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It is the purpose of this Journal to study the major questions facing us as Jews in the twentieth century, through the prism of Torah values. We will explore the relevant Biblical and Talmudic passages and survey the halachic literature including the most recent Responsa. The Journal of Halacha and Contemporary Society does not in any way seek to present itself as the halachic authority on any question, but hopes rather to inform the Jewish public of the positions taken by Rabbinic leaders over the generations.

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Jewish Implications of Astrology  
*Rabbi Yaakov Schwartz*

# Jewish Implications of Astrology

Rabbi Yaakov Schwartz

## Introduction

In the past year, national attention was drawn to the revelation that the President's wife freely consulted with an astrologer, and according to some reports, the astrologer's advice influenced the scheduling of Presidential events and activities. The reaction of the general public to this information ranged from open ridicule to quiet approval. Questions arose as to the validity of belief in astrology and its predictions.

To the Torah community, opinions on all issues should be predicated upon authentic halachic sources and the guidance of Torah scholars; especially so, when dealing with a somewhat obscure and often misunderstood topic.

The purpose of this article is to present the primary sources and opinions on this topic, up to and including their codification in *Shulchan Aruch*, and to seek in them information helpful in answering three essential questions.

1. Is it permissible to believe in astrology?
2. Is it permissible to consult an astrologer or read astrological forecasts?
3. Is it permissible or recommendable to schedule one's activities according to the advice of an astrologer?

However, we will not here consider the reliability or

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qualifications of those individuals today who claim to be able to predict events or indicate favorable options. That is totally beyond the purview of this inquiry.

### Astrology in the Torah and Talmud

Astrology claims to be able to forecast lucky or unlucky times for an individual, or to divine aspects of his personality based on the "influence of the stars" at the time of his birth or at a given moment of his career. At first glance, the pursuit of astrological guidance would appear to fly directly in the face of the biblical prohibition "*Lo te'onenu*," (*Leviticus* 19:26) which Rashi explains as someone who says "day X is good for starting this project," or "hour Y is not propitious for going out." However, this conclusion does not necessarily follow from the discussion in the Talmud on this topic.

In the Babylonian Talmud there are at least ten references to astrology, although none use the specific term "astrology."<sup>1</sup> The three terms employed are "*Iztagrinus*,"<sup>2</sup> which is the Aramaic equivalent of astrology, "*Mazal*,"<sup>3</sup> which literally means a "flow" of stellar influence, and "*Chaldeyim*,"<sup>4</sup> [i.e. Chaldeans = Babylonians] who were known popularly as experts and advocates of this endeavor.

The Talmudic sources seem to present a dichotomy. Some acknowledge and accept belief in astrology and others appear to prohibit it. The resolution of these seemingly conflicting statements by the *Rishonim* (medieval Rabbis) determines their position in the halacha.

Let us now examine two oft-quoted discussions that seem to permit or promote belief in astrology.

The Gemara *Shabbat* 156a reports that it was written on the

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1. Only in the Jerusalem Talmud and *Midrash* is the term "astrologers" found. See *Yerushalmi Shabbat* Ch. 6 Hal. 9.

2. As in *Shabbat* 156a.

3. As in *Moed Katan* 28a.

4. As in *Pesachim* 13b.

ledger of R. Yeshuva B. Levi that someone born on a Sunday would be a "Gvar V'loh Hadah Bey" which the Talmud explains to mean a person who is either wholly good or wholly evil. The discussion continues to enumerate the attributes of individuals born on each day of the week: Monday's child is to be temperamental, due to the fact that the waters of creation were split on that day; Tuesday's child would be promiscuous, comparable to the vegetation which flourished in an intermingled fashion<sup>5</sup> on that day of creation, and so forth.

R. Hanina, however, argues that the day of birth does not determine a man's predisposition so much as does his hour of birth. This is a reference to the astrological assumption of the existence of planetary "houses" which govern personality traits and fate. At hourly intervals different planetary configurations are considered to occupy these houses and exert influences on the individuals born therein.<sup>6</sup>

"One born at the time of the sun's influence will be bright (in Torah learning). One born at the time of the influence of Mercury will be of keen and sharp mind..." R. Hanina's assertion is that *Mazal* (astrological fate) can establish a person's intelligence and wealth — and that Jews are subject to such influence.

In contradistinction, R. Yochanan and Rav declare that "there is no *Mazal* for Jews." Rav's proof is critical in evaluating the nature of the *Amoraic* argument.

Rav says,

Abraham said to the Ruler of the Universe, "I looked into my astrology and I am unable to have children." [G-d said to Abraham], "Leave your astrology, for Israel has no *Mazal* — you see Jupiter in the west, I will put it in the east."

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5. See Rashi (ad. loc.)

6. I believe the Talmud here is referring to planetary "houses" or the position of the planets occupy at hourly intervals. For definition of these terms see the *Dictionary of Astrology* by James Wilson, N.Y., S. Weiser Publications, 1974, or any major Encyclopedia.

The crucial part of Rav's proof is the last phrase. It implies that even for those who opine that "*Ein Mazal L'Yisrael*," (there is no *Mazal* for Jews) the position of Jupiter (*Tzedek*) was still important to the Patriarch's ability to bear children, and that it was only G-d's "adjustment" of the planetary configuration that changed the course of events.

"*Ein Mazal L'Yisrael*," then, need not mean that Israel is totally unaffected by astrology, but rather that G-d alters astrology on behalf of Israel.

This point is strongly underscored by two incidents related in the continuation of this text.

The Chaldeans [astrologers] told R. Akiva that his daughter would be fatally bitten in the garden by a poisonous snake.

R. Akiva was worried about their forecast; and when she fortuitously escaped harm, he declared that her escape was based on an act of charity that she had performed that day.<sup>7</sup> This citation reiterates the attitude that astral influence exists, but can be overridden by Jews through their acts of religious merit.

In this talmudic report, there is no indication of any prohibition whatsoever giving credence to the prognostication. On the contrary, quite the opposite is indicated, that one like R. Akiva, or like the mother of R. Nachman b. Yitzchak, took heed of astrological forecasts and took action to merit divine intervention, so that the decree would be overridden. In R. Nachman b. Yitzchak's case, the Chaldeans at his birth foresaw that he would have a propensity towards thievery; his mother, heeding their words, took action to instill in him fear of G-d by making him always cover his head. Later, R. Nachman attests to his predisposition towards theft by reporting that "once his head cover fell off while he sat under a date palm, and he had a tremendous urge to steal the fruit."<sup>8</sup>

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7. "*Nafak R. Akivah V'Darash Tzedakah Tazil Memavet.*" (*Shabbat* 156b)

8. "*Nafal Glima Melooyeh Reshey Dali Eyney Chazah L'Diklah Almey Yetzrey.*"

Another major talmudic source that acknowledges astral influences on man is found in *Moed Katan* 28a.

Rava said, "Three things are not dependent on merit but rather on *Mazal*: lifespan, offspring, sustenance."

This text seems to take<sup>9</sup> an even more extreme stance than the one in Tractate *Shabbat*. Whereas in *Shabbat* it seemed that all influences could be negated by human action, here it is stated that no amount of prayer will enhance these three categories. *Tosafot*<sup>9a</sup> however suggest that the two texts are compatible, and that often but not always through special merit, the decree carried in the stars can be altered.

In contrast to the two aforementioned texts are two others that indicate prohibitions against astrology.

Rav Yosi of Huzil says, "From where [do we derive] that it is forbidden to inquire of Chaldeans? For it says 'Be simple and perfect (*tamim*) with your G-d.'"<sup>10</sup> (*Pesachim* 113b)

It is not clear, however, what "being perfect" or "*tamim*" means. It could be referring to a recommended level of character perfection and thus represent a rabbinic amendment,<sup>11</sup> or it could be referring to a biblical prohibition of more serious nature.<sup>12</sup>

Whatever the exact nature of the *issur*, it is clear from this talmudic text that seeking astrological counsel is prohibited.

The other source is not quite as explicit in its wording. In *Sanhedrin* 65a the *Amoraim* discuss the implication of the biblical prohibition mentioned previously, "*Lo te'onenu*."

9. See Question of *Tosafot*, M.K. 28a "Elah B'Mazlah."

9a. *Moed Katan* 28a and *Shabbat* 156a.

10. "Tamim Tihyeh Im Hashem Elokecha." (*Devarim* 18)

11. This is the opinion of the Rambam, who omits this commandment from the *Mishneh Torah* (*Yad Hachazaka*); according to R. Y. Perlow, R. Saadia Gaon concurs with this conclusion. See *Sefer Hamitzvot L'Rasag*, Vol. 2, pg. 52.

12. Such is the opinion of the Rambam as stated in his commentary to *Sefer Hamitzvot* of the Rambam. "Tamim..." is listed as one of the mitzvot the Rambam did not enumerate. See also *Shulchan Aruch*, *Yoreh Deah* 179-1.

13. Deuteronomy 18, Leviticus 19:26, "Lo Te'onenu."

R. Akiva says this [means] one who calculates times and hours and declares, "Today is fortuitous for travel, tomorrow is proper to harvest."

Some *Rishonim* write that this statement of R. Akiva refers to astrologers who concern themselves with hourly changes in the stars and planets,<sup>14</sup> but R. Shimon and other rabbis differ with R. Akiva on this definition.<sup>15</sup> However, if the halacha is according to R. Akiva, as some indicate, then the study of astrology itself is clearly identified as a biblical prohibition.

The dichotomy can now be formulated:

How can the former texts and others like them<sup>16</sup> which accept the influence of astrology and advocate reaction to the information it offers, be reconciled with the latter ones where astrological consultation is clearly prohibited and practicing astrology is perhaps branded as a quasi-idolatrous pursuit comparable to other preposterous forms of false divination?

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14. This is the opinion of the Rambam, *Hil. Avodah Zorah* 11:8,9. See also *Yoreh Deah* 179-3.

15. R. Shimon says that "Me'onen" is one who "augurs" using seven types of animal semen. The Sages say "Me'onen" is "Achizat Enayim." For a discussion about that definition see *Ency. Talmudica* loc. cit.

16. See also *Baraita D'Shmuel* and *Baraita D'Mazalot*. Also *Sotah* 12b about the inability of astrologers to make accurate forecasts, "Tzophin V'loh Yodin Mah Tzophin." See also *Bereshit Rabbah* 10 about astrology's influence on plant and animal life, *Megillah* 31, *Sanhedrin* 84a, *Bava Metzia* 27b. Other texts include *Rosh Hashanah* 11b.

R. Yehoshua says that the 17 of Iyar was the day [that the flood in the days of Noah] began because the constellation "kimah" sets during the day and the springs drop in water level. And since they [Noah's generation] perverted their actions, so too G-d perverted His act of creation and caused the constellation "kimah" to rise in the daytime, and He removed two stars from it, causing the world to be flooded.

R. Eliezer said it was the seventeenth of Cheshvan when the constellation "kimah" rises in the day and the springs swell. And since [in Noah's generation] they perverted their actions G-d perverted His creation and caused the constellations to rise and removed two stars causing the flood.

Rashi explains that Kimah is the tail of the constellation Aries. According to R. Yehoshua the date was the 17 of Iyar when the constellation Aries is visible at

We are thus left without a clearcut attitude towards astrology from the Talmud. Let us turn to the subsequent scholars, the *Geonim*.

### The Geonic Stance

On all the aforementioned talmudic references there are only two direct comments from *Geonic Responsa* literature.

The first and most important is a responsum attributed to Rav Hai and Rav Sherira Gaon<sup>17</sup> on the Talmud (*Shabbat* 156a, b), which indicates that, at least for non-Jews, astrology pre-determines behavior. If so, the *Geonim* were asked, how can non-Jews be held liable for punishment for robbery or other offenses if they lack free will at the time the crimes were committed?

The *Geonim* first "strengthen the question" by citing two other texts, (*Moed Katan* 28a and *Taanit* 25a) which also show that heavenly decrees even about Jews determine their fate, despite their own merits. The example in *Taanit* 25a is the case of R. Elazar b. Pedath who was the greatest authority of his time and yet seemed subject to the capricious fortune of his astrological natal influences.<sup>18</sup>

In response, the *Geonim* distinguish between two types of belief in astrology. The first, a fatalistic one, holds that man can in no way alter that which has been decreed about him. The second believes that what has been astrologically decreed about a man can

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night. According to R. Eliezer the date was 17 Cheshvan when Aries is "rising" (appears on the eastern horizon) during the daytime.

This text is the least disputed of all the texts cited. For even the staunchest opponents of astrological predispositions agree that G-d's will is carried out via His constellational messengers. See the words of the Responsa of the Rambam as quoted in "Correspondence of the Rambam to the Rabbis of S. France," ed. Marx, HUCA, 3 (1926), p. 354.

17. *Geonic Responsa*, Harkavy, *Siman* 390, 173, 140, 27 (p. 206). The rabbis of S. France assumed R. Hai and R. Sherira to be the authors of these *T'shuvot*. See Marx, HUCA, 3 (1926), p. 350.

18. Lit. "Ephshar D'Mityalda B'Shayta D'Mzoney?" Rashi explains that his colleagues told him rhetorically that by now it was obvious that he was born under a "bad sign" for bread-winning.

be altered either by the person's own deeds or by asking for divine intervention. The *Geonim* reject the first approach altogether.

They accept, however, the second type of belief that assumes that the *Mazal* only creates an *inclination* towards a behavior but not a predetermination that such behavior must be followed. Therefore, the *Geonim* reason, an inclination to thievery can and must be overcome, as with any evil inclination. And therefore non-Jewish thieves are liable for punishment.

This answer is particularly significant because no *Amora* ever said "*Eyn Mazal L'Adam*" (there is no *Mazal* for a person) rather "*Eyn Mazal L'Yisrael*" (there is no *Mazal* for Jews), which might have led to the conclusion of the inability of non-Jews altogether to alter their fate. But now that the *Geonim* have explained that even non-Jews may alter or plead for heavenly help in changing their astrological fate, what then is the meaning of "*Eyn Mazal L'Yisrael*"?

It seems that their attitude is that *even* those who say "*Yesh Mazal L'Yisrael*" (there is *Mazal* for Israel) mean that to whatever extent the *Mazal* has an influence it takes only the form of an inclination or tentative decision but not a final determination. As their responsum states:

For even R. Hanina who says<sup>19</sup> "*Mazal* wisens and enriches and there is *Mazal* for Israel" still says "All is in the hands of Heaven aside from Fear of Heaven"<sup>20</sup> to tell us that all is up to Man.

Thus, whether one holds "*Yesh Mazal*" or "*Eyn Mazal L'Yisrael*," those who say "*Yesh Mazal*" mean that that individual must work (even) harder to deny that inclination and is rewarded for doing so more than others.

In commenting on the text in *Taanit* 25a where R. Elazer b. Pedath is told that his fate is due to his time of birth, "*efshar deityalyid lach shaayta d'mzoni*"<sup>21</sup> the *Geonim* give two opinions.

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19. *Shabbat* 156a.

20. *Berachot* 33b.

21. Other texts read *D'Itrami* — or that happened now.

The first is based on a verse in Psalms<sup>22</sup> that prayer can effect change; the second is based on a parable of two men, one standing above who informs the one below him that unless a rope can be attached, the lower one is doomed to remain below — meaning that the options exist to overcome the situation should they be properly exercised.<sup>23</sup>

In the *Geonic Responsa* the only other reference is a minute one on the Talmud (*Sanhedrin* 49a).<sup>24</sup>

The astrologers (*Iztagninim*) of David are still alive, as R. Yehuda said in the name of Rav, "400 children David had as sons of captive non-Jewish women; all had long hair and were his captains and his strong-armed men."

The Geonim point out that obviously astrologers are not what is meant by "*Iztagninim*" here. Their explanation for the use of the term seems to be that of Rashi, that "David relied on them and followed their instructions," another strong indication that astrologic words "carried weight."

In summary, there is no indication from the *Responsa* of the *Geonim* Hai and Sherira that astrology should be equated with "*Me'onen*" and therefore totally rejected. They do accept and reiterate the sources which validate astrology and reinforce the conclusion of the Gemara *Shabbat* 156b that an individual through his or her merit may induce G-d to alter his fate. They do not comment in their *Responsa* on the passage in *Pesachim* 113b which forbids seeking astrological advice. It therefore remains unclear as to their halachic opinion about consulting astrologers and exactly how one should follow such warnings if at all.

In the writing of R. Saadia Gaon there may be a view that differs with that of R. Hai and Sherira in their *Responsa*.

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22. "Bikshu Tzedek Bikshu Amuah" as remedies.

23. The Geonim emphasize that the use in *Taanit* 25a of "*Ephshar*" does not mean random or capricious, but rather "reversible." See *Otzar Hageonim* p. 133a note A.

24. See *Otzar Hageonim*, *Sanhedrin* 49a.

In his book on R. Saadia's *Sefer Hamitzvot*, R.Y. Perlow discusses R. Saadia's position as to whether there exists a prohibition on astrological inquiry. R. Saadia's "Azharah"<sup>25</sup> refers to the biblical prohibitions of *Nichush*, *Me'Onen*, *Kosem*, *Mechashef*, *Chever*, *Dorshei metim*.<sup>26</sup>

He deletes the mitzvah of "Tamim", referred to in *Pesachim* 113a. R. Perlow asserts<sup>27</sup> that R. Saadia's position is that "Tamim" is a rabbinic commandment and therefore not to be enumerated in R. Saadia's poem, which is concerned only with the 613 biblical commandments. R. Perlow adds that the reason why R. Saadia saw "Tamim" as only a rabbinic command is that as a rationalist, R. Saadia totally dismissed astrology as foolishness and not worthy of mention. How R. Saadia would understand the texts in *Shabbat* 156a, *Moed Katan* 28a and *Taanit* 25a is not explained.

However, R. Saadia Gaon in his Arabic commentary to the *Sefer Hayetzira* does include astrologic material. This inconsistency requires further study.

### Maimonides vs. Nachmanides

Of all the major *Rishonim* who offer approaches to understanding the talmudic sources, two opinions are the representative ones. Maimonides (Rambam) and his followers<sup>28</sup> completely reject astrology and the "pro" astrological sources in the Talmud, rebuking those who would even classify it as a science.

25. The tradition asserts that the Decalogue is to the Pentateuch as the general rule is to the detail. This tradition led to the development of the "azharoth" (or "warnings"), namely, "Piyutim" (liturgical compositions) which take each statement of the Decalogue to refer to a group of mitzvot, or each letter of the Decalogue to represent a particular mitzvah, and list the mitzvah accordingly.

26. *Deuteronomy* 18.

27. R. Perlow, Volume 2 (pg. 47-52) equates R. Saadia's opinion with that of the Rambam. See his masterful elaboration which is important to understanding the nature of the Rambam's disagreement with the Ramban, *Yad Hil. A.Z.* 11-7, *Sefer Hamitzvot*, Negative Commandment 32 (Resp. 282) on this issue.

28. The *Nimukei Yosef* at the end of the 7th chapter of *Sanhedrin* may be in agreement with Ramban. See also the *Tur*, *Yoreh Deah* 179, and the editions of the Rosh and Rif on *Sanhedrin* 56, who read "Lo T'nachashu B'cochavim"

Nachmanides' (Ramban's) approach, on the other hand, is to blend the seemingly conflicting sources into one cohesive halachic attitude. It is toward the Ramban's approach that the codifiers of *Shulchan Aruch* were more sympathetic.

In the Rambam's halachic writings his consistent opinion is borne out in his *Mishneh Torah*, *Sefer Hamitzvot* and, most extensively, in his luckily preserved correspondence with the rabbis of southern France.<sup>29</sup>

In understanding the Rambam's opinion and halachic formulation, we are fortunately privy to his own orderly presentation on the issue. This presentation is in his responsum to the detailed questions of Rabbi Jonathan of Montpellier and his students.

The questioners were disturbed by the astrologer's claim that they could forecast evil happenings or moments of danger.

As the historian Marx wrote about them, "one feels that they believe in its truth but cannot reconcile it with their religion."<sup>30</sup> Their rational minds rejected the concept of being unable to escape astral "decrees", for that contradicts the Jewish belief in prayer and free will.

Their analysis begins with the talmudic source (*Shabbat* 156) "Eyn Mazal L'Yisroel," and then with the Geonic Responsa analyzed earlier, which they attribute to both Hai and Sherira Gaon and which they quote verbatim. They understand the Geonim to have concluded that astral influences do exist and are a part of creation, but their evil can be overcome by an individual through his merit. However, the French rabbis are convinced of their inability or inadequacy to merit G-d's alteration of their original astral decrees. Therefore, they assume that the only alternative is to

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instead of the variant "B'Dagim," which indicate agreement with the Rambam that astrology is equivalent to *Nichush*. See *Encyclopedia Judaica* for a listing of medieval philosophers and biblical scholars and their writings on this subject, particularly the letter of Abraham b. Hiyya in Adolph Schwartz *Festschrift*, Vienna (1917).

29. Marx, ed. HUCA 3 (1926) p. 354-358.

30. Ibid, p. 315.

seek "qualified" professional astrological counsel to learn how best to understand and prepare for their pre-ordained futures. They ask the Rambam to inform them whether this type of counsel is worthwhile and should be sought out.

The Rambam, unlike the French rabbis, does not attack the problem based solely on the rabbinic sources. First, he writes that astrology, which posits pre-determined patterns of behavior or at least inclinations towards said behaviors, must be rejected purely on logical grounds. He obliquely refers to the works of Greek and Persian philosophers whose writings, he says, already logically uprooted these astrologers' claims "root and branch."<sup>31</sup>

Significantly, the Rambam does acknowledge that the constellations do exert force over human events; indeed, he writes that they are the sole agents by which each living thing in nature is created and by which natural events are sustained. However, he asserts that constellations are only agents used for G-d's reward and retribution and that G-d sets their pattern as a reaction to the good and evil freely chosen by each individual. The Rambam emphasizes that those choices made by man are in no way caused by or influenced by astrological factors.

Secondly, the Rambam argues that the essence of our acceptance of religion<sup>32</sup> is reward and punishment, and astrological pre-determination make rewards and punishment illogical.

The Rambam deals with sources supportive of astrological belief, which he admits do exist in Talmud and Midrash, in three ways. First, he refuses to validate any source which seems to lend credence to astrology, comparing those sources to biblical passages which logically must be interpreted allegorically. In addition he conjectures that the rabbis quoted could be speaking in terms relevant to that era only, or that they were not privy to certain knowledge which we now have. Thirdly, and I believe most importantly, is the following statement:

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31. Ibid, p. 351.

32. First the Rambam uses the "*Da'at*" (reason) argument and then, the "*Dat*" (religion) argument.

Do not let it be difficult for you [to reject the rabbinic sources which espouse astrology] for it is not [the proper] way for a man to abandon the practical (consensus) halacha and follow minority opinions.<sup>33</sup>

The Rambam, using all these as supplementary arguments to the rational one, maintains that the halachic conclusion of the Talmud is compatible with the rational argument. But he does not reveal his sources for the Talmud's halachic conclusion in his Responsa. Instead, he refers us to his *Mishneh Torah*, *Hilchot Avodah Zarah*. In his own words, had the French rabbis read that, they would know the Rambam's opinion on all these matters, for it has all been explained there.<sup>34</sup>

By examining what the Rambam included in *Sefer Hamitzvot* (*Lo Taaseh* 32) and the *Mishneh Torah*, it is clear that he views astrological belief, consultation, and practice as part of the biblical prohibition of "Lo te'onenu." He bases his opinion totally on the citation from *Sanhedrin* 65a and a parallel one in *Sifra* (6-2), rejecting all other sources as irrelevant to the outcome of the halacha.

There does, however, appear to be a minor discrepancy between what is written in the *Sefer Hamitzvot* and the *Mishneh Torah*. This is unusual, for the *Sefer Hamitzvot* serves as the framework for the halachic "magnum opus," *Mishneh Torah*. Each of the 613 mitzvot is expanded upon in the *Mishneh Torah* using material from Babylonian and Palestinian sources, both talmudic and Midrashic.<sup>35</sup>

In the *Sefer Hamitzvot* the Rambam writes:

המצווה הל"ב — האזהרה שהוורהנו מלכון מעשנו בבחירה  
הזמנים על פי מערכות הכוכבים, והוא שנאמר: יום זה ראוי  
לפעלה פלונית ונתקון לעשותתו, או יום זה לא ראוי לעשותתו בו

33. Lit. "Pirchei V'shinuyay," questions and answers which are important only in the clarification of the authoritative opinions.

34. *Mishneh Torah* (*Yad*), *Hil. Avodah Zarah*, Chap. 11 *Hal.* 8, 9.

35. See the Rambam's introduction to *Sefer Hamitzvot* and *Mishneh Torah*.

פעלה פלונית ונמנע מלעשודה. וזה אמרו יתעלה: „לא-ימצא בר וגוי מעונן“ (דברים יט). ובבר נכפל לאו זה ואמר: „ולא תעוננו“ (ויקרא יט, כ). ולשון ספרא: לא תעוננו — אלו נוותני העתים. לפי שהוא גזoor מן „עונה“, כלומר: לא יהיה בכם קובע עתים האומר: עת פלונית טוביה ועת פלונית רעה. וגם העובר על לאו זה — חייב מלכות, כלומר: המודיע את העונות, לא זה השואל עלייהן; אבל גם השאלה על דבר זה — אסורה נוספת על הייתה דבר בלחין אמרת. והמכון מעשוו — לזמן מסויים מותך חשוב שיאשר או יצליח באותה הפעלה — הרוי גם זה לוקה, לפי שעשה מעשה. ועוד בכלל המעשה זה אסור מעשה אחזות העינים. ולשון חכמים „מעון — זה האוחז את-הعينים“.

Mitzvah 32: This is the admonition that we have been warned [not] to direct our deeds by choosing times according to the arrangements of the stars, so that we should [not] say, "This day is appropriate for project X," and intend to do it, or "This day is not desirable for doing project X," and hold off from doing it. And that is what He has said: "There shall not be found amongst you a "Me'onen" and this prohibition is repeated, as it says "Lo te'onenu" (Leviticus 19:26), and the Sifra explains "Lo te'onenu — refers to those who set times."

[The prohibition of *Lo te'onenu*] is conjugated from the word "*Ona*" — time. This means, there should not be amongst you a person who establishes times and says, "This time X is good and that time Y is bad." And one who transgresses this prohibition is liable for lashes. This refers to the one who foretells the times, not to the one who asks about time. However, also asking about this matter is forbidden, in addition to its being an untrue matter. And a person who directs his actions for a specific time out of a calculation that he will succeed or be lucky this way — he also gets whipped by lashes, inasmuch as he did a deed. Also included in this prohibition is "*Achizat einayim*" (sleight of hand), as our Sages have said, "*Me'onen* — that is one who practices sleight of hand."

According to this, one who reveals the forecasts, "Modea et Ha'onot", is liable for "malkot" (lashes) having violated the biblical commandment "Lo te'onenu" as well as one who schedules his actions "Mechaveyn Maasav" to coincide with (astrologically) favorable moments.

According to the Rambam in *Mishneh Torah*, only the "Mechaveyn Maasav" is liable for lashes. Also there the Rambam calls belief in astrology "lies and foolishness."

In any case, the position of the Rambam on the three halachic questions raised in our introduction are quite clear. Belief in astrology without acting upon that belief is "lies and foolishness" but not prohibited per se. However, forecasting, consulting, and scheduling one's action according to astrology are all violations of the biblical prohibition of "Lo te'onenu."

The reason why the Rambam ignores the *issur* mentioned in *Pesachim* 113b in both his halachic compendia still requires explanation. Moreover, the Rambam's opinion is not in consonance with the view of most *Rishonim*, which is summed up in the more popular opinion espoused by the Ramban.

### The Opinion of Ramban and His Followers<sup>35a</sup>

We have already noted that the Ramban (Nachmanides) in his commentary on *Sefer Hamitzvot* clashes with the Rambam on the issue of whether "Tamim Tihyeh Im Hashem," as explained in *Pesachim* 113b, should be listed as a positive command prohibiting the seeking of astrological forecasts of the future.<sup>36</sup> On this matter, Ramban sides with the *Bahag* in listing this mitzvah as the eighth (of 17) of positive commands that the Rambam failed to enumerate.

Moreover, in contrast to the Rambam, who called belief in astrological forecasts "lies and foolishness," the Ramban writes that we should not assume that their forecasts must come true but rather

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35a. See Responsa of the Rashba (413) (652), and *D'rashot HaRan* (8).

36. Instead we are to seek future forecasts only from prophets or the *Kohen Gadol* using the *Urim V'Tummim* (breastplate); see Deut. 18:14 and Rashi *loc. cit.*

say that G-d will alter our fate based on our own level of close adherence to the divine law.<sup>37</sup>

In the Responsa of the Ramban (282) his differences of opinion with the Rambam are more distinct. First he proves that astrology is not “*nichush*” or any other idolatry-related “*issur*,” primarily from the text in *Shabbat* (156b). Unlike the Rambam he does *not* disregard this text halachically. And unlike the Rambam he states that there is a predetermined pattern set in the stars which can only be altered based on individual merit. He calls such changes “hidden miracles.” In sharp distinction to the Rambam, who opines that lashes should be given to one who guides his actions upon astrological warnings, Nachmanides states that one who ignores such warnings may be liable for the sin of “*Lo T’nasu Et Hashem*,” for he is testing G-d by relying on miraculous intervention! Furthermore, Nachmanides says that character traits are *also* determined by the stars but that it is difficult to make an accurate analysis and not a recommended pursuit for the devout.<sup>38</sup>

The Ramban’s attitude towards the three questions raised in the introduction would appear as follows: Belief in astrology is permitted. But it is prohibited to seek consultation with an astrologer based on the biblical prohibition<sup>39</sup> “*Tamim Tihyeh*.” If astrological warnings of danger are somehow disclosed, one is required to heed them based on the command “*Lo T’nasu et Hashem*,” meaning we are not allowed to “challenge” G-d to create open miracles for us via negation of pre-determined astrological patterns. The Ramban unifies the talmudic sources by accepting both the validity of astrology while establishing the need to avoid astrological inquiry. If we serve G-d with “*T’mimut*” (with a pure faith) we will merit His altering our *Mazal* in those cases which would be detrimental to us.

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37. Lit. “*Avodah*” or service.

38. As per *Sotah* 12b.

39. See Responsa of the Radbaz (*Tshuvot HaRadbaz Hachadashot*) no. 485, that in reference to a question of *Nichush* the Ramban indicated that “*Tamim*” is only a rabbinic prohibition. This contradicts what the Ramban wrote in *Sefer Hamitzvot*, but may indicate his final position “*L’halacha L’maaseh*.”

### Astrology in *Tur* and *Shulchan Aruch*

The *Tur* in *Yoreh Deah* 179 quotes the Rambam's opinion that includes astrology under the prohibition of "Lo Te'onenu."

The *Bet Yosef* counters, based on Responsum 282 of the Ramban, that from *Shabbat* 156a, "we see that it is permissible to listen to astrologers and believe their words... and, infrequently, G-d will cause hidden miracles for His dear ones and nullify the decree of the stars..." To facilitate these "hidden miracles" we are therefore bidden not to inquire of the astrologers (*Tamim Tihyeh*).

If one did discover a forecast not to his liking, then he should do mitzvot and intensify his prayers. And if one sees in his astrology that today is unfavorable for work he should take heed and not rely on miracles, for in my opinion it is forbidden to go against one's astrology and rely on [open] miracles.

The *Bet Yosef* himself adds:

A person's knowledge of astrology... is a great wisdom and it is the decree by which G-d rules His world since Creation. Therefore the pious should pray that He cancel the [evil] decree of the stars for all is from the Master, and it is in His hands to change it — as we found by R. Akiva's [daughter]. But, our rabbis said no man should think about these matters, rather rely on Him Who spoke and created the world Who, in His mercy, saves His servants. And the rabbis said on this matter [*Pesachim* 113b] — "From where do we derive it is forbidden to ask of the Chaldeans? For it says 'Tamim Tihyeh Im Hashem Elokecha.'" And the Rambam wrote that even study of astrology is 'Nichush' [forbidden divination], but this is incorrect.

Indeed, the *Bet Yosef*'s position seems even more lenient than that of Rambam. For the Rambam in *Sefer Hamitzvot* lists "Tamim" as a biblical prohibition,<sup>40</sup> whereas according to the *Bet*

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40. See note 39.

*Yosef* it is only rabbinic in nature. Both the Ramban and *Bet Yosef* agree that astrology cannot be classified as either *Nichush* or *Me'onen* as the Rambam and his followers maintained.

In *Shulchan Aruch, Yoreh Deah* 179-1 the *Bet Yosef* writes:

- 1) It is forbidden to inquire of astrologers or to cast lots.
- 2) It is a custom not to begin labor on Mondays or Wednesdays and to marry only when the moon is waxing great (till full moon).

As the Ramo explains, the connection between astrology and lot-casting is based on the text in *Shabbat* 156b and *Tosafot* commentary there.<sup>41</sup> Both *issurim* are derived from "Tamim Tihyeh." The Ramo in 179-2 adds that these actions are not *Nichush* but only "*Siman*"<sup>42</sup> (a sign) and that also it is prohibited to go against astrological forecasts, if revealed, citing the Ramban in his responsum.

The conclusions of the *Bet Yosef* and Ramo both seem to favor the opinion of the Ramban and his adherents over that of the Rambam.

♦♦♦

The foregoing has been an analysis of the basic Jewish positions concerning astrological belief and practice. However, since we have limited our discussion to the *Rishonim* and early *Acharonim*, this obviously cannot serve as a guide to normative Jewish thought or practical observance. It has rather been our goal to illuminate a somewhat arcane topic in the light of rabbinic commentary.

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41. *Tosafot "Chaldaei."*

42. The concept of "*Simana Milta Hi*" is found in numerous instances. The Vilna Gaon in his gloss to *Yoreh Deah* 179-2 provides a list that includes *Horeyot* 12a, and *Kritot* 5b, 6a. The most prevalent one is in *Berachot* 50b, about "*Siman*" for the New Year. See *Orach Chayyim* 583.



Drafting Women for the Army  
*Rabbi Alfred S. Cohen*

## Drafting Women for the Army

*Rabbi Alfred S. Cohen*

Some thirty-five years ago, a great controversy roiled the Jewish community, starting in Israel but spreading through the world — the attempt on the part of the Israeli government to draft girls into the army and the outrage of the Orthodox Jewish community at what it considered an absolutely wicked decree which must be resisted at all costs.

In rabbinic circles there was remarkable unanimity in the resistance, and a broad spectrum of rabbinic leaders — Chassidic, "Yeshivish", Sephardic — stood side by side to repel what they evaluated as a potential death threat to the Orthodox camp and, by extension, to the Jewish people.<sup>1</sup> The Agudah agreed to join the Labor coalition government only on the express understanding that if the suggestion to draft girls were even whispered about again, they would immediately withdraw and thereby topple the government.<sup>2</sup> At the head of the opposition to the government

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1. In the Introduction to Rav Eliezer Waldenberg's *Hilchot Medinah*, Rabbi Tzvi Pesach Frank, writing about the threat to draft women, exhorts all rabbinic leaders to be conscious that the greatest danger would arise from the Rabbinate being fragmented on the issue; he saw it as equivalent to a *gezerat sh'mad* (forced conversion) and the very existence of the Jewish community depended on their united resolve to oppose the plan.

2. פאר הרור volume V, p. 13.

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*Rabbi, Young Israel of Canarsie  
Rebbe, Yeshiva University High School*

stood the Chazon Ish, unchallenged as the greatest Torah leader of his time. Almost an entire volume of his five-volume biography is dedicated to his involvement in this issue, which he considered a veritable death threat for Judaism.<sup>3</sup>

Albeit time has passed and the proposal laid to rest (if not buried altogether), it might be of value to consider the response of the rabbis and try to appreciate why they took the attitudes which they did. It is important to understand why they choose not to debate the issue at all on its merits — rather than discussing the proposal in a scholarly, objective fashion, rather than citing chapter and verse to prove that according to Jewish law women are not permitted to bear arms, the Chazon Ish and all who backed him reacted with vehement opposition — NO! — And if you try to force us — we are ready to desecrate the Sabbath,<sup>4</sup> to die for the principle, even to flee the land en masse rather than comply!! Why such a violent, emotional reaction?

Although we usually think of halacha — the study of Jewish law — as a dry, academic discipline, it is really a mistake to think of it in those terms. Halacha has a dynamic all its own; it is impossible to rule on a halachic matter from a distance, on a theoretical plane. The halacha reflects much more than a choice between two intellectual alternatives; at certain times, it demands that the *posek*, the rabbinic authority, consider the proposed action in the context of the times and the implications it might have for society. The Chazon Ish chose not to approach the question of a woman's going to war in the academic fashion that the topic had been discussed by scholars for some two thousand years. Nor did he dissect the problem into specific legal questions — may a woman bear arms, is it a mitzvah for a woman to fight for the Land of Israel, are there wars where she should be included, etc. On the contrary, the Chazon Ish saw the matter entirely as an issue of morality going to the very heart of Judaism. In a letter to a colleague, his brother-in-

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3. Yet in the biography of his major protagonist, David Ben Gurion, the entire issue is not even mentioned!

4. פאר הרור vol. V, p. 12, note 12.

law Rav Yaakov Koniefsky reported that the Chazon Ish had declared that if the law were indeed passed, it was the duty of every Jew to resist unto death — literally.<sup>5</sup> For him it represented an encroachment upon the prohibition of “*Arayot*” — immorality and licentiousness — which is one of the three mitzvot for which a Jew must choose death rather than transgress. Rav Koniefsky also writes that the Chazon Ish, the Brisker Rav, and the Tchebiner Rav all concurred that if the measure became law, every family with a draft-age daughter would have to leave the country! So strong were they in opposing the danger that they equally opposed a similar plan to draft girls not for the army but for some alternate National Service.

They left no doubt as to the cause for their opposition — the army in any country, and Israel is no different, is a place where moral standards are relaxed, to say the least, and it was just not the proper environment for a Jewish daughter. Against their will, the girls would be affected by the atmosphere and the environment to which they would be exposed, a milieu which would replace the positive reinforcement they would have gotten at home from parents and family.

Rabbis Isser Zalman Meltzer and Tzvi Pesach Frank also issued pronouncements that a person must choose death rather than accede to the government decree, as did the Steipler Rav and Rav Shach.<sup>6</sup><sup>7</sup> When another rabbi suggested that perhaps it would not be so terrible if the girls served under carefully supervised conditions, the Chazon Ish retorted that the rabbi’s opinion was totally worthless and, had he had any children, he would not have been able to say something like that. The Chazon Ish actually ruled<sup>8</sup> that the Sabbath should be desecrated to avoid compliance with a draft order and urged parents and teachers to inculcate young

5. קריינה דאיגרתא רבג

6. שם, פאר הדור, רבו, רבכו.

7. For a discussion of the topic of male yeshiva students being drafted into the Israeli army, see, עי' ב"ד, ציון אליעזר, ג. ס"ט, הלכות מדינה, שער ג. פרק ד'.

8. פאר הדור V, p. 26

women with the laws of dying "*al kiddush Hashem*," in sanctification of the Name.<sup>9</sup>

That historic confrontation between religious leadership and secular political authority resulted in an "accommodation" which permitted exemptions from army service for women who wanted to be excused on religious grounds. Although the compromise was essentially unsatisfactory, eventually the issue of drafting women did recede from centerstage and ceased to arouse much controversy. Nevertheless, the implications of that encounter are profound: they underline for us the realization that halachic decision cannot be based solely on abstract legal considerations but must take into account the practical impact of a proposal. Regardless of the halachic precedents on any specific question involved in having women serve in the army, the Chazon Ish saw that the ultimate reality of putting young women in such a position would be to strike a mortal blow against the purity and status of Jewish womanhood. His heroic efforts are the expression of his understanding of the true role which halacha must assume in Jewish society. Halacha is not a passive intellectual research but

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9. It was not the proposed law alone which provoked the Chazon Ish to such extreme reaction, but also a deeper understanding that the measure would be the first time that the State of Israel proposed to force someone to violate their religious beliefs. Up until then, it is true, the government's policy was definitely secular and at times even anti-religious. But every individual always had the option not to participate in the government-sponsored program; children did not have to attend the government schools, people did not have to work on the Sabbath nor to buy non-kosher food. Here, for the first time, there was an element of coercion, and he saw it as the first chink in the armor, the first step in what could become an enforced program of secularization. Therefore, he addressed the whole issue as the frontal attack in a war on religion. His violent rejection, his exhortations to all Orthodox Jews to hold firm, the united response of the international Orthodox Jewish community, all helped to overcome the threat. The measure was withdrawn and debate ceased.

In his book *התורה והמדינה כרכיהם* (The Torah and the State as its Components), Shaul Yisraeli writes that from the point of view of "non-combatants" (i.e., the secular Jews) the whole episode was often perceived as an attempt by the Orthodox Establishment to topple the government of Israel. (Editor's Editorial).

rather the vital, essential component in forming an authentic Jewish lifestyle. Halacha requires unequivocal refusal to allow the slightest relaxation of morality standards.

But a generation has now passed, and *giyus banot* (drafting women) no longer looms as an imminent threat. Perhaps at this time we may study the issue from a somewhat more dispassionate perspective. Under circumstances other than those which prevailed in Israel some thirty-five years ago, in a situation where it would *not* be a ploy to weaken religious observance among the Orthodox, could Jewish law countenance women's participating in the national defense? What halachic criteria would have to be considered? Or is the subject of women's military service totally beyond the pale of consideration at any time?

Before we proceed, we must note that any discussion of women's bearing arms, as far as Jewish law is concerned, can only be considered as a possibility in a situation of great danger and need, for rabbinic thought is very negative about army life in general even for men, let alone for women.<sup>10</sup> In his commentary to Torah, Ramban writes on the verse "and when you go out to war, be careful of all evil things. . . ." (*Devarim* 23:10),

It is well known that it is the custom of the troops who go out to battle that they eat all kinds of despicable things and steal and rob, and are not ashamed even of adultery and every disgusting thing. Even an upright human being cloaks himself in

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10. Even in the best of times, there are moral and religious dangers attendant upon participation in army activities. The Gemara (*Shabbat* 64a) records an exchange between Moshe Rabbenu and Jewish soldiers who had fought successfully in a war. The soldiers, all learned in the Torah, asked Moshe to arrange *kappara* (atonement) for them. Expressing surprise, Moshe retorted "But not even one of you fell in battle!" (i.e., you were all virtuous men and therefore G-d protected you). Yes, they responded, it is true that none of us sinned, "but perhaps some of us did entertain sinful thoughts." We are very far removed from that kind of saintly and ascetic attitude among soldiers. And if even then, they were afraid of the negative impact army life might have had on them, how much more so do we have to be concerned! (Introduction by Rabbi Tzvi Pesach Frank to *Hilchot Medinah*).

cruelty and wickedness when he prepares to fight the enemy.

It is little wonder that Rabbenu Bachya, writing on the verse “a man’s garment should not be upon a woman” (*Devarim* 22:5) comments, “Scripture withheld weapons [i.e. ‘men’s garments’] from women so that they should not go out to war and thereby cause licentiousness (*z’nut*).”<sup>11</sup>

Although the Torah does not explicitly mention whether or not women are to serve in the army, our scholars look to the Torah for implicit guidance. There are some who would like to draw a precedent from the account in the Torah of the agreement which the tribes of Reuven, Gad, and half of Menashe made with Moshe Rabbenu shortly before the Children of Israel were to enter the Land.<sup>12</sup> These tribes had a plan and an offer — they wanted to settle on the eastern bank of the Jordan River (now the country of Jordan) which was particularly well-suited to their lifestyle, being rich in pasture and ideal for their numerous flocks. In return, they promised to go along with the other tribes and fight with them as the vanguard in the wars to conquer the Promised Land.

In the wording of their proposal, some rabbis would like to find a halachic clue to the question of women’s serving in the armed forces. Offering to serve in the forefront of the invading army, the tribesmen pledged their assistance while “our children and our wives. . . . will remain in the cities of Gilead [Jordan].” Possibly this may be taken as proof that women did not join in war. However, this conclusion does not automatically arise from the text. First of all, if the children were to be left behind, naturally the women would have to stay behind also to take care of them. Furthermore, not every single man went to fight in the Jewish army; and if someone were to be left behind, certainly the women would have preference. Thus, if the entire population were not needed for defense, it only stands to reason that the women would be among

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11. See also רמב"ם ס' המצוות.

12. Vilner התרה והמדינה דיב"ד note 4; *Techumin* 4, p. 89, note 27.

these who stayed home. Consequently, we cannot rely on this particular biblical incident as the halachic indicator.

However, there are a number of other places where the Torah discusses going out to war: In *Devarim* (20:8) we find a description of how the soldiers gathered prior to starting a campaign: before they set out, it was announced that anyone who was newly married, or who had recently bought a house or planted a vineyard, or who was afraid, was to leave the ranks and return home. On this passage, the Mishnah remarks,

בד"א במלחמות הרשות אבל במלחמות מצווה הכל יוצאי  
...אפילו חתן מחוירו וכלה מחופתה...

When does this hold true [that people were sent back]? When it is voluntary war; but when it is a war which the Torah commands (*milchemet mitzvah*), all are to go out, even the bridegroom from his chamber and the bride from under the canopy....<sup>13</sup>

This is a major departure from the idyllic impression portrayed in the Bible of an entirely voluntary army. Here the Mishnah seems to teach that the only time certain people are excused from the army is when Jews are engaged in an “optional” war, not one which the Torah has commanded them to fight. In the latter case, *all* people have to go out — bar none! But does the Mishnah really intend to indicate that women join the troops?

Apparently Rambam accepts this passage at face value and rules accordingly.<sup>14</sup>

בד"א שמחזירין אנשים אל מערכיו המלחמה במלחמות  
הרשות אבל במלחמות מצווה הכל יוצאי ואפילו חתן מחוירו  
...וכלה מחופתה...

To what does this refer, that men are sent back from the ranks? In optional wars, but in obligatory wars

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13. Mishnah *Sotah* 44b.

14. Rambam ז"ד מלכים

(*milchemot mitzvah*) all go out, even the groom from his chamber and the bride from her canopy.<sup>15</sup>

The *Tiferet Yisrael* and *Rashash* also accept this reading of the Mishnah. But although they concede that if the war is a mitzvah, it is a mitzvah for all, they differentiate between the functions of the men and women who join together for the common defense.

The implication is that women also go to war, and this is a great innovation. But perhaps they only go along to cook and bake and the like, to supply the provisions of the fighting men.<sup>16</sup>

*Radvaz* also wants to narrow the scope of the Mishnah:<sup>17</sup>

And it [the Mishnaic text] is difficult, for is it really women's way to do battle? Doesn't the verse [praise women and] say "the glory of a princess is that she is within?" (*Tehillim* 155). But rather it means to say that, since the groom is exiting his chamber, the bride also has to leave her canopy and cannot follow the usual customs of the wedding time. Perhaps in wartime the women used to provide water and food for their husbands [does the *Radvaz* mean to imply that each woman would be responsible only for her own husband?] and, in fact, that is the custom nowadays among Arab women....<sup>18</sup>

15. There are variant texts of the Rambam which differ slightly, although significantly from one another. In his פירוש המשניות א"ז we read ונן גם פירוש המשניות א"ז מזוות פריה ורבייה ומלהחות עמלק כל אחת מזוות עשה שלא הונן מזוות פריה ורבייה ואין הנשים חייבות בהן גראם ואין הנשים חייבות בהן גראם. If this text is accurate, surely Rambam would not maintain that women are obligated to join even in an obligatory war (*milchemet mitzvah*). However, most editions are lacking the words "מלוחות עמלק" which phrase also does not appear in the Gemara.

16. *Rashash* to Rambam. *Tiferet Yisrael* says basically the same.

17. *Radvaz* to Rambam, *ibid*.

18. Vilner (*Ibid*) compares this passage to one in the Gemara *Gittin* (p. 12) which teaches that a woman who accidentally killed someone must be exiled from her home. There is some discussion whether her husband must continue to support her or whether she has to get a job and support herself. But if we rely on the verse that "all the glory of a princess is that she is within", how

It is reported that Rav Kook<sup>19</sup> in this century rejected the interpretation of Radvaz, pointing out that the interpolation of women as only "cooking and providing supplies" appears neither in the Mishnah nor in the Rambam, and is an unwarranted circumscription of the woman's duty to defend the land when there exists a state of "obligatory warfare."

The ruling of the Rambam, with some suggested emendations as we have noted, is generally not disputed by other *Rishonim*, with the possible exception of the *Sefer Hachinuch*, whose position is problematic. In this book which analyzes all 613 mitzvot of the Torah, there are a number of times when the author discusses the exigencies of battle:

Mitzvah 525: It is a mitzvah "not to fear the enemy" but rather to have trust in G-d. According to *Sefer Hachinuch*, this mitzvah applies "only to men, for they are the ones who go out to fight." (italics added)

Mitzvah 527: Before attacking the enemy, the Jewish army must sue for peace. "And this mitzvah applies at a time when the Jews are in their land, [and it applies] to men, "since they are the ones who are fit for battle."

Mitzvah 603: The commandment to wipe out Amalek, the ancestral enemy of the Jewish people. Here the *Sefer Hachinuch* concludes that it is an obligation only for men, "for they are the ones who have to go and fight."

These are clear indications that Jewish law did not consider women as suitable candidates for actual battle, whatever other obligations they may have undertaken during times of war. However, there is a deviation from this impression in the *Sefer Hachinuch*'s own explanation of Mitzvah 245: the mitzvah to wipe

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do we contemplate sending her out to work? Yet, we do see that it was an acceptable option (i.e., it was considered acceptable for women to work outside the house). Rashi explains the apparent inconsistency in that, since she would be living in a strange city, where she was a foreigner, it would be improper for her to go out publicly and seek employment.

19. As related in *שיחות הרב צבי יהודה, ערכות ביד הר"ש אבניר חוברת איש ואשה*.

out the seven Canaanite nations who inhabited Israel before the Jews entered it:

And this mitzvah applies to men and women in all places and at all times that we have the power to kill them.

In fact, the *Minchat Chinuch* (a commentary on *Sefer Hachinuch*) cites this as the rationale for the Mishnah's teaching that "even a bride goes out from under the canopy."

We are left with an apparent contradiction — in one place the author of the *Chinuch* instructs us that women must give battle, but elsewhere he seems to take for granted that the army is composed solely of men.

A number of eminent halachic scholars have addressed this inconsistency: why would *Sefer Hachinuch* rule that women do have a mitzvah against the seven Canaanite nations but don't fight Amalek, when both are in the category of "*milchemet mitzvah*," obligatory war, about which the Torah expressly instructs the Jewish people?

We may find an answer in the analysis offered by the *Marcheshet*,<sup>20</sup> who distinguishes between mitzvot incumbent upon the group and those which the individual must perform. There are *national* obligations, such as building the *Beit Hamikdash* or establishing a monarchy, which devolve only upon the men in the community. Then there are other mitzvot which, although communal obligations, are nevertheless an obligation upon each individual person to perform. An example of the latter is the mitzvah to settle the land, which is a collective mitzvah but which each person fulfills individually.<sup>21</sup>

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20. *Marcheshet* כב א' ס' חלק.

21. One can only wonder how *Marcheshet* would categorize the current status in the State of Israel: (A) Is there a mitzvah today to "settle the land?" (B) If the country is invaded by enemies, and the entire population is in a life-and-death situation, would women have to participate in the mitzvah of "saving lives?"

Thus, according to *Marcheshet*, the reason that *Sefer Hachinuch*<sup>22</sup> writes that women are to join in the battle to eradicate the seven Canaanite nations is not because he considered women as obligated in the mitzvah to conquer the Land. He obligates them to fight because of their responsibility under *another* mitzvah — that of settling the Land of Israel. Since the land cannot be settled as long as the Canaanite nations dwell therein, it is the duty of women to join in eliminating them. But this is not because they have a mitzvah to go to war.

Rabbi Joseph Ber Soloveichik also finds the key in the distinction between the *kinds* of mitzvah being discussed.<sup>24</sup> He holds that women are not included in the commandment to wage war, neither against the seven nations nor against Amalek. However, there are other mitzvot which also concern our relationship with those seven nations, and these certainly do apply to women equally with men. Thus, aside from waging war, there is the directive “*hacharem tacharimem*” to totally destroy their buildings, culture, and belongings. In this instance, the bride leaves her canopy at the same time that the groom must depart, for both have to fulfill this command, by war if necessary. But as for Amalek, which is strictly a mitzvah to wage war and eradicate them, a mitzvah which is incumbent on the group but not on each person individually, women are not included.<sup>25</sup>

Moreover, the rationale for exterminating Amalek is redress for the dreadful harm they inflicted upon the Jewish people as they wandered through the desert. Not so the imperative to wipe out the

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22. According to him, included in the translation of the concept of an obligatory war (מלחתת חובה) is the obligation to acquire the Land of Israel for the Jewish people.

24. Zevin, *אור ההלכה, דף בככיו*.

25. A similar approach is suggested by the Tikkunei Shabbat אבנין נור אויחיך but with a slight twist: The mitzvah to eradicate the memory of Amalek means that every single Amalekite is to be put to death. But in this regard, the Amalekite is not different than any other person who is to be executed according to Jewish law; and since we do not execute people on the Sabbath (סנהדרין פרק י') the Amalekite is not to be killed on that day. This makes it a mitzvah dependent

seven nations, who must be removed "lest we learn from their ways." Women are just as vulnerable as men to adopting wicked moral attitudes from the Canaanites, so it stands to reason that they are equally bidden to protect themselves.<sup>26</sup>

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Let us now examine another proposal: Even assuming that there is no mitzvah or obligation for women to actually fight in a war nowadays, is there any reason why she may not volunteer if she wishes? May she be required by the law of the state to do some services? Are there any halachic grounds which would prevent her from participating in military maneuvers?

In the *Machzor Vitry*<sup>27</sup> we find the ruling that although only men between the ages of 20 and 60 were called up to the army, those who were younger or older could join up if they wished.<sup>28</sup> Might this logic not apply similarly to women and permit their enlisting if they wished? (This volunteerism of course can only to be discussed if there is no danger of sexual immorality attendant upon their participation. Otherwise, the topic is moot.)

A very serious objection to a woman's carrying weapons does arise from the express dictum of the Torah that "a man's garment should not be upon a woman nor should a man wear the dress of a woman" (*Devarim* 22:5). The Gemara (*Nazir* 59a) specifically

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on time (*מצוות עשה שהזמן גורם*), and any positive mitzvah which can only be observed at some times but not at others is one from which women are exempt. For example, *tfillin* are supposed to be donned in the morning, therefore women are exempt. (See Zevin's comments on this — *ibid.*, footnote 8A).

26. *Avnei Nezer*, *Ibid.*

27. *Machzor Vitry* commentary to *Pirkei Avot*, *perek 5*, last mishnah.

28. *Siftei Chachamim* (*Bamidbar* 1:3) and others rule that these people cannot volunteer. Similarly, he considers that the newly-wed, the fearful, the Kohen, and others cannot volunteer.

There is some disagreement between the view of *Machzor Vitry* (above, note 27) and others. This is discussed in *Vilner טוותא*. See also Felder *תורה שבע"פ* *כ"ג*.

connects this command to the question of a woman joining the army:

Rabbi Eliezer the son of Yaakov said, "How do we know that a woman should not go out to war with weaponry? Because the verse says, 'A man's garment should not be upon a woman'..."

Rashi also makes a direct connection between the verse and the Jewish law:<sup>29</sup>

And that is why Yael the wife of Chever the Kenite did not kill Sisera [see Judges 4] with a weapon, as it says, "She set her hand out to take a tent peg..."

It is evident that aside from moral considerations which would preclude a woman's joining the army, there are numerous authorities who are opposed to her using guns and other weapons at any time, since this is something that men do.<sup>30</sup> It is important to note that the concept of a "man's garment" has always been taken to mean not only a garment literally, but any habit, affectation, style or practice peculiar or reserved to one sex should not be practiced by the other.

An example of how this principle applies in actual practice arose a number of years ago. A man asked his rabbi if he were permitted to dye his beard, which was turning white, for he feared that his job would be in jeopardy if he looked too old.<sup>31</sup> Now, if

29. See Rashi to Judges 5:26 as well as the *Targum* and *Yalkut* (מדרש) ב' ר' יוסי (ב' ר' יוסי) maintains that *Targum* was written with רוח הקורש. See also גלען הש"ס זייר נ"ט also.

Relying on Rashi's comments about why Yael was careful to select a tent peg rather than a standard weapon, ח"ב שעך ג' פרק ו' הלכות מדינית, shows that even during a *milchemet mitzvah*, women are careful not to violate the *issur* of לא תלכש.

He also discusses why we cannot draw conclusions from the precedent set by Devorah, that women do go out to battle — she was in a special category of having received specific prophetic instructions to go.

30. In fact, this is the conclusion of Rabbi Zevin, דף ב' זרור ההלכה.

31. Rabbi Y.Y. Weinberg, שרכי אש ח"ב פא אות ג'; others who have dealt with

dyeing the hair is something women do, then a man should not be allowed to do it. However, if the norm has become that both men and women dye their hair, one could argue that no *issur* would attach to doing it.<sup>32</sup> After examining the question from a number of vantage points, Rav Weinberg ultimately concludes that today it is not possible to defend the position that only women dye their hair, and thus a man would not be precluded from following the same practice. Similarly, Rav Ovadia Yosef<sup>33</sup> permits men to view themselves in a mirror, although the Gemara (*Avoda Zara* 29) expressly lists this as one of the things which men should not do because only women do it. However, since it is obvious that nowadays both men and women commonly use mirrors, there is no reason to prevent a Jewish man from doing it.

Centuries of halachic study and clarification have elaborated other pragmatic limitations on the prohibitions of “wearing a man’s garment”, which raise doubt whether this verse may legitimately be employed as the basis for forbidding women to serve in the army. First of all, as mentioned, if both men and women do something, many say it cannot be classified as “men’s garment.” If nowadays both men and women carry guns, that in itself might vitiate the argument that a woman cannot fight in the army because of this *issur*. Furthermore, the Gemara in *Nedarim* 49b informs us that at times Rabbi Yehudah wore a cloak to protect himself from the weather, while at other times his daughter wore it. Since they were wearing the garment for protection from the weather, there was nothing wrong. Here we find introduced the concept that if the

אגורות משה יוי"ד ב ס"א ד"ה ובאמ. מהרמ שיק יוי"ד רע"ג שערים מצוינים בהלכה ב"ד קע"ג אמא

32. This, too, is an arguable premise. The Rashba states very clearly that just because someone does a forbidden act for a long time, that doesn't transform it into something permitted. “ומי שהרגל בדבר האסור ונמשכו רבים בכה אין האיסור חור להתייר” Rashb”א שוחת חלק ד' ס"ד. In other words, if it was forbidden for men to dye their hair when they first started doing it, then just because it has now become the accepted practice should not render the act permissible. Apparently, his position has not been completely accepted.

33. רחוה דעת ורמ"ט. See also discussion in note 32.

garment is worn for a *function*, the *issur* does not seem to apply.<sup>34</sup> On these grounds, one could well sustain the argument that a woman is wearing a gun in the army not for the sake of resembling her brother soldier but for the purpose of protection.

This brings us to a fundamental issue which almost all rabbis accept in their understanding of the law concerning men and women wearing each other's garments or adopting each other's practices — the motivation. Virtually all rabbinic authorities accept the premise that the Torah forbade it so that a man might not dress like a woman and mix with women, and vice-versa. Men or women passing for the opposite gender could lead to immorality and is therefore prohibited.<sup>35</sup> But absent such motivation, it might be permissible for a woman to adopt a "man's practice." A number of rabbinic decisors have considered this element in their practical rulings on the subject:

Rabbi Ovadia Yosef<sup>36</sup> was asked whether a woman may carry a

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34. ט"ז יו"ד קפ"ביד, וב"ח שם. It is the *Taz* who expands upon the rationale that the Torah's prohibition is not a blanket *issur* and that if the person is wearing the garment (or copying the habit) for a reason, for a purpose which is not immoral, the behavior might be acceptable. In this respect, he is basing himself on the *Ramo* (גנ"ד). However, the *Ramo*, in א"ה תרץ"ז, mentions the custom of men dressing up on Purim so that one could not tell if they were men or women, and he notes that, although he considers it permissible, there are those who do not. In י"ג קפ"ב the *Shach* states his opinion that those who disapprove the practice are correct. The *Mishnah Berurah* allows it (תרץ) although he too mentions that, since many authorities are opposed to the practice, a truly pious person should avoid it.

Thus, although the normative law is that if one is donning women's clothing for a functional purpose, it is permitted, there is a distinct body of opinion which frowns on it.

Furthermore, if, as some contend, the purpose of the *issur* stems from בוחוקותיהם לא תלכו the prohibition to copy Gentiles, who are not careful to prevent indiscriminate mixing of men and women, then the "functional" factor would not in any way change the *issur*.

35. In *תורה ומדינה*, כרך ז'ח, the author cites the two reasons which the *Rishonim* gave for the *issur*:

(a) זימה immorality.

(b) בוחוקותיהם לא תלכו not following the ways of the Gentiles.

36. יחוּ דָעַת חָלֵק הַנֵּה.

gun when she is on guard duty at a kibbutz or settlement on the border of Israel. After citing the authorities mentioned above, Rabbi Yosef concludes that in addition to the criteria they raised, there is an additional element to be considered herein, namely *pikuach nefesh* (a life-threatening situation) and for that reason he allows it. As support for this position, he cites the *Sefer Chasidim*<sup>37</sup> and *Terumat Hadeshen*.<sup>38</sup>

Furthermore, Rav Yosef takes the position that if a deed is being done not for the purpose of mixing with the other sex but for a specific function, there is no *issur* in wearing a man's garment. The woman carrying a gun on duty is clearly doing it for a well-understood function (analogous to the way Rabbi Yehudah and his daughter used the same cloak to cover themselves.)

Although Rav Moshe Feinstein concurs with Rav Yosef that one must rule leniently in this instance since it presents a danger to life, he disputes other aspects of the responsum.<sup>39</sup>

Both Rabbi Feinstein and Rabbi Yosef are prepared to waive the *issur* of dressing like the other sex in a life-threatening situation. They also note that when Rashi, as cited earlier, explained Yael's use of a tent peg rather than a knife or sword to slay Sisera, as arising out of her understanding that a woman must not adopt a man's practice — it was because she saw that her enemy had fallen

37. ספר חסידים סי' מ' ר'.

38. תרומת הרשן ס' קצ'יו. While Rav Yosef notes that he relies for his leniency on a precedent of the *Terumat Hadeshen*, actually there is more to it than meets the eye at first glance. In the case brought before the *Terumat Hadeshen*, a man asked for permission to dress in the fashion of non-Jews, for he was going to travel in an area which was barred to Jews, and he feared for his life. Although the author of *Terumat Hadeshen* did grant the permission, it was somewhat reluctant, for he notes צ"ע א' חשיב סכנת הויאל ומתחילה עצמו לכך לעבור דרך אותו מודיעה, since the man is willingly putting himself in the dangerous situation, he should not really be entitled to rely on a lenient opinion.

39. However, Rav Yosef does not quote this part of the responsum. Rav Moshe Feinstein, ר' מושה פינשטיין, dismisses the fact that the man had no free access to that area and considers the *heter* valid, without conditions.

39. אגרות משה או"ח חלק ד' ע"ה אות ג'.

into an exhausted sleep and she knew she had the time to choose the proper method. But had it been necessary to act quickly, any weapon would have been allowed. Rashi did not intend to imply that women cannot save their lives by violating the *issur* of "wearing a man's garment."

In reviewing rabbinic literature on the practical application of the prohibition "a man's garment shall not be worn by a woman," we are led to conclude that the biblical verse, according to most authorities, need not present an impediment to a woman's carrying or using weapons in time of war. Furthermore, a historical analysis of rabbinic opinion leads to the realization that many rabbis have found no other major halachic obstacles for their bearing arms. Yet that is a long, long step from arriving at the conclusion that in a Jewish state, women may be drafted for military service. As we have seen, there are many other factors at work in arriving at the final halachic decision (*psak*) in any given situation. The social, religious, and political context in which a situation arises can have an overwhelming effect on the manner in which this issue is viewed halachically, for the moral and societal impact of its implementation are crucial elements in any solution. At all times, authentic Jewish leadership is not constricted by the niceties of academic precedent but acts from a broader and deeper appreciation of halachic norms, which may take precedence over other considerations.

We also have to realize that rabbis employ a variety of methods in arriving at a halachic conclusion, so that at times there is a certain anomaly in their conclusions. Widely diverse criteria are taken into account by individual *poskim*; their multi-faceted conclusions arise from their divergent points of departure. Our purpose herein has not been to offer a solution but rather to examine the considerations which *poskim* have raised in reaching their decisions, and possibly to open some avenues for further discussion.

Love Your Neighbor:

Halachic Parameters

*Rabbi Reuven P. Bulka*

## Love Your Neighbor: Halachic Parameters

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**T**he commandment to "love your neighbor..." (*Leviticus*, 19:18), is considered a cornerstone of our faith. In the words of Rabbi Akiva, "this is a great general principle of the Torah."<sup>1</sup>

It would be instructive to define more clearly what this general regulation means, in what specific situations circumstances it applies and when it does not.

### I

The commandment itself is found in the famous 19th chapter of the book of Leviticus, the chapter containing so many ethical principles. These ethical principles are broken down into units. The units are themselves delineated by the concluding words, "I am G-d."

The unit circumscribed by these words, and in which the "love your neighbor..." command is found, reads as follows:

You shall not hate your brother in your heart, you shall surely rebuke your neighbor and do not attribute

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1. Jerusalem Talmud, *Nedarim* 9:4.

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*Rabbi, Cong. Machzikei Hadas, Ottawa, Ont., Canada*

sinfulness to him. Do not take revenge or bear a grudge against a member of your community and you shall love your neighbor as yourself, I am G-d. (*Leviticus*, 19:17-18).

The verses seem to build towards a crescendo, starting at the base level with the prohibition of hatred, moving from there to rebuking and not considering the other as a sinner, from there to the prohibition against bearing a grudge, and culminating with the famous obligation to love your neighbor.

The lead-off statement, "Do not hate your brother in your heart..." obviously relates to a hatred which is based on some legitimate precipitant. This is evident from the subsequent statement that one must surely rebuke one's neighbor and not attribute sinfulness to him. Obviously there was an irritant or a precipitant which could lead the individual to harbor hatred within the heart for what has been done to him or her. Totally wanton hatred is obviously unconscionable, and one need not even legislate any statement concerning this.

The Torah deals with a situation in which we may understand how hatred could evolve, and cautions that even here one should not allow one's self to become the victim of a hate syndrome. Instead, if something hateful had been done to you which may lead you to harbor a hate, you are urged to directly confront the person who has wronged you, and in the words of the Ramban, ask, "why did you do such and such?"<sup>2</sup>

There is an understandable awareness that by keeping the hatred bottled up, it only festers within, and the enmity becomes exacerbated. By sharing one's feelings, it is possible that the situation may be remedied through the other's acknowledgement of having done wrong. One must assume that the other would not have deliberately harmed and must not attribute sinfulness to the individual whose action had caused bitterness. Instead, one must directly confront that individual and perhaps, through direct

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2. Rambam, commentary to *Leviticus* 19:17

communication, one will find out that it was a mistake, or unintended.

Once having gone through this confrontation, the individual who has been wronged is asked not to seek revenge or to bear a grudge against the fellow. Having directly confronted the situation and obviously now being aware of the circumstances that gave rise to the original problem, it is hoped that bygones will be bygones, that all will be forgotten, even to the point of return to the ultimate level of human dialogue, the level of loving one's fellow.

In other words, the natural state of affairs is that one should love one's fellow. However, it is recognized that sometimes impediments get in the way which block avenues of love. The Torah legislates that it is the sacred obligation of an individual faced with such a circumstance not to make of those impediments permanent blockages, by harboring the hate and not sharing one's feelings. Instead, through direct communication and expression of concern, the reasons for the impediments are to be neutralized, to be washed away permanently, so that the love can again express itself.

The Jerusalem Talmud (*Nedarim*, 9:4), offers an insight into this legislation with an interesting observation. If an individual were in the midst of cutting meat, and by accident cut one hand, would that individual contemplate, as an act of revenge, cutting the hand that cut the hand? Obviously not. Thus, says the Jerusalem Talmud, one should see the entire community as one corpus, such that seeking revenge against someone else should seem as incongruous as the left hand taking revenge on the right hand for having erroneously cut the left hand.

## II

We are one, says the Torah, and our behavior should reflect this oneness. But can we ever live up to the ideal that is demanded? Is it in fact ever possible to love others as you love yourself? Ramban points out that it is impossible to feel this way even toward one other individual, never mind the entire community. It is a psychological impossibility to feel towards others the way you feel about yourself. Aside from this he points to the fact that in any

choice, when your life or someone else's life has to be sacrificed, you have priority and must save yourself. Instead, Ramban suggests, based on the extra letter *lamed* in "l're'acha" (your neighbor), you should want for your friend as much as you would want for yourself, without any boundary. You should not be restrictive in the good that you desire for your friend. The Yiddish word to "fargin," is closely linked to this idea.

Ibn Ezra likewise reflects on the language of the statement, and suggests that the extra *lamed* means one should like that which is good for one's friend the way one likes it for one's self. Rabbi S.R. Hirsch follows along with the same lines, indicating that we must be as careful about others' dignity, self respect, and self-esteem as we are about our own.

It is interesting to note that the Onkelos translation for the words "love your neighbor as yourself..." reads as follows, "And you shall have mercy on your friends as you have on yourself."

These commentaries inclined to this interpretation, obviously bothered by the matter of achievability of the commandment. Taken literally, to love everyone the way one likes one's self, one would be obliged to make sure that everyone else is dressed in the morning before one puts clothes on, or be assured that everyone else has breakfast before one eats one's own breakfast, etc. This is an absurdity, which would make life unlivable. Therefore, the parameters of loving one's neighbor fall within more precise guidelines and boundaries.

Thus, Maimonides states:<sup>3</sup>

It is incumbent on everyone to love every Israelite as one's self, since it is said, "you shall love your neighbor as yourself." Thus, one ought to speak in praise of one's neighbor and be careful of one's neighbor's property as one is careful of one's own property, and solicitous about one's own honor.

The same general tenor is found in the *Chinuch* (No. 243),

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3. *Mishneh Torah, Hilchot De'ot* 6:3.

who indicates that the fulfillment of loving one's neighbor is achieved through having compassion on the other, and on the other's property, the way the individual has compassion on his or her own self and property.

The famous talmudic episode of the convert who approached first Shammai, and then Hillel, wanted to be converted while standing on one foot, elicited from Hillel the response — "What is hateful to you, do not to your neighbor; the rest is commentary, go and master it" (*Shabbat*, 31a), relates to the obligation to love your neighbor, applied in a realistic manner.

Hillel related to the prospective convert the basic principle to love your neighbor, not via a grandiose principle; instead, he gave to that convert the practical application of it. This was expressed in the words — "What is hateful to you, do not to your neighbor." This is the bottom line, the common denominator of all human interaction. If you can fulfill this, then, as the *Chinuch* points out, you will not steal, you will not overstep boundaries, you will not damage others in any way. All these prohibitions are part of Torah legislation concerning our obligations to others, and they all are implicit in the obligation to avoid doing that which is hateful to others, i.e., implicit in the obligation to love others.

### III

One may question why the Torah chose the positive language for the fulfillment, when the practical interpretation of the command deals with avoiding any harmful activity. Would it not have been more appropriate to state, as a prohibitive command, "do nothing harmful to your neighbor?" The simple answer is that even though the interpretation inclines to *avoiding that which is harmful*, still the avoidance of "that which is harmful" should be fueled by the more primary and positive feeling of love toward others.

Additionally, it seems that the obligation to love your *re'ah* as yourself does have a direct application which in fact incorporates the unreachable ideal as a norm. There is a hint of this in the observation of the *Baal haTurim*, who reflects on the fact that immediately following the obligation to love others, the Torah

legislates the prohibition against mixture of species; that one should not crossbreed with animals.

*Baal haTurim* elicits from this that one who loves his wife should not engage in conjugal relations with her whilst having his eye on someone else, and should also not force his wife to conjugal relations. Ibn Ezra offers a similar observation. Implicit in this interpretation, or homiletic connection, is the understanding that the word *re'ah* refers to one's wife, one's spouse.

Various talmudic statements seem to reinforce the identification of *re'ah* with wife. For example, "A man may not betroth a woman before he sees her, lest he subsequently see something repulsive in her, and she then becomes loathsome to him, and the All Merciful has said, "you shall love your neighbor as yourself...""<sup>4</sup>

Another identification of *re'ah* with wife is the following:

A man is forbidden to perform his marital duty in the day time, for it is said, "you shall love your neighbor as yourself." But what is the proof? — Abaye replied: "he might observe something repulsive in her and she would thereby become loathsome to him." (*Niddah*, 17a)

A further comment regarding marrying someone who is an unfit partner, and thereby transgressing the obligation to love your *re'ah* as yourself reinforces this correlation.<sup>5</sup>

An astounding comment of Rabbenu Bahya<sup>6</sup> carries this even further. Rabbenu Bahya states, based on the obligation to love your *re'ah*, that one is never allowed to divorce one's wife!

Obviously, there are legislated instances when divorce is obligatory, and Rabbenu Bahya is surely not intending to contradict this. Instead he is suggesting that the basic dynamic of marriage, and the love which infuses that marriage, should make divorce under normal circumstances an impossibility.

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4. *Kiddushin* 41a. See *Sefer Hasidim* (389), who states that the woman must also see the prospective groom.

5. *Tosefta, Sotah* 5:6.

6. *Kad HaKemach, Shavuot - Mitzvot Lo Ta'aseh*.

If *re'ah* is one's wife, one's spouse, then the obligation to love one's wife as one's self is one which knows no boundaries. It is not enough merely to avoid doing that which is harmful, when it comes to husband-wife relations. Here the ultimate expression of love in its fullest dimension should manifest itself. Here, the obligation to love your *re'ah* as yourself is indeed the pointed language of a precise legislation concerning a specific relationship, the marriage relationship.

#### IV

If the love between husband and wife is the ultimate expression of the obligation to love another without limitation, it remains to explore the extent of the obligation to love others at the other side to the spectrum. Does the obligation to love others extend even to those whose behavior is unseemly? In simple terms, does the *re'ah*, which in its idealized application refers to wife, apply, even at the most elementary level, to someone who is wicked?

Among the Torah commentaries, Rashbam is quite explicit in stating that the obligation to love applies only to one who is good, but not to one who is wicked. In his Torah commentary, *Or Hachayyim* likewise excludes from this category of love those who hate G-d, including those who deny the faith, whom, *Or Hachayyim* insists, it is obligatory to hate rather than to love.

The following statement seems to be consistent with the views of Rashbam and *Or Hachayyim*:

And the hatred of mankind: what is that? This teaches that no one should think of saying, "Love the Sages but hate the Disciples," or "Love the Disciples but hate the ignoramus." On the contrary, love all these. But hate the sectarians, apostates and informers; and so said David: "Do I not hate them, O G-d, that hate you? And do I not strive with those that rise up against you? I hate them utmost hatred; I count them my enemies" (*Psalms*, 139:21-22). But does it not say, "you shall love your neighbor as yourself, I am G-d?" (*Leviticus*, 19:18): and why is that? Because I, G-d, have created him. Indeed, if one acts as your people do, then you should love him, but

if not, then you shall not love him. (*Avot D'Rabbe Natan*, 16:5)

This statement seems to assert that one who is outside the societal pale, behaving arrogantly towards G-d and community, rejecting G-d and showing no sensitivity to community, one has no obligation to love, and indeed one must hate, as per the view espoused by *Or Hachayyim*.

On the other hand, there are interesting talmudic statements concerning the administering of the death penalty. The place of stoning was twice the person's normal height, based on the obligation to "love your neighbor as yourself," which the Talmud sees as broadening this requirement, to requiring that you "choose for your neighbor an easy death."<sup>7</sup>

The same principle is used to derive the methodology for speedy death via the sword, that it is from the neck, in order that it should be an easy death.<sup>8</sup> This principle is also at work in the practice of drugging the individual prior to the administering of the death penalty, so that the pain sensations are dulled.<sup>9</sup>

Obviously then, the obligation to love one's neighbor extends to include death, and even beyond, for we must not allow an individual who has been hanged to dally on the gallows. The condemned person must be given a dignified burial immediately (*Deuteronomy*, 21:22-23).

Now, the person who is killed by judicial court was obviously

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7. *Sanhedrin*, 45a.

See *Tosafot* ("Baror Lo...") who cite a view that the reason why the obligation to "love your neighbor..." is applied to choosing for your neighbor an easy death is because it is only *after* life that the "love" precept applies. During life, this view has it, your life has priority over the lives of others.

Of course, this leads to the question of why so many protocols are governed by this principle, e.g., seeing your mate before marrying, not cohabiting in daylight, etc. See on this *Torah Temimah* to *Leviticus* (19:18), note 123. Aside from this, one is hard pressed to explain Rabbi Akiva's statement that "love your neighbor..." is a great general principle of the Torah (Jerusalem Talmud, *Nedarim*, 9:4), when it applies only to after death!

8. *Ketubot*, 37b.

9. *Sanhedrin* 43a.

guilty of a capital crime. Such an individual would not fit into the category of righteous, and is more likely to be in the category of wicked, at least prior to the administering of the penalty. Still, the Talmud states that one is obliged to extend the principle of "love your neighbor" even to such an individual.

At first glance, this may be at the root of a difference of opinion between Rabbi Akiva and Ben Azzai. Rabbe Akiva, commenting on the obligation to "love your neighbor as yourself," states that this is a great general principle of the Torah. Ben Azzai, reacting to this, retorts that "This is the book of the generations of man..." (*Genesis*, 5:1) is an even greater general principle!<sup>10</sup> Perhaps Ben Azzai is arguing that everyone who comes under the category of "generations of man," i.e., G-d's creations, no matter what their behavior and whether they are in the category of neighbor or not, is beneficiary of the obligation to be sensitive to humankind. Rabbi Akiva, in restricting himself to the verse "love your neighbor," may in fact be limiting the obligation of love only to those who are one's brethren.

However, the Midrash seems to state quite clearly that the difference of opinion between Rabbe Akiva and Ben Azzai relates to another issue. Since the Torah states that one is obliged to love one's neighbor as one's self, this leaves a wide opening for someone who hates the self. Must such an individual love others? It is to this that Ben Azzai relates, in stating that the general principle derived from "This is the book of the generations of man..." includes the obligation to love others even when one may be sour on one's own self, when one has been shamed.<sup>11</sup>

## V

The apparent contradiction between the talmudic extension of the obligation to "love" even to choosing an easy death, implying

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10. Jerusalem Talmud, *Nedarim* 9:4.

11. *Midrash Rabbah*, *Genesis* 24:8.

The Midrash reverses the statements of Rabbi Akiva and Ben Azzai, unlike *Sifra* (*Leviticus*, 19:18). See also *Malbim ad. loc.*

that one is obliged to love even the wicked,<sup>12</sup> and the statement in *Avot D'Rabbe Natan*, to the effect that one must not love, and is even obliged to hate the sectarians, apostates, and informers, needs to be resolved. It may be conjectured that an ordinary wicked individual, who may be guilty of a transgression, does not thereby become excluded from the community that one must love. On the contrary, there is no one without taint, and if one were to exclude from the obligation of love any individual who had transgressed, the commandment itself would be neutralized. Even one who may have been guilty of a capital offense is not beyond the communal pale, and must be accorded the dignity that is deserved.

But one who has deliberately renounced the community, who has set himself apart from the community, even to the point of willingly informing against the community, has by virtue of that behavior removed the self from the community. Such a person is no more in the category of *re'ah*, neighbor, friend, or whatever interpretation one gives to that terminology. In such instance, that individual has in fact removed the self from any communal consideration. The person has in effect said — I do not want you and I certainly do not want your love. If the person has gone to such dramatic lengths to distance the self from the community, then it would seem obvious that there is no obligation on the part of the community to bend over backwards.

This is not an invitation to be oblivious to any segment of the community, nor a justification for not caring about any member of the community.

## VI

A concluding word about the matter of hating a wrong doer, be it a scoffer, sectarian, apostate, or informer. The Talmud

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12. This is the view of RaMah (*Sanhedrin*, 52b). R. Yeruham Perla suggests, in explaining RaMah, that one may hate a wicked person in that person's lifetime, as that may awaken the wicked person and induce a move to repentance, but after death, and when accepting the fate of death, one is obliged to act with love to the wicked.

(*Pesahim*, 113b), indicates that it is a duty to hate an individual who has done indecent things.

But, as evidenced in the biblical portion concerning the obligation to love, any hatred must have been preceded by a proper rebuke to the individual, a rebuke which was rebuffed, thus legitimizing the emotion of dislike or hate (*Leviticus*, 19:17).

However, the Talmud (*Arachin*, 16b), questions whether there are any individuals who know how to reprove or to rebuke. The trick in rebuking is to do such an effective job that the individual rebuked realizes the worthwhileness of the advice, and that it emanates from sincere friendship, and actually embraces the rebuker in love. The Talmud justifiably expresses doubts about whether there are individuals who have this capacity. If no one can rebuke, then no one can be properly rebuked.

Therefore, every individual, however delinquent that individual's behavior may be, is effectively considered to be in the pre-rebuke stage, such that any animosity directed towards such an individual is not legitimate.<sup>13</sup> Thus, in our times, it seems the obligation to love extends to all individuals.

How that love is extended depends on individual situations. Every individual has physical limitations which make it impossible to extend the full dimension of love to many individuals. The first area of priority, as has been clearly demonstrated, is towards one's spouse. That love expression should be without limit.

Insofar as others are concerned, the expression of love must begin with avoiding any compromise of the other's dignity or property. Whatever else is done beyond that is also a fulfillment of the all-important obligation to love your neighbor. However much one extends active love, to however many individuals, the more the better.

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13. *Chazon Ish* on Rambam, *Hilchot De'ot* 6:3.

Of Land, Peace, and

Divine Command

*Rabbi J. David Bleich*

## Of Land, Peace, and Divine Command

*Rabbi J. David Bleich*

**D**isturbances during these past months in the liberated territories of Judea and Samaria and in the Gaza Strip have given rise to considerable discussion and debate both within the State of Israel and in the Diaspora. The debate has centered around the issue of "land for peace," the return of territory taken during the Six-Day War as a means of achieving peaceful coexistence with the indigenous Arab population. The controversy concerning the impact of such a policy upon the security and aspirations of the State of Israel is mirrored in rabbinic circles in a debate centering upon the theological and halachic ramifications of such policies. While the secular debate has taken place in public forums and in the media, and although strident pronouncements of some religious figures have received much publicity, reasoned halachic disputation have, for the most part, been confined to the study halls of rabbinic scholars and their students.

There can be no question that every committed Jew awaits with eager anticipation the time when every particle of the sanctified soil of *Eretz Yisra'el* will be under unchallenged Jewish sovereignty. Return of territory is a contingency contemplated only with pain and anguish. Only exigencies of security, stability and

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peace prompt an investigation of the position of halacha with regard to this agonizing issue.

Judaism is hardly monolithic. It is no more surprising to find disagreement in rabbinic circles with regard to the religious and halachic aspects of the problem than it is to find disagreement in the political arena with regard to the impact of available options upon matters of national security. With regard to the latter a consensus is now in the process of emerging; with regard to the former, it seems to this writer, a consensus has long existed. Ralbag, in the course of his philosophical writings, employs a poignant phrase for widely held positions. He terms them the beliefs of "*hamon anshei Toratenu*", the beliefs of "the multitude of the adherents of our Torah." Although very little has appeared in print with regard to the stated position of Torah scholars, it is this writer's firm conviction that the material herein presented reflects the consensus of "*hamon chachmei Toratenu* — the multitude of the scholars of our Torah," i.e., the views of the "silent majority" of authoritative rabbinic decisors.

There is considerable disagreement among rabbinic authorities with regard to whether or not the commandment concerning residence in the Land of Israel is binding in our day.<sup>1</sup> Letters ascribed to both R. Ya'akov of Lissa<sup>2</sup> and the Chafetz Chaim<sup>3</sup> declare that our sole justification for remaining in the Diaspora is reliance upon the opinion of those authorities who maintain that, in our day, the obligation to live in the Land of Israel is no longer incumbent upon us. It may be argued that if establishment of

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1. For a discussion of the various positions regarding that issue, see this writer's *Contemporary Halakhic Problems*, II (New York, 1983), 189-211.

2. Cited in R. Yosef Sheinberger, *Amud Esh* (Jerusalem, 5714), pp. 105-109.

The authenticity of this letter was challenged by R. Shmuel ha-Kohen Weingarten in a detailed critique, "Ziyuf Sifruți," *Sinai*, vol. xxxii (5713), no. 1-2, pp. 122-127. Subsequently, Chaim Bloch, who had originally submitted the letter for publication in *Ha-Posek*, no. 140, again vouched for its veracity. Cf., Mayer Herskovics, *Maharatz Chajes: Toldot Rabbi Zevi Hirsch Chajes u-Mishnatto* (Jerusalem, 5732), pp. 231-232.

3. Cited in R. Menachem Gerlitz, *Mara de-Ar'a Yisra'el* (Jerusalem, 5734), II, 27-29 and in *Kovetz Michtavim* (Bnei Brak, 5735), pp. 19-21. This also appears to be the opinion of *Knesset ha-Gedolah*, *Yoreh De'ah* 239:33.

domicile and of a Jewish homeland in the Land of Israel is not incumbent upon us, it then follows, *a fortiori*, that there is no obligation to engage in war either for the conquest of any portion of the Land of Israel or in order to retain sanctified territory that has come under the jurisdiction of the Jewish state. Conquest of territory would appear to be mandated as a means of facilitating settlement; in the absence of an obligation with regard to settlement, conquest would be devoid of purpose. If so, the question of the propriety of returning liberated territory in order to avoid bloodshed bears further analysis only if the opinion of those authorities who maintain that the obligation to establish residence in the Land of Israel remains in force is accepted as normative. Other considerations, some of which will be discussed later, are certainly set aside in face of danger.

This conclusion also flows from an examination of the biblical passages in which these obligations are expressed. The obligation mandating conquest and settlement of the Land of Israel is formulated in the verse "and you shall inherit the land and dwell therein" (Numbers 33:53). The authorities who fail to consider the command "and you shall dwell therein" as binding in our day certainly would not regard the antecedent admonition "and you shall inherit the land" as remaining in force. There might, however, be grounds to assume that if "and you shall dwell therein" remains a binding obligation, the commandment to conquer the territory couched in the phrase "and you shall inherit the land" remains a binding obligation as well.

This, however, proves not to be the case. The halachic conditions that must be satisfied prior to engaging in a war of conquest are such that they cannot be fulfilled in the current historical epoch. Wars of conquest, including a *milchemet mitzvah* or "commanded" war, require a king who must initiate military activity, a Sanhedrin that must approve such action, and consultation of the *urim ve-tumim* for advice and consent. The absence of a monarch may not be a decisive factor since Ramban, who is the principal exponent of the position that residence in the Land of Israel remains obligatory, declares in a somewhat different context that the term "king" must be understood as connoting not only a royal monarch, but "a king, a judge, or whosoever has

jurisdiction over the people,”<sup>4</sup> i.e., the person or body exercising sovereignty over the nation. If so, absence of a scion of the Davidic dynasty would not vitiate either the prerogatives or the obligations recognized by halacha with regard to military endeavors. Some latter-day authorities have adopted the position that the need for approval of a Sanhedrin is limited to circumstances in which there is a need to employ the coercive powers of the judiciary for the purpose of raising an army by means of involuntary conscription.<sup>5</sup> When, however, voluntary enlistment satisfies military needs, approval of the Sanhedrin, according to these authorities, is not required. Nevertheless, consultation of the *urim ve-tumim* remains a *sine qua non* for any act of military aggression.<sup>6</sup> Since, lamentably, we possess neither an *urim ve-tumim* nor a High Priest to don the *urim ve-tumim*, a war of aggression designed to effect the conquest of the Land of Israel, in whole or in part, is precluded.

Indeed, even if such an obligation were to exist in our day, that obligation would be severely limited in nature. *Minchat Chinuch*, no. 425, raises an obvious question. All commandments, with the exception of the prohibitions against homicide, idolatry and certain sexual offenses, are suspended for the purpose of saving a life. Actions which otherwise would be prohibited are permissible, and indeed mandatory, in the event that there exists even a remote chance that a life may be saved as a result of their performance. Obligations which are otherwise mandated are suspended in face of even possible danger to life. Failure to wage an obligatory war is

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4. See Ramban, addenda to Rambam's *Sefer ha-Mitzvot, mitzvot lo ta'aseh*, no. 17. For a fuller discussion of this point, see *Contemporary Halakhic Problems*, II, 207, note 27.

5. See R. Judah Gershuni, *Torah she-be-'al Peh*, XIII (5731), 149-150; *idem*, *Or ha-Mizrach*, Tevet 5731; and R. Sha'ul Israeli, *Amud ha-Yemini*, no. 14 and no. 15, chap. 5, sec. 6.

6. See Rambam, *Sefer ha-Mitzvot, shoresh* 14, and Ramban, addenda to *Sefer ha-Mitzvot, mitzvot lo ta'aseh*, no. 17; see also R. Judah Gershuni, *Torah she-be-'al Peh*, XIII (5731). Cf., however, R. Yechiel Michal Epstein, *Aruch ha-Shulchan he-Atid, Hilchot Sanhedrin* 74:7, who states that “perhaps” consultation of the *urim ve-tumim* is not an absolute condition; cf., also, R. Shlomo Yosef Zevin, *Le-Or ha-Halachah* (Tel Aviv, 5717), p. 12.

not enumerated as one of the cardinal sins demanding martyrdom rather than transgression. How, then, can the Torah command us to wage war? Yet war for the conquest of *Eretz Yisra'el* as well as for the eradication of Amalek is a mandatory duty. Warfare obviously presents the possibility of casualties and, even in the most favorable of circumstances, poses a threat to life. The scriptural phrase "*va-chai be-hem* — and he shall live by them" (Leviticus 18:5) is understood by the Sages as suspending the yoke of the commandments when fulfillment might mean that the person so obligated might "die by them" rather than "live by them." *Minchat Chinuch* resolves the problem by explaining that the commandments concerning war are unique. Warfare, by virtue of its nature, demands that a participant's life be placed in danger. Hence, in this case, the nature of the mitzvah requires that one place one's life in danger. Since that is the very essence of the obligation, the mitzvah cannot be suspended in face of possible danger.<sup>7</sup>

Nevertheless, it is only reasonable to suppose that there exist certain limitations with regard to the nature of the risk which must be accepted. It may not be necessary to place one's life in danger under any and all circumstances. While acceptance of the danger inherent in a battlefield situation may be mandatory, a clear distinction must be drawn between acceptable risks and risks which are tantamount to a suicide mission. The obligation to participate in

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7. Cf., R. Naphtali Zevi Yehudah Berlin, *Meromei Sadeh*, *Eruvin* 45a and *Kiddushin* 43a; and R. Yitzchak Ze'ev Soloveitchik, *Hiddushei Maran Riz ha-Levi al ha-Torah* (Jerusalem, 5723), *Parshat Beshalach*, p. 32. These scholars quite appropriately note that, even in the absence of a *mitzvah*, considerations of endangerment of self or of others are set aside in time of war simply by virtue of the "laws of war", i.e., the Torah's very recognition and sanction of warfare constitutes dispensation for endangerment of lives in the conduct of war.

R. Joshua Aaronberg, *Dvar Yehsohu'a*, II, no. 48, extends this position in stating that, since considerations of self-endangerment are set aside in the conduct of war, war may not be eschewed if avoidance of war would result in infraction of even a rabbinic prohibition. Thus, for example, the prohibition, *lo titen lahem chaniyah be-karka* may not be violated because of considerations of *pikuach nefesh* since there exists the option of waging war in order to prevent

obligatory wars may not require an individual to place himself in a situation in which it is a certainty that his life will be forfeit. Moreover, it is reasonable to assume that the obligation to wage war is an obligation to engage in battle only when the anticipated gain is commensurate with the loss which may reasonably be anticipated.<sup>8</sup>

Quite apart from the foregoing, the Gemara, *Ketubot* 111a, reports that, at the time of the destruction of the Temple, G-d called upon the people of Israel to swear a solemn oath "*she-lo ya'al u be-chomah*," not to attempt a return to the Land of Israel by means of forcible conquest. If the oath remains endowed with any halachic import — and many, and probably most, rabbinic scholars maintain that it does<sup>9</sup> — it certainly serves to prohibit any military campaign for the purpose of territorial aggrandizement.

It may, of course, be objected that these considerations apply only to the initiation of armed conflict for the purpose of capturing or liberating sanctified territory. The stipulations requiring a king, Sanhedrin and *urim ve-tummim* certainly do not pertain to defensive war undertaken for the purpose of preserving Jewish lives.<sup>10</sup> Neither, it may be argued, do they apply to military activity undertaken for the purpose of retaining territory already

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non-Jewish occupation of land. This writer finds Rabbi Aaronberg's thesis unconvincing. The Torah permits self-endangerment in a *milchemet mitzvah*; nowhere is there the slightest hint that an otherwise non-obligatory war becomes obligatory when necessary to avoid suspension of any prohibition in the face of danger. On the contrary, the Gemara, *Gittin* 56a, indicates that a blemished animal might be accepted as a sacrificial offering because refusal would offend the authorities and result in danger to Jews. There is no suggestion that war, even if potentially successful, must be undertaken in order to avoid such transgression. Moreover, the Brisker Rav, in his above cited comment, explicitly writes that the commandment *hacharem tacharimem* (Deuteronomy 20:17), *qua mitzvah*, is suspended even in time of war.

8. R. Joshua Aaronberg, *Shanah ba-Shanah*, 5730, p. 140, cogently argues that there is no obligation to engage in military activity in order to secure or to defend territory if there are grounds to fear that defeat would result in the loss of additional territory.
9. For a discussion of these oaths in rabbinic literature see *Contemporary Halakhic Problems*, I, 13-14.
10. This point is amplified in this writer's "Preemptive War in Jewish Law," *Tradition*, vol. 21, no. 1 (Spring, 1983), pp. 17 ff.

reconquered, particularly if the territory in question has been liberated by means that are consistent with the provisions of Jewish law. It should also be noted that it can — and has — been argued that surrender of territories is an infraction of the prohibition "*lo techanem*" (Deuteronomy 7:2), which, in talmudic exegesis, is rendered as "*lo titen lahem chaniyah be-karka* — you shall not grant them permanent encampment."<sup>11</sup> This talmudic dictum is formulated in association with a prohibition against conveying real property within the boundaries of the Land of Israel to a non-Jew. Yet a literal application of the terminology in which that prohibition is formulated would render it applicable to any action that would tend permanently to confirm non-Jewish residence in the Land of Israel. Sale of real estate would thus be but one example of activity having that effect; obviously, transfer of political sovereignty would be even more instrumental in engendering permanence of non-Jewish residence.<sup>12</sup>

However, historical precedent clearly establishes that war for retention of territory or sovereignty is not halachically mandated, or at least, is not always halachically mandated. At the time of the destruction of the Temple, R. Yochanan ben Zakkai not only advocated total surrender in return for minimal concessions which might be exacted from the conquerors, but was prepared to flout the wishes of contemporary political leaders and to act singlehandedly in implementing his policies. It is unthinkable to suppose that R. Yochanan ben Zakkai acted contrary to halacha. The policies he advocated were clearly stamped with the imprimatur of Jewish values and tradition. It is only the analysis of the considerations upon which those policies were grounded that remains for our elucidation.

R. Yochanan ben Zakkai was undoubtedly motivated by a desire to preserve Jewish lives. Continued resistance and warfare would assuredly have evoked repressive measures and resultant loss

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11. See *Avodah Zarah* 19b.

12. See *Contemporary Halakhic Problems*, I, (New York, 1977), 27-32, and II, 212-220.

of additional lives. Accordingly, he must have regarded any continuing obligation with regard to preservation of a Jewish homeland as suspended in face of danger. This can be explained on the basis of a number of considerations and, although the considerations are multiple in nature, they are not exclusive of one another:

1. The most facile explanation involves the earlier-formulated thesis that a *milchemet mitzvah* is not obligatory when it must be rationally regarded as doomed to failure. A war of conquest may be mandatory, but an exercise in military futility is not. By the same token, as noted earlier, an obligation to wage war implies an obligation to assume the risks associated with warfare; it does not entail a concomitant obligation to engage in suicide missions or to accept the risk of disproportionate casualties. War has its own conventions and its own canons of military logic — inappropriate as those conventions and that logic may be in other areas of human endeavor. There is no obligation to engage in warfare in circumstances in which war must be deemed irrational even by military standards.

2. An examination of Ramban's comments regarding the commandment "and you shall dwell therein" inescapably yields the conclusion that the obligation is double-faceted in nature. The obligation encompasses 1) a personal obligation to establish domicile in the Land of Israel and 2) a similar obligation that is communal, rather than individual or personal, in nature. According to Ramban, the latter aspect of the mitzvah includes an obligation to conquer the land, to inhabit and cultivate the land in its entirety, and to assure that no part of that territory remains in the hands of gentile nations.<sup>13</sup> According to Ramban's formulation, the oath not to seek forcible return to the land, may well be reflective, not simply of the suspension of the obligation with regard to conquest, but indicative of the abrogation of all communal obligations with regard to the Land of Israel. Banishment from the Land of Israel is

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13. See Ramban, *Commentary on the Bible*, Numbers, 33:53 and *idem*, addenda to Rambam's *Sefer ha-Mitzvot*, *mitzvot aseh*, no. 4.

the fulfillment of the prognosticated punishment reflected in the verses "And you I will scatter among the nations" (Leviticus 26:33) and "... and you shall be plucked from off the land which you go there to possess. And the Lord will scatter you among all peoples from the end of the earth to the end of the earth" (Deuteronomy 28:63-64). But how can such a situation be reconciled with an ongoing obligation to dwell within the confines of the Land of Israel? The answer may well be that "you shall inherit the land" refers to the people of Israel as a communal entity, whereas "and you shall dwell therein" constitutes an admonition addressed to the individual. The community is in exile; hence there can be no communal obligation regarding the Land of Israel. The individual, however, remains fully bound by the personal obligation to "dwell therein." Accordingly, even after the dispersion of the community, the individual, if he is but capable of doing so, is duty-bound to establish residence in the Land of Israel. But since that obligation is incumbent upon a Jew only *qua* individual it does not extend to duties and responsibilities which, by their very nature, are not within the purview of the individual but which can be fulfilled only through the cooperative efforts of the community.

War, as a halachic category, constitutes a *mattir*, or suspension, of the prohibition against the taking of any human life. In the absence of a legitimating category of mandated or permissible war, military action would, ostensibly, be prohibited by Jewish law.<sup>14</sup> There exists, however, another category of halacha that is conceptually unrelated to the formal halachic categories of war but which does have a distinct bearing upon the present situation.

To be sure, wars of self-defense are recognized by halacha, not only as permissible, but as mandatory in nature. Such military action is the sole form of warfare requiring neither a king, Sanhedrin nor *urim ve-tumim*. Nevertheless, self-defense on the part of an individual is justifiable on entirely different grounds. Self-defense is recognized by Jewish law as justifiable homicide.

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14. For further elucidation of this point see "Preemptive War in Jewish Law" pp. 25-29.

Not only is the taking of the life of an aggressor sanctioned when necessary to preserve one's own life but such action is obligatory. Moreover, unlike common law, Judaism regards such intervention as also mandatory in order to save the life of a third person who is putatively the innocent victim of an aggressor.<sup>15</sup> There also are situations in which homicidal intent is imputed to a malevolent individual even in the absence of overt demonstration of murderous intent. The Bible declares, "If a thief be found breaking in and he be smitten so that he dies, there shall be no bloodguiltiness for him" (Exodus 22:1). The verse refers to a burglar who has designs only upon the property of his victim. Since he is not intent upon bloodshed, killing the perpetrator would constitute force that, under the circumstances, would appear to be entirely disproportionate. Yet the Gemara, *Sanhedrin* 72a, elucidates the biblical exoneration of the victim in his use of lethal force with the explanation, "It is to be presumed that a person [faced with loss] of his money does not restrain himself. This [perpetrator] says to himself, 'if I go [there], he will oppose me and not let me [steal his property]; if he opposes me, I will kill him.'"

One crucial problem concerning extension of the "law of the pursuer" to a *ba ba-machteret*, or burglar, requires clarification. Certainly, the slaying of the burglar by the householder is an exculpable act. The *chazakah* or presumption that a person finding himself in such circumstances cannot restrain himself from defending his property is known to the perpetrator and hence generates an assumption that he is not merely a burglar but also a would-be murderer. Accordingly, the householder's act is, in actuality, an act of self-defense. It is, however, equally certain that were the burglar to be assured that the valuables he seeks would be surrendered without protest there would be no cause for a presumption of intended violence on his part. On the contrary, the presumption would be that the burglar would not engage in unnecessary force. The question, then, does not arise only *post*

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15. See Rambam, *Hilchot Rotzeach* 1:9.

*factum* as a question concerning the householder's culpability. Rather, the question has its inception before the fact as a query with regard to the appropriate response of a calm and collected victim who is entirely capable of a reasoned, calculated response rather than an emotional reflexive reaction. Such a person will be quick to recognize that all danger to his life will dissipate if he surrenders his possessions without offering resistance. If he is emotionally capable of responding in such a manner, is he then not obligated to do so? At that moment, the burglar is not yet intent upon homicide. Since the householder can completely obviate the danger to his own life by deflecting the perpetrator in a different way, it would stand to reason that a lethal response is not warranted. If so, the householder in control of his emotions should be advised that he is duty-bound to surrender his possessions and, indeed, should he eliminate the aggressor instead, he will be culpable in the eyes of Heaven.

It is instructive to note that Rambam codifies the law concerning the *ba ba-machteret* in a manner significantly different from his codification of the general rule governing an aggressor. In *Hilchot Rotzeach* 1:9, Rambam declares unequivocally, "This too is a negative commandment not to spare the life of the pursuer..." The malevolent intent of the pursuer must be thwarted even at the cost of his life and failure to intervene constitutes a transgression. However, in *Hilchot Geneivah* 9:3 and 9:9, Rambam employs entirely different language with regard to the *ba ba-machteret*. Regarding such a malfeator, Rambam, *Hilchot Geneivah* 9:3, declares, "Every person has permission to slay him" and in *Hilchot Geneivah* 9:9, Rambam writes, "And why did the Torah permit the blood of a thief even though he comes with regard to property? Because it is presumed that if the householder will offer resistance and prevent him [from stealing], [the thief] will kill him. Thus this [person] who enters the house of his fellow to steal is as if he pursues his fellow to slay him." Rambam does indeed equate the burglar with the pursuer but fails to declare that elimination of the burglar is imperative upon pain of transgressing a biblical command. On the contrary, he speaks of the burglar's blood merely as being "permitted." The clear implication of those statements is

that the decision to employ lethal force, even if necessary to do so in order to protect one's possessions, is a matter left to the victim's discretion.

The apparent contradiction between Rambam's general formulation of the law of the pursuer and his application of that law with regard to the *ba ba-machteret* dissipates with the recognition that, once the perpetrator actually becomes an aggressor, the victim is bound to invoke the law in defending himself but that, this provision of law notwithstanding, it is within the victim's discretion to create, or not to create, conditions that will render the burglar a pursuer. If the householder is prepared to surrender his valuables without resistance the burglar will have no cause to do him harm and hence the burglar cannot be considered a pursuer. Should, however, the victim offer resistance, it must be presumed that the burglar will resort to violence and hence he must be regarded as a pursuer. The householder has no discretion with regard to invoking the law of pursuit against one who is already a pursuer; his discretion is limited solely to creating circumstances that will render the burglar a pursuer. Although he makes no explicit statement to that effect, Rambam's failure to indicate that the householder ought not to offer resistance in order to avoid triggering the law of pursuit would appear to indicate that the householder is under no obligation to do so. Thus the presumption of resistance which, in turn, gives rise to the burglar's status as a pursuer is not dependent upon an uncontrollable instinct on the part of the victim. Rather, the victim is fully entitled to protect hearth and home as a matter of right and it is the presumption that he will exercise that right that gives rise to classification of the burglar as an aggressor.<sup>16</sup>

The same inference may be drawn from a comment of *Magen Avraham, Orach Chayyim* 329:5. *Shulchan Aruch, Orach Chayyim* 329:7, cites authorities who maintain that, "in our day," defensive

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16. See R. Shlomo Zalman Auerbach, *Moriah*, Sivan-Tammuz 5731, pp. 19-25; reprinted in *idem, Minchat Shlomo* (Jerusalem, 5746), no. 7, sec. 2.

measures involving transgression of Sabbath restrictions may be initiated in response to an attack by non-Jews even if they are intent only upon plunder. The rationale is rather similar to, yet somewhat different from, the consideration that serves as the basis of the rule governing the *ba ba-machteret*, *viz.*, given the general lawlessness prevalent "in our day," failure to allow the gentiles to do as they wish, even if they are not resisted by lethal force, will result in the shedding of blood. Therefore, according to these authorities, their aggression must always be regarded as involving danger to life. *Magen Avraham*, however qualifies that ruling and declares that it is applicable only when the attack is directed against a community but not when the attack is directed against an individual. In a multitude it may be anticipated that some persons will be incapable of restraint and hence the situation must be regarded as posing a threat to Jewish lives. However, declares *Magen Avraham*, the individual who is capable of self-restraint must be admonished to surrender his possessions rather than desecrate the Sabbath.

*Magen Avraham's* comment appears to be limited to acts performed on the Sabbath. He does not draw a similar distinction with regard to a *ba ba-machteret*, *i.e.*, he does not state that an individual capable of self-restraint dare not slay the burglar because, since he is emotionally and psychologically capable of handing over his valuables, the burglar does not constitute a threat to his life. Apparently, according to *Magen Avraham*, the moral analysis of the problem begins with the positing of a right to defend property. Once the property owner has determined to exercise that right, utilization of lethal force in wresting property from its rightful owner may be met with a response in kind and the property owner is under no obligation to surrender his possessions in order to avoid killing the perpetrator. The responsibility for avoiding the spilling of blood lies entirely with the perpetrator who can readily obviate all danger by desisting from his nefarious endeavor. However, although one has a right to protect property against burglars or brigands, one does not have a right to transgress the Sabbath in order to preserve property. Thus, if offered a choice, upon pain of death, of either handing over one's money or

performing an act of Sabbath desecration, one is obligated to surrender one's possessions rather than violate Sabbath prohibitions. Similarly, when confronted on the Sabbath by a burlgar or by marauding gentiles, one is not permitted to safeguard property by means of Sabbath desecration even though on a weekday it would be permissible to do so despite the virtual certainty of resultant bloodshed.<sup>17</sup>

Of course, the right to defend hearth and home should not be confused with an obligation to engage in such defense. Not every right must be exercised. Prudence would dictate that a rational person would not accept undue risk in preserving his property. A cautious person will eschew any significant risk to life.

The application of these principles to the current debate concerning "land for peace" is perfectly obvious. What is true for the individual is true for a community or a nation as an aggregate of individuals. There is no obligation to relinquish territory in return for freedom from the threat of continued aggression. There is no obligation to capitulate to force of arms. On the other hand, there is no duty to defend property interests in the face of danger to life.

At the same time, a prudent assessment of inherent risks requires that prospective concessions be examined with regard to any risks such concessions may portend for the future. Jewish law, as recorded in *Shulchan Aruch, Orach Chayyim* 329:6, provides for defense of "a city close to the border" on the Sabbath against occupation by the enemy even when the enemy seeks only "straw and hay" because security considerations designed to safeguard against future danger to Jewish lives require that border areas remain in Jewish hands. Applying the selfsame consideration to the current dilemma, it may well be the case that return of territory, the

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17. The statement of the Gemara, *Sanhedrin* 72, declaring that there is no culpability attendant upon slaying the *ba ba-machteret* "whether on a weekday or on *Shabbat*" must be understood, according to *Magen Avraham*, as limited to a person incapable of controlling his response. See R. Shlomo Zalman Auerbach, *Moriah*, pp. 23 and 25; and *idem*, *Minchat Shlomo*, no. 7, pp. 47 and 48.

retention of which is essential for purposes of security, may only enhance the danger to the inhabitants of the State of Israel in any future conflict. Similarly, present concessions may not appease the enemy but, on the contrary, may whet his appetite and enhance his strategic capabilities in demanding surrender of additional territory.

The prudent householder, in determining whether or not to appease the demands of a burglar, must carefully weigh all salient factors and considerations. Ultimately, the decision to resist or not to resist is left to the discretion of the *ba'al ha-bayit* or householder. The same is true with regard to decisions made by a community or a nation. The "*ba'alei batim*," through their designated representatives, government officials and military commanders must carefully analyze all relevant military, political and economic consequences of the options available to them and exercise their discretion in the formulation of an appropriate response. Only those individuals are privy to all factors that must be considered in order to formulate policy in a prudent manner. Moreover, no outsider is entitled to make a decision of this nature on behalf of the householder; only the potential victim is entitled to determine whether or not he wishes to assume the attendant risks inherent in the situation in which he finds himself.

One caveat: A rational and prudent householder, upon weighing all considerations, may well, and indeed probably will, determine that should a burglar break into his home he will offer no resistance. However, it would be the height of irrationality and a gross lack of prudence on his part to post a notice to that effect on the front door of his home. With regard to this caveat as well, the implications in terms of policy formulation by the State of Israel are obvious.

Land for Peace:  
A Halachic Perspective  
*Rabbi Herschel Schachter*

## Land for Peace: A Halachic Perspective

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### Introduction

**D**ue to our *Galut* situation, we are often only able to study various halachic concepts on a theoretical plane. Interestingly, due to current circumstances, the subject of *milchama*—war, formerly one such topic, must now be examined in practical terms.

The Gemara in *Yoma* 22b relates that “שאול באחתי ועלתה לו, דוד בשתים ולא עלתה לו.”

King Saul made one mistake for which he lost his kingdom, whereas David erred on more than one occasion yet still retained his monarchy. The commentaries clarify this passage, explaining that it is not that G-d favored David and therefore pardoned his errors where he did not tolerate Saul’s, but that whereas David’s transgressions were of a personal, private nature, Saul’s was in the realm of government. Having failed to fulfill properly one of his major functions as king, namely that of waging war, he was deemed unworthy of remaining King of Israel. The Torah dictates that one employ a proper measure of each character trait as required by individual situations; Saul is faulted as having misplaced his mercy by applying it while waging war against Amalek. Instead, we are instructed to emulate King David who was humble when studying Torah yet, simultaneously, a ruthless warrior when the need arose.<sup>1</sup>

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1. See *Moed Katan* 166.

### Historical Precedent of Returning Land

The Gemara in *Pesachim* 56a reads:

ת"ר: ששה דרכיהם עשה חזקיה המלך. על שלשה הודה לו ועל שלשה לא הודה לו... קיצץ דלחות של היכל, ושיגרן למלך אשור ולא הודה לו... רשי"י: שהיה לו לבתו בחקב"ה שאמר מלכים ב, ט:ל"ד: וגנומי על העיר הזאת להושעה.

This passage lists various activities undertaken by King Hezekiah on his own initiative, some of which are deemed praiseworthy, whereas for others he is criticized. Included in this latter category is his attempt to pacify Sanherib by removing golden fixtures from the Temple and sending them to the Assyrian king. Rashi clarifies his point of error by commenting that Hezekiah should have placed his trust in G-d who had promised to protect the city (Jerusalem) and deliver it from the threat of the enemy. From this it is evident that Hezekiah's action was deemed unproper only in light of the prophet's assurance that the city would benefit from G-d's special protection. Had he not received such assurance, even this action of partly dismantling the Temple would have been justified in face of the impending situation of *sakanat nefashot*, (mortal danger), the *issurim* involved not being among those for which one is mandated to give up his life (*yehareg v'al ya'avon*). Similarly, in the current political situation in Eretz Yisrael it is argued that since the Jews there are in mortal danger, and being that we do not have a clear promise of divine protection from a prophet, it is proper to forfeit control of Judea and Samaria and even Jerusalem to the Arabs. Although such an act would be in violation of the injunction of "*Lo techanem*,"<sup>2</sup> (not to give Gentiles a permanent settlement in the Land) it is permissible in the interest of avoiding a situation of *sakanat nefashot*.

### Sakanat Nefashot in Wartime

In his commentary on Mitzvah 425 which commands us to

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2. See *Avodah Zara* 202.

destroy the seven Canaanite nations, the *Minchat Chinuch* limits the above precept by stating that the imperative to avoid *pikuach nefesh* (danger to life) does not apply in wartime for, in a battle situation losses are invariably suffered and thus we would never be permitted to wage war!<sup>3</sup> Applying this detail to the situation in Eretz Yisrael, it must be ascertained whether the State of Israel, in the eyes of the halacha, is currently considered in a state of war or at peace.

In response to this it would appear that although the State of Israel is not presently engaged in battle with any of her neighboring enemies, it is nonetheless halachically categorized as in a state of war. This conclusion served as the basis for a *psak* of Rav Yaakov Kaminetsky in response to a halachic inquiry that was made during the 1970 Arab hijacking of two airplanes from Lod to Jordan. At the time, the terrorists threatened to kill all passengers on board. When it became known that Rav Hutner, Rosh Yeshiva of Yeshiva Rabbi Chaim Berlin, was one of those being held, there was talk among his students of offering his captors a large ransom in exchange for his release. Although generally in a case of *pidyon sh'vuyim* (rescue of captives) the Jewish community is forbidden to ransom a captive for an exorbitant sum, the ruling in the case of a great scholar is that he should be ransomed even for a sum that exceeds his "worth."<sup>4</sup> Thus many Rabbis were of the opinion that every effort should be made to secure Rav Hunter's release. Rav Yaakov Kaminetsky dissented, however, arguing that the mitzvah of *pidyon sh'vuyim* only applies in peacetime, but surely not during hostilities, when the delivery of ransom money to the enemy would strengthen their position! He continued to explain that although a cease-fire existed at the time, the 1948 War of

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3. In concurrence with the *Minchat Chinuch* are the Netziv in his comments to *Kiddushin* 45; *Chidushhei HaGriz* on the *pasuk*: "Zevulun am cheref nafsho lamut"; *Nachlat Yitzchak* (Semiatycky) Chapter 69; *Dvar Yehoshua* (Ehrenberg) Volume II, Chapter 48 and additional comments in the table of contents; *Mikdash Mordechai* (Ilan) pages 228-229, among others.

4. *שוויע יורה דעתה סי' רניב סיד*.

Independence had never really ended, for the Arabs' avowed goal to destroy the State of Israel and drive the Jewws into the sea had never been renounced. In his view, although Israel was not then engaged in active battle, in the eyes of the halacha it was considered to be experiencing a mere lull in the ongoing original 1948 War of Independence.

Likewise today, since Israel's enemies (with the exclusion of Egypt) have thus far refused to sign peace treaties with her, and since their avowed aim continues to be the destruction of the State, Israel must be considered to be in a state of war. In light of this, it is argued that the Israeli army's reaction to current border incidents, terrorist attacks, and Arab riots should be conducted as it would in wartime; Israeli soldiers should shoot to kill when necessary and, as in times of war, may even punish or kill innocent Arabs when the situation calls for such action.<sup>5</sup> Furthermore, if we follow the reasoning of the *Minchat Chinuch* (and others who concur with his opinion) Israeli policymakers are not halachically required to be concerned with the danger the current situation poses to individual Israelis. Realizing that in a war people will get killed, the policymakers have to determine whether war may nevertheless be essential in preserving the viability and ultimate security of the state.

### **Milchemet Mitzvah and Milchemet Reshut**

With regard to the waging of war, the halacha defines the categories of *milchemet mitzvah* versus *milchemet reshut*. *Milchemet mitzvah* is a war required by the Torah, while *milchemet*

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5. The Maharal of Prague, in his commentary *Gur Aryh* to *Parashat Vayishlach* writes, "...Although the Torah reads, 'When you approach a city to wage war against it, you shall greet them peacefully' (first attempt to reach a peaceful agreement), this speaks of a city that did not harm us. But as regards those who attack the Jews, as Amalek did, even if only one of their members was responsible for this act, revenge may be exacted from the entire nation because he is one of them. Likewise, regarding any war such as that waged against the nation of Midian, all of whom were attacked, despite the fact that not all were guilty of wrongdoing; and this is the nature of all wars."

*reshut* is in the nature of a permissible military venture, which requires the prior authorization of the Great *Bet Din* (Sanhedrin).<sup>6</sup> Considering the fact that other nations have no High Court with the equivalent moral and spiritual authority of the Sanhedrin, it is understood that they are only justified in waging wars that are parallel in nature to what would be considered *milchemet mitzvah* for the Jewish nation.<sup>7</sup> It appears that *milchemet mitzvah* refers not only to wars of self-defense, but also to wars in defense of one's country.

The instinctive readiness of all people to defend their countries being a universal phenomenon, it can be deduced that such a war would be categorized as *milchemet mitzvah*; (otherwise, according to the responsa of the *Chatam Sofer* (see note seven, above), such a war would be forbidden even to the nations of the world). Having established this premise, we may conclude that Israel, too, may defend its territory, notwithstanding the possibility that lives will be lost in the process.

### The Winning Battle vs. the Losing One

There are those who contest the above conclusion, echoing the charge of Rabbi Yochanan ben Zakkai to his nephew Abba Sikara, leader of the militant Zealots of Jerusalem (*Gittin* 56a): "Until when will you continue to do this [Rashi: refuse to make peace with the Romans] and cause the nation to die of hunger?" Rabbi Yochanan demanded that they relinquish control of Eretz Yisrael in order to spare the Jewish nation further anguish. Eventually, Rabbi Yochanan ben Zakkai escaped from the besieged city of Jerusalem to negotiate a truce with Vespasian, conceding to the Roman general sovereignty over all of Eretz Yisrael, the Temple Mount included. Relying on this precedent, there are those who argue that land should be ceded to the Arabs if that will save lives.

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6. Mishna *Sanhedrin* 22; see also *Sotah* 44b where the Talmud defines the categories of *milchemet mitzvah* and *milchemet reshut*.

7. The *Chatam Sofer* (ח"ז ס"ד) makes this point in explaining the Talmudic passage (*Sanhedrin* 59a): "עכורים לאו בני כיבוש נינחו" (".

Surface examination of the two situations, however, reveals that they bear no basis for comparison. Whereas the Jews' revolt against the Romans was obviously doomed to failure, the war of the Israeli army today against the Arab insurgency is being conducted with moderate success. The Sanhedrin under Rabbi Yochanan ben Zakkai acted correctly by surrendering, for there is no mitzvah to "stick out" a losing battle.<sup>8</sup> This is quite dissimilar to the present situation in Israel; thus it may be argued that it is incumbent upon them to continue to fight to the victorious finish, despite the possible tragic losses that may occur.

We have to examine very carefully the premise that Israel can ultimately succeed in its military struggle with the Arabs. Perhaps, despite the fact that the Israel Army is succeeding in retaining the territories it has held since 1967 and enforcing tenuous order there, the toll that the current situation is exacting from the nation's morale and from its standard of living might warrant our redefining Israel's current status as "winning the battle, but losing the war." If in truth Israel is in a losing position, then perhaps a land-for-peace negotiation (assuming that Israel were assured that it would thereby achieve a real, lasting peace) would be in order. Indeed, Israel's current situation must be evaluated to determine whether it is presently engaged in a winning battle or, G-d forbid, a losing one, or perhaps a stalemate. Resolution of this question will determine whether Israel is halachically mandated to fight or alternately required to withdraw from the struggle.

### Israel Today: Winner or Loser?

But who is authorized to make this crucial decision? To shed light on this question, let us return to the point that *sakanat nefashot* must be disregarded when waging war: is it merely in the interest of maintaining our national pride that we are prepared to sacrifice the lives of Jewish soldiers? Or is the mitzvah of waging war one for which a Jew is required to forfeit his life?

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8. See Rav Moshe Neriyah's essay "On the Permissibility of Waging War on the Sabbath" in Mossad Harav Kook's *Torah Sheba'al Peh*, י"בשנ.

In answer to this it would appear that at the heart of our preparedness to fight for Eretz Yisrael is the fact that Israel's role today is as the national home and of the Jewish people. Since a nation's land is vital to its existence as a nation-state, to the point that in various limited contexts only those Jews residing in Eretz Yisrael are considered full members of *Klal Yisrael*,<sup>9</sup> conquest by a foreign power is considered a lethal blow to the essence of the

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9. The Torah rules that one who unintentionally does a violation which, if done intentionally, would have warranted the punishment of *karet*, must bring a *korban chatat*. If the majority of the Jewish nation sins in this manner due to an erroneous *psak* issued by the *Beit Din Hagadol*, rather than requiring of each individual to bring a *korban chatat*, the Torah requires that the Sanhedrin offer a sacrifice known as *par ha'alem davar shel tzibbur*.

The Talmud in *Horayot* 3A states that when calculating whether the majority of the Jewish nation has sinned, only those living in Eretz Yisrael are to be considered. This notion is derived from *Melachim* (I:8:65), which states that when King Solomon celebrated the completion of the building of the first Temple, all of the Jewish nation from the northernmost to southernmost points of Eretz Yisrael was in attendance, "*Kahal gadol milevo chamat ad nachal mitzrayim*."

The Rambam in his commentary to the Mishna (*Bechorot* 29) cites this halacha in explaining why *smicha* can only be conferred in Eretz Yisrael: Conferring ordination is not a private affair between Rebbe and talmid but is considered an act taken by all of the Jewish community, the Rebbe conferring the *smicha* acting on behalf of all of *klal Yisrael*. Since the Jews who live in *chutz la'aretz* cannot really constitute *klal Yisrael*, *smicha* cannot be conferred there, as it cannot be viewed as on behalf of the *tzibbur*.

In his supplement to mitzvah 284, the *Minchat Chinuch* interprets three additional Talmudic passages based on this principle:

A) The Gemara in *Megilla* 11b cites that one reason that *hallel* is not recited on Purim is because *hallel* can only be recited on a miracle that occurred in Eretz Yisrael. The *Minchat Chinuch* understands this as ruling that the obligation to recite *hallel* in commemoration of a miracle only applies if it is a "*nes hatzibbur*" (miracle of the community). Although the majority of the Jewish population at the time lived outside the Land, since only Jews in Eretz Yisrael can constitute *klal Yisrael*, this miracle was considered a "*nes yechidim*" (miracle of individuals).

B) The Gemara in *Ta'anit* 14b states that if private individuals are in need of rain in the summertime, a prayer requesting this may be inserted in *shema kolenu*. Only if the entire *tzibbur* is in need of rain is *veten tal* said in *barech aleinu*. In *Chutz la'aretz*, however, even if the entire community of Nineveh is in

conquered nation. Therefore, just as a doctor would amputate a patient's limb in order to save life,<sup>10</sup> when the "life" of an entire nation is endangered, it is permissible to sacrifice the lives of the few for the purpose of sparing the nation at large.

Thus the question at hand seems comparable to that of a sick individual who must decide the course of action his doctors should undertake. The *poskim* discuss the case of a patient who is fatally ill but who could receive treatment that would prolong his life although cause painful side-effects. In such a situation, since there is no clear consensus whether going ahead with such treatment is desirable, the decision is left to the sick individual.<sup>11</sup> Likewise, in the case of a nation in mortal danger, faced with a solution of dubious value, the decision on the course of action to be taken should be in the hands of the majority of those affected.

In earlier times the Sanhedrin or even a single accepted leader<sup>12</sup> could render such decision on behalf of the entire *tzibbur*

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need of rain in summertime, all are treated as individuals.

C) The Gemara in *Ta'anit* 11b states that although in Eretz Yisrael the Rabbis were empowered to institute a *ta'anit tzibbur* during times of difficulty, there is no *ta'anit tzibbur* in Babylon. Various explanations have been suggested for this passage; the *Minchat Chinuch* claims that because the Jewish population outside of Eretz Yisrael is to be treated as *yechidim*, the problem of individuals (*yechidim*) cannot warrant a *ta'anit tzibbur*.

The Talmud in *Sanhedrin* 43b cites that the principle of *kol Yisrael areivim zeh bezeh* only applied after the Jewish people crossed the Jordan River. It would appear that the reason for this is that *areivut* is dependent upon our status of nationhood, a status only attained with our possession of a national homeland. Thus, before entering Eretz Yisrael, *Bnei Yisrael* had not yet fully attained a status of nationhood. Today, however, even Jews outside of Eretz Yisrael are still bound by this principle of *areivut* because they identify with Eretz Yisrael, considering it their homeland. However, based on the above passages, it becomes apparent that their level of membership of *klal Yisrael* is of a weaker nature and therefore, with respect to an issue that must be determined by the majority of the nation of Israel, only those residing in Eretz Yisrael must be considered.

10. See Rambam, second *perek* of *Hilchot Mamrim*, fourth halacha.

11. See essay "Elav hu noseh et nafsho," *Beit Yitzchak* 1986, page 104.

12. The Gemara in *Brachot* 63a cites that Rabbi Akiva assumed the authority to intercalate the months from Babylon, because he was the greatest Torah leader of his generation.

(community), as the halacha regards them as representative of the majority opinion of *Klal Yisrael*.<sup>13</sup> However, inasmuch as there exists neither a Sanhedrin, nor any one person or group of persons widely accepted as leaders by the Jewish nation, it seems that the only course available is to assess the majority opinion of the Jews afflicted by this "malady."

It should be noted that this decision is not a matter of *psak halacha*. Therefore, just as only the individual patient — and not his rabbis — may decide which form of treatment to undergo, in this case, too, the opinion of rabbinic leaders should carry no more weight than that of anyone else. Yet, if military experts insist that it is impossible for Israel to maintain permanent control over Judea and Samaria, then even if the opinion of the entire Israeli population were unanimously otherwise, their demand would not be heeded.

Again we draw on the medical analogy — if all medical experts agree that they are unable to prolong the life of a particular patient, even if the patient insists that he receive a specific form of treatment, his request would be ignored.<sup>14</sup> Only in a situation in which the doctors themselves admit that there are valid considerations favoring either possibility is the decision left to the patient. Therefore, in this case in which military experts claim that it is possible to maintain control of Judea and Samaria but at the cost of regular losses in lives, it is for the public to decide whether the war is worth fighting.

In tallying the majority opinion of *Klal Yisrael*, it must also be stipulated that not everyone who is Jewish is considered a member of *Klal Yisrael* for this purpose. Among the criteria for "qualified membership" is that the individual be a *ma'amin* (believer), that he circumcise his sons, that he be married to a Jewess, that he believe

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13. See Rav Josef Dov Soloveichik's *Kovetz Chiddushei Torah*, pp. 51-52, p.55.

14. Rav Soleveichik always emphasized that in every situation, the experts in that field be consulted as, for example, a competent doctor must be consulted in order to determine whether a person should eat on Yom Kippur or if one may eat forbidden foods for health reasons.

that Eretz Yisrael is the Jewish homeland, *and that he live there*. Only such people may have input into the decision as to whether we are currently engaged in a winning situation or a losing one.<sup>15</sup> In addition, the process of seeking the majority consensus is to be undertaken for the sole purpose of appraising the situation with regard to the danger which people involved feel that it poses to them. Thus, one who feels that Israel is in a winning position may not allow his opinion to be colored by humanitarian or other considerations. Indeed, if it were ascertained that Israel maintains the upper hand in its current engagement, then not only is it mandatory that we continue to fight, but it would actually be *forbidden* to stop or impede the war, as will be explained.

### Atchalta D'Geula; A Halachic Concept

The term *Atchalta d'Geula* (onset of the Redemption) originates in a passage in *Megilla* (17b) which states that wars signify the *atchalta d'geula*. In halachic literature, the era of *atchalta d'geula* has two ramifications:

- a) According to the *Megillat Starim*, the commentary of the *Netivot* to *Megillat Esther* (9:19), it is permissible to establish a holiday in celebration of a manifestation that this era has arrived.
- b) In a responsum, the *Minchat Elazar* rules that according to *Chatam Sofer's Sefer Hazikaron*, one may not pray that the wars heralding the *atchalta d'geula* end, for by doing so he would be "prolonging the *galut* and preventing the coming of the redemption."<sup>16</sup>

Before determining what constitutes *atchalta d'geula*, the definition of *geula* must first be established. The Ramban prefaces his commentary to *Sefer Shemot* by stating that it is the book of the first exile of the Jews and their redemption from it. The redemption culminates at the end of *Shemot* not in the entry of the Jews to the

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15. For more detailed discussion of this topic refer to א/or המורה, ניסן תשמ"ג, "בגורי הייחוסן באומה הישראלית".

16. *Minchat Elazar*, Vol. IV, Chapter 5.

Land of Israel (which only occurs forty years later in Joshua's era), but in the building of the *mishkan* (Tabernacle) through which the Divine presence was manifested in their midst. Likewise, the *Gevurot Ari*, in his comments on *Ta'anit* 17, understands the talmudic argument (*Rosh Hashanah* 11b) whether the ultimate *geula* will take place in Nisan or Tishrei as referring to when the Temple is destined to be rebuilt. Thus, *geula* has been defined as the construction of the Holy Temple.

### Sequence of Mitzvot Upon Entering the Land of Israel

The Gemara in *Sanhedrin* 20b concludes on the basis of various biblical sources<sup>17</sup> that upon the Jews' entry to Eretz Yisrael, the mitzvot of appointing a king, destroying Amalek, and building the Temple are incumbent upon them, in that sequence.

#### A. The Mitzvah of Establishing a King

In his supplement to the Ramban's enumeration of the 613 mitzvot, the Ramban writes that the passage in *Bamidbar* "vehorashtem et ha'aretz viyeshavtem bah" entails the obligation of all Jews to live in Israel (positive mitzvah No. 4). In addition, a Jewish government must be established there. In explaining why the Rambam did not incorporate this commandment in his own listing of the mitzvot, the *Megillat Esther* claims that the mitzvah only applied in the era during which the Jews resided in Eretz Yisrael and will only be reinstated in the Messianic times.

The *Avnei Nezer* strongly disagrees with this reasoning, claiming that if the case were such, Rambam would not have enumerated other mitzvot such as *terumot*, *ma'asrot* and *hafrashat chalah* which are no longer biblically applicable today.<sup>18</sup> It would appear, instead, that the simple explanation for the Rambam's omission of this mitzvah is that he views it as identical to that of appointing a king, which he already enumerated elsewhere.

A further aspect concerning the mitzva of appointing a Jewish

17. שמואל ב:ז:א, ב; דברי הימים א:כ:ב:ז – י"ז.

18. יורה דעה סי' תניך אות ד'.

king can be deduced from the Ramban's commentary on *Parshat Korach* (*Bamidbar* 6:21). Discussing the fact that many centuries elapsed from the time the Jews entered the Land of Israel before the Temple was built, he claims that had they requested to build it earlier, they could have done so as early as the period of the Judges. Since it is clear from the above talmudic passage that a king must be appointed before the Temple is built, it appears that the Ramban's position is that it is merely necessary that a Jewish governing body — and not necessarily a monarchy — be established before the *Beit Hamikdash* is built. Similarly, a source in the *Yerushalmi*<sup>19</sup> claims that the third *Beit Mikdash* will be built prior to the renewal of the kingdom of the House of David. This also seems to indicate that it is merely necessary that a Jewish government exist at the time that the building of the Temple is undertaken.<sup>20</sup>

In view of the above, many people consider that the establishment of the modern State of Israel should be heralded as the *atchalta d'geula*, the first step in the redemptive process. As such, it is an essential step in the chain of events culminating in the rebuilding of the Temple. In fact, we are taught that it is only in the *z'chut* of our intent to build the *Beit Hamikdash* and renew the Divine service there that we merit to have sovereignty over Eretz Yisrael. The Gemara in *Megilla* 31b interprets the biblical account of a dialogue between G-d and Abraham as indicating this symbiosis: having been promised that the Land will be given to his progeny, Abraham queries: "bameh eida ki irashenu" — "In what merit will they receive the Land?" To this G-d responds by having him participate in the *brit bein habtarim*, symbolic of the Temple sacrifices in whose merit the Jews would retain ownership of Eretz Yisrael. (Furthermore, in the absence of the *Beit Hamikdash*, G-d assured Abraham that the Jews could compensate by the daily

19. מעשר שני פ"ה ח"ב.

20. See Rav Moshe Zvi Neriyah's essay entitled "Regarding the Significance of the Establishment of an Independent Jewish Government in the Land of Israel" in Mossad Harav Kook's *Torah Sheba'al Peh*.

recital of the *seder hakorbanot*.<sup>21</sup>) Thus, we may be worthy of controlling Eretz Yisrael as a step toward *geula*, for the loftier goal of renewing the service in the *Beit Hamikdash*.

### B. Mechiat Amalek

The Rambam<sup>22</sup> states that there is a positive commandment to destroy the seven nations dwelling in Eretz Yisrael and adds that they have already been destroyed and blotted from memory; but this is a postscript that he does not add with reference to the mitzvah to destroy Amalek.<sup>23</sup> Commenting on this anomaly in the name of his grandfather Rav Chaim Brisker, Rav Josef Dov Soleveichik notes that although the original Amalekites have been wiped out, it is still incumbent upon us to destroy any nation that, like the original Amalekites, is committed to the destruction of the people of Israel.<sup>24</sup>

The *Mabit*<sup>25</sup> concurs with the view of the Rambam, that the destruction of Amalek remains a national obligation. Indeed, it seems obvious that Amalek has not yet been obliterated, for our Sages indicates that our redemption will come after Amalek is

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21. In fact, the *Talmidei Rabbeinu Yonah* in his comments on the *Rif* to *Brachot* 5a considers the daily recital of the *korbanot* a biblical law, whereas in *Shabbat* 118b, the *Psukei D'zimra* are categorized as a *midat chassidut* (and not even of rabbinically-ordained nature!). Thus despite the fact that many today are more careful to recite the *psukei d'zimra*, it is proper that one rather be more concerned that he recite the *seder hakorbanot* daily. The *Mishnah Berurah* rules that women, too, are obligated to recite the *seder hakorbanot*, possibly including the Mishnaic passage of *Ezehu Mekoman*, as well.

22. הלכות מלכים פרק ה הלכה ד'

23. Interestingly, the *Sefer Hachinuch* on commandment 425 quotes the Rambam as having said of both the seven nations and of Amalek, as well, that they have already been completely destroyed. Rav Meir Don Plotzky dismisses this analysis of the Rambam, however, arguing in positive commandment 187 of *Chemdat Yisrael*, his commentary on the *Sefer Hamitzvot*, that the Rambam's view is explicitly opposite.

24. For this reason Rav Soleveichik felt that it was forbidden to accept reparations money from Nazi Germany.

25. *Beit Elokim, Sha'ar Hayesodot*, Chapter 50.

wiped out, and were they already annihilated, our *geula* would have taken place.<sup>26</sup>

In summary, according to the passage in *Sanhedrin*, the mitzvah of establishing a Jewish government in Israel and the destruction of Amalek, in that order, are incumbent upon the Jewish nation upon their entry into the Land of Israel, and are viewed as vital steps in the evolution of the *geula*.<sup>27</sup>

#### Application to the Present

In order for these two developments to be heralded as *atchalta*

26. See Rashi, end of Parshat *Beshalach*: “אין השם שלם עד שימחה ורעו של מלך” as pointed out in *Chemdat Yisrael*, note 23.

27. This concept clarifies the comment of the *Netivot* on *Megillat Esther* (9:19) that claims that the Rabbis established the permanent Yom Tov of Purim because they viewed the destruction of Amalek at that time as *atchalta d'geula*.

The Gemara in *Megilla* 5b points out a discrepancy between two *psukim* in *Megillat Esther*. In 9:19 the *pasuk* reads that Purim was established for the purpose of *simcha, mishteh, v'yom tov*, whereas in *pasuk* 22, the term “*yom tov*” is omitted. The Gemara resolves this contradiction, explaining that the term *yom tov* connotes an *issur melacha*; originally the Rabbis intended to institute an *issur melacha*, however this was never done.

Simply understood, this passage implies that as just as the Gemara in *Horiyot* 3b rules that the Rabbis may not introduce a *gezerah* that the majority of the population is unable to uphold, the same is true, with respect to *takanot*, which must be accepted by the majority of the people. (This parallel is stated explicitly in the *Tosefta* at the end of the second chapter of *Sanhedrin* as pointed out by the *Mitzpeh Shmuel* in his commentary there).

The *Netivot*, however, understands this Gemara as indicating that although the Rabbis originally thought that the miracle of Purim was part of *atchalta d'geula* (because it involved destruction of Amalek) they soon realized that they had acted in error and were therefore forced to cancel the Yom Tov status of Purim.

This interpretation seems difficult, firstly because it doesn't fit the wording of the text of the Gemara which states that the people never accepted the *issur melacha* and secondly, because even the establishment of a holiday like Chanukah and Lag B'omer which do not have an *issur melacha* would pose a problem of *bal tosif* unless the event to be commemorated is related to the building of the *Beit Hamikdash*.

Nonetheless, it is interesting to note that the *Netivot* felt it permissible for the Rabbis of the time to establish a yom tov merely because they *thought* that it was an *atchalta d'geula*, even though they lacked conclusive proof that the case was actually so!

*d'geula*, however, they must be linked to the rebuilding of the Temple. This being the case, it should be investigated whether the modern State of Israel will necessarily lead to the building of the Temple and therefore should be viewed as *atchalta d'geula* or, if G-d forbid, it may be destined to fail and therefore does not merit to be so regarded.

In response to this, it is apparent from the Ramban's commentary on the admonitions of *Bechukotai* and *Ki Tavo* that these correspond to the first and second Temple destructions, and that there will be no others. The Ramban<sup>28</sup> also points out that because the second Temple did not capture the full glory of the first, the description of the second *Churban* is termed as the destruction of the Jewish State, and not of the Temple, and therefore, if we are assured that there will not be another *Churban*, it is understood that there will not be a destruction of the State of Israel, either.<sup>29</sup> If Eretz Yisrael today is not yet to be considered in a state of *binyan*, (built up) it is possible that the Jewish Government there will fail, but if it is considered "*bebinyana*" we are assured that it will never again experience *Churban* and therefore we can assume that the State of Israel can rightfully be termed as *atchalta d'geula*.

#### What Defines Eretz Yisrael *Bebinyana*?

With regard to the Rabbinic imperative that one rip his garment upon seeing the cities of Judea in a state of destruction (*arei Yehuda bechurbanam*), *Magen Avraham*<sup>30</sup> states that even if a city is inhabited by Jews, if it is under the jurisdiction of non-Jews, it is considered to be in a "state of *Churban*." From this it can be

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28. *Vayikra* 26:16

29. Although Bar Kochba's government was abolished, this fact does not contradict the prophecy that there will not be a third destruction and exile. History has termed Bar Kochba's era as that of the Bar Kochba *revolt*, not according to the status of a government, whereas the State of Israel today is recognized by the world community as a bona fide government.

30. מגן אברהם ריש סי' תקס"א.

concluded that according to the *Magen Avraham*, a city in Eretz Yisrael that is ruled by a Jewish government and inhabited by Jews is considered a "built state," *bebinyana*. Applying this definition to the current situation in Eretz Yisrael, it appears that since it is both inhabited and controlled by Jews, the halacha would classify Eretz Yisrael as being in a state of *binyan* and therefore, according to the words of the prophets, we are promised that it will never again be subjected to *churban*.

It should be noted that according to the halacha, the states of *churban* and *binyan* are closely linked to the physical state of Eretz Yisrael. In speaking of the destruction of Eretz Yisrael, the *pasuk* states "*veshamemu aleha oyvechem hayoshvim ba*,"<sup>31</sup> that as long as the Jews are in exile, their land will remain in a state of desolation. Conversely, the Talmud comments on the words of the prophet Ezekiel, "And the mountains of Israel shall bear produce for my nation Israel. . . and the Land of Israel shall not make them [the Jewish nation] bereft again."<sup>32</sup> There is no more pronounced indication of the *geula* than when Eretz Yisrael will cease to be in a state of desolation.<sup>33</sup>

The Talmud also comments that the Rabbis arranged the sequence of the *brachot* comprising the *amidah* in accordance with the order established by the prophet, the *bracha* requesting success in agricultural endeavors (*mevarech hashanim*) directly preceding that dealing with the ingathering of the exiles (*Teka B'shofar Gadol*).<sup>34</sup> The last half-century has indeed been witness to exactly these historical developments — the renewed flourishing of the Land of Israel followed by large-scale influx of Jews — of which the prophet testified<sup>35</sup> "*velo yenatshu od me'al admatam*," "and they will never again be uprooted from their land".<sup>35a</sup>

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31. *Vayikra* 26:32

32. *Ezekiel* 36:8-12

33. *Sanhedrin* 98a

34. *Megilla* 17b

35a. Although we are assured that there will never be another *churban*, this does not guarantee that no lives will be lost in defense of Eretz Yisrael.

### Shelo Ya'alu Bachoma

Based on the fact that the verse “*hishbati etchem b'not Yerushalayim*” appears three times in *Shir Hashirim*, the Gemara states that three oaths were administered to the Jews, the first being “*Shelo ya'alu bechoma*” that they would not regain Eretz Yisrael through forceful means.<sup>36</sup> Therefore, some contest the validity of the current Jewish government in Israel, claiming that since control of the Land of Israel has violated the oath of “*shelo ya'alu bachoma*,” the State of Israel should be dismantled and sovereignty relinquished to previous occupiers or to the United Nations.<sup>37</sup> This argument would not be recognized by the many *Acharonim* who claimed that this oath was never halachically binding, as well as by those who offered various suggestions to explain why this oath no longer applied in the twentieth century.<sup>38</sup> In fact, the *Ohr Sameach* rejoiced about the Balfour Declaration, claiming that through it we were absolved of the oaths.<sup>39</sup> Possibly the majority of Torah leaders at the time of the Second World War were of the opinion that the prohibition, if it ever existed, was no longer binding.<sup>40</sup>

In any event, any current discussion of the ramifications of the oaths would only be in theoretical terms, for even if it were concluded that the State of Israel was established in violation of the oath, the overwhelming majority of rabbinic authorities clearly felt that we would not now be obligated to relinquish control of it.<sup>41</sup>

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36. *Ketubot* 111a.

37. According to the commentary of the *Megillat Esther* on the Ramban's supplement to the Rambam's *Sefer Hamitzvot* it is forbidden to establish a Jewish government in Eretz Yisrael until the arrival of the Messiah. Expanding upon this in the introduction to his *sefer Al HaGeula ve-al HaTmura*, the Satmer Rebbe claims that this *issur* requires of us to take such action.

38. See Rav Shlomo Avyner's essay entitled “*Shelo ya'alu BaChoma*” that appeared in *Noam*, volume 20. This essay enumerates these various opinions *le'heter*.

39. See Rav Zev Aryeh Rabiner's *sefer Rabbeinu Meir Simcha Zt'l*, p. 164.

40. See *BaMaaracha Hatzibburit* p. 45-49.

41. See the Steipler's *Kreina D'Igarta*, letter 205, in which he disagrees with the basis of the Satmer Rebbe's claim.

### Anti-Religious Leaders

Others dispute the significance of the existence of Jewish government in Israel as an element of *atchalta d'geula*, citing the fact that the original founders of the State and many of the government members today, as well, are irreligious individuals. Therefore they claim the Israeli government cannot be defined as a "Jewish government." Although it carries emotional appeal, this argument seems halachically incorrect in light of the Gemara in *Rosh Hashana* that established the concept of a Jewish government (in contradistinction to a non-Jewish government) without differentiating between the status of government headed by a Torah observer and that of Ahab who was guilty of transgressing the laws of the Torah and causing others to sin, as well.<sup>42</sup>

In light of the above, if the criterion essential to defining Eretz Yisrael as being in a "built state" is the existence of a Jewish governing body there, then the halacha would view Eretz Yisrael as being *bebinyana* (built).<sup>43</sup>

### Supernatural Geula

Others cite the *pasuk* in Daniel, "ve'aru im anenei shmaya

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42. The Gemara at the beginning of *Rosh Hashana* distinguishes between Jewish and non-Jewish governments, stating that with respect to the dating of legal documents, regardless of when the Jewish king is crowned, at *Rosh Chodesh* Nisan, a new year of the kingdom begins to be counted, whereas by a non-Jewish monarchy, the year begins from *Tishrei*. Citing the verse "*hachodesh hazeh lachem rosh chodashim*" (*Shmot* 12:2), the *Ran* on this source comments that this is not merely a custom, but an actual halacha. In his commentary on *Parshat Bo*, the *Netziv* explains this distinction as follows: Being that history of the nations of the world is governed by the natural principles of history established by G-d at the time of creation, their years begin with *Tishrei*, the month during which all laws of nature were established. However, *Bnei Yisrael*, whom G-d treats with His Divine Providence and whose history is supernatural, number their years beginning with the month of Nisan, the month of miracles, as the *Chazal* state that in Nisan we were redeemed (from Egypt) and in that month we are again destined to be released.

43. Although it can be argued that the majority of the Jewish nation must reside in Eretz Yisrael in order for it to be classified as in a "built state," the simple

*kebar inish ata*,<sup>44</sup> indicating that the *geula* will arrive in a supernatural manner and argue that this source proves that current developments in Eretz Yisrael are not leading to the *geula*. In his *sefer Eim Habanim Smeicha*,<sup>45</sup> the author raises this issue and refutes it by citing a Gemara in *Sanhedrin*<sup>46</sup> which resolves the apparent contradiction between this passage from Daniel with another in Zacharia, "ani verochev al chamor"<sup>47</sup> describing the messiah as a humble man riding on a donkey: "zachu-im ananei shemaya; lo zachu-ani verochev al chamor." If the Jews merit the *geula*, it will come in a rapid supernatural manner like heavenly clouds, whereas if G-d brings the *geula* because of His mercy for us, it will arrive as a natural process, at the lazy pace of a donkey.<sup>48</sup>

The *Ohr HaChayim* in his commentary on the *pasuk* "darach kochav miyaakov vekam shevet miYisrael"<sup>49</sup> makes a similar point, claiming that if *Bnei Yisrael* merit the *geula* it will arrive in a supernatural form like a shooting star, whereas if it arrives "*beito*," in its time, it will be a slower, natural process, "*ushfal anoshim*

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reading of the passage in *Sanhedrin* that terms the revival of agriculture in Eretz Yisrael as the most prominent sign of *geula* seems to indicate the *kibbutz galuyot* (ingathering of exiles) is not a prerequisite to *binyan ha'aretz*.

It should be noted, however, that although a total *churban* will never again befall Eretz Yisrael, the prophets' words do not preclude the possibility of a partial destruction of a part of Israel; thus the 1978 evacuation of Sinai does not contradict this premise.

Because of this, the basis for the establishment of *Yom Yerushalayim* in commemoration of the 1967 recapture of the Old City of Jerusalem may be questionable. Whereas the establishment of the State of Israel is clearly categorized as *atchalta d'geula* because it is a necessary, irreversible step clearly leading to the building of the Third Temple, it is unclear whether the conquest of Jerusalem will serve as a step toward the building of the *Beit Hamikdash*, as we have no guarantee that it will remain under Jewish control until that time.

44. *Daniel* 7:13

45. Jerusalem edition, 1983 pages 89-90.

46. *Sanhedrin* 98a.

47. *Zecharia* 9:9.

48. See *Einei Yitzchak*, in his commentary in *Eid Yaakov* on the above passage in *Sanhedrin*, No. 171.

49. *Bamidbar* 24:17.

*yakum aleha*<sup>50</sup> during which time lowly individuals will rule the land of Israel.

Thus, although the fact that the *geula* is taking a slow, natural course may be unfortunate, it does not bar these events from being classified as part of the process of *geula*.

### Introducing A Yom Tov to Celebrate Atchalta D'Geula

The Gemara in *Rosh Hashana*<sup>51</sup> queries: "being that the holidays established during the second Temple have been abolished, can new ones be introduced?" To this the *Pri Chadash* comments that it is forbidden to introduce a Yom Tov during a period when the Temple is not standing.<sup>52</sup> Although the Maharam Alshakar states that it is permissible for individuals or communities and their descendants who have experienced salvation to celebrate a Yom Tov in annual commemoration of the event,<sup>53</sup> later poskim have pointed out that it is forbidden to institute a Yom Tov to be celebrated by all of *Klal Yisrael*<sup>54</sup> unless it corresponds to the rules set forth in *Megillat Taanit*.<sup>55</sup> Because of this, the *Chatam Sofer* objected to the celebration of *Lag B'Omer* in Safed and Meron, claiming that it may

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50. *Daniel* 4:14.

51. *Rosh Hashana* 18b.

52. *Pri Chadash*, in his commentary to *Ohr Hachayim* 496.

53. This view is brought by the *Magen Avraham*, *Hilchot Purim*, chapter 686.

54. See the *Chaye Adam* at the end of *Hilchot Purim*, the Malbim in his commentary on *Megillat Esther* 9:19, the *Chida* in *Shem Hagedolim* on Rav Ovadiah miBartenura, who quotes this distinction in the name of several *Acharonim*. Surprisingly, in addressing the question of the permissibility of instituting the holiday of *Yom Ha'atzma'ut* to be celebrated universally by all of the Jewish nation, Rav Meshulom Roth (*Kol Mevasser* I, chapter 21) states that according to the above responsum of the Maharam Alshakar, this is clearly allowed!

55. *Megillat Ta'anit*, the first recorded *tannaitic* work, comprises a listing of all the minor holidays established during the Second Temple period. According to the Talmud in *Rosh Hashana* 18b, these holidays commemorated events related either to the building of the Temple, the improvement of its structure, service, the *Kehuna gedolah*, and preservation of the Temple from destruction.

be in violation of the *issur* of the *Pri Chadash*.<sup>56</sup>

Indeed, many *Acharonim* questioned the validity of the establishment of Purim to commemorate a salvation that occurred during the period of the Babylonian Captivity, to which *Netivot* answers that because the miracle of Purim involved the destruction of Amalek, an aspect of *atchalta d'geula*, the leaders of the time were permitted to establish a *Yom Tov*. The *Sfat Emet* likewise writes that the miracle of Purim was a preparation for the building of the Second Temple.<sup>57</sup> In an additional note about Purim, it is interesting that although the Jews were unhappy with the sequence of events that led to this salvation, (the fact that Esther was forced to marry a non-Jew and she bore a child, Darius, who was raised as a gentile in the royal palace) the Rabbis nevertheless saw through this apparent tragedy and pronounced it a step toward *geula* and thus an event worthy of commemoration by annual celebration. This establishes a precedent for the innovation of a holiday in honor of an event heralded as *atchalta d'geula*, despite the fact that at the time of the event all does not appear good and well, as discussed previously with regard to the caliber of political leaders in Israel today.

In a similar vein, the Hasmoneans established the holiday of Chanukah to celebrate the sparing of the *Beit Hamikdash* from destruction, and not as a celebration of their military victory. Today, even after the destruction of the second Temple, we continue to celebrate Chanukah, as we believe that the miracle of

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56. The *Chatam Sofer* was not opposed to the European custom of not saying *Tachnun* on *Lag B'omer* because this is not an indication that the day is viewed as a *Yom Tov*. *Tur Orach Chaim* (chapter 131) quotes Rav Natronai Gaon classifying the saying of *Tachnun* as optional.

Dayan Ehrenberg in *Dvar Yehoshua* justifies the custom of many Hassidic groups who never say *Tachnun* in *Mincha*, even if they complete *Chazarat HaShatz* before sunset, claiming that being that these people generally have good reason not to recite *Tachnun* (because it is improper to do so after nightfall), this coupled with the fact the *Tachnun* is only a *reshut* allows for the *minhag* that *Tachnun* always be deleted so that it will not mistakenly be said at night.

57. דרשת לפורים תרל"ד ד"ה נראה; תרל"ח ד"ה מה; תרמ"ג ד"ה ענן.

Chanukah was an indication that there will be a third Temple.<sup>58</sup>

The kabbalists write that G-d was motivated to create this world because He desired a dwelling place in the lower world. It is perhaps for this reason that He first created the site of the *Beit Hamikdash*, the essence of the entire creation. The Gemara in *Megilla*<sup>59</sup> also comments that on the day of the consecration of the *Mishkan*, G-d rejoiced as He had on the day that heaven and earth were created, for the building of the *Mishkan* was the ultimate purpose of that creation.<sup>60</sup>

The Gemara states that all of the Creation mourned the destruction of the Temple, for since the Temple comprised the essence of the Creation, at its destruction the world no longer held purpose. Conversely, at the future rebuilding of the Temple, heaven and earth will rejoice (*yismichu hashamayim vitagel haaretz*)<sup>61</sup> for G-d will once again have a dwelling place in this lower world and purpose will thus be restored to all of the Creation. For this reason, the Ramban<sup>62</sup> declares that celebrating the building of the Temple is a mitzva of biblical nature.<sup>63</sup>

In conclusion, although celebration of the building of the Temple is only mandatory at the start of the building, later commemoration of the event through celebration is not in violation of the *issur* of *bal tosif*, but has the status of a *kiyum d'oraita*. Just as there was no *requirement* to celebrate the miracles of Purim and Chanukah that proved intrinsic to the rebuilding and preservation of the Temple, the Rabbis had the right to institute these holidays for commemoration by all future generations. With respect to the

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58. For more detailed treatment of this topic see "Regarding the Nature of the Holidays of *Megillat Ta'anit*," *Ohr Hamizrach*, Nissan 1974.

59. *Megilla* 10b.

60. *Vayikra* 9:1.

61. *Psalms* 96:11.

62. *Bamidbar* 7:13.

63. In *Galia D'Masechta*, Rav Dovid of Navardok claims that today, since the synagogue and yeshiva have the status of a "mikdash me'at," we are required to make a *chanukat beit haknesset* and *beit hamidrash* as we would a *chanukat beit hamikdash*.

institution of *Yom Ha'atzma'ut* to commemorate the establishment of the State of Israel, an event categorized as *atchalta d'geula*, although it was not mandatory at the time that a Yom Tov be introduced, it was permissible to do so, even more so than the customary annual celebration of *Lag B'omer*, as previously explained.<sup>64</sup>

#### War and *Atchalta d'Geula*

The Gemara in *Megilla*<sup>65</sup> questions why the seventh *bracha* of the *amidah* is that dealing with *geula* (*re'eh b'anyenu*), and responds that this because the *geula* will occur in the seventh year, a fact that seems to contradict the tradition that the seventh year will be characterized by war. In reconciling these two concepts, the Gemara details that the seventh year will indeed experience wars, which are also categorized as *atchalta d'geula*, following which the *geula* will take place. The simple understanding of the above-cited text is that the coming of the Messiah will be immediately preceded by war. Although it is difficult to understand the convictions of the *Chatam Sofer* and, later, of the *Minchat Elazar* that certain European wars in their lifetimes represented the *atchalta d'geulaa*, the 1948 War of Independence that began immediately upon the establishment of the State of Israel seems clearly applicable to the category of *atchalta d'geula*. Because the start of this war served as a sign that the establishment of the State of Israel was truly *atchalta d'geula*, it would appear that it was within the right of the Rabbinic leaders of the time to institute the Yom Tov of *Yom Ha'atzma'ut* on the date of the outbreak of this war.<sup>66</sup>

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64. Even so, this does not necessarily justify the recitation of *Hallel* or half-*Hallel* on *Yom Ha'atzma'ut*, as we celebrate many holidays on which *Hallel* is not said. The issue of whether *Hallel* should be recited on *Yom Ha'atzma'ut* merits separate discussion.

65. *Megilla* 17b.

66. Although some argue that like the Hasmoneans who celebrated at the finish of their battles, we should only celebrate the victorious end of the 1948 War of Independence, the cases are not comparable. The Hasmoneans celebrated the ends of their wars because each victory served to spare the *Beit Hamikdash* from

### Conclusion

To return to the view of Rav Yaakov Kaminetsky that the 1948 War of Independence continues to be waged today and that current incidents of Arab unrest are merely extensions of that original conflict, it is to be concluded in concurrence with the views of the *Chatam Sofer* and *Minchat Elazar* cited above that it is forbidden to stop or slow this war, for in so doing, we would be preventing the coming of the *geula*.



The author thanks his daughter Aviva for her assistance in translating this essay from the original Hebrew.

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destruction; today, being that there is no *Beit Hamikdash*, we have no right to establish holidays to commemorate military victories, and are only permitted to establish Yomim Tovim intended to commemorate historical events viewed as elements of *atchalta d'geula*. Therefore, because the establishment of the State of Israel (and not winning of the war) constituted the *atchalta d'geula* we celebrate the date of *hakamat hamedina*.