

לכן, טיפול בהחזרת בחורים בתשובה על-ידי בחורות, הוא בגדר מצווה הבאה בעברה, ועל-כן יש להפנות אותם אל בחורים שלמי תורה כדי שהם יעסקו בעבודה זו.

ששת. גיוס בני ישיבה [סיכום שיעור שניתן ב"מכון מאיר"]

א. הקדמה

בנושא גיוס בני ישיבה, ישנה פגישה בין שתי מצוות אדירות העומדות ברומם של עולם:

- א. תקומת התורה באומה הישראלית שהיא יסוד קיום האומה.
- ב. הצבאות, שהיא הצלת נפשנו והמשך בניין ארצנו ויישובה.

יש להבחין בין שני עניינים שונים בנושא:

1. האם מי שתורתו אומנותו פטור מהשתתפות במלחמת מצווה? ויתברר בהמשך הדברים שלא כן הדבר, ואין שום יהודי שלא יהיה בכלל חיוב זה.

2. מצד שני, יש לשקול את הצרכים הצבאיים של האומה, לעומת החינוכית הלאומית של הישיבות והעמדת תלמידי-חכמים רבים שהיו גדולי תורה; וההכרעה תלויה במצב הדברים ויכולה להשתנות מתקופה לתקופה.

ב. ראיות לפטור ודחייתו

עיקר ראיותיהם של הטוענים למען שחרור אישי מוחלט של תלמידי ישיבות, נדחו על-ידי רבנו הרב צבי יהודה הכהן קוק, במאמר 'למצות הארץ' שהופיע באייר תש"ח [היום הגדול, כ"ח באייר, יום עלותנו עם אאמו"ר הרב זצ"ל לארץ-חיי קודשנו – בשנת תסדר ממחרת קריאת התורה – נשיאות-ראש והשראת-השכינה לששים ריבוא יוצאי צבא בישראל וברכת החודש מתנה" – דברים אלה כונסו בלנתיבות ישראל א, עמ' קיח-קכז].

1. בגמרא נאמר שתלמידי-חכמים פטורים מתשלום כסף לשם בניית חומת העיר ושמירתה, כי "רבנן לא צריכי נטירותא" (בבא בתרא ח א) [תלמידי-חכמים אינם צריכים שמירה], "שתורה ומעשים טובים שלהם משמרים אותה" (ריבנו גרשום, בבא בתרא ז ב).

ועוד נאמר שם בגמרא: "אני חומה ושדי כמגדלות". אני חומה זו תורה [פירש רבנו גרשום: "זו תורה שמגינה על לומדיה כחומה שמגינה על אנשי העיר"], "ושדי כמגדלות" אלו תלמידי-חכמים. וכן ברמב"ם (הלכות תלמוד תורה וי) נאמר: "תלמידי חכמים... ואין גובין מהן לבנין החומה ותיקון השערים ושכר השומרים". ובשו"ת הרדב"ז מבואר שבמקום שיש ספק נפשות אין הדבר כך (ב, סי' תשנב).

2. עוד אמרו חז"ל על המלך אסא, שהיה צדיק ואף-על-פי כן נענש ברגליו (מלכים א טו כג) מפני שעשה אנגריא [גיוס באונס] בתלמידי-חכמים, כאמור שם: "והמלך אסא השמיע את כל יהודה אין נקי, וישאו את אבני הרמה" (שם כב). ופירוש הביטוי "אין נקי" הוא, שגם תלמידי-חכמים הוא קרא לעבודה זו, שהיתה צריכה לחזק את ערי ארצו במלחמתו עם בעשא (סוטה יא). ושם לא היתה מלחמת מצווה, וכן אומר המהרש"א [הערה: לכן הוא נענש גם על שלקח חתן וכלה כדברי הגמ': "מאי אין נקי? ואפילו חתן מחדרו וכלה מחופתה"].

והסביר 'הערן' בערך "אנגריא": מכיוון שאסא לקח חתן מחדרו, אם-כן מכל שכן שלקח תלמידי-חכמים. ועיין ירושלמי (סוטה פ"ח ה"י): "אין נקי: לית רבי בריבי", ולא הזכיר שנענש על-זה. ועיין 'קרבן אורה' (סוף"ח סוטה) שבמלחמת מצווה חייבים אפילו תלמידי-חכמים.

3. ובגמ' נדרים נאמר (לב א): "מפני מה נענש אברהם אבינו ונשתעבדו בניו למצרים מאתים ועשר שנים? מפני שעשה אנגריא [גיוס באונס] בתלמידי חכמים, שנאמר: 'וירק את חניכיו ילידי ביתו'". ופירש הר"ן: "שהולכין למלחמה כדכתיב: 'וירק את חניכיו', דהיינו בני-אדם שחנך לתורה". ואף שם לא הייתה מלחמת מצווה כפי הגדרת הלכותיה לנו, וכן לא מלחמת כיבוש הארץ ולא עזרת ישראל מיד צר.

ואפילו אם נדון מצד שאברהם אבינו קיים את כל התורה כולה, מכל מקום הצלת לוט אינה בכלל הצינוי של "לא תעמד על דם רע" (ויקרא יט טז) מצד התורה, אחרי ש"הסיע עצמו מקדמונו של עולם, אמר אי אפשר לא באברם ולא באלוהיו" (בראשית רבה מה ז).

וכן אין ללמוד הלכה מאברהם אבינו בכל עניין: "אנן מאברהם ניקום וניגמר?" (יומא כח ב) ופירש הריטב"א, שזה קיים למסקנה, לעניין מה דאשכחן דפליג אדאורייתא (שם).

4. על הפסוק: "האלף לך שלמה, ומאתים לנטרים את פרי" (שיר השירים ח יב), אמרו חז"ל ששלמה המלך יוכל לקחת אלף חיילים למלחמה, אך ישאיר לעומתם מאתיים הנוטרים את פריו ועוסקים בתורה (שבועות לה ב). ורש"י פירש שם: "לרבנן הניחם ויעסקו בתורה אחד משהשה שבהם". אבל גם שם מדובר על מלחמת רשות [מהרש"א – שהוא שם כמו עניין אסא הנ"ל. וכן תוס' שם ד"ה דקטלא].

5. חז"ל אמרו שגם ציווי המלך דוד לא היה יכול לדרוח את לימוד התורה של תלמידי-חכמים (סנהדרין מט א). ועל האמור: "ויאמר המלך אל עמשא, הזעק לי את איש יהודה ויחר מן המועד אשר יעדו" (שמואל ב כ דה), וסיבת האיחור היתה: "אשכחינהו דפתח להו במסכתא" – "שהיו עוסקים במסכת ולא רצה לבטל" (רש"י, סנהדרין שם). ולמרות שעמשא צווה על-ידי המלך שאין להמרות את פיו כי: "כל איש אשר ימרה את פיו ולא ישמע את דבריך לכל אשר תצוונו יומת" (יהושע א יח), אין הדבר אמור לגבי דברי תורה (סנהדרין מט א). ויואב שהחשיכו למורד במלכות, הרג בגלל זה, ונתחייב בדין אצל דוד, ושלמה הוציא לפועל את הדין. אם-כן, מתברר שעמשא צדק בכך שלא לקחם למלחמה.

אבל גם שם לא היתה מלחמת מצווה כהלכתה [והיו תלמידי-חכמים פטורים, ולכן לא היה על המלך לבטלם מתורה, ואין עמשא מורד במלכות].

6. ונמצאו מי שהזכירו מאמר חז"ל: "גדול תלמוד תורה יותר מהצלת נפשות" (מגילה טו ב). אבל אין הכוונה כאן שמצוות תלמוד תורה תדחה חובת הצלת נפשות, חס ושלוש, אלא שלימוד תורה מקנה יותר חשיבות אישית לעוסק בה. וכמו שהעיר הר"ף ב'עין יעקב' שאין זה שייך אלא במי שעוסק בתלמוד תורה דרבים ללמד לישראל.

7. "וייה בהיות יהושע ביריחו וישא עיניו וירא והנה איש עמד לנגדו וחרב שלופה בידו. וילך יהושע אליו ויאמר לו, הלנו אתה

3. דברים אלה אינם מיוחדים לישראל ולעוסקי תורתו, אלא ל"כל איש ואיש מכל באי העולם".

ואין כאן קביעת חוק, אלא הבטחה לספק צרכיו לכל מי שנדבה רוחו והתרומם מעל ענייני העולם הזה (כפי שהבין הרב ד"ר פדרבוש בספרו משפטי המלוכה עמ' 194 ועיי"ש הערת רבנו הרב צבי יהודה עמ' 242). וכן העיד הרב טננבוים, מזכיר ועד הישיבות בישראל, ששמע מפי הגאון הרב איסר זלמן מלצר, שאין כאן שום מקור לפטור תלמידי־חכמים (רבנו הרב צבי יהודה).

וברור שכוונת הרמב"ם בסוף הלכות שמיטה ויובל, היא לדברי מוסר והתרוממות ולא לפסיקת הלכה, שהרי הוא אומר שם שלמי שעוסק בתורה, ד"י זכה לו בעולם הזה דבר המספיק לו כמו שזכה לכהנים ללויים" (ג יג). והרי ידועה דעתו של הרמב"ם שמי שעוסק בתורה, אסור לו להתפרנס מן הציבור, כפי שפסק בהלכות תלמוד תורה (ג יא) ובפירושו על המשנה באבות "אל תעשה התורה קרדום לחפור בה" (ד ו).

אם־כן, אין כוונת הרמב"ם שהלומד תורה רשאי להיפטר מחובות פרנסתו על חשבון הציבור, אלא הבטחה אלוהית "שהקב"ה יזכה לו להרויח בעולם דבר המספיק לו ולא שישליך עצמו על הציבור", כפי שפירש הרדב"ז (רמב"ם, הלכות שמיטה ויובל ג יג). והוא הדין בעניין חובת הצבא.

ד. הגדרה של מלחמת מצווה

אחרי שנתבאר שמי שתורתו אומנתו אינו פטור ממלחמת מצווה, יש להגדיר את מלחמתנו הנוכחית שהינה מלחמת מצווה משני פנים:

1. מצוות כיבוש הארץ כפי שלמדנו מבית מדרשו של הרמב"ן (בהוספותיו לספר המצוות לרמב"ם מצות עשה ד): "שנצטוונו לרשת הארץ אשר נתן האל יתעלה לאבותינו לאברהם ליצחק וליעקב ולא נעזבה ביד זולתנו מן האומות או לשממה... ופרט אותה להם במצווה הזו כולה בגבוליה ומיצריה... שאנו נצטוונו אבל הארץ לא ננית אותה בידם [עממים] ולא ביד זולתם מן האומות בדור מן הדורות". ומלחמת מצווה היא חלק ממצוות יישוב הארץ כדברי הרמב"ן, שכמותו נפסקה ההלכה כדברי ה'פתחי תשובה' המאסף לכל מחנות הפוסקים (שו"ע, אה"ע סי' עה ס"ק ו): "כל הפוסקים ראשונים ואחרונים".

2. "עזרת ישראל מיד צר שבא עליהם" כפי הגדרת הרמב"ם (הלכות מלכים ה א), שהיא מצוות הצלת נפשות בהיקף של כל האומה כולה.

ה. חיוב גיוס תלמידי ישיבות במלחמת השחרור

לכן כתב רבנו הרב צבי יהודה באייר תש"ח לגבי מלחמת השחרור: "במצב מלחמה זה של 'עזרת ישראל מיד צר שבא עליהם' (הלכות מלכים ה א) שיש בה צד חיוב של הצלת נפשות, המוטל על כל אדם מישראל, והחמור מכל חיובי תורה ודוחה אותם [מלבד השלושה: עבודה־זרה, גילוי־עריות ושפיכות־דמים]... הלא לא ימצא מי שהוא מזרע אברהם יצחק ויעקב – אם רק הוא באיזו מדה יכול להציל – שלא יהיה בכלל חיוב זה. ועל המתרפה נאמר (הלכות מלכים ז טו): 'שכל ישראל

אם לצרינו, ויאמר, לא, כי אני שר צבא ד' עתה באתי' (יהושע ה יג). מלאך ד' בא להאשים את יהושע העומד בראש המערכה באמצע מלחמה של מצווה, על שגרם לביטול תורה. ולכן מיד: 'וילן יהושע בלילה ההוא בתוך העם' (שם ח ט), 'וילך יהושע בלילה ההוא בתוך העמק' (שם ח יג) – מלמד שלן בעומקה של הלכה (מגילה ג ב). אבל רש"י פירש: "ועכשיו – שהוא לילה, היה לכם לעסוק בתורה, שהרי אינכם נלחמים בלילה".

8. בסנהדרין איתא, שאלמלא דוד שעסק בתורה, לא עשה יואב במלחמה (סנהדרין מט א), כלומר, שלא היה יואב מנצח במלחמה כי "זכותו של דוד עומדת לו ליואב במלחמותיו של דוד" (רש"י, סנהדרין שם). והכוונה היא, שהעיסוק בתורה התמידי והכללי של דוד, הועיל למלחמותיו של יואב גם שלא היו מלחמת מצווה; וגם דוד לא נמנע מלעסוק במלחמה כפי הצורך והחיוב.

9. וכן יש שרצו להוכיח שהעיסוק בתורה של המשוחררים מן הצבא, מועיל לניצחון יותר מאשר הלוחמים, מדברי הגמרא: "חובל עולו של סנהריב מפני שמנו של חזקיהו, שהיה דולק בבתי כנסיות ובבתי מדרשות" (סנהדרין צד ב). וכן מבואר שם שחזקיהו חיזק את עם־ישראל בלימוד תורה וקיומה בהיקף כל האומה. אבל הכוונה היא, שבכוח התורה והאמונה הלכו למלחמה ונושעו. וכן יש להבין: "מי גרם לרגלינו שיעמדו במלחמה? – שער ירושלם שהיו עוסקים בתורה" (מכות י א). [וכן: "כל העוסק בתורה אויביו נופלים לפניו" (בבא קמא ז א). וכן רא"ש (גדרים לב א): "שהוריקן בתורה – זרזו בזכות התורה ובשבילה נצחו במלחמה"].

ג. הסתמכות על דברי הרמב"ם

רבים שהכריעו לפטור, נשענו ותקעו יתדותיהם על דברי הרמב"ם (הלכות שמיטה ויובל ג יג): "ולמה לא זכה לוי בנחלת ארץ־ישראל ובביתו עם אחיו? מפני שהובדל לעבוד את ד', לשרתו ולהורות דרכיו הישרים ומשפטי הצדיקים לרבים, שנאמר: 'ורו משפטך ליעקב ותורתך לישראל', לפיכך הובדלו מדרכי העולם, לא עורכין מלחמה כשאר ישראל ולא נוהלין ולא זוכין לעצמן בכח גופן, אלא הם חיל השם שנאמר: 'ברך ד' חילו'. והוא ברוך הוא זוכה להם שנאמר: 'אני חלקך ונחלתך'". "ולא שבט לוי בלבד אלא כל איש ואיש מכל באי העולם אשר נדבה רוחו אותו והבינו מדעו להבדל לעמוד לפני ד' לשרתו ולעובדו לדעה את ד' והלך ישר כמו שעשהו האלהים ופרק מעל צוארו עול החשבונות הרבים אשר בקשו בני האדם הרי זה נתקדש קודש קודשים ויהיה ד' חלקו ונחלתו לעולם ולעולמי עולמים ויזכה לו בעולם הזה דבר המספיק לו כמו שזכה לכהנים ללויים. הרי דוד עליו השלום אומר: 'ד' מנת חלקי וכוסי אתה תומיך גורלי'".

אמנם הסתמכות על דברים אלו, על־ידי השוואת עניינם של הלוויים ושל תלמידי־חכמים לשם הסקת מסקנות הלכתיות לגבי שחרור בני ישיבה מחיוב צבא, היא עלבונה של תורת אמת. וכבר העיר על כך רבנו הרב צבי יהודה מספר הערות (לנתיבות ישראל א, עמ' קכה): 1. אין כאן דברי הלכה אלא דברי מוסר והדרכה רוחנית שבהם הרמב"ם רגיל לסיים את ספדיו.

2. הרמב"ם לא קבע דברים אלו בהלכות מלחמות אלא בהלכות שמיטה ויובל.

תלניים בצוארו, וכמו ששפך דמי הכל" (הלכות מלכים ז טו. לנתיבות ישראל א, עמ' קכה).

אמנם היו מי שרצו לתלות עצמם בדברי מרן הרב קוק על-ידי סילוף דבריו, ופרסמו את הקטע הבא מדברי קודשו:

"והכל סובב והולך על היסוד הגדול הזה, שהצלחת המדינה ונצחון המלחמה עצמה קשורה הרבה בעבודה הרוחנית. על כן תלמידי החכמים העוסקים בתורה הם הם מגינים על הארץ ועוזרים להצלחת הנשק הלאומי, לא פחות וגם יותר מכל החיל הלוחם, ומה תוצאה בטוחה, שממלכה אידאלית המכרת את הוד הקודש לא תכופ את התלמידים השוקדים על דלתי התורה, לבטל את תורתם ולעסוק בעבודה גשמית שאינם מסוגלים לה" (אגרות הראיה ג, אגרת תתי עמ' צב). ועל זה הגיב רבנו הרב צבי יהודה ב"הודעה גלויה" למען האמת והתורה:

"ב"ה כ"ה ניסן התש"ח

ראיתי קעת שנתפרסם בחוצות ירושלים קטע מתוך מכתב של אאמור"ר הרב זצ"ל, שכאילו הוא מסייע חלילה, להשתמטות ממלוא החיוב של העמידה על נפשנו ועל נפש כל קהל ישראל, והנני מחויב ומודיע בזה, למען אמינותה של תורה, כי המכתב הזה נכתב ממנו בחודש אדר שנת תרע"ז בלונדון [על השתלשלות המאורעות בשנת תרע"ז עיין בספר האיש נגד הזרם לר' שמואל הכהן אבידור עמ' ק ובספר הראי"ה לרב מיימון עמ' קל] להשתדלות לשחרור תלמידי חכמים ממלחמת אנגליה, רוסיה וגרמניה וכו', שלא היה בה שום עניין לחיוב הצלת נפשות בישראל ובארץ-ישראל [ועל כגון זה אמרו חז"ל שאין למדין הלכה מפי מעשה].

ועל השימוש בדברי קטע מכתב קדשו זה, בהעלמת העניין שהוא דן בו ובהסבת דעת הקהל שכאילו יש לדברים הללו איזו שייכות למצבנו עכשיו, יש להצטער שהוא כמו סילוף מן המין הגרוע והמחפיר ביותר..." (להלכות ציבור כרוז א).

ו. גיוס בני ישיבות בזמננו

ברור שהצרכים הבטחוניים עכשיו שונים ממה שהיו במלחמת השחרור, ואם מוטל עלינו לעמוד על משמר ארצנו, גם מוטל עלינו לשמור על תקומת התורה, ולכן יש לשקול חיוניות של כל אחת ואחת משתי מצוות רוממות אלו, לברר ולעשות חשבון אמיתי. צריך לשקול בכנות, האם הרווח שצה"ל יפיק מתוספת כוחות לוחמים, שווה לנוק שייגרם על-ידי זה לישיבות ולבניין התורה.

וכאן ראוי להעיר, "שיחד עם כל ההערכה לישיבות ההסדר שמקדשות שם ד' ברבים בכורכם יחד את הספר ואת הסיף, יודעים אנו מכל מקום עד כמה דרך זו קשה היא לישיבות ולתלמידים גם יחד, ומעולם לא עלה על דעתנו שזו צריכה להיות דרך המלך של כל הישיבות" [החלטת מרכז ישיבות בני עקיבא, שהשקיע מאמצים רבים בהקמת ישיבות ההסדר ובהכוונת תלמידים אליהן – הצופה – ב' אדר ב' תשל"ג]. ואין אפשרות לגדל תלמידי-חכמים גדולים שהאומה זקוקה להם כל-כך בעת תחייתנו, אלא על-ידי שקידה עצומה של שנים רבות רצופות.

ועוד פה המקום להעיר שאין אנו מדברים כאן על המשתמטים, זאת אומרת, אלה שאין תורתם ואומנותם, אלא אומנותם התעסקות

בדבר אחר, והנם מנצלים מסווה כוזב של תלמידי ישיבה כדי להשתמט מחיובם. ודאי שאלה אינם אלא שקרנים, מחללי השם ועוברים על חוקי מדינת ישראל, ויש לדאוג לתיקון מצב זה על-ידי בירורים אמיתיים. אבל מה זה שייך לענייננו של חיוב גיוס במסגרת הסדר של אלה ששוקדים על התורה באמת ובתמים?!

ז. בין צבא לישיבה

ולכן בפרשה זו, "הפוסק" העיקרי הוא הרמטכ"ל ושר הביטחון וכל אלה אשר איתם בפיקוד על מערכות ישראל, ד' יאריך ימיהם ויחזק ידיהם בעבודתם בקודש, ואנו יכולים לסמוך עליהם שהם דואגים לצה"ל כראוי, והם שצריכים לקבוע את צורכי הצבא ואת גיוס תלמידי הישיבה באופן שלם או חלקי, מתוך התייעצות הדדית עם ראשי הישיבות. ועד היום הזה שררו ביניהם יחסים מצוינים לגבי סידורי תלמידי ישיבה בצבא. וכמו בכל דבר, כל קיצוניות איננה טובה.

יש כאן שתי מצוות גדולות ואמיתיות, תורה וצבא. שכל תלמידי ישיבה ילכו לצבא, זה ודאי לא טוב, ושאיף אחד מהם לא ילך לצבא, גם לא טוב. והמציאות בישיבת מרכז הרב למשל, על-פי הדרכתו של רבנו הרב צבי יהודה, שיש תלמידי ישיבה שמתגייסים, ויש שמתגייסים מאוחר יותר, יש שהולכים להסדר, יש שתקופת שירותם מקוצרת ויש שכל זמנם וכוחם נתונים לתורה. ויש צורך בבירורים נכונים בין הצבא והישיבות, כדי לברר מי מתאים באופן ישר וצודק.

משל למה הדבר דומה, לשחרור חלקי או לדחיית שירות של חלק מן החיילים שמשרתים במסגרת הנח"ל, מפני הכרת החשיבות של חיזוק המסגרות ההתיישבותיות. וכן לשחרור החלקי של חיילים שממלאים תפקידי הדרכה בבני-עקיבא וכדומה, מפני הכרת הערך של הפעילות החינוכית הזאת. וישנן עוד דוגמאות של בעלי מקצועות מסוימים שבהם רציפות הלימודים היא תנאי בל יעבור להצלחתם, שיש צורך לשחררם משירות צבאי. הכלל העולה הוא שכל קיצוניות רעה, ושיש לשקול את כל הצרכים של האומה באופן ישר וצודק.

ח. צבאיות וחברתיות

ישנה אמנם עוד נקודה שהיא צדדית בעיקרה, אבל בכל זאת חשובה מאוד. פעם התקיים סימפוזיון אצל רבנו הרב צבי יהודה על בעיות דת ומדינה, ושם נכח פרופסור שמואל הוגו ברגמן ז"ל והוא אמר: "לדעתי גיוס תלמידי ישיבה חיוני ביותר לא בגלל עצם הצרכים הצבאיים, כי בזה אני סומך על צה"ל שהוא דואג לעצמו, אלא מפני הערך של הפגישה החברתית. כי חיוני מאוד שכל חלקי האומה ייפגשו עם העילית הרוחנית שלה, ואין לך מקום מתאים יותר לזה מאשר הצבא, שכולל בערך חצי עם ישראל. מסוכן הוא לאומה ולתורה שמפגש זה לא יתקיים". רבנו הרב צבי יהודה שיבח מאוד את דבריו, ואמר שאמנם בע"ה דבר זה גם מתקיים, וכל תלמידי ישיבת מרכז הרב בלי יוצא מן הכלל מגיעים לשורות הצבא, ופגישה זו היא לברכה גדולה לכולם.

ועוד הערה: יש שחוששים לחילול השם שעלול להיגרם על-ידי דחיית השירות של לומדי תורה.

אדרבה, האמת היא שביטול תורה הינו חילול השם, וקידוש

לעומת **דעת תורה** בה על פי רוב רק חכמים שהם גדולי הדור מכריעים.

קריטריונים להכרעה

בשניהם מכריעים ע"פ שלושה קריטריונים:

1. על פי בירור מקורות
 2. על פי סברה ושיקול דעת (של תורה)
 3. עם סיעתא דשמיא (!)
- בדין תורה** על פי רוב מכריעים על-פי בירור מקורות.
- בדעת תורה** על פי רוב שיקול הדעת מהווה את הגורם המכריע.

שאלות ציבוריות

על פי רוב הן מורכבות מאלמנטים של דין תורה ושל דעת תורה. כאשר המיעוט על פי דין תורה והרוב על פי דעת תורה.

האם ייתכנו עמדות שונות?

בשניהם ייתכנו מחלוקות ויש כמה אפשרויות:

1. המחלוקת הוכרעה, ושנה רק עמדה אחת לגיטימית.
2. המחלוקת לא הוכרעה, וישנן כמה עמדות לגיטימיות, וישנן עמדות שלכולי עלמא אינן לגיטימיות.

איך מכריעים כשיש חילוקי דעות? האם כל אחד יכול לבחור בעצמו?

בשניהם ע"פ כללי ההלכה הנקוטים בדינו: רוב חכמה, רוב מניין, על פי גדול, על פי מנהג, מרא דאתרא, שעת הדחק, סברה ועוד. וכן ע"פ הכללים שמכריעים כשיש התנגשות בין הכללים הנ"ל.

בהגבלות מסוימות, שביאורן ארוך, כל אחד יכול לבחור לעצמו עמדה אחת, ובתנאי שהיא הוכרה כלגיטימית על ידי חכמי ישראל.

האם מותר להתווכח?

מי שאינו מסכים עם פסיקה הלכתית או עם דעת תורה, רשאי [וגם מצווה] להקשות קושיות. ויש שלוש אפשרויות:

1. החכם יודה שטעה או בבירור המקורות או בשיקול הדעת.
2. המקשה יודה כנ"ל.
3. כולם ישארו בעמדותיהם.

מכל מקום, ההכרעה תהיה ע"פ חכמת התורה.

מהם יחסי גומלין בין דמוקרטיה לבין דעת תורה, או דין תורה [שמקיפים כל תחומי החיים]?

יש שני סוגי בעיות:

1. שהתורה מוסרת ההכרעות לחכמי התורה כמו שכתוב: "לא תסור מן הדבר אשר יגידו לך ימין ושמאל". והדבר אמור לגבי פסקי הלכה (דין תורה), וגם לגבי תקנות, גזרות, מנהגים, הוראת שעה וכד' (דעת תורה). אמנם גם בהן יש מקום להתבטאות ולוויכוח מצד הציבור שיכול לעזור לחכמי התורה בעיצוב עמדתם ואף להביאם לשנות דעתם כנ"ל בסעיף הקודם.

השם הוא להרבות תורה ולהגדילה. שמא מדובר על חילול השם לעיני אנשים, שאינם שייכים לתורה ומצוות ואינם מבינים את הערך של לימוד תורה? אז יש צורך להתאמץ במיוחד, כדי להסביר להם את הערך שיש לגדל אנשי תורה לעם-ישראל, ושדבר זה נחוץ וחיוני כמו צבא. נכון שהדבר דורש מאמץ ומסירות, אבל אם נהיה בעצמנו חדורים הבנה גדולה של ערך התורה ונחיצות לימודה, גם נוכל להסביר זאת לאחרים. ואם איננו מסוגלים לשכנעם, מה אשם בזה כלל ישראל, ולמה ייפגע בהחלשת בניין התורה!?

סיכום: האומה נצרכת לאנשי נשק, אבל לא פחות מזה, לאנשי תורה, ויש לערוך בכל תקופה ותקופה בירורים מדויקים לגבי צורכי האומה בכוחות צבאיים ולגבי צורכי האומה בכוחות לימודיים, ועל-פי זה להכריע.

אין לנו נוסחה כוללת ומוכנה מראש, ויש לשקול לגבי כל תלמיד ותלמיד בהתאם לתפיסת המקום שלו בלימוד, ובכל תקופה ותקופה לפי צורך השעה והזמן.

וכל זה אינו אלא בירור הלכתי עיוני. אבל ברור ופשוט שבעבור פסיקת ההלכה לגבי בעיות כמו זו שיש להם אופי כללי-ישראלי, יש לשאול את "השופט אשר יהיה בימים ההם" (דברים יז ט), זאת אומרת, הרבנות הראשית לישראל.

אולם יש להצטער בוודאי על המתרחש, שבחלק מהשיבות יש חסרון אמונה בריבונות של-עולם, שגורר אחריו זלזול בחשיבות הצבא הישראלי שהוא מתוך כוחו של ד' אלוהינו, אלוהי צבאות ישראל, "שלא נקרא צבאות אלא על שם ישראל" (שבעות לה ב).

שטט. דין תורה ודעת תורה

לבקשת רבים הנה ביאור שני מושגים אלו, ההבחנות ביניהם והמשותף להם, ודרכי סידור החיים על פיהם (ועיין מאמרו של הג"ר אברהם אלקנה כהנא שפירא, הרב הראשי וראש ישיבת מרכז הרב במורשה ט עמ' 15).

אמנם ישנם הבדלים בניסוחים, אך הרי כולנו רוצים לבנות את חיינו על-פי התורה. לכן הגדרה מדויקת של המושגים עשויה לקרב את העמדות.

דין תורה, ודעת תורה – שניהם מהווים בירור הלכה לאור מקורות התורה

הגדרה

דין תורה: בירור לאור מקורות הלכתיים. [מאמרי חז"ל שגובשו להלכה ע"י הפוסקים הראשונים והאחרונים].

דעת תורה: ביאור לאור מקורות לא הלכתיים. [מאמרי חז"ל שלא גובשו כנ"ל].

בשניהם חכמי התורה הם הקובעים לאור התורה.

בדין תורה הקביעה קלה יותר, לעומת **דעת תורה** בה הקביעה קשה יותר.

הסמכות הקובעת

בדין תורה על פי רוב גם חכמים שאינם גדולי הדור מכריעים.

This article is an expanded version of a paper prepared for the Etzion Foundation by Rav Lichtenstein, Rosh Hayeshivah of Yeshivat Har Etzion, Gush Etzion, Israel.

THE IDEOLOGY OF HESDER

Half a dozen years ago, advocacy of the cause of *yeshivot Hesder* before the American Jewish public would have seemed largely superfluous. The impact of the Yom Kippur War was then still strong, the memory of Hesdernikim's role within it still vivid, the halo of the heroic student-soldier yet fresh. The religious community, in particular, took great pride in a clearly perceived *kiddush ha-Shem*. Almost everyone had seen some striking picture or heard some moving story: of boys (they really were not much more) who had gone into battle wearing *tefillin*; of a group which had stunned its brigadier by inquiring, during a nocturnal lull in the Sinai campaign, whether and when they would be provided with a *lulav* and an *etrog*; of another which, after a disheartening day on the battlefield, improvised *Simhat Torah* dancing and *hakafot* by the banks of the Suez Canal. Almost everyone had read comments of leading I.D.F. commanders praising the courage and commitment of *b'nei yeshivot*, noting both the inspirational qualities which had done so much to boost collective morale and their vital role in the forefront of the actual fighting. And there was, of course, the litany of suffering, the grim statistics of the *yeshivot*'s highly disproportionate casualties, to attest to that role. Within the context of pervasive sadness and pride, the ideological presentation of Hesder seemed largely unnecessary. The reality spoke for itself.

Today, thank God, such a presentation is in order. Time has healed many wounds and dimmed many memories. Above all, it has opened fresh vistas and posed new challenges, these hopefully unrelated to the battlefield. We have seen the first glimmers of peace; and, for the moment at least, the country appears relatively secure. And as our sense of danger is dulled, as our roseate hopes lull us into a sense of imagined security, as the perception of just how

close Syrian armored columns had come to swooping down upon the Galil and beyond becomes blurred—Hesder and its cause evidently needs, if not an advocate, at least an expositor. This brief essay is therefore presented as a modest exposition of the essence of Hesder and its significance—at least as viewed from the perspective of Yeshivat Har Etzion.

The typical graduate of an Israeli yeshivah high school is confronted by one of three options. He can, like most of his peers, enter the army for a three year stint. Alternatively, he can excuse himself from military service on the grounds that *torato umnuto*, “Torah is his vocation,” while he attends a yeshivah whose students receive the Israeli equivalent of an American 4-D exemption. Finally, he can enroll in a yeshivat Hesder, in which case, over roughly the next five years, he will pursue a combined program of traditional Torah study with service in the Israeli army. While at the yeshivah he will learn full time (Hesder is *not* an Israeli R.O.T.C.), but there will be two protracted absences from it, one of nine months and the other of six months, for training and duty.

Of these three courses, Hesder is, in one sense, perhaps the easiest. Properly speaking, however, it is also the most arduous. The advantages, judged from a student’s perspective, are fairly clear. Most obviously, the tour of actual army service is shorter. While a student is tied down by Hesder for almost five years, he only spends, unless he becomes an officer, about sixteen months in uniform. Most important, however, Hesder provides a convenient framework for discharging two different—and, to some extent, conflicting—obligations. It enables the student, morally and psychologically, to salve both his religious and his national conscience by sharing in the collective defense burden without cutting himself off from the matrix of Torah. Socially—and this of course has religious implications as well—Hesder offers him a desirable context as, even while in the army, he will often be stationed with fellow Hesdernikim. And Hesder enables him, pragmatically, to keep his future academic and vocational options open. Unlike his peers at non-Hesder yeshivot, he can, upon completing the Hesder program, legally pursue any course of study or employment or both within the mainstream of Israeli society.

These are legitimate and even important considerations. But they are not what Hesder, ideally considered, is all about. Properly understood, Hesder poses more of a challenge than an opportunity; and in order to perceive it at its best we need to focus upon difficulty and even tension rather than upon convenience. Optimally, Hesder does not merely provide a religious cocoon for young men fearful of

being contaminated by the potentially secularizing influences of general army life—although it incidentally serves this need as well. Hesder at its finest seeks to attract and develop *b'nei torah* who are profoundly motivated by the desire to become serious *talmidei hakhamim* but who concurrently feel morally and religiously bound to help defend their people and their country; who, given the historical exigencies of their time and place, regard this dual commitment as both a privilege and a duty; who, in comparison with their non-Hesder confrères love not (to paraphrase Byron's Childe Harold) Torah less but Israel more. It provides a context within which students can focus upon enhancing their personal spiritual and intellectual growth while yet heeding the call to public service, and it thus enables them to maintain an integrated Jewish existence.

To be sure, the two aspects of Hesder, the spiritual and the military, are hardly on a par. The disparity is reflected, in part, in the unequal division of time. Primarily, however, it concerns the realm of value, within which two elements, each indispensable, may yet be variously regarded. When the Mishnah states, "If there is no flour, there is no Torah; if there is no Torah, there is no flour,"¹ it hardly means that both are equally important. What it does mean is that both are, in fact, equally necessary, although, axiologically and teleologically, flour exists for the sake of Torah and not vice versa. *Il faut manger pour vivre, il ne faut pas vivre pour manger*. ("One should eat in order to live, not live in order to eat"), declaims one of Molière's characters; and so it is with Hesder. The yeshivah prescribes military service as a means to an end. That end is the enrichment of personal and communal spiritual life, the realization of that great moral and religious vision whose fulfillment is our national destiny; and everything else is wholly subservient. No one responsibly connected with any yeshivat Hesder advocates military service *per se*. We avoid even the slightest tinge of militarism and we are poles removed from Plato's notion that the discipline of army life is a necessary ingredient of an ideal education. No less than every Jew, the typical Hesdernik yearns for peace, longs for the day on which he can divest himself of uniform and *uzzi* and devote his energies to Torah. In the interim, however, he harbors no illusions and he keeps his powder dry and his musket ready.

In one sense, therefore, insofar as army service is alien to the ideal Jewish vision, Hesder is grounded in necessity rather than choice. It is, if you will, *b'diavad*, a *post facto* response to a political reality imposed upon us by our enemies. In another sense, however, it is very much *l'hathillah*, a freely willed option grounded in moral

and halakhic decision. We—at Yeshivat Har Etzion, at any rate—do not advocate Hesder as a second-best alternative for those unable or unwilling to accept the rigors of single-minded Torah study. We advocate it because we are convinced that, given our circumstances—would that they were better—military service is a *mitsvah*, and a most important one at that. Without impugning the patriotism or ethical posture of those who think otherwise, we feel that for the overwhelming majority of *b'nei torah* defense is a moral imperative.

Hence, to the extent that the term Hesder, “arrangement,” connotes an accommodation arrived at between conflicting sides, it is somewhat of a misnomer. Hesder is not the result of a compromise between the respective positions of *roshei yeshivah*, and the Ministry of Defense. It is rather a compromise with reality. We do occasionally argue with the generals over details and they do not always sufficiently appreciate the preeminence of the spiritual factor. The basic concern with security, however, is ours no less than theirs.

Of course, that concern must be balanced against others. *Knesset Yisrael* needs not only security but spirituality—and ultimately, the former for the sake of the latter. Those who, by dint of knowledge and inspiration, are able to preserve and enrich our moral vision and spiritual heritage, contribute incalculably to the quality of our national life; and this must be considered in determining personal and collective priorities. Hence, while we of yeshivot Hesder, feel that training and subsequent reserve status for men should be virtually universal—spiritual specialization being reserved, at most, for a truly elite cadre²—the length of post-training service should be justifiably briefer than that of those unable or unwilling to make a comparable spiritual contribution. The military establishment, I might add, generally understands this. Junior officers, currently concerned with keeping good soldiers in their units, sometimes complain about what they regard as this inequity. However, higher level commanders, more keenly aware of the total picture and the longer term, recognize the value of the spiritual aspect of Hesder as inspirationally significant, for *b'nei yeshivah* as well as their comrades, in the event of war. It should be emphasized, however, that, from a Torah perspective, the justification for abbreviated service does not rest solely or even primarily upon the yeshivah's stimulus to bravery. It is grounded, rather, in the intrinsic and immeasurable value of Torah *per se*—indeed, in the faith and hope that it moves us toward the realization of the prophetic vision, “Neither by force nor by might but by my spirit, saith the Lord of hosts.”³

The case for Hesder rests, then, upon several simple assumptions. First, during the formative post-secondary years, a *ben Torah*

should be firmly rooted in a preeminently Torah climate, this being crucially important both for his personal spiritual development and for the future of a nation in critical need of broadly based spiritual commitment and moral leadership. Second, the defense of Israel is an ethical and halakhic imperative—be it because, as we believe, the birth of the state was a momentous historical event and its preservation of great spiritual significance, or because, even failing that, the physical survival of its three million plus Jewish inhabitants is at stake. Third, in light of the country's current military needs—and these should admittedly be reassessed periodically—yeshivah students should participate in its defense, both by undergoing basic and specialized training, thus becoming part of the reserves against the possibility, God forbid, of war, and by performing some actual service even during some period of uneasy peace. The need for such participation is based upon several factors. By far the most important, although it relates more to training than to peacetime service, is the fact that in the event of war the Israeli army may very well need every qualified soldier it can muster. And lest one think that the number is militarily insignificant, let it be noted that, while indeed they may not seem all that many, nevertheless, the boys currently enrolled in Hesder, not to mention those who have moved on to the reserves, can man over four hundred tanks—surely no piddling figure. This factor relates to training more than to peacetime service; but with respect to the latter as well, both common fairness and self-respect dictate that the Torah community make some contribution even if it be justifiably smaller than others'.

The notion, held by many at one major yeshivah, that *b'nei Torah* should prepare for a possible war but need do nothing to prevent it, fails to recognize the importance of deterrence. It should be emphasized that, with respect to aiding others, prevention is at least the equivalent of relief, halakhically and not just proverbially. The *mitsvah* of *hashavat avedah* includes deterring loss as well as restoring it.⁴ The highest level of *tsedakah*, the Rambam tells us, takes the form of preventive sustenance—even if it does not cost the “donor” one single penny.⁵ The rationale behind the position in question—in practice, it entails six months of training but no service thereafter—presumably rests upon the assumption that prevention can be supplied by others; or, as some put it, that so long as anyone is walking the streets or working on a civilian job, there is no excuse for pulling boys out of a *bet hamidrash*. This view is not without foundation.

In determining whether and when the study of Torah should be set aside in favor of a *mitsvah*, *efshar la'asota al yedei aheirim*, the extent to which it can be realized by others, is a crucial factor.⁶

However, that possibility should evidently be real and not merely theoretical; and in assessing it, their readiness to take up the slack should presumably be considered. It is by no means certain that I may compel others, directly or indirectly, to assume my share of a common task so that I may learn more.⁷ Further, the problem acquires a wholly different dimension when what is at issue is not just the distribution of time and effort but the possibility of danger; and this element is unfortunately present even in time of presumed peace. Consequently, in determining the duration of peacetime service, we are driven back to balancing conflicting communal needs – and this is the basis of its abbreviation within Hesder. It should be clear, however, that the concept of *efshar la'asota* provides no mandate for categorical dispensation. Those who strike this balance and conclude that they owe no peacetime service whatsoever are of course entitled to their position. But I must confess that I, for one, do not find the notion of a state on the house morally engaging.

The ethical moment aside, a measure of service is, for many, a matter of self-interest as well – and not only because it is, after all, our own home that we are defending. Service enables the individual soldier to avert the moral and psychological onus of the drone and it enables the religious community as a whole to avoid both the reality and the stigma of parasitism. It helps build personal character, on the one hand, and opens channels of public impact, on the other, by producing potential leaders attuned to the pulse and the experience of their countrymen. To be sure, the prospect of secular criticism should not routinely be the decisive factor in determining religious policy. Nevertheless, it cannot be totally ignored. Hazal, at any rate, did not regard *hillul ha-Shem* and *kiddush ha-Shem* lightly.

If the rationale underlying Hesder is relatively simple, its implementation is anything but. I described it at the outset as the most difficult of the options open to a yeshivah high school graduate, and, seriously taken, it is precisely that. The difficulty is not incidental. It is, rather, grounded in the very nature and structure of Hesder; and it is threefold. First, there is the problem of dual commitment *per se*, the possible loss of motivation and momentum and the division of time, energies, and attention inherent in the fusion of the study of Torah with any other enterprise, academic, vocational, or what have you. From this perspective, the question of Hesder meshes with the much broader problem of the relation of the active and the contemplative life, of Torah and *derekh erets*, of the sacred and the secular. As such it admits of no easy solution. “If I had been present at Mount Sinai,” said Rabbi Shimon bar Yohai, “I would have asked of the Merciful One that two mouths should be created for every per-

son, one with which to study Torah and one with which to attend to all his (other) needs.”⁸ His wish is deeply shared by Hesdernikim and their masters; but it remains a wish.

With reference to Hesder, specifically, there is, however, an additional problem: the conflict of values, lifestyle, and sensibility between *bet midrash* and boot camp, especially in a predominantly secular army. The danger is not so much that students will lose their faith and become non-observant. On this score, yeshivot Hesder have a track record at least as good as their immediate Eastern European predecessors.⁹ It is, rather, a problem of possible attrition—the loss of refinement and the dulling of moral and religious sensitivity which may result from exposure to the rougher aspects of a possibly dehumanizing and despiritualizing existence. As the Ramban noted, the qualities of aggressiveness and machismo which are so central to military life naturally run counter to the Torah’s spiritual discipline. Commenting upon the *pasuk*, “When thou goest forth in camp against thine enemies, then thou shalt keep thee from every evil thing,” he observes:

And what seems correct to me with respect to this *mitsvah* is that the verse enjoins with regard to a period during which sin is rife. It is known of the behavior of warring camps that they eat every abomination, rob and plunder, and are not even ashamed of fornication and any villainy. The most decent of men by nature may become invested with cruelty and wrath as the camp goes out to engage the enemy. Hence, the verse has enjoined, “And thou shalt keep thee from every evil thing.”¹⁰

Situations less drastic than actual war are less threatening, but these, too, can have an impact. As the Ramban’s interpretation clearly implies, the difficulty can be overcome, but a genuine and conscious effort is needed in order to avoid moral corruption and spiritual corrosion.

Probably the greatest difficulty, however, concerns neither the practical ramifications of the diffusion of effort nor the grappling with potentially inimical influences. It concerns the very essence of Hesder: the maintenance of a tenuous moral and ideological balance between its two components. At issue is a conflict of loves, not just of labors. At one level, this is simply the problem of religious Zionism writ large. On the one hand, a yeshivat Hesder seeks to instill profound loyalty to the State of Israel. On the other hand, it inculcates spiritual perspectives and values which are to serve as the basis for a radical critique of a secularly oriented state and society. The problem acquires another dimension, however, when that loyalty includes the readiness to fight and die. Moreover, it involves, at a

second level, issues which are specifically related to a student-soldier *per se*. Like all yeshivot, a yeshivat Hesder seeks to instill a love for Torah so profound and so pervasive as to render protracted detachment from it painful—and yet it demands precisely such an absence. It advocates patriotic national service even at some cost to personal development—and yet prescribes that students serve considerably less than their non-yeshivah peers.

These apparent antinomies are the result of the basic attempt to reconcile conflicting claims and duties by striking a particular balance: one which should produce an aspiring *talmid hakham* who also serves rather than a soldier who also learns; one which perceives military service as a spiritual sacrifice—we do *not* want students to be indifferent to their loss—but which proceeds to demand that sacrifice; one which encourages a Hesdernik to excel as a soldier while in the army but prescribes his return to the *bet hamidrash* before that excellence is fully applied or perhaps even fully attained. From the yeshivah's perspectives, these antitheses are fully justified. Indeed, they constitute the very essence of Hesder as a complex and sensitive balance. However, preserving that balance, with its multiple subtle nuances, entails traversing a narrow ridge—and here lies the primary difficulty, existential and not just practical, of Hesder. Small wonder that many only achieve the balance imperfectly. It is, however, in those who do succeed in attaining the balance and who, despite the difficulty, are genuinely at peace with themselves, that Hesder at its finest can be seen. And it is inspiring to behold.

These problems are very real. They pose a formidable educational challenge; and while they are by no means insuperable—the history of yeshivot Hesder can attest to that—we ignore them at our peril. Moreover, it is precisely the adherents of Hesder, those of us who grapple with its sophisticated demands on a regular basis, who are most keenly aware of the problems. Nevertheless—although stateless centuries have tended to obscure this fact—Hesder has been the traditional Jewish way. What were the milieux of Moshe Rabenu, of Yehoshua, of David, of Rabbi Akiva, as hazal conceived and described them, but yeshivot Hesder? The mode of integrating military service with the study of Torah may very well have differed from our own. Hazal described Yehoshua as being reproached for having omitted a single evening of communal *talmud Torah* in his camp;¹¹ and as an army, we are unfortunately quite far from this standard. Nevertheless, the principle is very much the same.

Indeed, in the Ramban's view, the institution can be traced back to our very fountainhead. In explaining why Avimelech was so anx-

ious to conclude a treaty with Yitshak, he conjectures that it may have been due to the fact

that Avraham was very great and mighty, as he had in his house three hundred sword-wielding men and many allies. And he himself was a lion-hearted soldier and he pursued and vanquished four very powerful kings. And when his success became evident as being divinely ordained, the Philistine king feared him, lest he conquer his kingdom . . . And the sons emulated the fathers, as Yitshak was great like his father and the king feared lest he fight him should he banish him from his land.¹²

This account of lion-hearted *avot* and their sword-wielding disciples may fall strangely upon some ears. Although we don't like to admit it, our Torah world, too, has its vogues, and, in some circles, much of the Ramban on *Bereshit*—the real Ramban, honestly read and unflinchingly understood—is currently passé.¹³ The fact, however, remains: the primary tradition is Hesder.

The reason is not hard to find. The halakhic rationale for Hesder does not, as some mistakenly assume, rest solely upon the *mitsvah* of waging defensive war. If that were the case, one might conceivably argue that, halakhically, sixteen months of army service was too high a price to pay for the performance of this single commandment. The rationale rather rests upon a) the simple need for physical survival and b) the fact that military service is often the fullest manifestation of a far broader value: *gemilut hasadim*, the empathetic concern for others and action on their behalf. This element, defined by Shimon Hatsaddik as one of the three cardinal foundations of the world,¹⁴ is the basis of Jewish social ethics, and its realization, even at some cost to single-minded development of Torah scholarship, virtually imperative. The Gemara in *Avodah Zarah* is pungently clear on this point:

Our Rabbis taught: When Rabbi Elazar ben Prata and Rabbi Hanina ben Tradion were arrested [that is, by the Romans], Rabbi Elazar ben Prata said to Rabbi Hanina ben Tradion, "Fortunate are you that you have been arrested over one matter, woe is to me who have been arrested over five matters." Rabbi Hanina responded, "Fortunate are you that you have been arrested over five matters but are to be saved, woe is to me who have been arrested over one matter but will not be saved. For you concerned yourself with both Torah and *gemilut hasadim* whereas I concerned myself solely with Torah." As Rav Huna stated; for Rav Huna said, "Whoever concerns himself solely with Torah is as one who has no God. As it is written, 'And many days [passed] for Israel without a true God.'" What is [the meaning of] "without a true God?" That one who concerns himself solely with Torah is as one who has no God.¹⁵

The midrash equates the renunciation of *gemilut hasadim* with blasphemy;¹⁶ and the Gemara in *Rosh Hashanah* states that while both Rabbah and Abbaye, being descended from Eli, overcame the curse cast upon his house, "Rabbah, who engaged in the study of Torah, lived forty years; Abbaye, who engaged in Torah and *gemilut hasadim*, lived sixty years."¹⁷ When, as in contemporary Israel, the greatest single *hesed* one can perform is helping to defend his fellows' very lives, the implications for yeshivah education should be obvious.

What is equally obvious is the fact that not everyone draws them—and this for one of several reasons. Some (not many, I hope) simply have little if any concern for the State of Israel, even entertain the naive notion that, as one *rosh yeshivah* put it, their business could continue as usual with Palestinian flags fluttering from the rooftops. Others feel that the spiritual price, personal and communal, is simply too high and that first-rate Torah leadership in particular can only be developed within the monochromatic contexts of "pure" yeshivot. Still others contend that, from the perspective of genuine faith and trust in God, it is the yeshivot which are the true guardians of the polity so that any compromise of their integrity is a blow at national security. These contentions clearly raise a number of basic moral, halakhic, and theological issues with respect to which I obviously entertain certain views. However, I do not wish, at this juncture, to polemicize. These are matters on which honest men of Torah can differ seriously out of mutual respect, and I certainly have no desire to denigrate those who do not subscribe to my own positions. What I do wish to stress minimally, however, is the point that, for the aspiring *talmid hakham*, Hesder is at least as legitimate a path as any other. It is, to my mind, a good deal more, but surely not less.

The point can be underscored by a brief glance at the relevant prooftexts most frequently cited by rigorist critics of Hesder. Of course, those who oppose it because they have little use for the state, on the one hand, and presume, on the other, that its dismemberment would not seriously endanger its inhabitants need not look far for support. Given their assumptions, they can draw upon a plethora of sources which stress the overriding importance of *talmud Torah* and castigate the expenditure of time upon relatively insignificant purposes. I very much hope, however, that, among our critics, this is a decidedly minority view; and I prefer to address myself to the position of those who do assign a measure of value to the state—and hence, of necessity, to its army—and whom the question of military service therefore confronts as an instance of the difficult, perhaps even agonizing, choice between conflicting values. In large measure—and I, for one, regard this as perfectly legitimate—the assignment

of priorities is ultimately based upon the degree of importance attached to the two realms as this determines the readiness to take respective risks; and, as previously noted, this, in turn, is a function of the much broader issue of the relationship of *talmud Torah* to the rest of human life. Nevertheless, much discussion of the issue quite properly centers upon specific authoritative texts—which, for this group of critics, must of course be such as do not simply espouse the study of Torah generally but address themselves to this dilemma directly; and I would like to consider the more important of these briefly.

While most are aggadic, one *locus classicus* is purely halakhic, and it may best be treated first. The Gemara in *Baba Batra* states that *talmidei hakhamim* are exempt from sharing the cost of municipal fortifications inasmuch as they “do not require protection.”¹⁸ Analogously, it is contended, they should be excluded from military service. It may be stated, in reply, that such a claim raises a very serious moral issue. Can anyone whose life is not otherwise patterned after this degree of trust and *bitahon* argue for exemption on *this* ground? Is it possible to worry about one’s economic future—in evident disregard of Rabbi Eliezer’s statement that “whoever has bread in his basket and says ‘What shall I eat tomorrow?’ is but of little faith”¹⁹—and yet not enter the army because one is presumably safe without it? I recall, some years back, admiring the candor of a *maggid shiur* who confided to me that he had moved from a neighborhood in which most young men served in Zahal to one in which they did not because while he might be convinced, intellectually, that he ought not serve in the army, he knew full well that he did not possess the depth of faith upon which such an exemption could only be granted. Hence, he felt too ashamed, especially as his sons were coming of military age, to remain in his old bailiwick. Perhaps not many would share his response but the basic situation is probably not uncommon; and for many, at least, any argument based on this Gemara is consequently problematic.

There is, however, no need to pursue this train of thought, for the basic analogy is quite tenuous, on purely halakhic grounds. The payment in question is not inherently normative. It relates to no *mitsvah* whatsoever. Rather, it derives solely from the obligation to help defray the cost of communal facilities from which one reaps benefit. This is obvious from the context—the impost is discussed in the same Mishnah which deals with that forced upon tenants of a courtyard to pay for a gate or watchman’s booth or both in order to keep out trespassers and onlookers and both are cited by the Rambam in *Hilkhos Shekhenim*—and is reflected in the fact that the sum

is prorated according to the degree of benefit involved, with those subject to the greatest risk paying the most.²⁰ Hence, those who derive no direct benefit whatsoever pay nothing. Tenants without cars do not generally pay for the upkeep of a building's garage while those who have no television sets may be exempt from sharing in the cost of a central antenna. The situation is radically different, however, with respect to an obligation which is precisely rooted in the responsibility to help others *qua* others. Does anyone suppose that one's duty to engage in a defensive *milhemet mitsvah* "to help save [the people of] Israel from a foe who has descended upon them"²¹ is based solely upon the fact that he is presently or potentially in danger? Within the context of the egocentric ethic of a Mandeville or Adam Smith, possibly. From a Torah perspective, however, this would be strange doctrine, indeed — the more so to the extent that we correctly perceive that such action is mandated by the general norm of *gemilut hasadim* and not just the specific commandment of defensive war.²² Consequently, the Gemara in *Baba Batra* provides no rationale whatsoever for totally excusing *talmidei hakhamim* from military service. *They* may not require protection but others do; and their duty to defend those who have no built-in armor remains.²³

A second oft-cited source is the coda of *Sefer Zeraim* in the Rambam's *Mishneh Torah*. The Rambam first postulates the spiritual character of the tribe of Levi as explaining its being barred from a share in *Erets Yisrael* and its spoils and then goes on to expand upon this theme:

And why did not Levi partake of the patrimony of *Erets Yisrael* and its spoils with his brethren? Because he was set apart to serve God, to worship Him and to teach His just ways and righteous ordinances to the masses. As it is stated, "They shall teach Jacob Thine ordinances and Israel Thy law." Therefore, they have been set apart from the ways of the world: they do not wage war like the rest of Israel, nor do they inherit or acquire unto themselves by physical force. They are, rather, the Lord's corps, as it is stated, "Bless, O Lord, his corps;" and He, blessed be He, vouchsafes them, as it is stated, "I am thy portion and thine inheritance." And not the tribe of Levi alone but each and every person throughout the world whose spirit has uplifted him and whose intelligence has given him the understanding to stand before God, to serve Him, to worship Him, to know God; and he walks aright as he has cast off from his neck the many considerations which men have sought — such a one has been sanctified as the holy of holies, and the Lord shall be his portion and his inheritance forever and ever and shall grant him his sufficiency in this world as he has granted to the *kohanim* and the *Leviim*. As David, peace be upon him, says, "O Lord, the portion of mine inheritance and of my cup, Thou maintainest my lot."²⁴

Prima facie, these lines seem to sanction, in principle, a *ben*

torah's total divorce from military service. In truth, however, they are of little, if any, relevance to our subject. At one level, there arises the obvious difficulty of squaring this statement both with the Rambam's personal history and with his repeated vehement critiques of those who exploit the study of Torah to worldly advantage by abstaining from all gainful activity in the expectation that they will be supported by the public treasury.²⁵ Even if we confine ourselves to this text, however, we shall find that its presumed sanction is weak, at best. First, the initial postulate—that every Levi enjoys a dispensation from army duty, has no source in *hazal*. On the contrary, it contravenes the evident purport of the Mishnah in *Sotah*, “But in [case of] wars of *mitsvah*, all go out, even a groom from his [wedding] room and a bride from her wedding chamber,”²⁶—and, as many have noted, if understood as a total bar from army service, appears to be clearly contradicted by a Gemara in *Kiddushin*.²⁷ Would or should *b'nai torah* readily lean upon such a thin reed in order to exempt themselves from, say, *lulav* or *shofar*? Secondly, it seems most unlikely that this statement is indeed all it's presumed to be. If the Rambam had truly intended to postulate a categorical dispensation for *b'nei Levi* or *b'nei torah*, would he have gone about presenting and formulating it in this manner and context? Given his sharply honed discipline and sense of order would he not have cited it in *Hilkhot Melakhim U'Milhamoteihem* (to cite the full rubric) together with all the laws of warfare rather than as a peroration to *Sefer Zeraim*? The implication is clear. What we have here is a hortatory coda, analogous to the conclusions of many books in *Mishneh Torah*—which of course is to be given full weight as such (it is, after all, the Rambam's)—but is not to be confused with a clear halakhic mandate. It provides a vivid evaluation of an inspiring personality but does not dictate how it or others should act.

Even if this contention is rejected, however, the Rambam's statement remains largely irrelevant to the contemporary problem of Hesder. For it should be noted, thirdly, that the spirituality of the Levi does not preclude military service entirely. It only absolves him from waging war “like the rest of Israel.”²⁸ At most, he can be exempt from the gamut of wars included within the *mitsvah* of *milhamah per se*. This exemption has no bearing, however, upon his duty to help fight or prevent a defensive war which threatens the survival of his community and his peers. Is a spiritual order then excused from saving human lives? To the extent that this obligation is rooted in the overall norm of *gemilut hasadim*, it encompasses everyone. The world of the *ben Torah*, too, rests upon three pillars. Of course, no one would suggest that all *b'nei yeshivah* stop learning and turn to

cardiology. There is, however, a clear difference between abstaining from specialized humanitarian endeavor and foregoing a universal effort. And above all, the issue is not of suspending *talmud Torah*, God forbid, but of balancing and complementing it.

Finally, even if we grant that the Rambam's statement does imply a categorical dispensation in purely halakhic terms, it remains of little practical significance. We have yet to examine just to whom it applies. A *levi* is defined genealogically. Those who are equated with him, however, literally or symbolically, are defined by spiritual qualities; and for these the Rambam sets a very high standard indeed. He presents an idealized portrait of a selfless, atemporal, almost ethereal person—one whose spirit and intelligence have led him to divest himself of all worldly concerns and who has devoted himself "to stand before God, to serve Him, to worship Him, to know God; and he walks aright as the Lord has made him and he has cast off from his neck the yoke of the many considerations²⁹ which men have sought." To how large a segment of the Torah community—or, *a fortiori*, of any community—does this lofty typology apply? To two percent? Five percent? Can anyone who negotiates the terms of salary, perhaps even of *naden* or *kest* or both, confront a mirror and tell himself that he ought not go to the army because he is *kodesh kodashim, sanctum sanctorum*, in the Rambam's terms? Can anyone with even a touch of vanity or a concern for *kavod* contend this?³⁰ Lest I be misunderstood, let me state clearly that I have no quarrel with economic aspiration or with normal human foibles *per se*. Again, least of all do I wish to single out *b'nei yeshivot* for undeserved moral censure. I do feel, however, that those who would single themselves out for exemption from normal duties on the grounds of saintliness should examine their credentials by the proper standard.

Two other texts may be treated more briefly. One is evidently critical of Avraham Avinu for having dispatched his students to fight:

Rabbi Abbahu said in the name of Rabbi Elazar: "Why was Avraham Avinu punished and his offspring enslaved in Egypt for two-hundred and ten years? Because he conscripted *talmidei hakhamim*, as it is stated, 'He led forth his trained men, born in his house.'"³¹

The implications of this source appear clearer but it, too, should not be assigned decisive weight. First, in the ensuing lines the Gemara quotes alternative explanations for Avraham's punishment.³² Second, the midrash, *ad locum*, cites comments of several tannaim and amoraim, all of whom clearly regarded the muster of his disciples favorably.³³ Third, Rabbi Elazar's criticism is limited to conscrip-

tion, with its almost inevitable encroachment upon personal dignity. The term he uses, *angarya*, refers elsewhere to forced labor or the requisition of goods;³⁴ and a parallel explanation of Assa's punishment deals with conscription for construction without reference to military service.³⁵ Hence, this Gemara can only support an argument against Zahal's subjecting *b'nei torah* to a coercive draft. It says nothing of their duty to serve as a matter of choice.

Lastly, we may note a more explicit source—it, too, positing a causal nexus:

Rabbi Abba b. Kahana said: "If not for David, Yoav could not have waged war; and were it not for Yoav, David could not have engaged in Torah. As it is written: 'And David executed justice and righteousness unto all his people. And Yoav the son of Zeruiah was over the host.' Why did David execute justice and righteousness unto all his people? Because Yoav was over the host. And why was Yoav over the host? Because David was executing justice and righteousness unto all his people.'"³⁶

Admittedly, in this Gemara the case for spiritual exemption and the division of functions appears more clearly articulated. Here, too, however, several comments are in order. First, the Gemara introduces this comment with the observation that it runs counter to the prevalent thrust of the preceding discourse. Second, the engagement in Torah of which it speaks does not refer to purely contemplative study alone but to implementation as well through the molding of a just and fair society. Above all, however, this source is of little use to our critics on the right because of its very protagonist. If indeed they wish to posit David, the heroic and sensitive soldier-scholar-poet-Notary whom Hazal have so graphically portrayed in numerous contexts, as the prototype of the contemporary Israeli *ben torah*, I shall have little quarrel with them.

There is, then, no halakhic, moral, or philosophic mandate for the blanket exemption of *b'nei torah* from military service. These categorical claims having been laid to rest, however, and their presumed authoritative basis neutralized, we are still confronted by the practical difficulty of weighing conflicting needs—of striking a balance, at both the personal and especially the communal plane, between the spiritual and the material, and of assessing the risks inherent in pressing one at the expense of the other. And we need to do this with reference to both ideology and fact, determining not only whether Hesder is desirable but the extent to which, in one form or another, it is feasible. At this level, that of the practical formulation of public policy rather than the principled invocation of personal prerogative, there is admittedly room for disagreement—and, quite

conceivably, for pluralistic solutions. Even assuming such pluralism, however, the composition of our educational mix must be carefully considered. I fully appreciate the contribution of non-Hesder yeshivot to our spiritual life; I grant that they contain some individuals who presently serve their country well by devoting themselves to Torah exclusively—and this not because they might make poor soldiers but because of their spiritual potential; and, much as I would like the great majority of their students to modify their course out of personal conviction, I have no desire to legislate them out of existence or into yeshivot Hesder. I realize, moreover, that some of the arguments I have raised against full exemption might be pressed by others against the abbreviation of service; and that just as I would vindicate the latter on the basis of spiritual need, so may others justify the former for the same reason. However, I feel strongly that, at the very least, the current proportion of hesder to non-Hesder yeshivot is totally out of kilter. Surely, we dare not acquiesce in the protracted spiritual desiccation of *b'nei torah* at a critical juncture in their lives. However, the ethical alternative should not be self-determined *carte blanche* exemption. Hesder, conceived and implemented not as a compromise but as a bold response to a difficult dilemma, should be the standard, rather than the exception. It is the direction which, upon searching examination of the issue, Torah leadership should seek to promote—as a norm, not as a deviant.

In making any assessment, it is important that we approach the subject with full awareness of the military ramifications—a point not always sufficiently heeded. The story is reliably told of a leading rosh yeshivah who, at the height of the controversy over *giyus banot*, “the drafting of women,” back in the fifties, attended a wedding near the Israeli-Arab border in Jerusalem. At one point, gunfire was suddenly heard and he scurried under a table, exclaiming passionately, “*Ribono shel olam*, I want to live! There is much Torah which I yet wish to learn and create!” Whereupon a rather insensitive observer approached him and asked, “*Nu, rebbe, was sagt ihr itser wegen giyus banos?* (Well, rabbi, what do you say now about *giyus banot?*)” And he kept quiet. I cite the story not because I favor the induction of women—under present circumstances, I very much oppose it—nor to impugn the memory of a truly great person but in order to point out that, at a certain distance, one can lose sight of the simple truth that a Jewish soul must inhere within a Jewish body.

That nagging truth persists, however, and its appreciation is central to the understanding of an institution designed to reconcile the conflicting claims of spirituality and security, of *talmud Torah* and

gemilut hasadim, of personal growth and public service. The present dilemma posed by these claims is not of our choosing. The response, however, is; and, in this respect, yeshivot Hesder are a conspectus of our collective anomaly: a nation with outstretched palm and mailed fist, striving for peace and yet training for war. For the foreseeable future, this is our situation. While, as previously noted, our position appears more promising than in the past, we are far from being genuinely secure and can hardly afford to weaken our defenses complacently. Hence, within the context of our "station and its duties" (to use F. H. Bradley's term) Hesder is, for *b'nei Torah*, the imperative of the moment. May God grant us a better station. In the meantime, however, if it is to become no worse, we must keep both our spirits and our guard up. Animated by vision and yet chary of danger, we, of yeshivot Hesder, pray that He may grant us the wisdom and the courage to cope with the challenges of the time. Fully appreciative of both the price we pay and the value of that which we safeguard in return, we approach our task with responsibility and humility; and, impelled by both commitment to Torah and compassion for our people, we strive to fulfill it with a sense of broader spiritual and historical vision. Standing in tears atop Har Hazeitim, the bleak sight of *kol hamekudash mehavero harev yoter mehavero*³⁷ stretching before him, what would the Ramban have given to head a yeshivat Hesder?

NOTES

1. *Avot*, 3:21.
2. The broader question of the morality of self-determined specialization which entails focusing upon some duties to the neglect of others deserves fuller treatment in its own right. The example of Ben Azzai—who proclaimed that whoever did not procreate could be likened to a murderer and yet remained a bachelor with the explanation that "What can I do? My soul yearns for Torah; the world can be preserved by others" (*Yebamot* 63b)—is of course familiar as is the dichotomy of Issachar and Zevulun. The problem requires further study, however.
3. Zechariah 4:6.
4. See *Baba Metsia* 31a and Rambam, *Gezalah Vavedah* 11:20. Cf. also *Sanhedrin* 73a.
5. See *Matnot Aniyim* 10:7.
6. See *Moed Katan* 9b and Rambam, *Talmud Torah* 3:4. This only applies to *mitsvot* which entail the attainment of a given objective but are not incumbent upon a particular individual. With respect to a personal *mitsvah*, one is of course required to suspend study in order to perform it.
7. The definition of *efshar*—and especially whether a situation in which I indirectly compel someone else to do A by doing B is to be regarded as such—is also relevant to another confrontation. The Gemara in *Kiddushin* 32a cites virtually the same formula as a guide to a person faced with the dilemma of choosing between serving his parents and performing a *mitsvah*. Quite possibly, however, the definition may not be identical in both areas.
8. Yerushalmi, *Berakhot* 1:2.
9. I recall discussing the matter some years back, before I had so much as seen a yeshivat

Hesder, with my late rebbe, Rav Yitzchak Hutner z.t.l. (who later rejected Hesder for his own Israeli yeshivah on quite other grounds, because he felt it would interfere too seriously with learning). He virtually scoffed: "*Kalye veren! Einer ken kalye veren sitzendig in candy store!*" He did, however, feel that the sense of *tsniut* was often adversely affected.

10. *Devarim* 23:10.
11. See *Megillah* 3a.
12. *Bereshit* 26:29.
13. Of course, no one admits to dismissing him in so many words. However, the gap between the Ramban's perspective and that of much recent *parshanut*—particularly with reference to the human element in *Bereshit* and the balance between realistic and idealized if not hagiolatrous interpretation—is very broad.
14. See *Avot* 1:2.
15. *Avodah Zarah* 17 b. The *pasuk* quoted is from *Divrei Hayamim II*, 15:3. Of course, the Gemara prescribes no specific measure for *gemilut hasodim*. Presumably, however, it refers to a significant commitment. We can hardly suppose that Rabbi Hanina disregarded this area entirely. See also Maharal of Prague, *Netivot Olam*, "*Netiv Gemilut Hasodim*," ch. 2.
16. See *Kohelet Rabbah*, 7:4.
17. *Rosh Hashanah* 18a. Again, I presume that Rabbah, too, engaged in *hesed*, but only minimally.
18. *Baba Batra* 7b.
19. *Sotah* 48b.
20. See the whole discussion, *Baba Batra* 7b, *rishonim ad locum*, and Rambam, *Shekhenim* 6:1, who accepts the position that the primary criterion of risk is proximity to the danger zone rather than the value of the threatened property. It should be noted that quite conceivably the payment is also a function of the ability to pay. The *sugya*, however, neither presents nor precludes this factor. It only relates to means as possibly determining the degree of benefit rather than the capacity to pay for it.
21. Rambam, *Melakhim* 5:1.
22. Of course, one may ask just why the Mishnah did not classify payment for fortifications as aid. The question of who should pay for public services, the beneficiary or the whole community, is general and complex and certainly deserves treatment in its own right. However, the halakhah's decision in this case is clear. In any event, one cannot infer from a situation in which the burden is cast upon residents who evidently can afford the facility to one in which, by the very nature of the *mitsvah*, it is incumbent upon the general community. I take it for granted that if the residents could not afford the fortifications—although this is admittedly a rather murky criterion—that others would be taxed to pay for them.
23. There is, of course, a second halakhah, that *talmidei hakhamim* are exempt from paying taxes even if these maintain services and facilities which they do need; see *Baba Batra* 8a and Rambam, *Talmud Torah* 6:10. However, this exemption, essentially similar to that widely granted religious institutions today, only precludes the community's imposing upon them. It does not pertain to their possible obligation to perform certain vital functions. Moreover, it would appear from the Gemara and Rambam—who cites the general exemption in *Hilkhot Talmud Torah* but nevertheless felt constrained to set down the specific dispensation from paying for defense needs in *Hilkhot Shekhenim* 6:6, accompanied by the explanation "that *talmidei hakhamim* do not need defense as the Torah guards them"—that defense is excepted from the overall exemption. Evidently, if the *talmid hakham* were deemed as requiring a bulwark, he would have to share in its cost, his general *petur* notwithstanding: This exception applies to vital needs—road maintenance, according to the Rambam, (*loc. cit.*); water supply, according to Rashi (*Baba Batra* 8a, s.v. *lekarya patya*); or generally, "that which is necessary for human life," as the *Shulhan Arukh* formulated it (*Yoreh Deah* 243:2)—and its application to defense is of course natural.

Finally, it should be noted further that the scope of any exemption drawn from the Gemara in *Baba Batra* depends upon the definition of *talmid hakham*, a question which arises in various halakhic contexts. See with respect to our problem, Rav C.F. Tchursh, *Keter Ephraim* (Tel Aviv, 5727), pp. 172-4, and the many sources cited by him. It may very

- well be that we should distinguish, with regard to this definition, between the general exemption and that for defense. The former is a personal *petur gavra* and may very well depend upon one's level and qualifications. However, the latter is grounded in one's adherence to Torah which affords him protection; and to this end, effort and commitment may be more important than accomplishment.
24. *Shmittah Veyovel* 13:12-13. The citations are from *Devarim* 33:10 and 33:11, *Bamidbar* 18:20, and *Tehillim* 16:5, respectively.
 25. The best-known is to be found in *Mishneh Torah*, *Talmud Torah*, 3:10. See also *Perush Hamishnayot*, *Avot* 4:5. For a full discussion of the issue—much of it centering upon the Rambam—see *Sefer Hatashbets*, I:142-148.
 26. *Sotah* 44b.
 27. See *Kiddushin* 21b.
 28. The construction, *v'ein orhin milhamah kishear Yisrael*, could admittedly mean not only that they do not wage war on a par with others but that they do not wage it altogether. Even on that interpretation, however, I think the statement would only refer to *milhamah* as an independent category but not as an instance of *hesed*.
 29. The phrase *hishvonot rabbim* which I have rendered as "many considerations" is drawn from *Kohelet* 7:29. The JPS version translates, "many inventions," but I find this overly intellectual and it misses the element of worldly self-interest—perhaps even tinged by manipulative machinations contrasted with man's primal rectitude—clearly implied by the context.
 30. Of course, I am familiar with the contention that even if the exemption properly applies to only a select few it must, in practice, be granted *en masse*—either because those few cannot be identified *ante facto* or because they need all the others as a supportive and stimulating environment. Given our national exigencies, however, I do not find it convincing.
 31. *Nedarim* 32a. The citation is from *Bereshit* 14:14.
 32. Elsewhere, the Ramban suggests yet another explanation: the reason for the punishment was Avraham's decision to go to Egypt at a time of famine rather than remain in Canaan. This, the Ramban (*Bereshit* 12:10) states, constituted a lack of sufficient trust in God.
It may be added that to the modern mind—unschooled in the theological reading of history, oriented to liberal individualism, and unattuned to the concept of causality, especially as it relates to reward and retribution, as expressed by Hazal—the whole discussion may seem strange. This subject requires much fuller elucidation than can be given. I would only state, very generally, that the causal relation should be perceived as correspondence, the meshing of a person with a complex as it impinges upon him, rather than as a linear interpretation, in *quid pro quo* terms, of the complex as a whole.
 33. See the various views cited in *Bereshit Rabbah* 43:2.
 34. See *Arukh Hashalem* and *Otzar Leshon Hataalmud*, s.v. *Angarya*.
 35. See *Sotah* 10a.
 36. *Sanhedrin* 49a. The citation is from II Samuel 8:15-16.
 37. From his famous letter to his son, in *Kitvei Haramban*, ed. Rabbi C.B. Chavel (Jerusalem, 1963), p. 368.

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R. SHELOMO YOSEF ZEVIN ON THE DRAFTING OF YESHIVA STUDENTS

(EDITORIAL NOTE: Rabbi Shelomo Yosef Zevin (1890–1978) was universally acknowledged to be one of the great contemporary Talmudic and Halakhic scholars. He served as editor-in-chief of the *Encyclopedia Talmudit*, which itself reflected the unique style which Rabbi Zevin had created: a clear presentation of complex material in a form meaningful to knowledgeable laymen as well as to accomplished scholars. His more popular works are now being opened to the English-speaking community with the publication of the translations of *Sippurei Hasidim* and *HaMo'adim baHalakhah* issued by ArtScroll Judaica Series. The ideas expressed in this article are by now well known in many Israeli circles. What is most significant is that they were written by someone of Rabbi Zevin's stature, and that when he published them as a monograph in 1948, it was under the pseudonym of "One of the Rabbis." It was republished under his name in *Talmud Torah veSherut Tseva'i* (1980, HaKibbutz haDati-Ne'eman Torah va'Avodah, POB 14177, Jerusalem). It was translated into English by David Wachsman, then a student at the Yeshivah of Flatbush.—JBW)

The deepest respect and admiration is due the rabbis and learned scholars of our holy city, but the question may nonetheless be asked! Teach us, our masters, how can this be justified?

What is the source for exempting yeshiva students and Torah scholars from an obligatory war fought to defend Israel from those who come to destroy her, God forbid? How can you pass it off as if it were halakhah or *da'at Torah* that yeshiva students need not register or serve? Have we not learned that when it comes to saving a life—not many lives, just one—"these things are done by the leaders of Israel"¹ and by *the scholars*² "in order to teach the halakhah to the nation"?³ Was any distinction made whether or not it is time of learning Torah that is to be lost? If this is the case in the saving of one life, how much more so in the saving of tens of thousands of Jews?

Perhaps a distinction should be made as to whether one must endanger himself in order to save someone else's life. Could we go so far as to say that if one's own life would be threatened, he has no obligation to save other people? If so, where does the Torah differentiate between the self-sacrifice of the highest of the high and that of

the lowest of the low? If a person should not have to be drafted because of the danger involved, all of Israel is exempt! Why have you excused only the yeshiva students? "How do you know that your blood is redder than that of your fellow-man?"⁴ There is no distinction to be made between the blood of a Torah scholar and that of a common man. The rule that "one life is not pushed aside for another"⁵ applies even to a day-old baby! It is clear that up to now there had never been any controversy as to whether the principle that one must put his own life in danger to save another's⁶ applied only to saving an individual's life—or perhaps the lives of many individuals. But there is certainly no disagreement when it comes to saving *kelal Yisra'el*—surely there is no need to review the unanimous opinion that a defensive war fought to save Israel from her enemies is an obligatory one⁷ of which it has been said, "All must go, even a bridegroom from his room and a bride from under her *huppah*."⁸ How have we arrived at the conclusion that scholars are not included in this obligation? If our generation merited everyone studying Torah, would we allow our enemies to ravage our land and kill our people without taking up arms to defend ourselves? We were not worthy, but thank God that there are people ready to stand firm and fight! What source have we for a hierarchy of obligation regarding participating in a war to save Israel from its enemies?

But we have found sources expressing a totally opposite position. The Captain of *Tseva HaShem* admonished Joshua before the battle of Jericho, saying "You have not made the afternoon sacrifice, and now you abolish the study of Torah,"⁹ and Rashi explained, "Now that it is night you should be involved in studying Torah because you do not fight at night." This is very explicit: "You do not fight at night!" In times of war, the Torah is pushed aside if there is a need for it. In the Talmud Yerushalmi¹⁰ it is written, "And Asa the king called all of Judah to his army without exception . . . not even a teacher or his student was exempt." And while the Talmud Bavli¹¹ says that Asa was punished for this, Maharsha explained that this was a voluntary war, because in an obligatory war certainly even a Torah scholar must fight. The *Arukh* explained how Asa could call the Torah scholars to war, because when it was said "without exception" it means "even a bridegroom from his room and a bride from under her *huppah*," so the scholars too must be included. From here we learn that if in an obligatory war a bride and groom must go, so must the rabbis! In the war against Midyan we read that Moses sent a thousand from each tribe to the army along with Pinehas, and the Sanhedrin was included.¹³

Indeed, are we dealing with saving *others*? Every one of us is in mortal danger, as are our families and everyone dear to us. Is it right

for the scholars not to save themselves, but to place the obligation upon others? Is this *da'at Torah*? Where have we seen such a thing?

Doesn't the Torah defend her scholars? On the contrary! Let the *benei Torah* fight at the front and the merit of their learning Torah will defend them and their comrades! "If you follow in my statutes"—this requires the study of Torah, not simply doing the *mitsvot*.¹⁴ And what is the promised reward for this? "You will chase your enemies and they will fall by the sword before you." Yes, "they will fall," but "you will chase!" The *Tanna Devei Eliyahu* says:¹⁵ "God said, I did not write so in my Torah, but even if Israel were not absorbed in the study of Torah and kept only the *mitsvah* of *Derekh Eretz*, the Shekhinah would be with them and the promise of 'five chasing a hundred and a hundred chasing ten thousand' would be fulfilled. If they fulfilled the Torah and *mitsvot* one would chase a thousand and two would put to flight ten thousand."

"Rabbis do not need guarding"?¹⁶ God Almighty! When actual lives are at stake may we rely on miracles? In 1929 at Hebron (such a calamity should never occur twice!) didn't young students of the yeshiva, whose holiness shone like stars in the sky, fall before the malicious enemy? Please, did these martyrs need guarding or not? And those same murderous Arabs are still the enemy today! If you understand that the scholars need no guarding in relatively peaceful times and are exempt from building the protective walls,¹⁷ what consequence has this when compared to a life-and-death struggle, a war which is a *mitsvah* and in which all are obligated? The defense authorities ordered everyone to cover all windows as protection against shattering glass in case of an air raid. Would anyone think that some rabbis will not do so, claiming, "Rabbis do not need guarding"? Did anyone absorbed in Torah study exempt himself from this? Why did rabbis leave areas under enemy fire along with the rest of the general population? Why did they not rely on this maxim? Is this *da'at Torah*? They took this Torah concept out of context and used it improperly, while if it were used in its proper context it would be a valuable pearl.

I understand the feelings of *Neturei Karta* who are unalterably opposed to the State of Israel. They oppose the war because they feel that we should surrender. Even according to these ideas, there is no difference between the yeshiva students and the common people. Anyone who subscribes to this philosophy must be against the conscription of anyone in Israel, whoever he may be. Luckily, very few people feel this way. Our entire nation, in Israel and in the Diaspora, eagerly risk their lives in this defensive war which has been thrust upon us. They understand well that there is no future for the *yishuv* here or for the refugees waiting in the Diaspora without our own independent country, one that would be open to accept our bloody

brothers who wander in the burning *Galut*. God, Israel, and the rest of the world know that we are not the aggressors. We do not want war, and we are not gladdened by the spilling of blood. But if our enemies fall upon us in a mad killing frenzy, we must defend ourselves. And you, our *Geonim*, admit the dire necessity of this obligatory war. Many of you have sent blessings and words of encouragement to our valiant soldiers. It is your obligation to encourage young and healthy scholars to fight. Will you send your brothers to war, and yourselves sit at home?

A practical fear has been expressed that if the students go to war, all the yeshivot will become depleted and who knows what will happen to Torah in Israel. It would be possible to arrange a mutually agreeable accommodation and as far as I know the draft offices are willing to negotiate this. But to decide in the manner of halakhah not to participate at all—how can you possibly justify this?

Many yeshiva students are standing at the front even now, sanctifying God's name. With one hand they are turning the pages of a *Tenakh* or Talmud, and in the other hand they hold their rifles. Their spirit of Torah and belief in the Almighty strengthens their comrades and influences them in the ways of Torah. Most respected rabbis, are you not obligated to encourage others to follow in their footsteps?

The opinion of the Torah? It is clear and explicit: "Those who act quickly when lives are at stake are to be praised and do not require the permission of Bet Din."¹⁸ "For the Lord thy God goes with you to fight against your enemies and save you!"¹⁹

NOTES

1. T.B. *Yoma* 24b; *Mishneh Torah*, *Hilkhot Shabbat*, 2:30.
2. *Mishneh Torah*, *ibid*.
3. *Taz to Shulhan Arukh Orach Hayyim* 328, and *Shulhan Arukh Harav*, 328.
4. T.B. *Pesahim* 25b.
5. *Ohalot* 7:46.
6. *Kesef Mishneh*, *Hilkhot Rotse'ah*, 1:14; *Bet Yosef*, *Hoshen Mishpat*, 426 and *Sefer Me'irat Einayim*; Responses of the Radbaz, part three, 1:52; *Shulhan Arukh haRav*, part five, *Hilkhot Nizkei haGuf veNefesh*; etc.
7. *Mishneh Torah*, *Hilkhot Melakhim*, 5:1.
8. T.B. *Sotah* 44b; Rambam, *Melakhim* 6:4.
9. T.B. *Megillah* 3a.
10. T.J. *Sotah* 8:5.
11. T.B. *Sotah* 10a.
12. *Arukh*, s.v. *Angaria*, and at *Sotah* 10a.
13. T.B. *Sotah* 43a.
14. *Torat Kohanim*, Rashi to Lev. 26:3.
15. Chapter 11.
16. T.B. *Baba Batra* 7b.
17. See Rashi to *Baba Metsia* 108a.
18. T.B. *Yoma* 84b. See Rambam, *Melakhim* 5:1-2.
19. Deut. 20:4.

On Yeshiva Men Serving In The Army

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Since the founding of the State of Israel, the need for defense has been the highest priority of the community. Due to the overwhelming needs for security, virtually all able bodied men and many women - serve in the army for a period of a few years and then for additional service for decades thereafter.

However, when the state was created, the then Prime Minister, David Ben Gurion, came to an agreement with leaders of the religious parties, whereby 400 yeshiva students were to be exempted from military service so that they might continue the Torah studies without interruption. After the government lifted restrictions on the establishment of new yeshivot, the number began to mount steadily. According to current figures¹ 18,400 yeshiva students were exempted from military service in 1988. Between 1976 and 1986, the proportion of yeshiva students out of the total population of 18 year olds more than doubled from 2.5 to 5.3 percent, as the government steadily lifted the ceiling on how many students could acquire the exemption.

The exemption of boys and men involved in learning Torah from serving in the army has at times aroused much resentment. It is a practice which has been, and continues to be, challenged, not only by secular Jews but even by many observant and dedicated Jews, even by some who benefit from the exemption.

We are dealing here with a very emotional issue. The families of soldiers who daily risk their lives are far from tolerant when they see yeshiva students strolling casually through the streets. There is anger, too, at the rabbis who instruct their students in the yeshiva to stand at attention on Yom Hazikaron² to honor the fallen war heroes - but at the same time teach their students not even to consider serving in the army. And there is frustration and bitterness in the yeshiva homes as well, where people live in privation all their lives in order to dedicate themselves to the ideal of learning Torah, and yet have to bear the contempt of their fellow citizens.

The present study will explore this issue, hopefully from a dispassionate and objective position. It is our intention to identify the sources from Jewish tradition which support the practice, as well as those which seem to question the validity of exempting one group from military service. Our aim is an halachic exposition, without recourse to emotional arguments; our intention is to clarify the halachic sources, as the basis for formulating an intelligent position.

Before we consider what role, if any, yeshiva students ought to take in the army, it would be appropriate to consider what Judaism has to say about war - whether it is ever right for any Jew, not only a yeshiva student, to serve in the army.

Jewish thought views war with great trepidation, not as a glorious adventure.³ War is a scourge: lives are lost, families disrupted. When the Jewish Commonwealth existed, the decision to go to war was never undertaken lightly, no matter how pressing the situation might appear to be. Even when war was necessary or defensive, it retained a negative connotation. Thus, when King David expressed his desire to build a House of G-d, *Hashem* rejected the plan: "Much blood have you spilled, and great wars have you waged, [therefore] you shall not build a House for My Name."⁴

The rejection of King David is most surprising, in view of the fact that he had dedicated his life to freeing his people from the perpetual onslaughts of their inimical neighbors. His wars had been wars of defense, of retaliation, of prevention, wars of *Mitzvah* if you will. Nevertheless, a certain opprobrium clung to them.

But Judaism does not condemn war entirely, for there are times when it is inescapable or necessary.⁵ And although taking someone's life is murder, Judaism does not consider war as murder; there are times when people are justified in going to war, such as when they are attacked or to take revenge for a previous injury.⁶ While it is true that the Torah commands "when you draw near to a city to battle with her, [first] you must call to her to make peace,"⁷ the Maharal is of the opinion that the rule applies only when they have not done anything to the people of Israel, but if they have done something, such as "they pressured them to do some abomination, then it is permissible to take revenge upon them."⁸

Hundreds of years later, the N'tziv echoes the view of Maharal, that at times war is permissible and warranted:⁹

When is the person punished? At a time when it is proper for him to act with brotherly love, but this is not true during wartime, and it is a time to change... and there is no punishment for this at all, because thus was the world established, as we see in Tractate *Shevuot* - and even a king of Israel is permitted to wage an optional war.

In *Orach Chaim*¹⁰, the Ramo even extends this permission to wage war to such time as the enemy has not yet attacked but only wants to attack the Jews. *V'afilu lo bau adayin ela rotzim lavo*. Such a preemptive strike is permitted even on the Sabbath.

Cognizant of the reality that sometimes war is the necessary option, despite its negative connotation, the halacha recognizes different types of war.¹¹

1. *milchemet mitzvah* - a war to conquer the land of Israel, such as those waged by Joshua when the Jews entered the Land. Another such war is the battle to eradicate Amalek. These wars may be initiated without the mandate of the *Beth Din*, simply at the instigation of the king, who has the license to draft the people into his army at his discretion.
2. *milchemet reshut* - a war fought to expand the boundaries of Israel; this could be done only with the approval of the *Beth Din* of Seventy. An example is wars fought by King David.
3. Wars to reduce the heathen influence¹² so that they will not attack the Jews. Some scholars consider such wars as mandated (*mitzvah*) but others consider them optional. The Rambam¹³

rules that these wars are obligatory, "And which is a mandated war? .. to help Israel from an enemy who might come upon them."

4. An additional category has been suggested - a war to instill fear and respect into the nations, so that they will not even consider attacking the Jews.¹⁴

Behavior in Wartime: The Moral Imperative

The Jewish attitude towards war is singular. Unlike other cultures, we do not glorify the strength, vigor, and triumphs of war so much as we realize the tremendous moral dangers which lurk in the war zone. It is not our tradition, however, to be tolerant of the immorality and depravity which typically are rampant in an army camp, but rather to seize the opportunity to grow spiritually even from such a situation.

Despite the exigencies of war, the Torah teaches us to maintain our high moral code: when a soldier falls in battle, he must be buried individually, not in a mass grave.¹⁵ Even though the soldier has the responsibility of fighting, we urge him to study Torah whenever he has free time.¹⁶ And if battle is necessary on the Sabbath, all booty of that day is dedicated to G-d.¹⁷ Even when serving in a non-Jewish army, the Jewish soldier is expected to observe whatever mitzvot are possible.¹⁸ Even while out on the front, the Jewish soldier must light at least one light each night of Chanukah, if he can;¹⁹ although he is permitted if necessary to eat before his morning prayer, nevertheless he is expected to pray daily.²⁰

The overriding concern of Judaism is not to sanction the immorality which is prevalent in an army situation, which has not abated appreciably with the passage of millennia. Even today, after thousands of years of civilization, rape, mayhem, looting are daily concomitants of war, and stealing and eating non-kosher foods might be considered only minor infractions.²¹ It is precisely in such a situation that the Torah admonishes the Jewish soldier. "When you go to war against your enemy, beware of all evil things..."²² That is the time when a person must be most careful in performing mitzvot. Rather than suspend the laws and observances, it is then that a person must be most careful in following the minutiae of the Torah. Thus, it is our philosophy that learning Torah and praying with true concentration are outstanding weapons for the Jewish people to employ in their quest for victory. More mitzvot, more dedication to Torah, will bring us more protection from above.²³

This belief, that purity of thought and deed and dedication to the ideals of Torah are the true strength of the Jewish people and the source of any victory they might enjoy, is the core of the argument that the yeshiva scholar is doing his share for the protection of the nation through his dedicated learning in the *Beit Midrash*. As the N'tziv points out (*Devarim* 31:1), the troops used to give a share of the spoils to the Torah scholars, in recognition of the fact that their learning Torah had kept the soldiers and the people safe.

If observance of mitzvot is so crucial that a minimum standard is not abrogated even for the soldier, doesn't it stand to reason, argue many, that those who are intensely involved in observing all the mitzvot of Torah, who spend all their hours involved in Torah, are surely adding to the protection of the nation just as are the armaments and tanks?

What role are the citizens supposed to play during a war? Are all equally obligated to serve on the battlefield? Are there distinctions to be made, exemptions to excuse certain people? Some answer emphatically "no", but others contend that the answer might be "maybe" or "yes." *Kelal Yisrael* is made up of diverse people, with many contributions to be made. An orchestra achieves its fulfillment when each of the musicians contributes his unique talent; so, too, the Jewish people are not monolithic. Different people can and should contribute to the welfare and security of the nation in different ways.

One of the Sages of the Yavneh is quoted as reflecting, "I am a man, and my friend is a man; my work is in the city, and my friend's work is in the field. This goes to show that one complements the other, and no one person can or ought to do all the jobs."²⁴

Is such a differentiation defensible in the case of military service? Can a class of people legitimately claim that, as a group, they are serving a different, equally vital, need for the salvation of the community? On these grounds should they be exempted from military duty in order to fulfill their unique role in national security?²⁵

Rav Kook, the first Chief Rabbi of Israel, felt strongly that students in the yeshiva should not be called to the front, for in their *batei midrash*, through learning Torah, they were assuring the spiritual welfare of the nation, and ultimately, we rely on our spiritual superiority to save us, not on our military might. Others have also strongly maintained that the *z'chut* of learning Torah is a more effective and more important shield for the Jewish community than military service.²⁶

Others, however, scoff at such an argument. "Will you send your brother to war, and yourselves sit at home?" rails Rav Zevin, in his call to yeshiva students to take up arms equally with their secular brothers. "Is your blood redder than theirs?" he wants to know. Yeshiva lives and families are being threatened the same as everyone else's, and he feels no person can excuse himself from the fray. He cites rabbinic dicta that in times of war, "all go out to fight, even the bridegroom from his chamber and the bride from her chuppah."²⁷

Exemption

Already in the Torah, there is indication that not all the Jews participated actively in the actual fighting:

Ach et shevet Levi lo tifikod v'et rosham lo tisa

But the tribe of Levi you shall not count [in the military census], nor number their heads.²⁸

The entire tribe of Levi was excluded from active warfare, and therefore there was no need to include them in the military census.²⁹ Rambam rules that the tribe of Levi did not inherit a portion of the land, "because they were separated for one task - to serve [in the Temple] and to teach His righteous ways... therefore they were separated from the ways of the world, and they do not wage war as do the other Israelites."³⁰

But then Rambam adds,

V'lo shevet Levi bilvad, ela kol ish v'ish mikol baei haolam asher nadva rucho oto v'hevino midaato.

Not only the tribe of Levi, but any individual whose spirit moves him to... separate himself to stand before G-d and to serve him, to know Him.. and he removes from his neck the yoke of considerations which most people see, behold this person becomes most holy.

Jewish thinking recognizes and respect those individuals who reject the pursuit of material goods as their goal and dedicate themselves instead to a higher ideal. Such a person should not be called up even for defense of the country.³¹ The source for this practice long predates the Rambam: the Gemara (*Nedarim* 32a) criticizes Avraham Avinu for having roused the scholars in his entourage and pressed them into joining his troop which gave chase against the four kings who had raided the land. Similarly, the Gemara in *Sotah* 10a concludes that King Asa was punished by heaven for conscripting Torah scholars into his army.³²

Most nations do not have universal conscription. People understand that not everyone is suited for the battlefield, or that some people should be doing something else. When America had the draft, clergy were excluded, students in the universities were deferred, and others in sensitive positions excused. Can no justification be found for excusing yeshiva students from serving in the Israeli army?³³

However, all exemptions advocated by the rabbis seem to be predicated on the assumption that the Jewish army would be victorious without the missing troops; but, if there exists the possibility of their being overcome in battle, all agree that no one can be excused, all must rush out to battle. "And it is a mitzvah for all Israelites who can, to come and go out to aid their brothers who are under siege."^{34 35} This proviso, obviously, is not a minor issue in the current debate, and we will discuss it more fully further on.³⁶

Alternative Service

No one should imagine that those who were traditionally excused from active duty during war went on vacation instead. On the contrary, everyone was expected to do his or her share in saving the community, but it was recognized that there were a variety of necessary tasks to be performed. Those exempted from active duty were duly expected to serve in some other capacity.

Historically, there is evidence that Torah scholars who were excused from fighting used to accompany the troops to the front and learn and teach Torah there.³⁷ It is hard to imagine a more uplifting practice than thousands of soldiers encamped and equipped for war, each with a man next to him learning the Torah or reciting the *Shema*. Yet the difficulties inherent in such a relationship are quite evident, and ultimately the practice had to be stopped.

Who Should Be Exempt

When the State of Israel was first established, the number of men learning full time in yeshivot was small; the agreement that yeshiva students would be exempt from military service caused little

concern. Today, thank G-d, the situation is quite different in the yeshivot, which are packed with students. As their numbers grow, so do the deferments - and the protests. An added factor is that in Israel many men remain yeshiva students for life, such that military deferment becomes de facto permanent exemption. Under these circumstances, should all yeshiva students be exempt from army duty?

In his monograph against exempting yeshiva men from the draft,³⁸ Rav Zevin rejects the contention that it is more important for them to be learning than fighting. He asks, if everyone were learning in yeshivot, "would we allow our enemies to ravage our land and kill our people without taking up arms to defend ourselves?" And he points to the halacha which teaches that all must go out in case of attack - even a bridegroom from his chamber and bride from under her chuppah. Certainly it should apply to rabbinic students as well! How can one imagine it is right, he asks, to let others die for him rather than protect his own life and family?

Aside from the question of whether it is right to let others bear all the burden of physical defense, there are those who maintain that an exemption from military service based on the individual's involvement with Torah learning can apply only to the relatively few who truly disassociate themselves from all worldly concerns and do nothing but learn Torah. This definition, according to Rav Aharon Lichtenstein would disqualify very many yeshiva people from their present exempt status.³⁹

Finally, even if we grant that the Rambam's statement does imply a categorical dispensation in purely halachic terms, it remains of little practical significance. We have yet to examine just to whom it applies. A levi [sic] is defined genealogically. Those who are equated with him, however, literally or symbolically, are defined by spiritual qualities; and for these the Rambam sets a very high standard indeed. He presents an idealized portrait of a selfless, atemporal, almost ethereal person - one whose spirit and intelligence have led him to divest himself of all worldly concerns and who has devoted himself "to stand before God, to serve Him, to worship Him, to know God; and he walks aright as the Lord has made him and he has cast off from his neck the yoke of the many considerations which men have sought." To how large a segment of the Torah community - or, a fortiori, of any community - does this lofty typology apply? To two percent? Five Percent? Can anyone... confront a mirror and tell himself that he ought not to go to the army because he is *kodesh kodashim*, sanctum sanctorum, in the Rambam's terms? Can anyone with even a touch of vanity or a concern for *kavod* contend this? Lest I be misunderstood, let me state clearly that I have no quarrel with economic aspiration or with normal human foibles per se. again, least of all do I wish to single out *b'nei yeshivot* for undeserved moral censure. I do feel, however, that those who would single themselves out for saintliness should examine their credentials by the proper standard

Despite this harsh appraisal of the unworthiness of present day yeshiva scholars to claim exemption from community obligations, it appears that actually it was a widespread practice to excuse Torah scholars from many of the levies put upon all others. Nor were they generally expected to withdraw totally from the ordinary pursuits of most people. The common custom in Jewish communities was indeed to consider the Torah scholar as a person who, because of his holy dedication to Torah, should not be expected to shoulder the same burdens as ordinary citizens.

In truth, the question of military exemptions is adumbrated in similar debates over the centuries. There, however, the issue was generally a different kind of community service, involving payment of taxes levied by the government on the entire Jewish settlement. Back in the 15th century, R. Isserlein, author of *Terumat Hadeshen*, had to address the problem of taxes which the government demanded from the Jewish community as a unit. There is a long halachic tradition exempting rabbis and Torah scholars from having to pay community taxes, and of course, every individual excused from paying a share meant that the share of the others was that much bigger. The author of *Terumat Hadeshen* appears reluctant to grant widespread exemption from community taxes.⁴⁰

*Onnam hehamon am einam sovrin klal liftor shum talmid chacham ela im ken yoshev
b'rosh yeshiva v'af ze davka b'ostreich... v'haya kim'at minhag pashut sh'lo lechayev
bemas harav hayoshev b'yeshiva b'rosh... aval b'gyul d'bnei Rinus kindume li shelo hayu
nohagin liftor talmid chacham... mishum detzarich dikduk yafe sheyachzor tamid
letalmudo k'sheyifne me'asakav v'ein nizharin ha'idna.*

However, ordinary people do not have any wish at all to exempt any Torah scholar unless he serves as the head of a yeshiva, and this is true only in Austria...and it is virtually a common practice not to require the Rabbi who serves as the head of the yeshiva to pay the tax. But it appears to me that in the provinces near the Rhine, it was not the practice to exempt Torah scholars... since it requires that he be very careful about returning always to his studies as soon as he is finished with his business...

But more than a century later, the *Shach* does not equivocate when he rules that anyone who makes the study of Torah his major concern, taking time out only to earn the requisites for supporting his family, is exempt from community tax.⁴⁰

Similarly the Rambam rules:

*V'ein cholkin bein shehu tofes yeshiva oh lo rak shehu muchzak ketalmid chacham
b'doro...beinyan liftor mimas ein medakdekim baze rak sheyihyeh muchzak letalmid
chacham*

And it makes no difference whether he runs a yeshiva or not, only that he be known as a Torah scholar in his generation, ...as for exempting him from the tax, we are not overly particular about this, only that he should be accepted as a Torah scholar.⁴²

Perusal of these halachic sources provides a basis for exempting certain individuals from obligations which all other members of the community have to shoulder. Some rabbinic authorities interpret this rule quite broadly, while others give it a narrow scope.

In pleading for a change in the present system of exempting all yeshiva students from the draft, Rav Zevin seeks to find a middle ground. He notes that "a practical fear has been expressed, that if the students go to war, all the yeshivot will become depleted" and who knows what will happen then to the study of Torah in Israel? Therefore, he urges that "a mutually agreeable accommodation" be arranged, whereby the principle of the importance of Torah study would be established without, however, applying it universally.⁴³ The Hesder yeshivot seem to be a direct response to this plea, and

we will discuss them shortly.

Saving Lives - or Learning Torah

A talmudic statement seems to give tremendous support to the position that yeshiva students should not join the army. "Rabbi Yosef said, 'learning Torah is greater than saving lives.'" (*Megillah* 16b). This talmudic text is often cited as evidence that maintaining the spiritual welfare of the nation is more important than maintaining its physical security. However, assuming that the Gemara considers learning Torah to be preferable to saving lives might be a simplistic conclusion. A great wealth of Torah literature leads one to conclude that many major Torah authorities did not take this statement literally.

In the *Shulchan Aruch*⁴⁴ we find the following rule:

"It is permissible to take money from the Torah fund in order to pay... the ruler, since it is for saving lives."

The ruling is based on a responsum of the Rosh to the effect that it is proper to divert even a large group from learning Torah in order to save lives. How could the Rosh render a ruling contrary to the Talmud? Numerous scholars have grappled with this difficulty,⁴⁵ and we shall look at some of their answers.

There are those who contend that the text in *Megillah* is aggadic in nature; wherever the aggada disagrees with the rules of halacha, it is halacha which takes precedence. Thus, the overarching rule of *pikuach nefesh*, doing virtually anything in order to save a life, applies in this case as well. Furthermore, it is not possible to take a statement concerning the life of one individual and use it to justify a situation in which the entire Jewish community is threatened. On the contrary, we are confident that G-d will never allow the entire Jewish community to be annihilated, and succor will come to them somehow. In such a situation, it is more important to learn Torah. There is no such assurance of divine intervention, however, for an individual; thus, when one person is in danger, it is surely mandatory to save his life. But for the group, we can rely on G-d's providence.

In resolving the question of apparent contradiction, the *Perisha* rules that if there are others who can undertake to save lives, it is preferable for those who can, to study Torah.⁴⁶ However, if there are no others, then the rule of *pikuach nefesh* takes precedence. Another solution suggested by the *Perisha* is that in a situation where it is not possible to do both - save lives and learn Torah as well - then learning Torah takes precedence. However, in the case discussed in the halachic text, even though some of the money would go to pay off the governor, some would still be left over to provide for leaning Torah, albeit not in great comfort.⁴⁷

The persistent lack of clarity in resolving the issue makes it apparent that, the importance of learning Torah notwithstanding, it cannot be the only consideration in determining normative Jewish practice. Our rabbis have introduced many other factors which at times may mitigate the primacy of the mitzvah of learning Torah.

Rabbis Don't Need Protection

In *Bava Bathra* 7b, the Talmud discusses the need for building walls around a settlement. Since walls

are for communal protection, all residents have to share in the cost of erecting them. However, the Gemara rules that Torah scholars are exempt from this expense, since they are protected by virtue of the Torah they learn. Can this talmudic exemption be compared to an exemption from the military draft?

Although the above statement, unlike the one in *Megillah*, is not aggadic - it is actually codified in the *Shulchan Aruch*⁴⁸ - nevertheless, it is not cited by the proponents of exemption as proof for their position. On the contrary, the rabbis opposed to exempting yeshiva students seize on this statement to argue that yeshiva students themselves don't believe that the Torah shields them enough!⁴⁹

When actual lives are at stake, may we rely on miracles? In 1929 at Hebron... didn't young students of the yeshiva, whose holiness shone like stars in the sky, fall before the malicious enemy? Please, did these martyrs need protection or not?... If you understand that the scholars need protection in relatively peaceful times and are exempt from building the protective walls, what consequence has this when compared to a life-and-death struggle, a war which is a mitzvah and in which all are obligated? The defense authorities ordered everyone to cover all windows as protection against shattering glass in case of an air raid. Would anyone think that some rabbis will not do so, claiming, "Rabbis do not need protection?" ...Why did rabbis leave areas under enemy fire along with the rest of the general population? Why did they not rely on this maxim?

Rav Lichtenstein, too, does not accept the dictum:

It may be stated... that such a claim (that since rabbis "don't need protection" they should be exempt from military service) raises a very serious moral issue. Can anyone whose life is not otherwise patterned after this degree of trust and *bitahon* argues for exemption on this ground? Is it possible to worry about one's economic future - in evident disregard of Rabbi Eliezer's statement that "whoever has bread in his basket and says 'What shall I eat tomorrow?' is but of little faith" - and yet not enter the army because one is presumably safe without it?⁵⁰

Effect on Others

No one lives in a vacuum. A person not only has to do that which is right for himself, he has to factor into his decision how his actions may affect the group. This is brought out by the N'tziv in his study of Scripture: The tribes of Gad and Reuven addressed Joshua as he prepared to commence the conquest of Canaan, urging him to be strong, and they would fight along with him. Although they had already taken as their inheritance the provinces conquered by Moshe in his lifetime, they had promised that they would fight along with the other Jews until all the land had been conquered, only then returning to settle in their own fields. Now that he was preparing for his campaign of conquest, they renewed their pledge: "Whoever rebels against your word and does not heed what you say, whatever you command, will be put to death. Only, be strong and persevere."

Isn't that somewhat excessive? Should a person really be put to death for failure to obey Joshua? But the N'tziv explains that the tribes of Reuven and Gad realized that if they failed to join the impending battles, it would have a devastating effect on the rest of the Jews. Perhaps these others would be overcome by fear or panic when they saw part of the army dropping out. Thus, had the two tribes

failed to live up to their commitment, they might have fatally weakened the people's resolve. Therefore "be strong and persevere," kill anyone who stands in your way, if that is necessary to strengthen the nation.

Also concerned with the effect exemption of a large group may have on others. Rav Waldenberg cites the Abarbanel⁵¹ that Deborah joined in the battle against Sisera, even though she didn't want to, only to placate Barak, the general of the troops. She did it only "because the Jews then were scared and frightened of the army of Sisera and his chariots and his hordes... [and she went along] in order to strengthen the hearts of the Jewish people when they would see the Prophetess with them." (Note that Deborah may even have been transgressing a biblical command - it is forbidden for women to wear armor - in order to raise the spirits of the soldiers.)

Perhaps this factor, too, has to be taken into account - the effect it has on the soldiers and on their families when certain people, for whatever reason, do not share in the common burden and are exempt from the danger and the sacrifice it entails.

Chilul Hashem

Possibly the greatest sin in Judaism is *Chilul Hashem* - desecration of the Name, which includes anything which lessens the respect and devotion of people for G-d and His Torah. Every sin can be forgiven, other than this one.⁵² On the other hand, the very greatest act a person can ever hope to achieve is *Kiddush Hashem*, the exact opposite of *Chilul Hashem*. Most mitzvot of the Torah can be violated in order to effect a *Kiddush Hashem*, the Book of Samuel (II 21:3-10) records a dreadful vengeance that the Gibeonites exacted from the Jewish people: God had sent a plague upon the Jews to punish them for King Saul's having put some Gibeonites to death. The only strategem which would placate the Gibeonites and halt the plague was to kill a number of King Saul's descendants, which King David reluctantly agreed to do, at the instruction of the Prophet. But then, instead of burying them immediately as Jewish law requires, the bodies were left hanging on trees for months. How could he allow this to happen? The Gamara answers:

It is better that a letter should be eradicated from the Torah so that the name of Heaven will be sanctified in public. For passersby would ask, "What is the nature of those men [hanging]? [and they would be told] "they are sons of the king," "and what did they do [to warrant such a horrible punishment]?" "They violated the rights of aliens" [and then the passersby would exclaim] "Certainly there can be no nation more worthy for us to become attached to than this one, for if this is how they treat princes [who did wrong to foreigners - i.e., the Gibeonites] how much more so will they be strict with ordinary people!"⁵³

This is the greatest *Kiddush Hashem* - when people seeing our deeds are overcome with awe and respect for the justice and goodness of our behavior, which is predicated on the Torah's teachings. *Kiddush Hashem* remains the highest priority of the Jew. Even today, Rabbi Shear Yashuv Cohen warns, before engaging in a war or military foray, we should stop to consider whether the nations of the world might judge our deeds negatively, thus causing a *Chilul Hashem*.

So, too, Rabbi David Tzvi Hoffman relies heavily on the prohibition of *Chilul Hashem* when considering whether a Jew living in a gentile country may evade the draft. His ruling is that even if

the Jew knows that service in the army will inevitably entail desecration of Shabbat and other laws, he is still not permitted to avoid his civic duty.

Is it valid to apply this line of reasoning to the question of yeshiva students serving in the Israeli army? Some say yes, while others disagree. After all, one can only cause a *Chilul Hashem* if he is doing something wrong. But if a person acts in accordance with what is right and yet others react negatively, it can be argued that that is not his responsibility.⁵⁴ However, this disagrees with what the Gemara expressly says - that a person has to be careful about the impression he is making, even when he is doing the right thing.⁵⁵ others maintain that such a delicate evaluation can be made only by a person of great stature and importance in the community, not by ordinary people, who need be concerned primarily that their behavior is in itself unimpeachable.

It is difficult to pin down an answer to the question whether the Orthodox Yeshiva community has to be concerned that the policy which exempts their sons from army duty is well-received by the secular Israeli public. For those who see the policy as arousing much animosity, resentment, and contempt for those who study Torah, it is indeed a terrible *Chilul Hashem*. For those with a different vantage point, the fact that their policy is subject to misinterpretation should not deter people dedicated to learning Torah from following this pursuit. Just because people do not appreciate their dedication, should that stop the inspired individuals from dedicating their lives to a high ideal?

It is easy to see that both intellectual and emotional arguments can be raised for either point of view, as well as halachic ones. But one truth is indisputable - when the nations of the world see Jews fighting among themselves, that is surely a *Chilul Hashem*.⁵⁶

The Hesder Yeshiva

The controversy about drafting yeshiva men for the army has roiled Israeli society for decades. Partly in response to the strong emotions engendered by the situation, there arose the institution of the Hesder yeshiva, where young men alternate months of learning Torah with months of active duty in the army. Many sincerely dedicated Torah students feel very strongly that, living in Israel, they want to participate in the defense of their country and their lives. At the same time, they realize that if they leave their yeshiva for two years while they serve in the army, the chances are slim that many of them will return. The Hesder yeshiva seeks to bridge the gap and indeed fills a very important role. The proponents of the Hesder yeshiva, however, do not see themselves as a compromise but rather as the right way to go.

We advocate it because we are convinced that, given our circumstances - would that they were better - military service is a mitzvah, and a most important one at that. Without impugning the patriotism or ethical posture of those who think otherwise, we feel that for the overwhelming majority of *b'nei Torah*, defense is a moral imperative.⁵⁷

There are any number of good reasons for the creation of the Hesder system. First of all, it is considered important that during the formative post-high school years, the *ben torah* should be firmly rooted in a Torah climate. Furthermore, many sincerely religious people consider it their ethical and halachic imperative to defend the State of Israel, even if only for the reason that they themselves live there. Lastly, in view of the military needs of this small nation, every able-bodied person should be

trained for defense, even if only as part of the reserves.⁵⁸

The Hesder yeshiva is grounded in necessity, not in choice. It does not glorify militarism, but views army training as the necessary response to the critical political and military situation of the Jewish state.

Although this might seem like the perfect solution to the dilemma many in the yeshiva world do not agree. They argue, and many scholars in other fields would agree, that there is nothing equivalent to a person's being able to devote himself entirely only to study, without interruption or distraction. Our rabbis observed in their pithy style: "The Torah cannot be acquired except by someone who is ready to sacrifice his entire existence for it".⁵⁹

Volunteering

Since the Torah specifically did not want certain people to go to war, does that mean that a person in the exempt category is not permitted to volunteer? Could an individual *kohen* or *levi* choose to serve in the army? Is exemption a privilege or a disqualification?

Rav Waldenberg cites numerous sources which, in his view, adequately prove that any individual Levite who was so moved was able to serve in the armed forces. His opinion is in agreement with that of the author of *Birkei Yosef*⁶⁰ who contends that although exempt, one may indeed volunteer. He cites a text in *Kiddushin* which questions whether a *kohen* who encountered a captive woman in battle would be permitted to marry her (under the conditions laid out in the Torah, in *perashat ki teitzei*). How could a *kohen* even be in a position to take an enemy woman captive, if he could not have volunteered to fight? Obviously, counters *Birkei Yosef*, he could enlist.⁶¹

The question of volunteering is quite a serious one - may a person put himself in a life-threatening situation if he doesn't have to?⁶² Rav Waldenberg cites a novel proof⁶³ that if a person feels his death may bring salvation to the entire group, it is permitted: The Gemara in *Ta'anit* 10b praises Lulianus and Pappus, who gave their lives rather than permit a wholesale slaughter of the Jewish community. We know, says Rav Waldenberg, that a person who dies unnecessarily is considered equivalent to a suicide, culpable for his own murder.⁶⁴ Yet the Gemara praises the two who sacrificed themselves. We must conclude that dying to save many others is a heroic and highly commendable act.

A Non-Jewish Army

What we have said so far applies almost entirely to the situation of a Jew serving in a Jewish army. In a final note, let us turn to the question of a Jew's serving in a non-Jewish army. This is a relatively modern question, for until they were given civil equality, usually some time in the 19th century, Jews were generally not allowed to serve in the army. The Chafetz Chaim wrote a small monograph, *Machane Yisrael*, addressed to those who were called upon to serve, in which he seeks above all else to strengthen the Jewish commitment of those who are about to undertake this difficult assignment.

Forced to follow the directives of his non-Jewish superiors, the Jew, who will be unable to observe many mitzvot, is nevertheless encouraged to do as much as he can and always to continue to struggle to observe the Torah. The Chafetz Chaim encourages and prods the soldier, no matter how difficult his situation, to trust in G-d. In a homily, he shows that when a person gives another person a gift, to hold

for him, if the recipient misuses the gift, the donor will want to take it back. Not so with the *Ribono shel Olam*; even if a person misuses the precious gift of life, G-d does not want to take it back.⁶⁵ At all times, concludes the Chafetz Chaim, remember that you are still the child of G-d.⁶⁶ The Chafetz Chaim advises the soldier not to look for *chumrot* (stringent interpretations of the Jewish law);⁶⁷ on the other hand, he urges the soldier not to worry if gentiles make fun of his Jewish practices,⁶⁸ and to continue to study Torah whenever possible. He further reminds the soldiers that every mitzvah is important,⁷⁰ and that his *yetzer hora* will continually try to impede his performance of mitzvot.⁷¹ He urges the soldier to be willing to expend considerable sums in order to return home as often as possible.⁷² And if he finds that his uniform contains *shatnes*, he must make every effort to correct it as soon as possible.⁷³

If all these precautions are necessary in a gentile army, how much more so do they apply in a Jewish one!



COMMENTS:

1. *Jerusalem Post*, 9/12/88
2. *Techumin* 4 p. 125.
3. For a complete discussion of the question whether there is any obligation for a person to place himself in danger in order to save another person from certain death, see *Choshen Mishpat* 426 and *Aruch Hashulchan Pitchei Teshuva*, *ibid*.
For a discussion if there is an obligation to put oneself in danger to save the Jewish community, see *Mishnah Makkot* 11a, *Or Sameach Hilchot Rotzeach* 7-8, *Meshech Chochma Perashat Shemot*, *Mishpat Kohen* of Rav Kook, 142-144. See also Rav Shlomo Zevin in *Talmud Torah Vesherut Latzava*.
4. *Divrei Hayammim* I, 22. See also Rav Shlomo Zevin in *Talmud Torah Vesherut Latzava*.
5. For the Jewish position on non-Jews engaging in war, see *Teshuvot Chatam Sofer* 14-19, *Devar Avraham* 1-11, and *Zera Avraham* 24.
6. *Gur Aryeh*, *Bereishit* 34:13. See *Hilchot Medina* II, *Shaar* I (written by Rav Eliezer Waldenberg, author of *Tzitz Eliezer*) 1; see *Hilchot Medinah* III, *Shaar* 4, for an analysis of the role of the minority and majority.
7. *Devarim* 20:10-11.
8. *Bereishit* 32:9. See *Torah Umedinah* 8-7, *Mishpat Kohen* 143, and *Tzitz Eliezer* 12-57 for other differences that apply during a war.
9. *Ha'amek Davar Bereishit* 9-5, *Devarim* 20-8; for a discussion to whom property captured in war belongs, see *Or Hahalacha* p. 18.
10. *Or Hachayim* 329:6. See *Or Sameach*, *Deut.* 5-5, who uses the same argument in favor of giving