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EXAMPLES OF CIVIL DISOBEDIENCE IN EARLY JEWISH TEXTS

VICTOR S. APPELL

Thesis Submitted in Partial Fulfillment of
Requirement for Ordination

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Examples of Civil Disobedience in Early Jewish Texts
Victor S. Appell

This thesis has four chapters, and introduction, and a conclusion. This thesis looks at a number of instances in the Bible and in intertestamental sources that, today, would be considered acts of civil disobedience. Talmudic decisions that require a person, in certain instances, to break a civil law in order not to break a religious law, are examined. By looking at these sources, a Jewish tradition requiring civil disobedience in certain instances is evident.

The goal of this thesis was to show that this tradition requires that, in certain instances, Jews be required to engage in civil disobedience. Modern criteria for engaging in civil disobedience are needed today in order for Jews to determine what circumstances require acts of civil disobedience. Together, the ideas of people who have contributed to our modern understanding of civil disobedience, along with Jewish tradition create these modern criteria for engaging in civil disobedience.

This thesis is divided into four chapters. The first chapter looks at the contributions of Henry David Thoreau, Mohandas Gandhi, and Martin Luther King, Jr. to a contemporary understanding of civil disobedience. A contemporary set of criteria is introduced. Chapter Two presents four examples from the Hebrew Bible of people employing the methods of civil disobedience. Relevant rabbinic commentaries are included to determine how earlier Jewish communities interpreted these events. In Chapter Three, examples are taken from two intertestamental texts, The Books of the Maccabees and Antiquities of the Jews. The fourth chapter presents two Talmudic discussions involving the obligation to protest in order to prevent someone or something from committing a sinful act, and to disobey civil laws that conflict with religious law.

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INTRODUCTION

Civil disobedience is commonly associated with modern movements designed to achieve political and civil rights. It has been used by pacifists, in the effort to gain the right to vote for women, in labor disputes, and in protests against the United States governments' response to AIDS. Two of the most notable examples of progress achieved by means of civil disobedience have been accomplished in the twentieth century.

What do Jewish texts tell us about civil disobedience? Jewish history and texts have many examples of civil disobedience. This should come as no surprise. As demonstrated in our own society, even when people live in a democratic society, there are times when citizens feel compelled to resort to civil disobedience. For a people that has spent the majority of their more than three thousand year history under the rule of others, there are bound to be numerous instances of civil disobedience.

This work raises the question, is there a Jewish understanding of civil disobedience? If there is, what are its sources? An explanation of civil disobedience in non-Jewish contexts will lay the groundwork for a contemporary, secular understanding of civil disobedience. A look at Jewish texts dealing with what we would call civil disobedience, and commentaries on these texts, will help toward answering the questions raised.

In the first chapter, civil disobedience will be defined. The contributions of Henry David Thoreau, Mahondas Gandhi, and Martin Luther King, Jr. toward understanding civil disobedience are of great importance to our own understanding of this topic. For Martin Luther King, in particular, there was a relationship between his religious beliefs and his decision to engage in civil disobedience. The National Council

of Churches, an umbrella organization of Christian denominations, will provide one set of criteria for engaging in civil disobedience. Milton Konvitz, a professor of law and an author, has created a set of criteria necessary in order to engage in civil disobedience. These criteria will be used in subsequent chapters in an effort to determine if certain instances in Jewish texts may be considered acts of civil disobedience.

The second chapter will look at four passages from the Hebrew Bible. These four passages offer examples of individuals engaging in civil disobedience in a variety of situations. Though the Hebrew prophets often engaged in what we would describe as civil disobedience, they are not included in this work. The prophets' behavior was not of their own free will. They were commanded by God to do what they did. When engaging in civil disobedience, one must be acting of one's own accord. The four biblical examples will illustrate this.

In the first passage, from the book of Exodus, the activities of the midwives, Shifrah and Puah, will be explored. The king of Egypt ordered the midwives to murder the Israelite infant boys they help deliver. The midwives refused to obey the king's order. The second passage is from the first book of Samuel. In chapter twenty-two of this book, Saul, the king, ordered his guards to kill a group of priests that he believed had been disloyal to him. The guards refused to carry out Saul's order. The book of Esther is the source of the third passage. The king issued a decree requiring his courtiers to bow down to Haman. Haman was the king's chief officer. Mordecai refused to bow down, citing his religious beliefs as preventing him from doing so. The final passage to be examined is from the book of Daniel. In this story, a decree was issued that made it

illegal, for thirty days, to pray to any person or god except the king. Daniel ignored this decree and maintained his practice of thrice daily prayers directed to God.

For each of these biblical passages, classic Jewish commentators will be examined to see what they have to say about these events. Though early commentators did not have the term "civil disobedience" to apply, how did they interpret these four sections? Finally, each of these biblical passages will be evaluated against Konvitz's criteria for civil disobedience. Do they meet the criteria for engaging in civil disobedience?

Chapter Three presents two examples of intertestamental texts having to do with civil disobedience. In Antiquities of the Jews by Joseph Flavius, the Jewish community refused to desecrate the Temple in Jerusalem by erecting in it a statue of the Roman Emperor, Caligula. In this story, the actions of the Jewish community actually succeeded in turning their oppressor into their ally. The four books of the Maccabees contain numerous examples of civil disobedience. These horrific accounts almost always result in acts of martyrdom. In comparison with the other examples, those who engaged in civil disobedience were not successful. These instances illustrate examples of people engaging in civil disobedience, knowing that it will almost certainly cost their lives.

Chapter Four looks at two Talmudic discussions relevant to this topic. In Shabbat 54b, the rabbis teach that one is responsible for preventing a person from committing an improper deed. Maimonides, in his codification of legal principles, offers an example of someone who sins against God, and refuses to change his or her ways. From this the obligation to publicly protest wrongful deeds is derived. In Sanhedrin 74a, the rabbis engage in a lengthy discussion about situations in which one should allow oneself to be

killed rather than commit a sinful act. Using Biblical sources, the rabbis explain how they determine which sins are so terrible that one should die rather than commit them. They then expand this rule to encompass times of religious persecution.

In the conclusion, the material will not only be reviewed, but also analyzed to see how it may instruct us today. How do these historical acts help us determine our own behavior? While the circumstances are not the same, our historical record of protest and civil disobedience may inform the choices we make today.

Chapter One: Defining Civil Disobedience

Civil disobedience is not simply breaking a law. The acts of criminals or terrorists are not civil disobedience. Certain conditions must be present and criteria met in order for an act to constitute civil disobedience. One modern definition of civil disobedience is, "refusal to obey civil laws in an effort to induce change in governmental policy or legislation, characterized by the use of passive resistance or other non-violent means."[1] When laws are broken in the practice of civil disobedience, it is because the law is considered unjust. The goals of civil disobedience include calling public attention to what is felt to be the injustice of the law, and persuading lawmakers to repeal or amend the law in question. One who practices civil disobedience is prepared to accept any penalties for breaking the law.

In order to understand civil disobedience one must realize that it assumes an inherent respect for the law. Parking illegally and hoping not to receive a parking ticket does not count as civil disobedience. Cheating on one's income taxes in order to receive a greater refund, or to have to pay less in taxes, does not count as civil disobedience. Small acts of subterfuge are only that, and not civil disobedience. Disobeying the law is only the beginning of civil disobedience. It seeks to bring attention to injustice, so civil disobedience must be public. Civil disobedience is engaged in only as a last resort, after all legal means have been exhausted. The respect for the law that one has means that even though one feels compelled to break the law, one will accept whatever punishment is imposed for breaking that law. More than this, one must disobey the law with the ultimate goal of changing the law, not simply avoiding the law.

In civil disobedience, one must respect the law enough to be willing to accept, or even to request, the penalty for not following the law. One asks for no special treatment. Socrates is the classic example of this. While in prison, awaiting execution, his friends had arranged an escape for him. Socrates refused this offer, arguing that he would accept the punishment, even if the verdict, itself, was an injustice. Socrates respected the legal order, even if its imperfections meant his own death.[2]

Civil disobedience is located on a continuum of political responsibility. As a citizen of the state, one may not immediately opt for civil disobedience. One must first explore other means of changing a policy or law. If there is a possibility of changing a law through existing structures, such as lobbying or legislative efforts, these must first be exhausted.

Lobbying is the practice of attempting to influence legislation. It can be done by individuals, groups, or professional lobbyists who are paid to represent the interests of individuals, organizations, or businesses. In lobbying, one attempts to influence a legislator to vote in a particular way. Another method of changing laws through established channels is by bringing suits before a court of law. Through this method, one may attempt to have a law overturned as unconstitutional. Only when no other reasonable options present themselves, may one engage in civil disobedience.

Three individuals have contributed to and exemplify the contemporary understanding of civil disobedience. In the modern world, the nineteenth century American author Henry David Thoreau was one of the first people to begin to define civil disobedience and its application. Thoreau wrote that the individual is "a higher and independent power."[3] Therefore it is the individual who grants power to the state, and

not the other way around. Thoreau argued that "it is not desirable to cultivate a respect for the law, so much as for the right."[4] Laws must be morally correct and a law that cannot make this claim, need not be followed. Thoreau goes so far as to say that such a law **must not** be followed. "If the laws of the state conflict with the Transcendental higher law of the conscience, than it was the individual's duty to obey the law within, rather than the civil law."[5] Thoreau's conscience would not allow him to obey an unjust law even for a brief amount of time. About such laws Thoreau asked, "Shall we be content to obey them, or shall we endeavor to amend them, and obey them until we have succeeded, or shall we transgress them at once?"[6] For Thoreau, the only acceptable option was the last. He argued that if enough people disobeyed the law, and went to jail, the governmental gears would be forced to a grinding halt. This would generate public awareness of the wrong, and make people willing to right the wrong.[7]

By extending the groundwork laid by Thoreau, it is possible to begin to look at laws against certain criteria. If laws are in violation of certain moral criteria, one must disobey them. According to Harris Wofford,[8]

> ...there is implicit in each law the alternative of obedience, or of civil disobedience with full acceptance of the consequences. Once we no longer see the law as a mechanical thing, once we free ourselves from the idea that as good citizens we have no choice but to obey any law passed by the legislature, no matter how bad, then of each law we must ask ourselves, is this a law that I should obey? Is it a just law? Is it so unjust that it needs to be resisted from the very inception, and cannot wait the slow process of parliamentary reform?[9]

In India, Mohandas Gandhi, through nonviolent resistance, led his country to freedom from British colonial rule, and gave world politics the concept of active nonviolent civil disobedience. Gandhi's inspirations included the Russian writer Leo Tolstoy, the teachings of Jesus Christ, and Henry David Thoreau.[10] It was in South

Africa that Gandhi first began to develop his own theories of civil disobedience. Between the 1890's and the 1910's, Gandhi worked to secure the civil rights of the Indian population living in that country. After returning to India, Gandhi began working with peasant farmers, providing them with legal assistance in handling their grievances against their landlords. In 1916, he was arrested for this activity.[11] In court, Gandhi responded to the charges against him by saying that while he had no wish to disobey the law, he owed "obedience to the higher law of our being, the voice of conscience."[12]

Gandhi, as a British-trained lawyer, had a great understanding and respect of the law and the legal process. But like Thoreau, Gandhi felt the higher law was one's conscience. Gandhi wrote that one who used civil disobedience was one who "obeys the laws of the state to which he belongs, not out of fear of the sanctions, but because he considers them to be good for the welfare of the society. But there come occasions, generally rare, when he considers certain laws to be so unjust as to render obedience to them a dishonor."[13] He had the highest hopes for civil disobedience and saw it as a "constitutional forum of persuasion, as a way to reach and move the minds and hearts of people and thus to mold the law."[14] Gandhi used the term, *Satyagraha* to describe his philosophy. This is Sanskrit for "truth and firmness."[15] By resisting oppression through non-cooperation, Gandhi believed he could expose wrongs, change laws, and ultimately convert enemies into friends.

In the United States, the non-militant practices of Martin Luther King, Jr. helped pave the way for civil rights legislation. While in college and seminary, King studied the writings of Thoreau and Gandhi. He was also influenced by the teachings of A.J. Muste, a twentieth century Catholic priest and pacifist who was against using any form of

violence in order to solve disputes.[16] King began to put these theories into practice in 1957, when he was made President of the Southern Christian Leadership Conference (SCLC). In this role, King made use of non-violent, direct action, such as marches, demonstrations, and boycotts, in order to protest segregation.[17]

In 1959, Martin Luther King traveled to India in order to gain a greater understanding of non-violent persuasion. This trip had a profound effect on King. He wrote of this trip:

> I left India more convinced than ever before that non-violent resistance is the most potent weapon available to oppressed people in their struggle for freedom. It was a marvelous thing to see the amazing results of a non-violent campaign... They way of acquiescence leads to a moral and spiritual suicide. They way of violence leads to bitterness in the survivors and brutality in the destroyers. But, the way of non-violence leads to redemption and the creation of the beloved community.[18]

In 1963, Martin Luther King was arrested in Birmingham, Alabama for participating in anti-segregation marches. While in jail, King wrote his now famous, "Letter from Birmingham Jail." In this "Letter" King spelled out many of his ideas about civil disobedience. He laid out his belief that an individual has both the moral right and responsibility to disobey a law that is unjust. He wrote:

> One may well ask: How can you advocate breaking some laws and obeying others? The answer lies in the fact that there are two types of laws: just and unjust. I would be the first to advocate obeying just laws. One has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws. I would agree with St. Augustine that 'an unjust law is no law at all.'[19]

Henry David Thoreau developed, in a modern context, the moral component to civil disobedience. Thoreau recognized and was guided by moral imperatives that he understood as overriding civil laws. Gandhi, as influenced by Thoreau, took this a step further. Guided by his conscience, Gandhi also wished to move the hearts of people in an

effort to create better laws and turn oppressors into allies. Martin Luther King, Jr. drew heavily upon the teachings and examples of Gandhi in developing his own understanding of civil disobedience. Religious thinkers and his own education as a minister also influenced King. King believed living under unjust laws would lead to spiritual death, but that non-violent resistance could create a new community of religiously redeemed individuals. The religious underpinnings of King's beliefs attracted religious leaders of many faiths to his cause.

Religious movements have at times found their moral beliefs and teachings in conflict with civil legislation. Religious institutions have at times had to determine how to resolve these conflicts. Which takes a higher precedence, a religion's moral laws, or a state's civil laws? How is resolution determined when these come into conflict with each other? Religious leaders and teachers have had to struggle with these conflicts, not only for themselves, but also for those who follow them. What does one do when one cannot live with certain laws, and all means of changing these laws have failed?

Throughout the ages, devout people of all religions have been imprisoned, have been exiled, and have been executed for defying civil authorities as a result of their attempt to be true to their beliefs. In a democracy, in the event that civil and religious conflicts cannot be resolved through legislative means, religious bodies must counsel their followers as to appropriate responses. When civil disobedience arises out of a clash between civil law and religious principles, the definition of civil disobedience differs slightly from the standard dictionary definition. The National Council of Churches has defined civil disobedience as the "deliberate, public, peaceable violation of a law deemed to be unjust, in obedience to conscience or a higher power and with recognition of the

state's right to punish the violator."[20] The National Council of Churches, for example, has counseled it members: "The Christian who is impelled to speak against an unjust law is not necessarily excused from action because of civil interdiction. He is responsible before God for his deeds as well as his words, and cannot yield that responsibility to anyone, even the magistrate."[21]

According to this understanding, civil disobedience must be deliberate. One must intend to commit acts of civil disobedience. The breaking of a law by accident or in ignorance is not civil disobedience. The act must be intentional, well thought out, and done with complete knowledge of the possible consequences and punishments. Acts of civil disobedience must be public. One cannot attempt to hide such acts. In fact, civil disobedience is often designed to focus public attention on the problem, and sometimes police and media may be given advance notice of such acts.

Civil disobedience must be engaged in with peaceful intentions, and there is no attempt to inflict harm or damage to others or to property. The one who participates in civil disobedience must be willing to suffer harm and not cause harm to others.

Those who enter into civil disobedience must feel they really have no choice but to do so. Their conscience or obedience to a higher law informs them of the injustice of a certain law or group of laws. Their conscience leads them to do everything they can to change laws they believe are unjust. The failure of other means and their enduring commitment to the need to follow a higher law leads them to accept the need to break an unjust law.

In order to enter into civil disobedience, one must first respect the civil order and recognize the legitimacy of the state. One recognizes that the goal is not to overturn the

government, or bring about anarchy, or subvert the social order, but only to change one law or group of laws. Engaging in civil disobedience does not make one a radical or a revolutionary. In fact, it may be quite the opposite. One who engage in civil disobedience may, under other circumstances, be a law-abiding citizen with a high respect for the political and legislative processes. One's willingness to accept the punishment for one's actions demonstrates both a respect for the law and a desire to be a member of his or her community.[22] Before resorting to civil disobedience, one must have first exhausted all other political and legislative means. As a respectful, law-abiding citizen, one may feel it is his or her duty to commit civil disobedience, as it is that person's obligation as a citizen of the state to protest those laws which he or she feels are unjust. By protesting, by breaking the law, and by willingly paying the penalty for breaking the law, it is hoped that others will see the injustice of the law, and that they too will work to repeal the law.

Just as non-Jews have asked themselves certain questions before breaking a law, so have Jews. And just as Christians, for example, have expected their faith to provide them with some guidance, so have Jews looked to Judaism for some guidance. One asks, when is it permissible to break the law, and how does one make this decision? If one does decide to knowingly break a law, where does one find the authority to do so?

Jewish history is marked by protests, from the midrashic story of Abraham smashing his father's idols, to Moses slaying the Egyptian, to Mordecai's refusal to prostrate himself before Haman. Samuel Broude[23] argues that in the Hebrew Bible, civil disobedience usually takes the form of a protest against the state's authority. This is done in order to assert the authority of God. "The king must constantly be reminded that he is

under God's rule, and that God's law must be administered by him, irrespective of the response of the people."[24]

The Talmud, of course, did not have as its disposal a term such as "civil disobedience." It's guidance is often expressed in the concept of *dina d'malchuta dina*, "the law of the land is the law." The premise of this concept is that Jews are to abide by civil law, as long as it does not come into direct conflict with religious law. This formulation allowed the Jews of third-century Babylonia to live as law-abiding citizens in a foreign land.[25]

Some of the issues that our ancestors, living as minorities in the Diaspora, faced still have meaning for us today. As citizens of the United States, and as Jews, we find ourselves obligated to both the civil laws and our religious beliefs. When these obligations do not come into conflict with each other, there is no problem. When, however, "the law of the land" and the tenets of Judaism do come into conflict with each other, is one permitted to disobey the civil law? Is one even **required** to break the law? *Dina d'malchuta dina* does not require the Jew to obey all the laws of civil government under all conditions, but only as long as they do not interfere with the teachings and values of Judaism.

How far is the Jew allowed to take civil disobedience? The ultimate form is martyrdom. But is every unconscionable law worth dying for? Surely, the rabbis did not want the ultimate extension of civil disobedience to come at the cost of Jewish survival. The classic legal formulation is spelled out in the Babylonian Talmud:

> For every law of the Torah the rule is that a man may transgress the commandment rather than suffer death – excepting idolatry, incest and murder...Murder may not be committed (even) to save one's life...For example, someone came to Raba and told him: "The general of my town has ordered me to

> go and kill a named person, and if not, the general will kill me." Raba said to him: "Let the general kill you rather than that you should commit murder. Who knows that your blood is redder? Maybe his blood is redder!" (Sanhedrin 74a)

These three exceptions, idolatry, incest and murder create the three-fold principle of civil disobedience. The duty to choose martyrdom would be limited to three transgressions: murder, idolatry and incest. Faced with the order to commit any of these acts, the legal principle is clear – civil disobedience is required, even at the cost of one's life.

To support this limit, the rabbis applied the principle of Leviticus 18:5: "And you shall guard My statutes and My ordinances, by doing which a man shall live." This verse is cited as a prooftext in Sanhedrin 74a. The rabbis understood this to mean that the Torah's purpose was that people should live by it, not die by it. "The emphasis of the Torah is on holy living and not on holy dying."[26]

Today, American Jews faced with the option of engaging in civil disobedience need a more contemporary set of guidelines than offered in the Talmud. When religious and civil law come into conflict today in the United States, it does not usually mean a life and death choice for Jews. For Samuel Broude, the conflict is between what is legal and what is moral. He writes:

> We are concerned with a conflict between legal and moral. It is possible to be legal, but immoral (the Nazis passed laws), and it may be necessary, in order to be moral, to be illegal. Certainly, we ought to conduct ourselves legally as long as we can, but it isn't always possible to be legal and moral at the same time. Then we must make a choice.[27]

For Broude, there really is no choice. He would advocate protesting against injustice, even if it means breaking the law.

Modern Jewish texts do not define civil disobedience in abstract terms. Milton Konvitz[28] has created a set of criteria necessary for engaging in civil disobedience. Konvitz has based these criteria on instances from the Hebrew Bible and Jewish history. The criteria[29] are:

1. There is a law, or civil decree.
2. Those required to obey the law find it unconscionable.
3. Those required to obey the law refuse to obey it.
4. Non-violent resistance is employed.
5. Those engaging in civil disobedience were willing to suffer the penalties for their resistance; they were often willing to pay the price with their lives.
6. There is the hope that the opponent will be converted. Not only will the law be repealed, but reconciliation will be achieved "by the assertion of the force of truth and love in the place of fear, hate, and falsehood."[30]

These criteria will be used to evaluate the biblical and intertestamental sources used in this paper. The final element is the most difficult to examine. Unless this hope is explicitly stated, it is not always possible to ascribe, in historical texts, this motive to those who engaged in civil disobedience.

While Milton Konvitz gives us a method of measuring certain historical events, he also gives us something more. Acts of civil disobedience are not limited to our ancient past. Recent history offers us many examples of civil disobedience, and these criteria may be applied to more modern events as well. In fact, these criteria may be used by those considering engaging in civil disobedience as a way of determining if this is an appropriate course of action.

[1] The American Heritage Dictionary of the English Language, Third Edition, 1996 ed., s.v. "civil disobedience."
[2] Milton R. Konvitz, "Conscience and Civil Disobedience in the Jewish Tradition," in Contemporary Jewish Ethics, ed. Menachem Marc Kellner (New York: Sanhedrin Press, 1978), 246.
[3] Henry David Thoreau, The Portable Thoreau, ed. Carl Bode (New York: The Viking Press, 1975), 136.
[4] Henry David Thoreau, The Writings of Henry David Thoreau, ed. Walter Harding (Princeton: Princeton University Press, 1970), 65.
[5] Walter Harding and Michael Meyer, The New Thoreau Handbook (New York: New York University Press, 1980), 138.
[6] Bode, 119.
[7] Harding and Meyer, 65.
[8] Harris Wofford was a friend of Martin Luther King, Jr. and a staff member of the United States Civil Rights Commission. When he wrote this he was an Assistant Professor of Law at the University of Notre Dame Law School. In 1960, he left this post to join the staff of President John Kennedy. Wofford went on to become President of Bryn Mawr College, and a United States Senator from Pennsylvania.
[9] Harris Wofford, "The Law and Civil Disobedience" (Talk at Gray's Inn), 20 November 1959, 4.
[10] John B. Severance, Gandhi – Great Soul (New York: Clarion Books, 1997), 51-53.
[11] Ibid., 63.
[12] Ibid., 63.
[13] Mohandas K. Gandhi, Non-Violent Resistance, ed. Bharatan Kumarappa (New York: Schocken Books, 1961), 7.
[14] Wofford, 4.
[15] Severance, 11.
[16] Jim Haskins, I Have a Dream – The Life and Words of Martin Luther King, Jr. (Brookfield, CT: The Millbrook Press, 1992), 27.
[17] Ibid., 49.
[18] A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr., ed. James M. Washington (San Francisco: Harper Collins Publishers, 1986), 25.
[19] Ibid., 289.
[20] Policy Statement on Religious Obedience and Civil Disobedience, Department of Social Justice, Division of Christian Life and Mission, National Council of Churches, 7 May 1968, 5.
[21] Ibid., 5-6.
[22] Konvitz, 245.
[23] Samuel G. Broude is a Reform rabbi. He has written extensively on Jewish ethics and civil disobedience. He is currently Rabbi Emeritus of Temple Sinai in Oakland, California.
[24] Samuel G. Broude, "Civil Disobedience in the Jewish Tradition," in Judaism and Ethics, ed. D. J. Silver (New York: Ktav, 1970), 233.
[25] Ibid., 235.

[26] Konvitz, 247.
[27] Broude, 237.
[28] Milton R. Konvitz was a Professor of Law at Cornell University. He is the author of several books on United States Constitutional Law and the editor of Judaism and Human Rights.
[29] Konvitz, 243.
[30] Ibid., 243.

Chapter Two: Civil Disobedience in the Hebrew Bible

A. The Case of Shifrah and Puah

In the first chapter of the book of Exodus, we encounter the Israelites in the land of Egypt. The Egyptians feared the increasing population of Israelites, and thus enslaved them and forced them to work at hard labor. This failed to decrease the Israelite's numbers. The king of Egypt, Pharaoh, then ordered the midwives who assisted the Israelite women in giving birth, to kill the male babies they delivered:

טו וַיֹּאמֶר מֶלֶךְ מִצְרַיִם לַמְיַלְּדֹת
הָעִבְרִיֹּת אֲשֶׁר שֵׁם הָאַחַת שִׁפְרָה וְשֵׁם הַשֵּׁנִית פּוּעָה׃ טז וַיֹּאמֶר בְּיַלֶּדְכֶן
אֶת־הָעִבְרִיּוֹת וּרְאִיתֶן עַל־הָאָבְנָיִם אִם־בֵּן הוּא וַהֲמִתֶּן אֹתוֹ וְאִם־בַּת הִוא
וָחָיָה׃ יז וַתִּירֶאןָ הַמְיַלְּדֹת אֶת־הָאֱלֹהִים וְלֹא עָשׂוּ כַּאֲשֶׁר דִּבֶּר אֲלֵיהֶן מֶלֶךְ
מִצְרַיִם וַתְּחַיֶּיןָ אֶת־הַיְלָדִים׃ [שני] יח וַיִּקְרָא מֶלֶךְ־מִצְרַיִם לַמְיַלְּדֹת
וַיֹּאמֶר לָהֶן מַדּוּעַ עֲשִׂיתֶן הַדָּבָר הַזֶּה וַתְּחַיֶּיןָ אֶת־הַיְלָדִים׃ יט וַתֹּאמַרְןָ
הַמְיַלְּדֹת אֶל־פַּרְעֹה כִּי לֹא כַנָּשִׁים הַמִּצְרִיֹּת הָעִבְרִיֹּת כִּי־חָיוֹת הַנָּה בְּטֶרֶם
תָּבוֹא אֲלֵהֶן הַמְיַלֶּדֶת וְיָלָדוּ׃ כ וַיֵּיטֶב אֱלֹהִים לַמְיַלְּדֹת וַיִּרֶב הָעָם וַיַּעַצְמוּ
מְאֹד׃ כא וַיְהִי כִּי־יָרְאוּ הַמְיַלְּדֹת אֶת־הָאֱלֹהִים וַיַּעַשׂ לָהֶם בָּתִּים׃[1]

(15) The king of Egypt spoke to the Hebrew midwives, one of whom was named Shifrah and the other Puah, (16) saying, "When you deliver the Hebrew women, look at the birthstool: if it is a boy, kill him; if it is a girl, let her live." (17) The midwives, fearing God, did not do as the king of Egypt had told them; they let the boys live. (18) So the king of Egypt summoned the midwives and said to them, "Why have you done this thing, letting the boys live?" (19) The midwives said to Pharaoh, "Because the Hebrew women are not like the Egyptian women: they are vigorous. Before the midwife can come to them, they have given birth." (20) And God dealt well with the midwives; and the people multiplied and increased greatly. (21) And because the midwives feared God, He established households for them.

From the text, we do not know if the midwives, Shifrah and Puah, are Israelite. We do know that they worked for the Israelite women. Pharaoh spoke directly to the midwives, giving them an order. The midwives, out of fear of God, disobeyed this order.

When Pharaoh learned that the midwives disobeyed his orders, he confronted them. Shifrah and Puah responded not by telling Pharaoh the truth, but by lying to him.

More than a few authors have portrayed the story of Shifrah and Puah as a landmark event in the history of civil disobedience. Milton Konvitz wrote about this story: "These events, which may have happened some thirty-four hundred years ago, relate to what may well be the first recorded instance in history of civil disobedience."[3] But does this case meet all of the qualifications for civil disobedience? Does this case meet the criteria according to traditional Jewish standards of civil disobedience, or perhaps according to contemporary notions of civil disobedience?

While to our modern ear, the story of Shifrah and Puah may sound like civil disobedience, what did it sound like to the classic commentators on the Hebrew bible? One might think that medieval Jews, living under oppressive conditions, would see themselves in this story. Shifrah and Puah would be heroines and role models in the fight of medieval Jews against religious persecution. While the commentators recognized the efforts of the midwives, they do not portray them as we so often do, as role models.

Rashi (Rabbi Shelomo Yitshaki), perhaps the most famous commentator on the Hebrew bible, lived in northern France from 1040 – 1105.[4] His commentary on this passage shows a greater concern with grammar than with politics. Up until the last ten years of Rashi's life, conditions in that part of France were favorable for Jews. This may have had some influence on Rashi's commentaries. According to Rashi's comments on verse 15, the midwives Shifrah and Puah are actually Jochebed, Moses' mother, and Miriam, Moses' sister. In verse 17, Rashi concerns himself with questions of grammar. He does, however, comment on "they kept the boys alive."

(יז) ותחיין את הילדים.

מספקות להם מים ומזון (ב"ר לח:ט; סוטה יא:).

Rashi interprets this as "they supplied them with water and food." In a Talmudic commentary in Sotah 11b of the Talmud, Rashi points out that instead of saying "they kept the boys alive," the verse might have read, "they did not put the infant boys to death."[6] By saying, "kept the boys alive," the implication is that the midwives played an active role in helping the baby boys survive.

Abraham Ibn Ezra was another prominent Hebrew Bible commentator of the medieval era. Ibn Ezra was born in Spain around 1092. A Bible commentator and roving scholar, Ibn Ezra died in 1167.[7] In his commentary on these verses, Ibn Ezra attempts to fill in some of the information he believes is missing, and uses his own time period as a way of understanding the biblical text.

(טו) ויאמר מלך מצרים למילדות, שרות היו על כל המילדות כי אין ספק כי יותר מחמש מאות מילדות היו[41], אלא אלו שתיהן שרות היו עליהן לתת מס למלך מהשכר[42]. וככה ראיתי היום במקומות רבות.[8]

"The king of Egypt said to the midwives" – They (Shifrah and Puah) were in charge of all of the midwives. No doubt there were more than five hundred midwives, but they were in charge of them, to give the king the tax, as I have seen today in many places.

Ibn Ezra points out that Shifrah and Puah could not be the only midwives to the Israelite women. They were in charge of the many midwives who served the Israelite women, which would explain why Pharaoh spoke to them. Shifrah and Puah would instruct the other midwives to obey the Pharaoh. This, however, was not the case. Ibn Ezra implies that not only did Shifrah and Puah **disobey** the Pharaoh's orders, they instructed the other midwives to do the same. In addition to supervising the midwives,

Shifrah and Puah collected a tax from them, which they turned over to the king. Apparently Pharaoh trusted Shifrah and Puah enough to give them this responsibility.

In Ibn Ezra's commentary on verse 17, he takes the midwives' disobedience a step further:

> ותחיין, בכל כוחן יותר ממשפט הראשון. כי מה צורך היה להאריך? [9]

> "They let them live" – with all their strength, more than before the law, what was needed to make them live.

The midwives did more than they had to. Like Rashi, Ibn Ezra tells us that they did everything they could to insure the survival of the Israelite baby boys.

Several hundred years later, Obadiah ben Jacob Sforno wrote his biblical commentary. Born in Cesena, Italy around 1470, Sforno was also a philosopher and a physician.[10] Sforno, like Ibn Ezra, observes that there must have been more than two midwives. Sforno comments on verse 15:

> (טו) למילדות העבריות, לאותן שהיו בעיר מצרים. כי אמנם בעם כל כך רב לא היו שתי מילדות בלבד. אבל אחר שבגדו במלך מילדות מצרים, אחר שדיבר להן המלך בעצמו, לא שם לבו לבטוח במילדות שאר המקומות. [11]

> To the Hebrew midwives – certainly, in the Egyptian city with such a large population, there were not only two midwives, but after the midwives (Shifrah and Puah) betrayed the king, after he had spoken to them personally, he could not put his trust in the midwives in other places.

Shifrah and Puah used their influence to persuade the other midwives to disobey the king's orders, and as a result, Pharaoh could not rely on any of the midwives. In his commentary on verse 18, Sforno elaborates on the conversation between Pharaoh and Shifrah and Puah:

(יח) מדוע עשיתן, שבגדתן בי , כי הנה כשצויתי לא מאנתן לעשות מצותי, ובטחתי בכן שתמיתו את הילדים, ותוחלתי נכזבה.[12]

Why have you done this thing? – You betrayed me, for when I made my commandment, you did not refuse to do my commandment, and I trusted you to kill the children, and my hopes were deceived.

ותחיין את הילדים , ולא די שלא עשיתן מצותי להמיתן כי גם נתתם עצות להחיותם.[13]

And you let the boys live – Not only didn't you do as I commanded, to kill them, but you also gave them (the other midwives) advice on how to save their lives (the infants boys).

Here, Pharaoh implies that Shifrah and Puah gave him no warning that they would not follow his commandment. Pharaoh then confronts them with his knowledge that they counseled the other midwives against following his orders.

In his work, Me'Am Lo'ez, Yaacov Culi presents an encyclopedic commentary. Culi lived from approximately 1685 to 1732. Born in Jerusalem, he eventually moved to Constantinople, where he was a rabbinic scholar and Judeo-Spanish author.[14] Of Shifrah and Puah, Culi says they "were the heads of the midwives' guild, overseeing all the others, and collecting the required taxes on their fees."[15] Culi presents an elaborate response by Shifrah and Puah when confronted by Pharaoh:

They said, "The Israelites are not stupid. They were fully aware that you had summoned us, and it was not difficult for them to figure out the reason. They knew that you wanted us to harm or kill the newborn infants. Since they were able to do without us

anyway, they dispensed with our services completely. We realized that the fact that we provided food for the newborns makes us look suspicious. But we did not do that out of any love for the children. When we saw that the women no longer sought our services, we devised a plan through which we would gain a reputation for providing food for indigent families. This would provide an inducement for women to seek our services, and we would then be able to obey your orders and kill the babies."[16]

While this account may not sound very plausible, Culi suggests Shifrah and Puah told Pharaoh this story in order to be able to do just the opposite, continue saving the baby boys. According to Culi, Pharaoh believed the midwives, which is why they were not put to death for disobeying him.

Nahum Sarna, the modern commentator, also questions the assumption that there were only two midwives for all of the Israelite women. Sarna even suggests that the two names, Shifrah and Puah, were actually the names of guilds of midwives.[17] Like Konvitz, Sarna sees the behavior of the midwives as civil disobedience: "Their defiance of tyranny constitutes history's first recorded act of civil disobedience in defense of a moral imperative."[18]

Sarna suggests that the moral and ethical behavior of the midwives was motivated by "fear of God." In the Torah, this phrase is used several times in association with ethical and moral behavior. In Genesis 20:11, Abraham tells Abimelech that he feared for his life because, "surely, there is no fear of God in this place." In Leviticus 19:14, the fear of God and ethical behavior are directly linked: "You shall not insult the deaf, or place a stumbling block before the blind. You shall fear your God: I am the Lord."[19] This is also the case in verse 32 of the same chapter: "You shall rise before the aged and show deference to the old; you shall fear your God: I am the Lord."[20] In the book of Deuteronomy, 25:18, one is reminded of Amalek, who "undeterred by fear of God,"

attacked the Israelites in the desert. And Shifrah and Puah, fearing God, refused to do as Pharaoh ordered them.

Shifrah and Puah must have known that defying the Pharaoh would mean death. According to the Talmudic dictum, when forced to commit murder, idolatry, or incest, one must refuse to do so, even if the cost is one's life. What Shifrah and Puah did was correct, was what God expected. It demonstrated that they feared and obeyed God.

If one applies the test of a continuum of political responsibility, the case of Shifrah and Puah would fail. They did not first attempt to change the Pharaoh's decree. Of course, we cannot know if that was actually an option or not, so this test may not be applicable to them Though Konvitz cites this story as an act of civil disobedience, it is not clear that it meets all of his criteria. There is no evidence that the midwives attempted to convert Pharaoh. They do not try to convince him that his decree is futile. They may have used their influence, as some of the medieval commentators suggest, to convert the other midwives to their cause. But there is no indication that Shifrah and Puah tried to convince Pharaoh that his decree was morally wrong, and therefore should be repealed.

B. Saul and the Priest, Ahimelech

In Chapter 22 of the first book of Samuel, the saga of the King, Saul, his son, Jonathan, and his son-in-law, David continued. David had fallen out of favor with the King and has fled for his life, and was in hiding. Saul berated his courtiers for not informing him of the whereabouts of David. At this point Doeg, the Edomite, stepped forward and volunteered the information that he saw David with the priest Ahimelech. The priest not only prayed to God on David's behalf, but he gave David provisions and a sword. The King sent for Ahimelech and confronted him. Saul asked the priest why he aided David, who was the King's enemy. Ahimelech pleaded ignorance. He knew nothing of any of the strife between Saul and David. In fact, he assumed just the opposite. In verse 14, Ahimelech replied to the King, "But who is there among all your courtiers as trusted as David, son-in-law of your majesty and obedient to your bidding, and esteemed in your household?"[21] Saul did not believe the priest.

טז וַיֹּאמֶר הַמֶּלֶךְ מוֹת תָּמוּת אֲחִימֶלֶךְ אַתָּה וְכָל־בֵּית אָבִיךָ: יז וַיֹּאמֶר
הַמֶּלֶךְ לָרָצִים הַנִּצָּבִים עָלָיו סֹבּוּ וְהָמִיתוּ | כֹּהֲנֵי יְהוָה כִּי גַם־יָדָם עִם־דָּוִד
וְכִי יָדְעוּ כִּי־בֹרֵחַ הוּא וְלֹא גָלוּ אֶת־אָזְנִי [אָזְנָם] וְלֹא־אָבוּ עַבְדֵי הַמֶּלֶךְ
לִשְׁלֹחַ אֶת־יָדָם לִפְגֹעַ בְּכֹהֲנֵי יְהוָה: יח וַיֹּאמֶר הַמֶּלֶךְ לְדוֹאֵג [לְדוֹאֵג]
סֹב אַתָּה וּפְגַע בַּכֹּהֲנִים וַיִּסֹּב דּוֹאֵג [דּוֹאֵג] הָאֲדֹמִי וַיִּפְגַּע־הוּא בַּכֹּהֲנִים
וַיָּמָת | בַּיּוֹם הַהוּא שְׁמֹנִים וַחֲמִשָּׁה אִישׁ נֹשֵׂא אֵפוֹד בָּד:[22]

(16) But the king said, "You shall die, Ahimelech, you and all your father's house." (17) And the king commanded the guards standing by, "Turn about and kill the priests of the Lord, for they are in league with David; they knew he was running away and they did not inform me." But the king's servants would not raise a hand to strike down the priests of the Lord. (18) Thereupon the king said to Doeg, "You Doeg, go and strike down the priests." And Doeg the Edomite went and struck down the priests himself; that day, he killed eighty-five men who wore the linen ephod.[23]

Why did the King's own guards disobey his orders? Were they afraid to kill a priest, or did they refuse because the victims were unarmed civilians? Did their

conscience inform them that the King's command was unjust? Milton Konvitz cites this as another "first" in the history of civil disobedience: "This may be the first recorded instance of non-violent civil disobedience by military men in refusing to obey superior orders."[24] Like Shifrah and Puah, the guards had no precedent to turn to. Unlike Shifrah and Puah, these guards were given the command by a Jewish king to whom they were expected to be loyal. How did the rabbis understand the behavior of the guards? Did they see them as heroes for standing up to injustice, or as soldiers who did not follow orders, and therefore deserved to be court marshaled?

Rashi's first comment on verse 17 is regarding the identity of the guards.

(יז) לרצים הנצבים עליו . חנר ועמסה היו:

25

Who were standing beside him – They were Abner and Amasa.

Rashi seems to be drawing on the Talmud, in Sanhedrin 49a, which identifies Abner and Amasa.[26] Abner was the chief general of King Saul's army. When Saul died, Abner supported Saul's son, Ish Boshes, in his attempt to gain the throne. Amasa was the commander of the army of Absalom, one of the sons of David. Amasa led Absalom's army in a revolt against King David. This background information would suggest that Saul was giving orders to his senior officers, those whom he trusted to carry out his every command.

While most of the commentators agree with Rashi's explanation, one commentator goes a step further. David Kimhi, known by the acronym "Radak." Was born in France, and lived from 1160 to 1235.[27] He comments on verse 17:

הדרש הזה יהיה פירוש ויאמר המלך לרצים
ולנצבים עליו כי אבנר ועמשא לא היו רצים אלא שרים: [28]

The explanation of the passage is: And the King said to the footmen and the officers, who were beside him, since Abner and Amasa were officers, not footmen.

The king was speaking directly to Abner and Amasa because they were officers, implying both their loyalty to the king and their authority over the footmen. Abner and Amasa, however, would not carry out the King's order. According to A. J. Rosenberg, a commentary in the Palestinian Talmud suggests that Abner and Amasa were of such high character, that they "were willing to return to Saul their belts, weapons, and reins, the uniform of their office, to avoid slaying the priests."[29]

Yaakov Culi suggests the reply Abner and Amasa gave to Saul:

אמרו לו: מה יש לך עלינו (מה נתת לנו) הלא רק מיני כלי הזיין
והתכשיטים (שנותנים המלכים להוד ולתפארת), קח אותם. [30]

"What have you given us? The only kind of weapons we have are jewels (that kings gave them for glory and splendor). Here, take them.

With this reply, they had hoped to sidetrack the king. Abner and Amasa argued that what they had were not really weapons, but only ceremonial arms that came with their office. They had nothing with which to kill Ahimelech.

Rashi believes that Abner and Amasa attempted to explain to the King why they could not carry out his order. He explains this in his commentary on verse 17, by providing a Biblical prooftext:

ולא אבו. דרשו חכין ורקין כל חים חסר
ימרה חת פיך וגו' (יהושע ח' י"ח) יכול חפי' לדבר עבירה
תלמוד לומר רק: [31]

"And they would not" – They explained 'but's and only's.' "Any man that rebels against your commands, etc., (Joshua 1:18). One might think that even for a sin, but Scripture states, 'only.'

Rashi refers to Joshua 1:18. The complete verse is, "Any man who flouts your commands and does not obey every order you give him shall be put to death. Only be strong and resolute."[32] Yaacov Culi explains how this verse applies:

ונתבאר שהיו אלה אבנר ועמשא, שסירבו לקיים מצות המלך. (לה) ואע"פ שאמר ה' ליהושע כל איש אשר ימרה את פיך יומת (יהושע א), אבל זה רק לדבר מצוה, אבל לא לדבר עבירה שנאמר רק חזק ואמץ.[33]

But it is explained that they, Abner and Amasa, refused to carry out the order of the King. Even though God said to Joshua, "Any man that flouts your commands...shall be put to death" (Joshua 1:18), but this applies only to a mitzvah, but not to a sin, as Scripture says, "only be strong and resolute."

The verse in Joshua states that one must obey all of the orders of the king, or suffer the penalty of death. Like Rashi before him, Culi understood the last words of this verse, "only be strong and resolute" to have a limiting effect on the verse. It places a limit on the king's power. One is required to obey all of the king's orders, so long as those orders do not require one to commit a sin. One must disobey the king's orders to commit a sin, and in order to do so, one would need to "be strong and resolute."

According to Rashi, Abner and Amasa explained all of this to the King. While this did not convince the King that this order to kill Ahimelech and the other priests was wrong, Saul did not force Abner and Amasa to commit a sin. The King turned to Doeg and ordered him to kill the priests. Doeg complied with the King's commandment and killed the priests.

By Talmudic standards, as in the case of Shifrah and Puah, Abner and Amasa did the right thing. They had no choice but to risk their own lives, rather than commit the sin of murder. To bolster their argument, the rabbis employed the text from Joshua 1:18, to suggest that one should not follow the orders of a king to commit a sin.

The Biblical text does not give us all of the information necessary to determine if the act of Abner and Amasa qualified as civil disobedience by contemporary standards. Some of the commentators filled in what may be the missing pieces. We do know that there was a law which Abner and Amasa found unconscionable. While we are not sure why they would not kill the priests, it is clear that they refused to do so. This act constituted their non-violent resistance. As guards or officers of the King, they obviously were aware that defying him could result in their deaths. According to Yaacov Culi, Abner and Amasa handed their insignias of office over to Saul. They would rather resign from their positions as the King's officers than carry out an unjust command.[34]

From the text itself, we do not know if Abner and Amasa attempted to convert Saul, and make him understand the error of his order. We know they refused to carry out the King's orders, but what did Abner and Amasa say to the King? Rashi suggested that they actually tried to explain to Saul the limits of his authority and why they could not carry out his order. Using Rashi's comments, we are able to successfully apply the criteria of attempting to convert one's opponent.

Even without the help of the commentators, this story still serves as an example of civil disobedience. Abner and Amasa had only their conscience to rely on in determining their right not to follow Saul's orders. Centuries later, the Talmud would use this very situation to address the question of whether there is agency for wrongdoing. Can one

blame one's behavior on someone else? As it spells out in Sanhedrin 74a, when a man was ordered by his town's general to kill another man, Raba told him, "Let the general kill you rather than that you should commit murder." Therefore, the Talmud teaches that merely saying that one was only carrying out the orders of a superior is not a defense. As Moshe Greenberg wrote, "...his moral autonomy is not canceled by his agency and he remains responsible for his acts."[35]

Abner and Amasa had no legal precedent to stand on. They did have their conscience, their understanding of God's will, and their understanding of their faith to rely on to tell them what the right course of action was.

C. Mordecai and Standing Up for Your Beliefs

In this well-known story, Mordecai refused to bow down to Haman, who had just been made the king's highest ranking officer. The king had commanded all of his servants who were at the king's gate to bow down to Haman. Mordecai refused to bow down. As we see from the text, Mordecai's behavior not only put his life in danger, it caused dire consequences for the entire Jewish community.

ב וְכָל־עַבְדֵי
הַמֶּלֶךְ אֲשֶׁר־בְּשַׁעַר הַמֶּלֶךְ כֹּרְעִים וּמִשְׁתַּחֲוִים לְהָמָן כִּי־כֵן צִוָּה־לוֹ הַמֶּלֶךְ
וּמָרְדֳּכַי לֹא יִכְרַע וְלֹא יִשְׁתַּחֲוֶה׃ ג וַיֹּאמְרוּ עַבְדֵי הַמֶּלֶךְ אֲשֶׁר־בְּשַׁעַר הַמֶּלֶךְ
לְמָרְדֳּכָי מַדּוּעַ אַתָּה עוֹבֵר אֶת מִצְוַת הַמֶּלֶךְ׃ ד וַיְהִי בְּאָמְרָם [כְּאָמְרָם]
אֵלָיו יוֹם וָיוֹם וְלֹא שָׁמַע אֲלֵיהֶם וַיַּגִּידוּ לְהָמָן לִרְאוֹת הֲיַעַמְדוּ דִּבְרֵי
מָרְדֳּכַי כִּי־הִגִּיד לָהֶם אֲשֶׁר־הוּא יְהוּדִי׃ ה וַיַּרְא הָמָן כִּי־אֵין מָרְדֳּכַי כֹּרֵעַ
וּמִשְׁתַּחֲוֶה לוֹ וַיִּמָּלֵא הָמָן חֵמָה׃ ו וַיָּבֶז בְּעֵינָיו לִשְׁלֹחַ יָד בְּמָרְדֳּכַי לְבַדּוֹ
כִּי־הִגִּידוּ לוֹ אֶת־עַם מָרְדֳּכָי וַיְבַקֵּשׁ הָמָן לְהַשְׁמִיד אֶת־כָּל־הַיְהוּדִים אֲשֶׁר
בְּכָל־מַלְכוּת אֲחַשְׁוֵרוֹשׁ עַם מָרְדֳּכָי׃[36]

(2) All the king's courtiers in the palace gate knelt and bowed low to Haman, for such was the king's order concerning him; but Mordecai would not kneel or bow low. (3) Then the king's courtiers who were in the palace gate said to Mordecai, "Why do you disobey the king's order?" (4) When they spoke to him day after day and he would not listen to them, they told Haman, in order to see whether Mordecai's resolve would prevail; for he had explained to them that he was a Jew. (5) When Haman saw that Mordecai would not kneel or bow low to him, Haman was filled with rage. (6) But he disdained to lay hands on Mordecai alone; having been told who Mordecai's people were, Haman plotted to do away with all the Jews, Mordecai's people, throughout the kingdom of Ahasuerus.[37]

Rashi's comments on this section are rather terse, though his comments on verse two clarify why Mordecai would not bow down to Haman:

(ב) כורעים ומשתחוים. שעשה עצמו מלוה לפיכך ומרדכי לא יכרע ולא
ישתחוה׃

Kneel and prostate themselves – Because he (Haman) made himself a god; therefore Mordecai would not kneel and would not prostate himself.

Haman may have thought quite highly of himself. He may even have thought he was a god. According to Rashi, that is the reason why he did not bow down. However, this opinion is not universally accepted. According to a Midrash (rabbinic commentary), on the book of Esther, once Haman was promoted, "he attached an embroidered image to his garment upon his breast, and everyone who bowed down to Haman, bowed down to the image."[39] This story suggested that Mordecai's refusal to bow down was his way to refuse to engage in idol worship.

The text tells us that Mordecai's refusal was a daily occurrence. Each day the king's servants would tell Mordecai that he had to bow down to Haman, and each day Mordecai told the servants that he would not bow down because he was a Jew. Finally, the servants reported this to Haman. The Biblical text does not offer a reason for their actions. According to Rashi, the servants go to Haman to see if Mordecai's excuse would be sufficient for him. Rashi comments on this.

(ד) היעמדו דברי מרדכי . המומר שלא ישתחוה עולמית כי הוא יהודי והוזהר על ע"ג:[40]

Whether Mordecai's words will stand up – He (Mordecai) said that he would never bow down because he was a Jew and he had been warned about idol worship.

According to Rashi's interpretation of the events, Mordecai's non-violent resistance, as we would call it, was not a single occurrence. It happened repeatedly. Mordecai did explain to the guards why he would not bow down. According to a midrash (Midrash Rabbah – Esther), Mordecai explained to the guards, "Our master,

Moses, admonished us in the Torah, saying, 'Cursed by the man that maketh a graven or molten image' (Deuteronomy 27:15)"[41]

In Ibn Ezra's comment on verse 2, he reiterates the midrash:

(ב) יכרע וישתחוה . ידועים ונכון מה שדרשו רז"ל כי צורת צלם וע"ג
בבגדיו או על מצנפתו [42]

Kneel and bow down – It is known that it is correct what the rabbis explained – that the form of an image was on his (Haman's) clothes or his hat.

In his comments on verse 4, Ibn Ezra questions Mordecai's behavior. Why did he put all of the Jews in danger?

(ד)כי הגיד להם אשר הוא יהודי. כי הוא אסו' לו. והנ"ש לשאול
למה הכניס מרדכי עצמו בסכנה גם הכניס כל ישראל היה
ראוי שידבר לאסתר ותסירנו משער המלך ולא יכעיס את
המן אחר שראה שהשע' מגעת לו. והתשוב' כי לא יוכל לסור
משער המלך כי אם יסור בלא מצות המלך דמו בראשו: [43]

For he told them he was a Jew – and that it is forbidden to him. We can ask why did Mordecai place himself in danger, and all of Israel? He should have spoken with Esther and she would have him (Mordecai) removed from the king's gate, and he would not anger Haman, after he had seen that Haman's time had arrived. The answer is he would not have been able to move from the king's gate because if he moved without the king's permission, he would be endangering his life.

According to Ibn Ezra, Mordecai really had no choice. The only way he could leave the gate was with the king's permission. And he was forbidden to worship idols. Yaacov Culi explains that Mordecai actually had a number of options that would have allowed him to stay at the gate and avoid endangering his life. Mordecai would not settle for this. He was proud of his heritage, and in fact, wanted to serve as an example to others.

וכיון שנשא דמות ע"ז והוא עשה עצמו ע"ז, אסור היה להשתחוות לו אע"פ שהיה בדבר משום סכנה. (כט) ולכן נאמר לא יכרע ולא ישתחוה. ללמדנו שזלזל בהמן בב' דברים. האחד שכולם היו משתחוים לו, והוא לא החשיבו כלל. והשני שעשה לו בזיון זה בשער המלך. שאילו היה מבזה אותו במקום סתר היה סובל הדבר, אבל במקום זה היה בזיון גדול להמן. ועוד אילו עשה עצמו מרדכי כאילו הוא ישן או כאילו אינו רואה אותו כלל, לא היה איכפת לו כל כך להמן אע"פ שהיה מבין שעושה כן בכוונה שלא להשתחוות לו, שהיה יכול לומר שאינו רואה אותו. אבל מרדכי הכעיסו בזה שהיה פותח עיניו לרווחה והיה רואה אותו ולא קם ולא זע. שלאחר שהבין כונתו של המן שהוא רוצה שישתחוו לע"ז החליט מרדכי לקדש השם ברבים. [44]

But since he wore the figure of an idol, and he made himself into an idol, it was forbidden for him (Mordecai) to bow down to him (Haman), even though there was danger from doing this. First everyone bowed down to him, but he (Mordecai) would not pay any attention to him at all. Second, he had done this humiliating thing at the king's gate. If he had done this in private he (Haman) would have suffered this thing, but in this place, it was a great humiliation to Haman. And also, if Mordecai had pretended that he was asleep, or that he didn't notice him at all, Haman would not have minded it so much. Even when he (Mordecai) understood his (Haman's) intention, he would not bow down to him, and he would not say that he didn't see him. But Mordecai angered him by opening his eyes wide and not getting up and not moving. After Mordecai understood Haman's intention, that he wanted him to bow down to the image, Mordecai decided to sanctify God's name in public.

Mordecai could have compromised and not angered Haman. He could have pretended he didn't see Haman, or perhaps just give him a short, quick bow. He would not limit his behavior to private situations. Mordecai could have taken an easy way out, but would not. Mordecai could have tried to keep his actions out of the public eye, but he decided that he wanted others to see how he treated Haman.

As Yaacov Culi points out, Mordecai took the high road. He refused to do anything that did not sanctify God's name. Some commentators felt he had no choice but to do what he did. Even Ibn Ezra, who questioned Mordecai's tactics, came to this conclusion. By Talmudic standards, Mordecai clearly did the right thing. If Haman

either served as a human idol or, as the midrash suggests, displayed symbols of idolatry on his clothing, one should risk death rather than engage in idol worship.

Does Mordecai's behavior constitute civil disobedience by our modern criteria? There was a decree that Mordecai was required to obey. He found it unconscionable and therefore refused to obey it. Mordecai engaged in non-violent resistance by refusing to bow to Haman, even though he must have been aware that there would be a penalty for not obeying the king's orders. Mordecai's explanation of why he could not bow down to Haman was his attempt to make the guards understand, so that they would allow him to continue to not bow before Haman. In addition, Mordecai took the opportunity to engage in non-violent resistance in a very public fashion. In this way he set an example for others, with the hope that they would follow him. By these criteria, Mordecai's behavior falls within the category of civil disobedience.

D. Daniel and the Right to Pray

The case of Daniel differs from the cases of the midwives in Egypt and of Saul's guards. In those two cases, there was a refusal to commit an act, which they were ordered to do, because they felt the act was unjust or unconscionable. In the case of Daniel, he does not refuse to perform an act, but performs an act in violation of the law. Daniel's act "was the first instance of what became a pattern in Jewish life and history – the worship of God without regard to the fact the such worship had been prohibited at the price of one's life."[45]

In this story, Darius had just been made king. He appointed 120 ministers to be in charge of the kingdom. Over these 120, Darius appointed three chief ministers. Daniel was one of these three chief ministers. Darius was so pleased with Daniel that he was considering elevating Daniel to an even higher position, putting him in charge of the entire kingdom. The other ministers were jealous of Daniel and plotted against him. They convinced the king to issue a decree that for the next thirty days no one was permitted to make a petition to any person or god, except King Darius. The penalty for doing otherwise was death in the lion's den.

ז אֱדַיִן סָרְכַיָּא
וַאֲחַשְׁדַּרְפְּנַיָּא אִלֵּן הַרְגֹּשׁוּ עַל־מַלְכָּא וְכֵן אֲמְרִין לֵהּ דָּרְיָוֶשׁ מַלְכָּא לְעָלְמִין
חֱיִי׃ ח אִתְיַעֲטוּ כָּל | סָרְכֵי מַלְכוּתָא סִגְנַיָּא וַאֲחַשְׁדַּרְפְּנַיָּא הַדָּבְרַיָּא
וּפַחֲוָתָא לְקַיָּמָה קְנֵם מַלְכָּא וּלְתַקָּפָה אֱסָר דִּי כָל־דִּי־יִבְעֵה בָּעוּ
מִן־כָּל־אֱלָהּ וֶאֱנָשׁ עַד־יוֹמִין תְּלָתִין לָהֵן מִנָּךְ מַלְכָּא יִתְרְמֵא לְגֻב אַרְיָוָתָא׃
ט כְּעַן מַלְכָּא תְּקִים אֱסָרָא וְתִרְשֻׁם כְּתָבָא דִּי לָא לְהַשְׁנָיָה כְּדָת־מָדַי
וּפָרַס דִּי־לָא תֶעְדֵּא׃ י כָּל־קֳבֵל דְּנָה מַלְכָּא דָּרְיָוֶשׁ רִשְׁם כְּתָבָא וֶאֱסָרָא׃
יא וְדָנִיֵּאל כְּדִי יְדַע דִּי־רְשִׁים כְּתָבָא עַל לְבָיְתֵהּ וְכַוִּין פְּתִיחָן לֵהּ בְּעִלִּיתֵהּ
נֶגֶד יְרוּשְׁלֶם וְזִמְנִין תְּלָתָה בְיוֹמָא הוּא | בָּרֵךְ עַל־בִּרְכּוֹהִי וּמְצַלֵּא וּמוֹדֵא
קֳדָם אֱלָהֵהּ כָּל־קֳבֵל דִּי־הֲנָא עָבֵד מִן־קַדְמַת דְּנָה׃ יב אֱדַיִן גֻּבְרַיָּא
אִלֵּךְ הַרְגֹּשׁוּ וְהַשְׁכַּחוּ לְדָנִיֵּאל בָּעֵא וּמִתְחַנַּן קֳדָם אֱלָהֵהּ׃[46]

(7) Then these ministers and satraps came thronging in to the king and said to him, "O King Darius, live forever! (8) All the ministers of the kingdom, the prefects, satraps, companions, and governors are in agreement that a royal ban should be issued under sanction of an oath that whoever shall address a petition to any god or man, beside you, O King, during the next thirty days shall be thrown into a lions' den. (9) So issue the ban, O king, and put it in writing so that it be unalterable as a law of the Medes and Persians that may not be abrogated." (10) Thereupon King Darius put the ban in writing. (11) When Daniel learned that it had been put in writing, he went to his house, in whose upper chamber he had had windows made facing Jerusalem, and three times a day he knelt down, prayed, and made confession to his God, as he had always done. (12) Then those men came thronging in and found Daniel petitioning his God in supplication.[47]

Despite the ban, Daniel continued his practice of praying in his home, three times a day. As always, Daniel offered his prayers at a window facing Jerusalem. The ministers who had plotted against Daniel came to Daniel's house to find him praying. Naturally, the ministers reported this to the king. The king endeavors to find a way to save Daniel, but cannot and is forced to see his law carried out. Daniel was put into the lions' den. In the morning, the king rushed to the den, to find Daniel alive and unharmed, saved by an angel of God.

In the commentary of Saadiah Gaon, Daniel is portrayed as someone who would not be deterred from his usual prayers. Saadiah Gaon was an early commentator, who lived from 882 – 942. This outstanding scholar was born in Egypt, and lived in Tiberias and Babylonia, where he was appointed head of the Academy of Sura.[48] On verse 11, he comments:

(יא) ודניאל. כשידע שנשנילו. נרשם הכתב בא אל
ביתו: וכוין. וחלונות פתוחות לו בעלייה שלו: נגד ירושלם.
כדי שתהא תפילתו נשמעת שהיה מכוון את לבו נגד בית המקדש
שנאמר והיו עיני ולבי שם כל הימים: וזמנין תלתא. ושלש פעמים
ביום שחרית וערבית ומנחה היה כורע על ברכיו ומתפלל ומודה לפני אלהיו ושמא
תאמר אותו היום בתחילה ראה מכתוב כל קבל די הוה עבד מן קדמת דנא
כמו שהיה רגיל לעשות קודם

And Daniel – He knew the decree was written about him; he went to his house.
An opening – Where the windows were open in his attic.
Toward Jerusalem – So the prayers of his soul would be heard and he directed his heart toward the Beit ha-Mikdash (The Temple), as it is said, "My eyes and heart were there all the days."
Three times – Three times a day, morning, evening, and afternoon he would bow down on his knees and pray and give thanks to his god. You shouldn't say that he took on these obligations that day, because he was used to doing that, even before.

According to Saadiah Gaon, Daniel knew the decree referred specifically to him. He did not begin praying that day, just so he could defy the king's ban. That was never his intention. Daniel, however, would not let the ban change his routine in any way. He went to his home and prayed, just as he had always done. With the window in his attic open, Daniel prayed out loud, even though he might be heard.

Rashi sums up Daniel's behavior with this comment on verse 11:

[50] ככל אשר היה עושה לפני זאת :

All that he had done before this.

Rashi explained that there is no indication that Daniel changed any of his behavior. Daniel had always prayed three times a day; he had always knelt down; he had always prayed by an open window in his attic, in order to face Jerusalem. Daniel's behavior was identical to his behavior before the ban. It was not more public, or private, than before.

A later commentary on the book of Daniel was written by David Altschuler, a Galician (Polish) exegete of the 18th century[51]. Altschuler's commentary on the text is known as Metsudat David, or Citadel of David. His comment on verse 11 also points out that Daniel was fully aware of the ban:

(יא) כדי ידע . כאשר ידע אשר כתב
52 המלך מכתב ידו על הכתב :

When he knew – When he knew that the king had written the decree, he knew what the decree was about.

Altschuler is the one commentator who interprets Daniel's place of prayer as a secret or hidden place, within his home. He continues his commentary on verse 11:

עלי . נכנס בביתו במקום
מוצנע ועל העליה היה לו חלונות פתוחות מול ירושלים לכוין
53 בתפלתו מולה:

Up – he enters his house, in a secret place, and in the upper part he had windows open-facing Jerusalem, so as to direct his prayers toward it.

According to this, it seems that Daniel was, in fact, trying to be discreet. The place in his home where Daniel prayed was in a hidden part of the house, perhaps the attic. This might be so that the other people in his household would not see him praying, or even know that he prayed. Despite the secrecy, Daniel did pray by an open window. Though the window was on the top level of his house, it did not rule out the possibility that someone might see, or hear, him praying.

Like Saadia Gaon and Rashi, Altschuler indicates in further comments on this verse that this is what Daniel has always done:

וזמנין . ושלשה פעמים ביום
היה הוא כורע על ברכיו ומתפלל ומודה לפני אלהיו בעבור
54 אשר כן היה עושה מלפני זה לכן אחז צדיק דרכו:

And times – Three times a day he would bend down on his knees and pray and offer thanks to his god, as this is what he would do in the past, therefore "the righteous man holds to his way."

Altschuler assures us that there was no change in Daniel's routine. He prayed just as he had before the king's decree. The place, times, and contents of Daniel's prayers had not changed. Before the ban, Daniel prayed in a secret place in his house. Just as before the ban, Daniel prayed by an open window. Why did Daniel not change any of his habits regarding his prayers, after the ban was issued? Because he is a righteous man. As it says earlier in Chapter 6, in verse 5, the ministers looked for faults in Daniel, but "could find neither fault nor corruption, inasmuch as he was trustworthy, and no negligence or corruption was to be found in him."[55] Altschuler ends his comments on this verse by describing Daniel with a verse from Job, 17:9, "The righteous man holds to his way."

The rabbis are certainly pleased with Daniel's actions. They all take care to point out that even the possibility of losing his life was not enough to keep Daniel from his normal routine of prayer. This threat was not even great enough to make Daniel move his prayers to a completely secure location, where there was not risk of his being seen or heard.

None of the rabbis mention the Talmudic argument that one should opt for death rather than commit murder, idolatry, or incest. This technically does not fit into any of these categories. Daniel was not being forced to pray to another god; he was just being prohibited from praying to his god.

According to our modern criteria, the case of Daniel meets the standards for civil disobedience. A law was enacted that Daniel found unconscionable. Daniel refused to obey it and the non-violent resistance he employed was to continue praying to his god. He did this with complete knowledge that the penalty for his actions was being thrown

into the lion's den. And, in fact, when caught, he willingly paid the penalty. After Daniel came out of the lion's den alive, King Darius was so impressed that he ordered everyone in his kingdom to pray to the god of Daniel. While the king's reaction created its own set of problems, Daniel and the other Jews in the Kingdom were assured of religious freedom.

[1] Exodus 1:15-21.
[2] Tanakh: The Holy Scriptures (Philadelphia: The Jewish Publication Society, 1985), 85-86.
[3] Milton R. Konvitz, "Conscience and Civil Disobedience in the Jewish Tradition," in Contemporary Jewish Ethics, ed. Menachem Marc Kellner (New York: Sanhedrin Press, 1978), 239.
[4] "Rashi." The Encyclopedia of Judaism. Ed. Geoffrey Wigoder. (Jerusalem: The Jerusalem Publishing House, 1989).
[5] Yisrael Issor Zvi Herczeg, Rashi – Commentary on the Torah (Exodus) (Brooklyn: Mesorah Publications, 1994), 7.
[6] Ibid., 7.
[7] "Ibn Ezra, Abraham." The Encyclopedia of Judaism.
[8] Torat Chaim Chumash (Jerusalem: Mossad Harav Kook, 1993), vol.3, 9.
[9] Ibid., 9.
[10] "Sforno, Obadiah ben Jacob." The Encyclopedia of Judaism.
[11] Torat Chaim Chumash, 8.
[12] Ibid., 8.
[13] Ibid., 8.
[14] "Culi, Jacob." The Encyclopedia of Judaism
[15] Yaacov Culi, Me'Am Lo'ez – The Torah Anthology (Exodus), trans. Aryeh Kaplan (Brooklyn: Maznaim Publishing Corp., 1978), 22.
[16] Ibid., 28.
[17] Nahum S. Sarna, The JPS Torah Commentary – Exodus (Philadelphia: The Jewish Publication Society, 1991), 7.
[18] Ibid., 7.
[19] Tanakh: The Holy Scriptures, 185.
[20] Ibid., 186.
[21] Tanakh: The Holy Scriptures, 454-455.
[22] I Samuel 22:16-18.
[23] Tanakh: The Holy Scriptures, 455.
[24] Kellner, 240.
[25] Mikraot Gedolot – Neviim Rishonim (Jerusalem: HaMasorah, 1990), 122.
[26] Talmud Bavli – Tractate Sanhedrin (Brooklyn, NY: Mesorah Publications, Ltd, 1994), 49a1.
[27] "Kimhi." The Encyclopedia of Judaism.
[28] Samuel I, ed. and trans. A.J. Rosenberg (New York: The Judaica Press, 1976), 190.
[29] Ibid., 189.
[30] Yaakov Culi, Yalkut Me'Am Lo'ez – Shmuel Aleph (Jerusalem: Vagshal Publishers, 1975), 273.
[31] Rosenberg, 189-190.
[32] Tanakh: The Holy Scriptures, 338.
[33] Culi, 273.

[34] Moshe Greenberg, "Rabbinic Reflections on Defying Illegal Orders: Amasa, Abner, and Joab," in Contemporary Jewish Ethics, ed. Menachem Marc Kellner (New York: Sanhedrin Press, 1978), 214.
[35]Kellner, 216-217.
[36] Esther, 3:2-6
[37]Tanakh: The Holy Scriptures, 1460.
[38] A. J. Rosenberg, The Five Megilloth – Volume I (New York: The Judaica Press, 1992), 20.
[39] Midrash Rabbah, trans. Maurice Simon (London: Soncino Press, 1939), 82.
[40] Rosenberg, 20, 23.
[41] Simon, 83.
[42] Rosenberg, 20.
[43] Rosenberg, 20, 23
[44] Yaakov Culi, Yalkut Me'Am Lo'ez – Megillat Esther (Jerusalem: Vagshal Publishers, 1973), 103
[45] Kellner, 240.
[46] Daniel, 6:7-12.
[47] Tanakh: The Holy Scriptures, 1480 – 1481.
[48] "Saadiah Gaon," The Encyclopedia of Judaism
[49] Kotvim (Tel Aviv: Schocken Publishing House, Ltd., 1959), 213.
[50] Ibid., 213.
[51] "Bible Commentary, Jewish," The Encyclopedia of Judaism.
[52] Kotvim, 213.
[53] Ibid., 213.
[54] Ibid., 213.
[55] Tanakh: The Holy Scriptures, 1480.

Chapter Three: Intertestamental Texts

A. A Community Under Siege

The Hebrew Bible and the Talmud are not the only texts that offer examples of civil disobedience. Though these two works carry great status among Jewish writings, some of the most important examples of civil disobedience are to be found in intertestamental texts, particularly in Antiquities of the Jews, and The Books of the Maccabees. In these two works, the Jewish communities were under siege and were oppressed by decrees that prevented them from worshipping or living as Jews. What makes these examples useful is the fullness of the texts. The stories are told in great detail. The reader is made aware of the motives and thoughts of some of the Jews who decided to engage in civil disobedience. These stories present two very different responses to oppression with very different results.

The author of the First Book of Maccabees is unknown. The geographical and topographical references suggest that the author was a contemporary of the Hasmonaeans, and an eyewitness to the events he described.[1] The book was compiled near the beginning of the reign of John Hyrcanus (135 – 5 BCE).[2] The author accepted the view of history as it was presented in the historical books of the Bible. Despite some lapses in historical accuracy, scholars look to this work as an accurate historical source of the period.

The style of the Second Book of Maccabees suggests that it was a composite work. It is generally held that the principal author was a historian named Jason of Cyrene. Another author, known only as the Epitomist, also served as the redactor.[3] While little is known about these authors, Cyrene is in Egypt and the Epitomist is believed to have lived

in Antioch. The Second Book of the Maccabees was probably written during the period of Agrippa I (41 – 44 CE).[4]

In the four Books of the Maccabees, a number of examples of civil disobedience can be found. The texts describe a period of Hellenization among the Jews. Syrian officials banned the offering of sacrifices among Jews, and prevented them from observing the Sabbath or festival holidays. Jewish boys were not allowed to be circumcised. The Syrians forced the Jews to observe pagan holidays and worship idols. Some Jews embraced Hellenization and gave up their Jewish practices. But other Jews refused and remained determined to practice Judaism even though disobedience almost always meant death.

While these books offer, with horrific detail, story after story of torture and death, they also portray a people who refused to give up their religious practices. As this passage from the First Book of the Maccabees indicates, even the threat of death did not deter many Jews:

> In accordance with the decree they put to death the women who had circumcised their children, hanging the new born babies around their necks; and they also put to death their families as well as those who had circumcised them. Nevertheless, many in Israel were firmly resolved in their hearts not to eat unclean food. They preferred to die rather than be defiled by food or break the holy covenant, and they did die.[5]

Many of the Jews found abandoning their Jewish practices to be unconscionable. They refused to follow the laws imposed upon them, even though they knew what the consequences of their actions would be. Not only were Jewish religious observances prohibited, the Jews were required to participate in pagan practices:

> The altar was filled with abominable sacrifices, which the Law prohibited. It was impossible either to keep the Sabbath, to observe ancestral festivals, or openly confess oneself to be a Jew. With bitter necessity they were compelled every month, on the birthday of the king, to partake of the sacrifice; and when the festival of the

> Dionysia took place, they were compelled to march in the procession for Dionysus, garlanded with ivy wreaths.[6]

The authorities used the Jews who were detained for breaking the law as examples to other Jews:

> As an example, two women were brought up on the charge of having circumcised their children. They publicly paraded them around the city with their babies clinging to their breasts, then hurled them headlong from the wall. Others who had fled to nearby caverns to observe the seventh day in secret were betrayed to Philip, and were burnt because their religious scruples kept them from defending themselves on account of their reverence for that most sacred day.[7]

The story of Eleazar was told in enough detail to enable the reader to apply modern criteria for civil disobedience to it. Eleazar was a prominent scribe who refused to compromise his beliefs to save his life. When presented with an opportunity to save his life by deceiving his tormentors, the scribe refused. Eleazar wanted his legacy to be that of a man who refused to commit acts he believed to be unconscionable. The example Eleazar wished to leave the younger generation of Jews was that of a man who chose to die rather than disobey his god. The Second Book of Maccabees described Eleazar's decision:

> Eleazar, one of the foremost scribes, a man well advanced in years and of most noble countenance, was compelled to open his mouth in an attempt to force him to eat swine's flesh. He welcomed death with glory rather than life with pollution, and of his own free will went to the rack. Spitting out the food, he became an example of what men should do who are steadfast enough to forfeit life itself rather than eat what is not right for them to taste, in spite of a natural urge to live. Those who were in charge of the forbidden sacrifice, because they had known the man for such a long time before, took him aside and urged him privately to bring meat, prepared by himself, which would be proper for him to use, and to pretend that he was eating the meat of the sacrifice ordered by the king. Thus he might be saved from death and on account of his old friendship for them he might obtain courteous treatment. He, however, high-minded as always, worthy of his age, worthy of his superiority of rank, his gray hair so honorably acquired and his distinguished appearance, because of his fine behavior from childhood and still more because he followed the holy and God-given laws, declared himself in no uncertain terms, saying that they should rather quickly send him forth to Hades.

"It is not suitable to my age to pretend, lest many of the youth think that Eleazar in his ninetieth year has changed to heathenism. They, because of my pretense and for the sake of this short span of life, will be led astray through me, and I shall come to a stained and dishonored old age. Even if for the present I were to escape the punishment of men, nevertheless I could not escape, either living or dead, the vengeance of the Almighty. Therefore, by departing this life courageously now, I shall show myself worthy of my old age, and to young men I shall have left a noble example of how to die happily and nobly in behalf of our revered and holy laws."

After saying this he immediately went to the rack... In this way he died leaving in his death an example of nobility and a memorial of valor, not only to the young but also to the great majority of his nation.[8]

One of the most famous and most horrifying stories in the books of the Maccabees is that of a mother and her seven sons. The story is told twice, once in Book Two, and once in Book Four. The family was arrested for refusing to follow the new laws curtailing Jewish religious practice. The king ordered them to eat swine, telling them that if they complied, they would be set free. They told the king they would rather die:

It happened also that seven brothers, with their mother, were arrested and tortured with whips and scorpions by the king to compel them to partake of swine meat forbidden by the Law. One of them made himself their spokesman, and said: "What do you intend to ask and to learn from us? It is certain that we are ready to die rather than transgress the laws of our fathers."[9]

One by one, each son was given the opportunity to save himself by eating the swine, and one by one, each son refused. And so, one by one, each son and their mother was tortured to death.

These examples paint a clear picture of Jews, in a time of persecution, engaging in civil disobedience. By both Talmudic and contemporary criteria, these martyrs did what was necessary and required. According to the Talmud, in times of persecution, one should surrender one's life rather than transgress even a minor mitzvah. The Jews in these cases were ordered to transgress a variety of different commandments.

Under any circumstances one is expected to give up one's life rather than worship idols. Under normal circumstances, one would eat pork, transgress the Sabbath laws, or refrain from circumcising an infant in order to save one's life. But in times of persecution, the Jews in the Books of the Maccabees, did as they should, giving up their lives.

Using the criteria developed by Konvitz, these cases from the Maccabees stand up well. Laws restricting religious observances were enacted. Some of the Jews found these laws unconscionable and refused to obey them. In some cases the Jews engaged in prohibited religious observances and in other cases they refused to engage in pagan worship or the eating of forbidden foods. As was seen time after time, the Jews were well aware of the price to be paid for their passive resistance. In fact, the price paid was their lives. One could argue that, of course, they wished to convert their opponents in order to save their lives. Many of the examples in Maccabees contain dialogue between the Jews and the oppressors in which the Jews attempted to explain why they would not comply with the laws or decrees. Eleazar certainly tried to convert other Jews to his way of thinking. He refused to take advantage of a ploy, which would have saved his life because it would have appeared to others that he was breaking Jewish law. He sacrificed his life so that he could be an example to other Jews of one who refused to submit to the oppressive authorities.

B. Antiquities of the Jews: Converting Your Enemy

Flavius Josephus, the author of Antiquities of the Jews was born in approximately 38 CE and died after 100 CE. Born into an aristocratic priestly family in Jerusalem, Josephus was related, through his mother, to the Hasmonaean dynasty.[10] This book is based on Josephus' experience of having seen the Jewish people live in a non-Jewish environment and yet preserves its character and observe its religion. After witnessing the hatred of Jews by non-Jews, the author decided this could be rectified by educating gentiles about Judaism. This book details the struggle of the Jewish community to maintain its loyalty to Jerusalem in the face of great odds. As a result of Josephus' favorable attitude towards Rome,[11] the author also explains what he considered Rome's attempts to be impartial and protect the Jews from their enemies. Scholars do not give Josephus high marks as a historian. His strength was as a writer, not as a historian. Josephus was neither historically accurate nor unbiased. Despite this, he is still important because his work is the only surviving source and without it little would have been known about the history of this period.

The Roman emperor, Caligula, ruled between the years 37 and 41. Flavius Josephus, in his book Antiquities of the Jews related an incident that took place during Caligula's brief reign. Milton Konvitz called this incident "the first recorded instance of *mass* non-violent civil disobedience."[12] In this story, not only did the Jews save the Temple from desecration, but their enemy was converted to their cause. Caligula (referred to as "Caius" in the text) has been informed by one of his ambassadors that the Jews refused to worship him as a god. The emperor was

incensed by what he felt was the Jews' disrespectful behavior, and threatened them with invasion. Josephus wrote:

> For that while all who were subject to the Roman empire built altars and temples to Caius, and in other regards universally received him as they received the gods, these Jews alone thought it a dishonorable thing for them to erect statues in honor of him, as well as to swear by his name... Hereupon Caius, taking it very heinously that he should be thus despised by the Jews alone, sent Pertonius to be president of Syria, and successor in the government to Vitellius, and gave him order to make an invasion into Judea, with a great body of troops; and if they would admit of his statue willingly, to erect it in the temple of God; but if they were obstinate, to conquer them by war, and then to do it.[13]

Caligula ordered that his statue be placed in the Temple in Jerusalem. Petronius, the emperor's representative, was instructed to first use the threat of his large army to convince the Jews to peacefully allow the statue to be erected. If this plan did not prove successful, Petronius was to then have his army invade Jerusalem, and install the statue by force. Josephus recounts the standoff between Petronius and the thousands of Jews who came to protest against the emperor's plan:

> But there came many ten thousands of the Jews to Petronius, to Ptolemais, to offer their petitions to him, that he would not compel them to transgress and violate the law of their forefathers; "but if," said they, "thou art entirely resolved to bring this statue, and erect it, do thou first kill us, and then do what thou has resolved on; for while we are alive we cannot permit such things as are forbidden us to be done by the authority of our legislator, and by our forefathers' determination that such prohibitions are instances of virtue." But Petronius was angry at them, and said, "If indeed I were myself emperor, and were at liberty to follow my own inclination, and then had designed to act thus, these your words would be justly spoken to me; but now Caesar hath sent me, I am under the necessity of being subservient to his decrees, because a disobedience to them will bring upon me inevitable destruction." Then the Jews replied, "Since, therefore, thou art so disposed, O Petronius! That thou wilt not disobey Caius's epistles, neither will we transgress the commands of our law."[14]

Petronius defended himself by telling the Jews that he was only the messenger of the emperor's orders. If he were the emperor he would not demand this, but if he didn't carry out the emperor's orders, he would lose his life. Having no desire to go to war with

the Jews of Jerusalem, he took his entourage to Tiberias in order to see if the Jews there felt the same way as the Jews in Jerusalem. Again, Petronius was met by a large contingent of Jews who informed him that they were prepared to die for their beliefs:

> When Petronius saw by their words that their determination was hard to be removed, and that, without a war, he should not be able to be subservient to Caius in the dedication of his statue, and that there must be a great deal of bloodshed, he took his friends, and the servants that were about him, and hasted to Tiberias, as wanting to know in what posture the affairs of the Jews were; and many ten thousands of the Jews met Petronius again, when he was come to Tiberias. These thought they must run a mighty hazard if they should have a war with the Romans, but judged that the transgression of the law was of much greater consequence, and made supplication to him, that he would by no means reduce them to such distresses, nor defile their city with the dedication of the statue. Then Petronius said to them, "Will you then make war with Caesar, without considering his great preparations for war, and your own weakness?" They replied, "We will not by any means make war with him, but still we will die before we see our laws transgressed." So they threw themselves down upon their faces, and stretched out their throats, and said they were ready to be slain; and this they did for forty days together, and in the mean time left off the tilling of their ground, and that while the season of the year required them to sow it. Thus they continued firm in their resolution, and proposed to themselves to die willingly, rather than to see the dedication of the statue.[15]

With this act of passive resistance, the Jewish population of Tiberias declared that they would not go to war with Rome, and that they would not allow the statue to be erected in their Temple. They would rather be killed than see this happen. To demonstrate their determination to Petronius, the Jews went on strike for forty days, refusing to harvest their crops.

Representatives of the Jewish community persuaded Pertonius to send a letter to Caligula informing him of the situation. Petronius told the emperor that not only have the Jews refused to allow his statue to be placed in the Temple, but that he would not force the Jews to comply. Petronius concluded his letter by saying he would sooner suffer Caligula's hatred against him, rather than see so many others perish.

> When matters were in this state, he saw the resolution of the multitude, he would not make any alteration, and thereby drive them to despair; but would write to Caius, that the Jews had an insuperable aversion to the reception of the statue, and how they continued with him, and left off the tillage of their ground; that they were not willing to go to war with him, because they were not able to do it, but were ready to die with pleasure rather than suffer their laws to be transgressed... He then called the Jews together... "I do not think it just to have such a regard to my own safety and honour, as to refuse to sacrifice them for your preservation, who are so many in number, and endeavour to preserve the regard that is due to your law; which as it hath come down to you from your forefathers, so do you esteem it worthy of your utmost contention to preserve it; nor, with the supreme assistance and power of God, will I be so hardy as to suffer your temple to fall into contempt by the means of the imperial authority. I will, therefore, send to Caius, and let him know what your resolutions are, and will assist your suit as far as I am able, that you may not be exposed to suffer on account of the honest designs your have proposed to yourselves... But if Caius be irritated, and turn the violence of his rage upon me, I will rather undergo all that danger and that affliction that may come either on my body or my soul, than see so many of you perish, while you are acting in so excellent a manner[16]

This story from Antiquities of the Jews is an excellent example of civil disobedience. It certainly meets the criteria established in the Talmud. Caligula wanted the Jews in Jerusalem to pray to a statue of him. This is clearly idol worship, and according to the Talmud, one is to allow oneself to be killed rather than engage in idol worship.

More than many other cases, the story of Caligula and the Jews of Jerusalem and Tiberias clearly meets modern criteria of civil disobedience. Caligula decreed that his statue be placed in the Temple. The Jews found this decree unconscionable and refused to obey it. To make their case, the Jews engaged in passive resistance. They held a rally to present their case to the authorities and went on strike, refusing to harvest their crops. Petronius brought his army with him, making clear to the Jews that their non-compliance was putting their lives at risk. In response, the Jews told Petronius that they would prefer death to seeing their Temple desecrated. These Jews did an excellent job of converting

their oppressor. Pertonius ultimately agreed with the case made by the Jewish community and defended their actions to Caligula. In doing so, Petronius put his own life in danger. Most importantly, by engaging in civil disobedience, the goal of the Jewish community was accomplished without any violence or bloodshed.

[1] The First Book of the Maccabees, trans. Sidney Tedesche (New York: Harper and Brothers, 1950), 27.
[2] Ibid., 27
[3] The Second Book of the Maccabees, trans. Sidney Tedesche (New York: Harper and Brothers, 1954), 18.
[4] Ibid., 27.
[5] Tedesche, The First Book of the Maccabees, 79.
[6] Tedesche, The Second Book of the Maccabees, 153.
[7] Ibid., 153, 155.
[8] Ibid., 155, 157, 159.
[9] Ibid., 159, 161.
[10] " Josesphus, Flavius," Encyclopedia Judaica.
[11] Ibid.
[12] Milton R. Konvitz, "Conscience and Civil Disobedience in the Jewish Tradition," in Contemporary Jewish Ethics, ed. Menachem Marc Kellner (New York: Sanhedrin Press, 1978), 242.
[13] Flavius Josephus, The Life and Works of Flavius Josephus, trans. William Whiston (New York: Holt, Rinehart and Winston, 1970), 550.
[14] Ibid., 550.
[15] Ibid., 551.
[16] Ibid., 551-552.

Chapter Four: Talmudic Discussions and Categories

A. Taking Responsibility

In Talmudic literature there are a number of discussions about the course of action one should take when faced with moral dilemmas. One scenario involves being forced to commit a sin against Jewish law. As will be seen in the discussion in Sanhedrin, sometimes the scenario presented is dramatic and the options are clear. But what about situations that are less clear, and that don't involve life and death issues?

In this first case, the discussion centers around one's obligation to prevent another from doing something that is wrong. The rabbis argue that it is one's responsibility to prevent another from committing an improper deed. In fact, they argue, if you have within you the power to prevent someone from committing an improper deed, and you do not exercise that power, you are held responsible for that person's behavior. In other words, if you see someone about to break a window, and you can stop him or her, but don't, you are as responsible for that broken window as the person who actually broke it. In Shabbat 54b of the Talmud, the rabbis explain:

רב ורבי חנינא ורבי יוחנן ורב חביבא מתנו, בכוליה דסדר מועד, כל כי האי זוגא חלופי רבי יוחנן ומעייל רבי יונתן: כל מי שאפשר למחות לאנשי ביתו ולא מיחה - נתפס על אנשי ביתו, באנשי עירו - נתפס על אנשי עירו, בכל העולם כולו - נתפס על כל העולם כולו. אמר רב פפא: והני דבי ריש גלותא נתפסו על כולי עלמא. כי הא דאמר רבי חנינא: מאי דכתיב (ישעיהו ג) ה' במשפט יבא עם זקני עמו ושריו, אם שרים חטאו - זקנים מה חטאו? אלא, אימא: על זקנים שלא מיחו בשרים.

Rav and Rabbi Hanina, and Rabbi Yochanan, and Rabbi Habiba taught, in all of the appointed times, when this set appears, Rabbi Jonathan may substitute for Rabbi Yochanan. Anyone who is able to prevent the people of his household but doesn't – he is responsible for the people of his household. The people of his city

> – he is responsible for the people of his city. The entire world – he is responsible for the entire world. Rav Pappa said: The people of the household of the chief [of the Babylonian Jews] were held responsible for the entire world. This is according to what Rabbi Hanina said, "Why is it written, 'Adonai will enter judgment against the elders of his people and his princes'? (Isaiah 3:14) If the princes sinned, what was the sin of the elders? But say, of the elders, they didn't stop the princes."

While it may sound rather extreme to modern sensibilities to say that one is responsible for the entire world, this is certainly not inconsistent with rabbinic thinking. It is clear from the above Talmudic dictum that the rabbis expected people to take responsibility for what happened in their immediate world.

Maimonides commented on the concept. Also known as Rambam, Moses Maimonides was born in approximately 1135 in Cordoba, Spain. An expert in Jewish law, a philosopher, and a physician, Maimonides' major halachic work was the *Mishneh Torah*. This is widely accepted as one of the major codification of Jewish law.[1] Maimonides comments on this Talmudic discussion:

> מצות תוכחה / כל שביכול להוכיח ולעשות לתקון חרכרים ולא עשה
> כן נענש בעונם של אלה שלא מיחה בידם.
> (רמב"ם, ספר המדע, הלכות דעות, פ"ו ה"ו)

> Mitzvah of Rebuke – whoever has it in his power to rebuke and to do something to repair things, and did not do so, he is punished for their [those who actually committed the sin] sin, for not having prevented it.

Maimonides elevated the rabbis' rule to the status of a commandment. In the *Mishneh Torah*, Maimonides elaborated on one's responsibilities to rebuke. In the section of the *Mishneh Torah* known as the Book of Knowledge, Maimonides explained:

ז הרואה

חבירו[5]) שחטא או שהוא הולך בדרך לא טובה מצוה להחזירו למוסב ולהודיעו שהוא חוטא על עצמו במעשיו הרעים שנ' הוכח תוכיח את עמיתך[5a]). : המוכיח את חברו בין בדברים שבינו לבינו בין בדברים שבינו לבין המקום צריך להוכיחו בינו לבין עצמו וידבר לו בנחת ובלשון רכה ויודיעו שאינו אומר לו אלא לטובתו ולהביאו לחיי העולם הבא אבל בדברי שמים אם לא חזר בו בסתר מכלימים אותו ברבים ומפרסמין חטאו ומחרפים אותו בפניו ומבזים ומקללים עד שיחזור למוסב

If one sees his friend sin or walking in a way that is not good, it is his duty to return him to the proper path, and tell him that his evil actions brought sin upon him, as it is said, "Thou shalt surely rebuke thy neighbor" [Leviticus 19:17]. The one who rebukes his friend, whether for things between them, or for things between him and God, one needs to reproach him privately and speak to him calmly and in a soft tone and tell him that he is speaking to him for his own good, in order to secure his [the friend's] place in the world to come... But in his duties to God, if he doesn't return [to better ways] after speaking to him in private, shame him in public and broadcast his sin, disgrace him to his face, and he should be despised and cursed until he returns to the right path.

What happens when someone or something (for example, a government or a corporation) is engaging in what we would consider a sin against God? They are to be rebuked in private. If this does not remedy the situation, one is obligated to take their actions before the public and make others aware of the offense.

We might use the explanation of Maimonides to understand some of the protests of our own day. If one felt the laws of segregation to be sinful in the eyes of God, one would have been obligated to try to change those laws. If, after all other means had failed, one would have had to go public with the rebuke, and in doing so, might have engaged in acts of civil disobedience. That might take the form of marches, demonstrations, or protests. Today, these behaviors are often considered to be forms of civil disobedience.

B. Putting One's Life on the Line

In Sanhedrin 74a, the rabbis engage in a lengthy discussion about the circumstances in which one must allow him or herself to be killed, rather than commit a sin. This discussion reflects differing opinions among the rabbis. Biblical sources are used in support of their decisions, and finally, the rabbis will create additional rules for specific situations.

The discussion begins by describing the location of the rabbis and spelling out their decision:

אמר רבי
יוחנן משום רבי שמעון בן יהוצדק: נימנו וגמרו בעלית בית נתזה
בלוד: כל עבירות שבתורה אם אומרין לאדם עבור ואל תהרג - יעבור
ואל יהרג, חוץ מעבודה זרה וגילוי עריות ושפיכות דמים.

Rabbi Yochanan said in the name of Rabbi Shimon ben Yehotzadak: They took a vote and decided in the attic of Nitzah's house in Lod: Of all the prohibitions in the Torah, if they tell a person, "transgress them and you will not be killed," he should transgress them and not be killed, except for idol worship, incest, and murder.

It appears that the rabbis are considering what actions to take in a time of persecution. They are having a discussion in an attic, a discreet place out of the public eye. So important is this issue that they bring their decision to a vote. The rabbis have identified three sins for which a person should give up his life rather than commit.

Regarding idol worship, Rabbi Yishmael asks if this is really something that one must choose death rather than engage in:

והא תניא, אמר רבי ישמעאל: מנין שאם אמרו לו לאדם עבוד
עבודה זרה ואל תהרג מנין שיעבוד ואל יהרג - תלמוד לומר (ויקרא
כ"ג) וחי בהם - ולא שימות בהם.

It was taught, Rabbi Yishmael said: From where do we know that if they said to a person, "Engage in idol worship and you will not be killed, that he should do this

and not be killed?" Scripture teaches (Leviticus 18:5) "and live by them," and not die by them.

Rabbi Yishmael uses this verse from Leviticus 18:5, "You shall keep My laws and My rules, by the pursuit of which man shall live: I am the Lord,"[4] to argue that one should live by God's laws and not die because of them. He concludes that if a person is threatened with death unless he engages in idolatry, he should worship the idols in order to save his life.

The Talmud then raises the question of whether Rabbi Yishmael's ruling applies to public or private acts.

יכול אפילו בפרהסיא - תלמוד לומר
(ויקרא כ') ולא תחללו את שם קדשי ונקדשתי.

You might think even in public (one should worship idols in public in order to save their lives. Scripture teaches, " And you shall not desecrate my holy name, and I will be sanctified."

The complete verse, from Leviticus 22: 32 is, "You shall not profane My holy name, that I may be sanctified in the midst of the Israelite people – I the Lord who sanctify you." The Baraita[5] is saying that one may worship idols in private, if he is being threatened with death, but not in public. Rashi commented on why one may not worship idols in public in order to save one's life:

לא תחללו. בפרהסיא לוכל
חלול השם ולריך לקדש את השם וזהו
ונקדשתי שמוסר נפשו על אהבת יוצרו.

You shall not desecrate it – In public there is a desecration of God's name. One must sanctify God's name and thus when it says, "and I will be made holy" that is one gives one's soul for the love of one's creator.

A distinction is made between the consequences of private behavior and public behavior. In private, if one is made to transgress a minor rule, one should comply in

order to save his or her life. In public, however, one should refuse and allow oneself to be killed. To commit a sin in public is seen as worse than committing the same sin in private. Rashi, in a Talmudic comment on idol worship (Avodah Zarah 27b), states that when one performs a forbidden act in public, he not only violates the law regarding the act, but he also desecrates God's name. When one disregards God's will in public, the fear of God will be lessened among others, which may in turn lead them to violate God's laws.

This contradicts the decision reached earlier in Nitzah's attic. The rabbis in Nitzah's attic respond by saying their decision was in accordance with the teachings of Rabbi Eliezer. Rabbi Eliezer quoted Deuteronomy 6:5: "You shall love the Lord your God with all your heart and with all your soul and with all your might."[6] Rabbi Eliezer understood "might" to mean one's money and possessions. He explains the verse:

אם נאמר בכל נפשך למה נאמר
בכל מאדך, ואם נאמר בכל מאדך למה נאמר בכל נפשך, - אם יש לך
אדם שגופו חביב עליו מממונו - לכך נאמר בכל נפשך, ואם יש לך
אדם שממונו חביב עליו מגופו - לכך נאמר בכל מאדך.

> If it is stated "with all your soul" why does it state "with all your resources"? And if it stated "with all your resources" why does it state "with all your soul"? If you are dealing with a man whose life is more precious to him than his possessions, it is stated "with all your soul." And if you are dealing with someone whose possessions are more precious to him than his life, it is stated, 'with all your possessions."

For the person whose life is most precious to him, loving God with all his soul would mean he would sacrifice his life rather than worship idols. For the person whose greatest sacrifice would be to give up his possessions, he would give up everything he owns rather than engage in idol worship. In other words, one must love God so much that one would give up everything rather than dishonor God.

The discussion goes on to cite a Biblical verse mandating that one allow oneself to be killed rather than transgress by committing the other two sins, incest and murder.

דתניא, רבי אומר (דברים כ"ב) כי כאשר יקום
איש על רעהו ורצחו נפש כן הדבר הזה,

As is was taught in a Baraita, Rabi says, For this is like a man who rises up against another and murders him, so is this thing.

This verse is from Deuteronomy 22:26, "But you shall do nothing to the girl. The girl did not incur the death penalty, for this case is like that of a man attacking another and murdering him."[7] Rabi uses this verse to explain that a man who rapes a betrothed woman is to be killed. The Baraita goes on to say:

מקיש רוצח לנערה המאורסה,
מה נערה המאורסה - ניתן להצילו בנפשו, אף רוצח - ניתן להצילו בנפשו. ומקיש נערה המאורסה לרוצח, מה רוצח - יהרג ואל יעבור, אף נערה המאורסה - תהרג ואל תעבור.

Compare the murder to the betrothed girl – just as the betrothed girl may be saved at the cost of his (the rapist's) life, so may he (the victim) be saved at the cost of the (murderer's) life. And compare the betrothed girl to the murderer. Just as someone told to murder should (allow himself to) be killed and not transgress, so must the betrothed girl (allow herself to) be killed and not transgress.

As proof for this law, the Gemara relates the story of Rabah and the man who was told by the general in his town to murder someone. Rabah, as noted in Chapter Two, instructs the man to allow himself to be killed rather than commit a sin.

The Gemara then goes on to expand the rule that a person may transgress a law in order to save his or her own life, except where the three acts are involved:

בי
אתא רב דימי אמר רבי יוחנן: לא שנו אלא שלא בשעת השמד, אבל בשעת השמד - אפילו מצוה קלה יהרג ואל יעבור.

When Rab Dimi came, he said in the name of Rabbi Yochanan: This was taught only when it was not a time of (oppressive) governmental decrees, but in a time of (oppressive) governmental decrees, even for a minor mitzvah, one must allow himself to be killed and not violate it.

The rule voted on by the rabbis in Nitzah's attic applied only to ordinary circumstances. If, however, it is a time of governmental decrees designed to oppress the Jewish population, then even if one is ordered to violate a minor commandment, he must allow himself to be killed, rather than violate the commandment.

Rashi provides the explanation for the expansion of this rule:

ואפילו מצוה קלה יהרג ואל יעבור . שלא ירגילו העובדי כוכבים להמריך את הגבוה לכך :

Even if it is a minor mitzvah, he must be killed and not violate it. So they will not be at the feet of idol worshippers in exchange for their lives.

According to Rashi's interpretation, one must allow oneself to be killed in order to prevent the government from striking fear in the hearts of the Jews. He reasons that if the Jews give in, the government will consider itself successful and will only enact more discriminatory legislation. The only possible way to save themselves seems to be through what we would term, "passive resistance."

The Gemara goes on to expand the rule even more:

כי אתא רבין אמר
רבי יוחנן: אפילו שלא בשעת השמד, לא אמרו אלא בצינעא, אבל בפרהסיא - אפילו מצוה קלה יהרג ואל יעבור. -

When Ravin arrived, he said in the name of Rabbi Yochanan: Even if it is not a time of oppressive decrees, they said in private (that one may sin). But in public, even for a minor mitzvah, be killed rather than transgress.

This concurs with the attitude of Rashi. The ramifications of public behavior are greater than those of private behavior. Public behavior has the ability to influence others.

Though the costs may be great, there are times when we must take a stand and set an example for others.

By means of these two Talmudic arguments, the rabbis created guidelines and criteria for Jews faced with certain moral dilemmas. In the first case, it is clearly argued that people must take some amount of responsibility for one another. One must do what one can to prevent another from engaging in a wrongful act. More than this, Maimonides believed, there were times when public rebuke was necessary. If someone (or something) refuses to change from its wrongful ways, one must take that behavior before the public.

In the second case, the rabbis conclude that our tradition teaches that certain acts are so abhorrent, that one should give up his or her life rather than allow oneself to be forced to commit them. By distinguishing between public and private, the rabbis indicate that acts committed in public carry greater consequences. Rashi commented that seeing one commit a sin in public may lead others to sin as well. Though Rashi does not say this, perhaps conversely, observing one refusing to desecrate God's name in public may lead others to emulate this behavior.

[1] Maimonides, Moses, The Encyclopedia of Judaism.
[2] Talmud, Shabbat 54b
[3] Moses Maimonides, The Mishneh Torah, trans. Moses Hyamson (New York: Azriel Press, 1937), 55a-55b.
[4] Tanakh: The Holy Scriptures, 183.
[5] Talmud Bavli – Tractate Sanhedrin, vol.2, (New York: Mesorah Publications, Ltd, 1994), 74a4.
[6] Ibid., 284.
[7] Ibid., 309.

Conclusion

Events in the Bible, in the intertestamental texts, and in the Talmud suggest that civil disobedience has been a part of Jewish experience for millennia and finds its roots in early Jewish writings. Though our ancestors had no understanding of the term "civil disobedience," they often engaged in it. Though our modern understanding of civil disobedience is largely influenced by non-Jewish activists, there is a clear tradition of Jewish civil disobedience. Together, our contemporary understanding and our tradition can provide us with a model for our own actions in the present day.

In the nineteenth century, Henry David Thoreau began to lay the groundwork for our modern understanding of civil disobedience. Thoreau suggested that we were able to look at laws against certain moral criteria when determining whether laws were moral or not. According to Thoreau, only a moral law needed to be obeyed, and an immoral law had to be disobeyed. Mohandas Gandhi used the terms nonviolent resistance and civil disobedience interchangeably in his writings. Gandhi employed nonviolent resistance to obtain freedom from colonial rule for his nation. For Gandhi, civil disobedience was a vehicle of persuasion. He saw it as a device for shaping public opinion, gaining allies, and turning foes into friends. In this country, Martin Luther King, Jr. was greatly influenced by the work of Gandhi. King used civil disobedience in his effort to secure civil rights for African-Americans. King was influenced, not only by Gandhi, but also by religious thinkers. Based on his understanding of the writings of St. Augustine, King believed that one had a moral obligation to disobey a law that was not just.

When civil and religious laws have come into conflict, religious institutions have sought to give their followers guidance. The National Council of Churches developed a

definition of civil disobedience in order to advise Christians. Jews have not drawn up a specific definition of civil disobedience to serve as a guide. However, it is possible for Jews to draw on their religious texts for examples of Jews engaging in civil disobedience.

Jewish sources which seem to exemplify civil disobedience are hundreds and thousands of years old. Although the Talmud provides a framework for resistance and martyrdom, these guidelines do not always apply to modern situations. For example, a Jewish person, today, deciding whether or not to engage in civil disobedience, would more likely think of the price to be paid in terms of a night in jail than with his or her life. A modern set of Jewish criteria must be used in order to evaluate events in Jewish history. In this way, Jews today can draw upon their history and with the help of modern criteria, determine if there are times when they must engage in civil disobedience. Milton Konvitz has developed a set of criteria that can be used both to evaluate historical events, as well as situations that we, as modern Jews, may encounter. These criteria include the enactment of a law or decree, which those ordered to obey it refuse to do because they find it unconscionable. They resort to nonviolent resistance, willing to pay the price for their actions, and determined to convert their opponents.

In reviewing the literature it seems one must also take into account a continuum of political responsibility when evaluating cases of civil disobedience. A key question in determining whether or not an action qualifies as civil disobedience is was it used only as a last resort? In order to be considered civil disobedience, the nonviolent resistance must be a last resort. A respect for the law and the legal process must be understood. All other options must have been explored before engaging in civil disobedience. The goal of civil

disobedience is always to change a law or set of laws, and never to circumvent the legal process, overturn the government, or bring harm to others.

The Bible provides a number of examples of people who engaged in actions that might qualify as civil disobedience. In each of the cases analyzed in this paper, some of the criteria were clearly met. There was a law or decree. The protagonists in each of these examples, though required to comply with the law or decree, found doing so unconscionable. Therefore, in each instance, they refused to obey the law or decree: a form of non-violent resistance was employed. In each case, those who engaged in civil disobedience were willing to suffer whatever penalties were imposed on them as a result of their resistance. In fact, in each of these cases, the protagonists may very well have expected to have paid with their lives. The final criteria developed by Milton Konvitz is the most difficult to successfully apply to the Biblical examples. In order to meet this last criterion, those who engaged in civil disobedience must have hoped that as a result of their behavior, their opponents would have been converted to their cause, and reconciliation achieved. The sparseness of the Biblical texts makes this difficult to ascertain.

Shifrah and Puah, the midwives in the book of Exodus, clearly meet the first five of the six criteria. It is also clear that the midwives deceived Pharaoh in order to carry out their plan to save the Israelite boys. They may have believed there was no possibility of changing Pharaoh's mind. Despite this, Shifrah and Puah are often held up as the earliest examples of people engaging in civil disobedience.

It is difficult to apply the last of Konvitz's criteria to Biblical texts not only because the motives of the protagonists are not always clear. It may not be realistic to

expect that the criteria of converting one's enemy could be applied in all situations. Converting one's enemy may be a modern construct, more applicable to modern situations than to Biblical incidents. Perhaps this was not an option for Shifrah and Puah. These midwives may not be the best of examples of civil disobedience by Konvitz's criteria, but they are still worthy of its name. They refused to engage in acts they found unconscionable and used their resources and abilities to save lives rather than harm them.

Saul's guards, in the first book of Samuel, chapter 22, provide another example of civil disobedience. This is a somewhat stronger case than the one in Exodus. There is certainly nothing in the text to indicate that the guards did anything to deceive Saul. Some of what the text leaves out is supplied in the form of commentary. These rabbinic commentaries make this a stronger case of civil disobedience. According to the commentaries, the guards, Abner and Amasa, first tried to explain to Saul why they would not kill the priests. On a continuum of political responsibility this meets the requirement of having first used all other means before resorting to civil disobedience. By explaining the limits of his authority to Saul, the guards were trying to convert Saul to their point of view. To some degree, Abner and Amasa may be considered successful. The king did not force them to kill the priests and the text does not indicate that the guards were punished for their disobedience. But Abner and Amasa were not completely successful. The king was not converted to their cause and had someone else kill the priests. Nonetheless, the actions of Abner and Amasa serve as examples of civil disobedience. At the risk of their own lives, the refused to follow orders they believed to be immoral, and they attempted to change the mind of the king.

The story of Mordecai's resistance to Haman is quite well known. Though Mordecai's behavior had the potential to put the entire Jewish community in danger, his actions meet the criteria for civil disobedience. Mordecai found the decree requiring the King's courtiers to bow down before Haman unconscionable, and therefore, would not obey it. Bowing down to Haman would have been the equivalent to idol worship. Mordecai explained to the other courtiers that he was a Jew and could not bow down to another person. By not bowing, Mordecai engaged in nonviolent resistance. This occurred repeatedly. Did Mordecai hope to convert others? His actions were in public and would certainly have been seen by others. While we do not know if Mordecai wished to convert all of the courtiers to the notion of not bowing before another person, he at least wanted to convince them that he should not have to bow down. Mordecai does qualify as an example of one who engaged in civil disobedience. By refusing to bow down to Haman, Mordecai put his life in danger. In fact, the story indicates that Mordecai did this repeatedly, perhaps in an attempt to bring attention to his cause, and through this convert others.

The final Biblical case to be looked at was from the book of Daniel. Daniel's act of civil disobedience was to continue to pray to God three times a day, even after praying to anyone but the king had been outlawed for a period of thirty days. While Daniel did not pray in public, after the ban was enacted, he did nothing to make his prayers more private. In fact, the ministers who found Daniel at prayer might have known this was his normal routine. Daniel knew that the specific penalty for praying to anyone other than the king was to be thrown into the lions' den. Daniel did not let this deter him from his prayers. The text does not indicate if Daniel attempted to convert his enemies. In this

case, his enemies were the other ministers, who out of their jealousy, plotted against Daniel. Turning his enemies into his friends may have been an impossible task. Despite this, the actions of Daniel qualify as civil disobedience. He refused to give up his religious practices, even though a decree banned praying to anyone but the king. At the risk of his own life, Daniel continued to pray just as he had always done.

These four cases make the statement that, when necessary, Biblical characters practiced civil disobedience. This raises an interesting question as to why these events were recorded in the Biblical canon. Perhaps the Biblical editors found in these stories compelling examples of behavior, worthy of being passed on to future generations.

The Books of the Maccabees are known for their many examples of civil disobedience. Though the Jews' efforts often proved unsuccessful, the books tell of many Jews who refused to obey laws they found unconscionable. For Example, Eleazar the scribe wanted his actions to be an example for others. Eleazar refused to eat pig meat because he didn't want other Jews to think he gave in to the Hellenizers and turned his back on his religious practices. Rather, he wanted to be remembered as one who gave up his life sooner than break a commandment. Eleazar hoped his example would encourage other Jews to do the same. These examples meet the criteria for civil disobedience. Jews risked their lives rather than obey laws requiring them to give up their religion. Their nonviolent resistance was their practice of Judaism, and though unsuccessful, they attempted to make their oppressors understand why they would not give up their faith.

Flavius Josephus' Antiquity of the Jews contains one of the most compelling cases of civil disobedience to be found in Jewish historical literature. This story amply

demonstrates all of the criteria necessary for civil disobedience, and contains elements of what we might consider contemporary methods of nonviolent resistance.

Caligula decreed that his statue be installed in the Temple in Jerusalem. The Jewish community found this decree unconscionable and refused to obey it. They employed several means of passive resistance to prevent the statue from being placed in the Temple. First, the Jews assembled as a group to present their case to Petronius. This would be the equivalent, today, of holding a rally or demonstration. Petronius was met by a similar rally in Tiberias. There, he was informed that the Jews had no intention of going to war with him, but nonetheless, would not allow Caligula's statue to be placed in the Temple. Employing the tactics of passive resistance, they held what we would call a "sit-in." They sat down and, refusing to be moved, declared that they would sooner die than see their laws transgressed. In addition, the Jews went on strike, refusing to harvest the fields.

This story is compelling for a number of reasons. The Jewish community used a number of nonviolent methods of resistance that resemble techniques one might use today when engaging in civil disobedience. The final criterion of Milton Konvitz is clearly met in this instance. Petronius was converted to the cause of the Jews, to the point where he put his own life in jeopardy. Reconciliation was achieved and Petronius did what ever he could do assist the Jews. Reaching the highest standards of civil disobedience, this was accomplished without any violence or loss of life.

Centuries later, the Talmud codified some of the aspects of civil disobedience based on their understanding of the Bible and in response to their contemporary circumstances. In Shabbat 54b, it was made clear by the rabbis that one has an obligation

to prevent another from committing a wrongful act. Later commentaries extend this to require one to even publicly rebuke a wrongdoer in an effort to stop someone or something from committing an act that is morally wrong.

In a rabbinic discourse in Sanhedrin 74a, the rabbis spelled out the circumstances that would require one to sacrifice one's own life. If forced to commit murder, incest, or idolatry, one must opt for death. In times of persecution, the scope of the law is broadened. In such circumstances, if one is being forced to publicly transgress even a minor mitzvah, one must choose death. The rabbis understood the power of public examples, and their ability to influence others.

Yes, Jewish historical events and Jewish legal opinion have created a Jewish understanding of civil disobedience. Historical and literary examples in Jewish history consistently demonstrate that people have always put their lives at risk rather than obey objectionable laws. These can serve as examples for Jews today.

The history and rabbinic opinions charge Jews, even today, to engage in civil disobedience. According to both our historical examples of civil disobedience and our modern understanding of civil disobedience, the criteria of Milton Konvitz are valid for Jews considering engaging in civil disobedience. There must be a law or decree that is found unconscionable by those required to obey it. They must refuse to obey the law or decree and employ nonviolent resistance. Those engaging in civil disobedience must be willing to suffer any legal penalties imposed upon them for their actions. Finally, civil disobedience is engaged in with the hope of converting the enemy.

But Jewish legal opinions compel us to add two more criteria not supplied by the historical examples and our modern understanding of civil disobedience. First, based on

the interpretation of Maimonides, our acts **must** be public. It is not only our enemy who we must hope to convert. One of the goals of civil disobedience must be to mold public opinion. Gandhi, like Maimonides, understood the importance of this. Gandhi believed that passive resistance could be used to persuade people and to change laws.

Second, our behavior must fall on the continuum of political responsibility. One must first employ all legal means to correct a situation. This includes lobbying, voting, and bringing legal actions before courts of law. Just as the Jews in Antiquities of the Jews, our acts of resistance must come only as a last resort. Both Gandhi and King teach us that immoral laws should not be obeyed, but that they should not weaken our respect for the government and its authority. As members of the society, we must try to work within the system before going outside of the system.

Just as our ancestors did, we too may at times find ourselves faced with the dilemma of having to obey laws we find immoral. Just as our ancestors felt compelled to act, so must we, today, feel compelled to act. Our tradition teaches that we are obligated to act. These criteria can guide us and assist us in living up to the highest goals of Judaism.

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