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LIBERAL RESPONSA PERTAINING TO
ענייני ארץ ישראל:

AN ANALYSIS OF THE ROLE OF
PROGRESSIVE HALAKHIC LITERATURE IN
ISRAEL

KENNETH MARK CHASEN

Thesis submitted in partial fulfillment of the requirements for Ordination
Hebrew Union College - Jewish Institute of Religion
1998

Referees, Professors Mark Washofsky and David Ellenson

DIGEST

The following rabbinical thesis afforded me an opportunity to examine the nature and function of the *halakhic* literature authored by rabbis representing the liberal religious denominations in Israel.

In my opening chapter, I present an exposition of the history of Israeli liberal Judaism. This includes a discussion of the origins of the Traditional (Conservative) and Progressive (Reform) movements in Israel, statistical data pertaining to their size and influence, exploration of legal, cultural and ideological challenges to the movements, and analysis of their future prospects. These items provide a necessary backdrop for the study of the *teshuvot* which have emerged from the Progressive and Traditional rabbinic communities.

In Chapters II and III, I translate and analyze representative Orthodox, Traditional, and Progressive responsa on two issues of particular import in modern Israeli society — the service of women in the military and the ramifications of surrendering Israeli-controlled land for the purpose of procuring peace. Each chapter includes verbatim translations of two liberal *teshuvot* (one Progressive, one Traditional), followed by a discussion of the legal reasoning employed by the *poskim* and a comparison to one or more Orthodox responsa on the same topic. My goal is to discern any meaningful distinctions between the *teshuvot* that might reflect divergent denominational strategies, clashing movement ideologies, and competing approaches to Jewish law.

Chapter IV represents my conclusions regarding the *halakhic* enterprise of liberal Israeli Judaism. I consider such items as length, audience, and style in suggesting some

ACKNOWLEDGMENTS

I welcome this opportunity to express my sincerest gratitude to my thesis advisors, Drs. Mark Washofsky and David Ellenson. Both have been enormous sources of inspiration as scholars and rabbis who embrace Reform Judaism with seriousness and passion. They will remain powerful role models throughout my rabbinate; I pray that I will, someday, be able to repay them by giving just as freely to my own students as they have given to me.

Mark's instructive and incisive comments on my manuscript have consistently elevated my learning experience throughout this past year. I am appreciative of his enthusiasm, flexibility, and generosity as a teacher and mentor. His encouragement gave me the confidence to tackle this project and grow as a student; his keen *halakhic* insight can be sensed in these pages. I am extraordinarily grateful.

I am indebted to David for introducing me to the study of responsa literature and for assisting me in formulating the topic and methodology for this project. The excitement I have found in the study of Jewish law was only one of David's many precious gifts to me. His warm friendship, honest interest, and willing participation in this project from Los Angeles and Jerusalem have provided an unforgettable lesson in what it means to be a *rav*.

Finally, I wish to thank Allison Lee — my best friend, my life partner, and my constant inspiration. Without her generous spirit, this thesis — and my rabbinate — simply would not have come to be. This volume is dedicated to her and to our son, Micah, whose arrival filled me with wonder and whose smile is a glimpse of the world to come.

K.M.C.
February 1998

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CHAPTER I

THE STATE OF LIBERAL JUDAISM IN ISRAEL SINCE 1948

Introduction

From the time of the *Geonim* in Babylonia, the *halakhic teshuvah* has been the primary vehicle through which Jewish law has been employed in responding to contemporary life. In describing the role of the responsum, David Ellenson asserts, "*It is the crossroads where text and context meet in the ongoing tradition of Jewish legal hermeneutics.*"¹ As such, the responsa literature of a given place and time period offers us a glimpse of the currents which pulsed through Jewish life at that specific juncture in Jewish history. The perceptive historian can see in the responsa literature a portrait of the values, struggles and innovations which characterize the evolving Jewish experience over time.

It is curious to note that responsa have only rarely been examined in such an academic, historically oriented manner. By and large, this corpus of Jewish literature has remained the domain of ritually observant rabbis, who consult these writings for guidance in religious matters.² The scholarly community has all too frequently looked elsewhere in

¹

David Ellenson, Tradition in Transition: Orthodoxy, Halakhah, and the Boundaries of Modern Jewish Identity (Lanham, Maryland: University Press of America, 1989), p. 10.

²

Ibid., 1.

its investigations of the forces which shape Jewish life throughout history. Yet a careful analysis of responsa — their content, their methodology, their apparent audience, their presumed function — in a particular Jewish setting may reveal much about the character of that Jewish community that might not surface in other media.

Perhaps the ideal locale in which to test this hypothesis is the contemporary state of Israel. Certainly, the traditional *halakhic* enterprise has flourished under Jewish sovereignty. As new social realities continue to materialize in Israel, there are concomitant legal questions which must be addressed. Jewish law, as it has been interpreted by Orthodox rabbis, has played a significant role in court decisions which have provided answers to those questions, as we shall see later in this chapter. However, the Israeli *halakhic* frontier is not populated solely by Orthodox *poskim*. In Israel, where Progressive (Israeli Reform) and Traditional (Israeli Conservative) Jews are decidedly in the minority, a considerable liberal *halakhic* literature is emerging. Progressive rabbis are publishing *teshuvot* on the most pressing matters in Israeli life. The Traditional movement in Israel has its own *Va'ad HaHalakhah* which prepares responsa formulated in the positive historical tradition of Conservative Judaism. Indeed, as Louis Jacobs indicates, this new genre within the responsa literature offers an alternative approach to Israeli Jews who wish to reconsider the function of *halakhah* in contemporary life:

" . . . the ultimate authority for determining which observances are binding upon the faithful Jew is the historical experience of the people of Israel, since, historically

perceived, this is ultimately the sanction of the *halakhah* itself."³

Consequently, our exploration must begin with an analysis of the liberal movements themselves. By examining the circumstances in which the respondents find themselves as liberal Jews in Israel, we may endeavor to unveil the fullest meanings in their writings. Moshe Zemer, the foremost author of Progressive *halakhic* works in Israel, stands firm upon the assumption that *halakhah* has always been responsive to social reality. In a brief that he submitted to the Israel Supreme Court to challenge the notion — proffered by the orthodox Chief Rabbinate — of Jewish law as immutable, Zemer writes that "The *halakhah* has continually developed and changed in confronting changing reality in every generation."⁴ It is certainly reasonable to propose, then, that the realities which confront the Progressive and Traditional movements in Israel — their historical circumstances, their successes, their failures, their obstacles, their strategies — play a role in the development of their legal literature.

Our task, in the pages of this chapter, will be to explore those realities. During the short fifty years of Israel's existence as a sovereign state, liberal Israeli Jews have already encountered evolving challenges unlike those experienced by their Reform and Conservative compatriots in other parts of the world. We will need to acquire a sophisticated knowledge of these factors if we wish to assess the degree to which context

³

Louis Jacobs, A Tree of Life (Oxford: Oxford University Press, 1984), p. 245.

⁴

Moshe Zemer, "Authority and Criteria in Liberal *Halakhah*," Dynamic Jewish Law: Progressive *Halakhah*. Essence and Application, Walter Jacob and Moshe Zemer, editors (Tel Aviv and Pittsburgh: Rodef Shalom Press, 1994) p. 12.

mingles with text in Progressive and Traditional Israeli responsa.

Origins of the Progressive Movement in Israel

Institutionalized Progressive Judaism began to arise in Palestine even before the establishment of the political state of Israel in 1948. The World Union for Progressive Judaism, founded in London in 1926, represented Jews in five countries, one of which was *not* Palestine.⁵ However, only thirteen years later, the World Union's financial and spiritual assistance paved the way for the establishment of the Leo Baeck School in Haifa. From its beginnings, the Leo Baeck School, which opened its doors to fourteen pupils in 1939, was rooted in the ideology of Progressive Judaism, and the school was envisioned as a vehicle through which Progressive Judaism might best be presented to a wide scope of Israeli society. That ideology remains in place today, and the school has grown considerably in numbers and reputation. Hundreds of students attend the elementary and secondary schools, although it is important to note that many of the students choose the Leo Baeck School for its academic excellence, not for its Progressive affiliation.⁶

The Leo Baeck School remained the only official institution of the Progressive movement until 1958, when Har-El Congregation in Jerusalem became Israel's first Progressive synagogue. The idea to establish the congregation belonged to Rabbi Herbert

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Richard G. Hirsch, "Progressive Judaism: An Agenda for Relating to the Jewish State and the Jewish People," Towards the Twenty-first Century: Judaism and the Jewish People in Israel and America, Ronald Kronish, editor (Hoboken, New Jersey: KTAV Publishing House, Inc., 1988) p. 53.

⁶

The Movement for Progressive Judaism in Israel (promotional pamphlet), 1966, p. 19.

Weiner of South Orange, New Jersey, who had visited Israel in 1957 as a representative of the Central Conference of American Rabbis. After igniting interest in non-orthodox Jewish life in Israel, a preparatory committee was formed under the guidance of Jerusalem author and journalist Shalom Ben-Horin, who ultimately became the congregation's first spiritual leader. By April, 1962, Har-El had obtained land and erected a synagogue building through the generosity of the Wishnick family and Rodeph Shalom Congregation, both of New York, and a regular schedule for worship services was established.⁷

In the early and middle 1960's, Progressive congregations began to spring up throughout Israel. By 1966, there were seven Israeli Progressive congregations, each located in a different city. In addition, the Hebrew Union College - Jewish Institute of Religion, the American Reform seminary, opened a branch campus in Jerusalem in 1963. The Hebrew Union College Biblical and Archaeological School was to serve as a much needed American archaeological center in Israel, while also accommodating American rabbinical students for one year of study.⁸ Before long, the Jerusalem campus of the College-Institute had also initiated its own rabbinical course of study for individuals wishing to serve as Progressive rabbis in Israel; numerous *olim* (Jewish immigrants to Israel) and Israeli natives have been ordained through this program, including the first native Israeli woman rabbi in 1994.

⁷

Ibid., p. 3.

⁸

Ibid., pp. 23-25.

Estimates published in the early 1990's indicated that there were approximately fifteen Progressive congregations in Israel.⁹ Two Progressive *kibbutzim*, as well as a host of scouting, camping and youth group programs for native Israeli children, also contribute to the fabric of Progressive religious life in Israel.¹⁰

⁹

Ephraïm Tabory, "The Identity Dilemma of Non-Orthodox Religious Movements: Reform and Conservative Judaism in Israel," Tradition, Innovation, Conflict: Jewishness and Judaism in Contemporary Israel, Zvi Sobel and Benjamin Beit-Hallahmi, editors (Albany: State University of New York Press, 1991), p. 138.

¹⁰

David H. Ellenson, "Liberal Judaism in Israel: Problems and Prospects," Journal of Reform Judaism, Volume 31 (Winter, 1984), p. 61.

Origins of the Traditional Movement in Israel

Conservative synagogues could be found in Israel as early as the 1960's, but without a national organization to promote their development, they were perceived largely as gathering places for like-minded immigrant Jews from English-speaking countries. On the festival of *Tu BiShevat* in 1979, more than a dozen synagogues joined in forming the *Masorati* (Traditional) movement in Israel. This provided the country's Conservative Jews with a sorely needed vehicle through which they could organize and seek new adherents.¹¹

The Traditional movement published its first *Yedi'on*, an overseas news bulletin, in the summer of 1979. In it, the leadership of the fledgling movement targeted the many native Israelis who perceived themselves to be secular Jews:

The new organization has accepted the responsibility of bringing many thousands of unaffiliated Israelis to an appreciation of our heritage, its traditions and its values. One of the major contributions is to show our people in Israel that the synagogue is more than just a house of prayer, but that it can serve as a center for Jewish living and learning for all members of the family.¹²

Also identified in this initial publication were seven objectives for Traditional Judaism in Israel. These included the advancement of Jewish values in Israel and safeguarding of

¹¹

Lee Levine, "Masorati Judaism in Israel: Challenge, Vision, and Program," Towards the Twenty-first Century: Judaism and the Jewish People in Israel and America, Ronald Kronish, editor (Hoboken, New Jersey: KTAV Publishing House, Inc., 1988) p. 79.

¹²

The United Synagogue of Israel and the Rabbinical Assembly of Israel, "Masorati Movement Established," *Yedi'on*, Volume 1, Number 1 (Summer 5739), p. 1.

Jewish tradition in accordance with history; the encouragement of devotion to Torah as viewed through historical interpretation; the strengthening of Israel as the Jewish homeland to which *aliyah* should be promoted; the integration of Jewish values with modernity in Israel; the nurturing of scientific research into the spiritual and cultural heritage of Judaism; the pursuit of *k'lal Yisrael* through friendly relations with other Jews in Israel and throughout the world; and the assistance of Jews in distress, whether in or out of Israel.¹³

In the eighteen years since the establishment of the Traditional movement, one can note the steady institutional development of *Masorati* Judaism in Israel. Recent estimates indicate that there are between thirty and forty congregations affiliated with the Traditional movement. A Traditional *kibbutz* and a Traditional *moshav* have been founded. The movement sponsors Ramah day camps and other youth activities which service approximately one thousand Jewish young people. An extensive adult education program was introduced in the 1980's, spearheaded by the formation in 1984 of a *Masorati Beit Midrash*, the Seminary for Jewish Studies, whose purpose is the training of future rabbis and educational leaders for the Traditional movement. The Seminary also hosts American Conservative rabbinical students at the Jewish Theological Seminary in New York and the University of Judaism in California for one year of study.¹⁴

¹³

Ibid., p. 1.

¹⁴

Levine, p. 80.

Liberal Judaism in Israel: A Statistical Analysis

Despite the emergence of Progressive and Traditional synagogues, schools, camps, seminaries, and *kibbutzim*, statistics do not suggest that liberal Judaism has assumed a position of widespread influence in Israel. It is estimated that between 3,000 and 5,000 Israeli families consider themselves members of the country's Progressive and Traditional congregations. This accounts for less than one-half of one percent of the entire Jewish population in Israel. Other statistical indicators confirm the hardships of liberal Judaism in Israel. A survey of the two movements in 1979 revealed that the average age of a self-identified Progressive Jew was fifty-nine, while the average Traditional Jew was fifty-three; more recent findings only suggest that the average age of the Progressive Jew is now older, given the difficulties that the Progressive synagogues have had in attracting large numbers of new young members. Traditional congregations appear to be meeting with more success in this regard, however their new young congregants are, more often than not, immigrants from English-speaking countries or native Israelis whose spouses are immigrants.¹⁵

The struggles of the Progressive and Traditional movements in Israel have been more fundamental than the mere lack of affiliation would suggest. Indeed, liberal Judaism has long languished in obscurity in many sectors of Israeli culture, and it has been perceived as rather foreign to the great majority of Israeli Jews who *are* acquainted with it. In the early 1970's, a public opinion poll sponsored by the *Jewish Chronicle* of

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Tabory, p. 139.

London disclosed that 41% of the Israeli public supported the fight of Progressive rabbis to gain official recognition in the country, 26% were opposed, and 33% had never even heard of the movement. A further indicator of the dilemma facing the Progressives was that the overwhelming majority of those supporters were culled from the liberal-minded, Western-oriented circles in Israeli life, whose citizens were firmly entrenched in either secularism or agnosticism. Consequently, an extremely small number of those who signed petitions or spoke out on behalf of the Progressive movement were, in fact, Progressive Jews. Most were no more likely to attend a liberal worship service than were Orthodox Jews.¹⁶

The situation is only modestly improved for the liberal movements in Israel today. A survey published in December, 1993 revealed that " . . . only in recent years has the Israeli public become aware of the existence of 'denominations' in religious observance."¹⁷ Moreover, there appears to be considerable confusion surrounding the names of the two movements. When asked if they think of themselves as members of any of the Jewish denominations, 44% of the Israeli sample reported no connection to a denomination, 6% declared themselves to be *Haredi*, 12% defined themselves as National-Religious, 29% identified themselves as Traditional, and 6% affiliated with

¹⁶

Norman L. Zucker, The Coming Crisis in Israel: Private Faith and Public Policy (Cambridge, Massachusetts and London, England: The MIT Press, 1973), p. 94.

¹⁷

All the findings in this paragraph are taken from Shlomit Levy, Hanna Levinsohn and Elihu Katz, Beliefs, Observances and Social Interaction Among Israeli Jews (Jerusalem: The Louis Guttman Israel Institute of Applied Social Research, December 1993), pp. 14-15, 103-104, E-5.

Progressive Judaism. Those numbers seem to suggest marked progress for liberal Judaism, until one examines the results when the same question was asked, *but with slightly different answer options*. A similar sample returned strikingly different results (as they pertain to the state of liberal Judaism in Israel): 45% reported no denominational affiliation, 5% declared themselves to be *Haredi*, 9% defined themselves as National-Religious, 36 % identified themselves as Traditional, and the remaining 4% were evenly split between "Conservative" and "Reformist" Judaism. These findings point to an apparent lack of basic familiarity with the names which describe Conservative and Reform Judaism in Israel. Even more disturbing for proponents of the Progressive movement is the revelation that nearly half of those who identified themselves as "Reformist" Jews indicated that they are "totally non-observant" religiously. Needless to say, the leaders of the Progressive movement would not enthusiastically count such respondents as ideological or theological adherents.

The most recent scholarship in Israel confirms these dismal findings for liberal Judaism in Israel. Ira Sharkansky, a professor of political science and public administration at The Hebrew University of Jerusalem, notes in 1996 that surveys of Israeli Jews tend not to use terms which are identified with liberal Judaism, since much of the Israeli population is either unfamiliar with them or assigns meanings to them which are inconsistent with their definitions in North America. Sharkansky indicates that, in such surveys, large numbers of Jews identify themselves as "traditional," but for them, the term has no link to *Masorati* Judaism whatsoever:

Israelis who consider themselves traditional are typically from North African or Asian backgrounds. Many of them observe dietary laws and Sabbath and wear *kipot* (yarmulkes) but are not as rigorous about observances as those who consider themselves Orthodox.¹⁸

Sharkansky acknowledges that there are liberal congregations in several Israeli cities, but he is quick to emphasize that they represent only a tiny proportion of the Israeli population.

We must conclude, on the basis of our statistical analysis of liberal Judaism in Israel, that the Progressive and Traditional movements have definitely not attained the level of salience to which they aspired in their respective infancies. Our next task is to identify the barriers which may have prevented (and may continue to prevent) that type of success.

¹⁸

Ira Sharkansky, Rituals of Conflict: Religion, Politics, and Public Policy in Israel (Boulder and London: Lynne Rienner Publishers, 1996), p. 9.

Legal Barriers

The legal complications which hinder the development of liberal Judaism in Israel are rooted in the status of Orthodox Judaism as the *de facto* official state religion. The chain of events which afforded Orthodoxy that status actually began before Israel became an independent state in 1948. The Executive of the Jewish Agency, led by socialist David Ben-Gurion, forged a preliminary agreement in 1947 with the World Agudah movement, which represents the ultra-Orthodox. The arrangement committed the future state of Israel to four parameters: 1) the establishment of the Sabbath (Saturday) as the legal day of rest for Israeli Jews and for all institutions of the state; 2) the observance of *kashrut* in all institutions of the state; 3) the maintaining of rabbinical control over matters of Jewish personal status; and 4) the formation of a religious school network which would be bound by state-created minimum secular standards. This agreement — secured by the ultra-Orthodox even before the state was a reality — established the groundwork for what is now known in Israel as the "religious status quo."¹⁹

There is more to the uninterrupted domination of the Orthodox over Israeli religious matters than mere inertia. With Israel under a constant threat from its hostile neighbors, there is a premium placed upon unity within Israeli borders. Political leaders consider it foolhardy to tinker with a workable, if somewhat questionable arrangement for religious affairs under such circumstances. Furthermore, the vast majority of religious

¹⁹

Martin Edelman, Courts, Politics, and Culture in Israel (Charlottesville and London: University Press of Virginia, 1994), p. 51.

Jews in Israel identify themselves as Orthodox, and they comprise approximately 15-20% of the state's Jewish population. Obviously, a budding democracy such as Israel's could ill afford to ignore so numerous a constituency.²⁰

The most important factor in the continuation of the religious status quo, however, is Israel's system of parliamentary democracy. From its birth, Israel has been ruled by coalition governments comprised of representatives from a wide range of political parties. The size of each party's delegation to the government is a direct reflection of its percentage of the national vote. This structure has afforded the Orthodox political parties — which can frequently “make or break” a coalition — extraordinary political clout. The tiny number of Jews affiliated with the liberal religious movements, predictably, wield little or no collective power in governmental concerns. The two major secular parties, Labor and Likud, have, of course, been motivated to befriend the Orthodox as a matter of political expedience. Consequently, every government in Israel since 1959 has included in its formal coalition agreement a commitment to uphold the religious status quo.²¹

This has effectively created a legal mountain in front of Israeli liberal Judaism in practically every imaginable direction. The Ministry of Religious Affairs, which distributes state funds to synagogues, churches, mosques and other religious institutions, has typically been headed by representatives of the Orthodox political parties or by those friendly to their interests. The same can be said for governmental departments such as

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Ibid., pp. 51-52.

²¹

Ibid., p. 52.

the Ministry of Interior, which distributes funds to local authorities, some of which are designated for religious purposes; the Ministry of Education, which disburses funds to schools and influences the development of curricula in state secular and religious schools; the Ministry of Housing and Construction, which exercises control over the erection of new housing projects, schooling ventures, and other public facilities; and the Ministry of Welfare, which finances community centers, homes for the aging, and other programs generated by religious organizations.²² It is undeniable that the influence of the Orthodox establishment has continually prevented the initiatives of Progressive and Traditional Jews from receiving governmental sanction.

The legal problems of liberal Judaism are exacerbated by the structure of Israel's official rabbinate, which is co-led by the chief rabbi for the Ashkenazic community and the chief rabbi for the Sephardic community. This body, which is closely associated with the Ministry of Religious Affairs, plays a key role in appointing official community rabbis, inspectors of *kashrut*, overseers of cemeteries and burial societies, and members of local religious councils.²³ The religious councils, for their part, control the appointment of judges for the Rabbinical Courts, which rule on matters of marriage, divorce, confirmation of wills, and other personal status issues.²⁴ This fact has rendered liberal rabbis powerless to officiate at wedding ceremonies, divorce proceedings, or

²²

Sharkansky, pp. 88-90.

²³

Ibid., p. 90.

²⁴

Edelman, p. 53.

conversion rituals which are deemed legal and acceptable in Israel.

Dominated by the Orthodox, the official rabbinate of Israel has become a platform for the public denunciation of Progressive and Traditional Judaism. The chief rabbinate of Jerusalem, for instance, places an annual advertisement in the *Jerusalem Post* declaring that attendance at High Holy Days worship services in Traditional synagogues does not fulfill one's religious obligation to hear the *shofar* blown.²⁵ Similarly, when Issar Y. Unterman, the chief rabbi of Tel Aviv, spoke out against Progressive women and men praying together at the Western Wall in 1968, the religious press lambasted the Progressive movement, calling its adherents "... traitors to their people, their land, and their God," and suggesting disparagingly that they "... build a wall near one of their temples and go there to pray with their wives and mistresses."²⁶

As we have seen, the legal barriers to the successful expansion of liberal Judaism in Israel are onerous enough on their own to stunt the growth of the Progressive and Traditional movements. However, we will soon discover that there are other factors which are also working to undermine the non-Orthodox strands of Israeli Judaism.

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Tabory, p. 142.

²⁶

Zucker, p. 95.

Cultural Complications

Rabbi Robert L. Samuels, describing in 1966 the budding Israeli Progressive movement of which he was a leader, elucidated a handful of realities endemic to Israeli culture which, even today, continue to impede the progress of liberal Judaism:

Many of the motivations for joining a Reform congregation in America do not exist here. We have no need for religious schools. Jewish identification is certainly not a factor in congregational membership. We do not have to counter-influence a gentile community. No one joins our congregations for extraneous reasons, as Progressive Judaism here is so controversial. Therefore, those who join us do so primarily out of religious motivations.²⁷

Samuels' statement makes clear the importance of *religious* relevance to a Jewish denomination in Israel. Unless a movement can effectively meet the spiritual needs of a significant number of Jewish Israelis, it has few other means for attracting adherents, since the Israeli's needs in the areas of Jewish education and identity are rather easily fulfilled.

This distinctive cultural reality presents a problem for liberal Judaism in Israel. Both the Progressive and Traditional movements have attempted to position themselves as excellent structures for fulfilling the religious needs of native Israelis. Yet it is becoming increasingly doubtful that the "product" offered by liberal Judaism can be considered an ideal match for the vast majority of Israeli Jews, some of whom do not even feel that they *have* spiritual needs.

²⁷

Robert L. Samuels, "The Religious Situation in Israel Today," A Summary on Activities to Our Friends Abroad (Israel: The Israel Progressive Congregations, 1966), p. 1.

Progressives, such as Rabbi Samuels, have long proposed that their brand of Judaism is, in fact, best poised to bring Jewish religion to the wayward Israeli masses:

... there is a spiritual vacuum between a rigid orthodoxy and an apathetic secularism. The orthodox tradition cannot satisfy the religious needs of the vast majority of Israelis whose parents or they themselves have abandoned it ... The usual alternative is secularism which in its many forms (Humanism, Socialism, Jewish Nationalism) seems to have failed to give a continuing spiritual drive ... Our tiny movement of seven congregations has been struggling to provide a meaningful religious expression in spite of the antagonistic opposition of a powerful and entrenched orthodoxy.²⁸

This theme was reiterated just ten years ago by Rabbi Richard G. Hirsch, the Executive Director of the World Union for Progressive Judaism in Jerusalem: "We dare not underestimate the challenge. We are engaged in a struggle for the soul of the Jewish people."²⁹

As we discovered above, every statistical indication suggests that this religiosity-centered vision has failed to attract large numbers of subscribers; it has been particularly unsuccessful among native Israelis. This is alarming to leaders of the Progressive movement, who note that the religious observance patterns of so-called "secular" Jews in Israel are highly consonant with the ritual practices embraced by most adherents of the

²⁸

Ibid., p. 1.

²⁹

Richard G. Hirsch, "Progressive Judaism: An Agenda for Relating to the Jewish State and the Jewish People," Towards the Twenty-first Century: Judaism and the Jewish People in Israel and America, Ronald Kronish, editor (Hoboken, New Jersey: KTAV Publishing House, Inc., 1988) p. 55.

liberal movements.³⁰ But while many self-identified secular Israeli Jews may be *de facto* Progressive or Traditional Jews, only the smallest percentage see themselves in that light.

There are a couple of cultural forces which, when joined together, explain this phenomenon. One has already been suggested — the two movements have battled an enduring name-recognition problem. Researchers have concluded that the terms “Progressive” and “Traditional” still do not necessarily imply identification with Israel’s Reform and Conservative strands.³¹ This prolonged obscurity can largely be explained as the logical consequence of the Orthodox establishment’s legal onslaught designed to keep liberal Judaism hidden away in the closet, without any state resources or official recognition. However, the choice of names which are ambiguous — particularly in the case of the Traditional movement — does not simplify liberal Judaism’s publicity campaign.

Another factor is that the growing numbers of non-religious Israelis who *are* familiar with the two liberal movements typically consider Orthodoxy to be the “legitimate” form of Jewish religious expression. This, too, can be explained, in part, as a result of Orthodox dominance in Israeli politics. But the emerging perception of liberal Judaism as a culturally divergent import from western Europe and North America is also

³⁰

Tabory, p. 139.

³¹

Levy, Levinsohn and Katz, p. 14. See also Rabbi A. Yehoshua Zuckerman, “Comments on the Guttman Report,” The Jewishness of Israelis: Responses to the Guttman Report, Charles S. Liebman and Elihu Katz, editors (Albany: State University of New York Press, 1997), p. 179.

a part of the problem. The Orthodox and the non-Orthodox in Israel agree on very little, but they share a common value:

... (there is a) popular perception of Orthodox Judaism as being the spirit around which the unity of the Jewish people has been maintained in the past. This is the spirit that characterizes Israel as well, surrounded, as it is, by enemies on all sides. By comparison, the Reform and Conservative movements appear to be legitimizing assimilation inasmuch as they allow their adherents to mingle more easily in the secular world. This picture is encouraged by Orthodox leaders ...³²

Issues such as this have cast a cloud over the pursuit of legitimacy in which Progressive and Traditional Judaism are engaged. The disdain held by the "secular" community for the Orthodox remains palpable, but religious alternatives to Orthodoxy are still seen as inauthentic. Consequently, we find that 64% of Israeli respondents in a December, 1993 survey favored the granting of equal status to the various denominations of Israeli Judaism, while 55% also replied that they would never attend a service at a liberal synagogue if one were in their neighborhood.³³ As Tabory concludes: "The feeling of many non-religious Israeli Jews appears to be that while they do not wish to attend synagogue services, it is an Orthodox service that they wish to refrain from attending."³⁴

The two liberal movements are searching for strategies to address the cultural peculiarities of Israeli Jewish life. Rabbi Michael Graetz, at his inauguration as

³²

Tabory, p. 140.

³³

Levy, Levinsohn and Katz, p. 103-104.

³⁴

Tabory, p. 139.

President of the Israel Region of the Rabbinical Assembly in 1992, argued for an end to the Traditional movement's emphasis on the synagogue-centered model embraced in 1979:

The Conservative movement in the United States and Canada has stressed that the Synagogue is the center of Jewish life, because it is the only Jewish "space" there. The average Jew in the United States and Canada is so far from Judaism that there is no choice but to try to bring him back to Jewish space, almost at any price. But what role does the Synagogue play in Israel, where the ground one walks on is part of "Jewish space?" Today in Israel, the center of Jewish life is the individual citizen of the state, and thus the Jewishness of the state depends on the Jewish sensibilities of its citizens.³⁵

Similarly, there are factions among the Progressives that have suggested, in recent years, that the movement should replace its synagogue-centered approach with an emphasis on a youth movement.³⁶ Such changes might be well-conceived, but it remains to be seen whether the liberal movements, which found fertile ground in religiously pluralistic countries, can be effectively "translated" for Israel, where religious identity is invariably bound up with national identity.

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Michael Graetz, "Our Task In Israel," Conservative Judaism, Volume XLV, Number 3 (Spring 1993), pp. 69-70.

³⁶

Tabory, p. 148.

Anti-Zionist Roots

An added complication has contributed to the difficulties experienced by the Progressive movement in Israel: early American Reform Judaism had a well-earned reputation for being anti-Zionist. The movement's Pittsburgh Platform of 1885 clearly identified Judaism as a religious entity devoid of any national element.³⁷ This, of course, left no room for Zionist ideology. Jewish nationalism was viewed by many early American Reform leaders, such as Hebrew Union College President Kaufmann Kohler, as an unwelcome concept that fueled the fire of anti-Semitism. There existed a prevalent fear that the drive for a Jewish state would confirm allegations that Jews were not loyal and patriotic citizens in the various countries in which they lived. Especially in America, where Jews were yearning for acceptance and full membership in their host culture, such a portrayal was highly undesirable. Consequently, an anti-Zionist flavor remained a part of Reform Judaism well into the twentieth century.³⁸

With the onset of World War I, which left many Jewish communities in eastern Europe decimated and laid waste to the confidence Americans had once maintained regarding the homogeneity of their own culture, Reform Jews began to recognize the need to reexamine Zionism and its place in their future. This reexamination was led by

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Robert M. Seltzer, Jewish People. Jewish Thought: The Jewish Experience in History (New York: Macmillan Publishing Co., 1980), p. 643.

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David Polish, Renew Our Days: The Zionist Issue in Reform Judaism (Jerusalem: World Zionist Organization in cooperation with the World Union for Progressive Judaism, 1976), pp. 58-59.

Abba Hillel Silver and Stephen S. Wise. Silver, a prominent Reform rabbi in Cleveland, skillfully merged his passions for Reform Judaism and Zionism in his own life and work. His rise within the institutional culture of the Reform movement afforded him an opportunity to propose a new vision of Zionism — one which placed Israel at the center of Reform's hope for a universal messianic age. Conversely, Wise was a maverick whose impact was forged as an outside challenge to normative Reform organizational life. His creations included the Zionism-driven American Jewish Congress, his Free Synagogue in New York, and the Jewish Institute of Religion, a rabbinic seminary established in the early 1920's largely out of his disgust at the Hebrew Union College's patently anti-Zionist stance.³⁹

By the middle of the twentieth century, the sentiments against Jewish nationalism had gradually faded from the Reform landscape. The Hebrew Union College and the Jewish Institute of Religion would merge by 1950, and thirteen years later, the College - Institute would open a Jerusalem campus devoted to the study of biblical archaeology, which ultimately became the first liberal Jewish seminary on Israeli soil.⁴⁰

Progressive Judaism in Israel, however, was unable to avoid paying a steep price for the early anti-Zionism of its American "sister." S. Clement Leslie, writing about the

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Ibid., pp. 115-122.

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Richard G. Hirsch, "Progressive Judaism: An Agenda for Relating to the Jewish State and the Jewish People," Towards the Twenty-first Century: Judaism and the Jewish People in Israel and America, Ronald Kronish, editor (Hoboken, New Jersey: KTAV Publishing House, Inc., 1988) p. 53.

Progressive movement in 1971, noted: "... despite a thorough-going change of heart in recent decades, its reputation among Israelis is still slightly shadowed by the anti-Zionist phases of its earlier history. Though these were abandoned long ago they are sometimes publicly recalled in the Israeli press."⁴¹ Indeed, early leaders of Progressive Israeli Judaism, in some instances, offered little aid to their own cause. In their attempts to create a place for liberal Jewish life in Israel, they occasionally resorted to chastisement of the secular life most commonly identified with Zionism. Robert L. Samuels, for example, wrote in 1966: "The pioneering spirit is giving way to the urge to acquire. The very word 'Zionism' in Israel has come to mean "preaching without practice."⁴²

The anti-Zionist reputation has been difficult to overcome, particularly in light of the predilection of the socialist Zionists in the early *Yishuv* to look negatively upon liberal Judaism for their own reasons. Many of these pre-Israeli trailblazers saw Zionism as the essential realization of Jewish tradition. While they did not cling to the Bible or other aspects of Jewish law in a religious sense, they maintained that the Bible was to be seen as the text that granted legitimacy to the Jewish claim on the land and proffered authentic ideals for Jewish living. They also held the Hebrew language in high regard as a powerful source of Jewishness. Accordingly, these early Zionist looked upon liberal Judaism with contempt. They perceived it to be a perversion of authentic Judaism

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S. Clement Leslie, The Rift In Israel: Religious Authority and Secular Democracy (London: Routledge & Kegan Paul, 1971), p. 66.

⁴²

Samuels, p. 1.

designed by those who wished to run from their Jewish identities. One can hardly ignore the unmistakable impact of these beliefs upon the development of Progressive Judaism (and, by association, even Traditional Judaism) in Israel.⁴³

Adherents of the Progressive movement, both in Israel and around the world, have attempted to distance themselves from the damaging, anti-Zionist reputation. One strategy has been to establish Progressive *kibbutzim* in Israel. This has afforded the Israeli Progressives the privilege to suggest, as they did in a publicity brochure after the opening of their first *kibbutz*, that liberal Judaism in Israel is "rooted in the land."⁴⁴ Another strategy has been for leading Progressives around the world — both as individuals and collectively — to go on public record in favor of the mixture of liberal Judaism and Zionism. For example, John D. Rayner, rabbi of the Liberal Jewish Synagogue in London, delivered a pro-Zionist address in 1983 that was ultimately published and disseminated by the International Center for Peace in the Middle East, located in Tel Aviv. In it, he declared:

Is Progressive Judaism compatible with traditional, mainstream, liberal Zionism? I believe it is. Not indeed with every version of it, for there are of course many varieties within the general tendency. For instance, insofar as it relegates religion from the centre to the periphery of Jewish life, and insofar as it depreciates the Diaspora, we must continue to dissent from it. But insofar as it seeks to build a society which shall be both a refuge for the homeless and a fulfillment of the highest ideals of our heritage, and therefore, among other things, endeavours to do justice to the other inhabitants of the land, and to make peace with its neighbors, we surely

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Ellenson, "Liberal Judaism in Israel: Problems and Prospects," p. 65.

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Tabory, p. 146.

endorse it. With such a Zionism Progressive Jews can identify themselves; from it they have much to gain, and to it they have much to give.⁴⁵

The most recent collective effort of this sort was the new Zionist platform adopted by the Central Conference of American Rabbis, which is the governing body for American Reform rabbis. While the Columbus Platform of 1937, which was hospitable to Zionism, had long ago superseded the controversial Pittsburgh Platform, the American Reform rabbinate enthusiastically welcomed the opportunity on June 24, 1997 to embrace indelibly an assortment of tenets that would meet with the approval of veritably every type of Zionist. The new Miami Platform includes groundbreaking statements that assign the land of Israel a special destiny because of the Sinai covenant, embrace the Hebrew language as indispensable, and encourage *aliyah* (immigration to Israel).⁴⁶

Clearly, these efforts possess the potential to counteract the negative effect of an anti-Zionist past on Progressive Judaism in Israel. Their success, however, will depend upon the degree to which the broadest spectrum of the Israeli populace is still listening.

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John D. Rayner, "Progressive Judaism, Zionism and the State of Israel," (Tel Aviv: International Center for Peace in the Middle East, 1983), p. 6.

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Ammiel Hirsch, "The Making of a New Zionist Platform," Reform Judaism, Volume 26, Number 2 (Winter 1997), p. 65.

Recent Legal Strides

Despite the obvious hardships which continue to plague the liberal movements in Israel, there have been some noteworthy breakthroughs in the political process and in the courts. The most widely publicized recent battle has yielded mixed results thus far. In November, 1995, the Israeli Supreme Court detected a technicality in the procedure that afforded a monopoly over legal conversions to Judaism in Israel. The court's ruling upheld the ban on conversions performed by liberal rabbis (as well as the Orthodox monopoly over other ceremonies pertaining to personal status, such as weddings), but it also recommended that the *Knesset* reconsider the existing legislation on the matter.⁴⁷

The divisive issue has been under debate since that time, and it has become an increasing threat to cause an internal split or to alienate Israel from the Diaspora, where liberal Jewish strands represent the majority. In June, 1997, Israeli Prime Minister Netanyahu appointed prominent Orthodox lawyer Ya'akov Ne'eman to head a committee on the matter of conversions. Ne'eman saw this as an opportunity to make history and to achieve unprecedented harmony within religious Israel. His committee — comprised of five Orthodox members and one participant from each of the two liberal movements — conducted its business in a remarkably civil manner. Forty meetings led to a historic proposal for a compromise which would allow Progressive and Traditional rabbis to participate in state-approved conversions and officially sanctioned weddings. The deal required legitimate give-and-take on both sides; liberal rabbis would have to accept

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Sharkansky, p. 138.

halakhic standards (and allow Orthodox Jews to carry them out where liberal rabbis were not *halakhically* qualified), while the Orthodox would have to grant recognition to the non-Orthodox religious groups. Not surprisingly, the plan was rejected out of hand by the Chief Rabbinate and the ultra-Orthodox Shas party's *Knesset* members. It was a devastating setback after hopes had been raised within the Progressive and Traditional communities, but liberal Jews around the world are struggling to recognize the progress that is represented by the emergence of such a compromise in the first place. Moreover, the Ne'eman Commission is endeavoring to remain active, and their intent is to broaden the scope of their discussion to include even more divisive religious matters, such as the worship of women at the Western Wall.⁴⁸

Recent years have brought several legal victories to the proponents of Progressive and Traditional Judaism in Israel. Sharkansky reports an increase in the number of liberal synagogues and schools that are receiving governmental financial support, and the Ministry of Education has approved the inclusion of Progressive and Traditional Judaism in the religious curricula of Jewish secular schools.⁴⁹ It is also important to note the progress which was achieved in the Ministry of Religious Affairs during the later years of Prime Minister Yitzhak Rabin's government:

Several actions initiated by the minister of religious affairs who served in the Rabin

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Yossi Klein Halevi, "The Battle for the Future of the Jewish People," The Jerusalem Report (November 13, 1997), pp. 40-41, 56-58.

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Sharkansky, p. 138.

cabinet in 1995 provoked a protest by Orthodox rabbis. The minister had opened to public scrutiny the rabbinate's list of Jews forbidden to marry in Israel, demanded that individuals placed on the list be given an opportunity to appeal their designation, and proposed public funding for them to travel overseas in order to obtain a secular marriage.⁵⁰

There remains, of course, a considerable distance for the Progressive and Traditional movements to travel if they hope to attain legal recognition in Israel — and all the benefits that would come along with it. However, as we prepare to explore the possibilities which lie ahead for liberal Israeli Judaism, we must bear in mind that the first promising indicator for the future can be found in the successes and near-misses of the recent past.

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Ibid., p. 138.

Future Prospects and Visions

Supporters of the Progressive and Traditional movements in Israel appear to have reason for guarded optimism as they look to the future. David Ellenson remarks that the increasingly vitriolic attacks by the Orthodox on the non-Orthodox in Israel seem to suggest that the liberal movements are inspiring gradually more fear as a potential threat to the religious status quo.⁵¹ Ugly incidents and physical altercations between different types of religious Jews are becoming the norm in modern Israel, and the chastisement of liberal Judaism in the Israeli media has reached a crescendo. It is certainly reasonable to assume that the Orthodox establishment would feel secure enough simply to ignore the activities of the two tiny movements if they were perceived to be universally unattractive to the Israeli population. The intensified polemics against Progressive and Traditional Judaism are, therefore, worthy of our attention.

Another reason for Progressive and Traditional Israelis to look to the future with hope is the recent triumph of liberal Judaism in the American elections to the World Zionist Congress. The 1997 election results carry with them two positive indicators. First, the successful campaign to register liberal Jewish voters suggests that America's Reform and Conservative Jews have not yet abandoned their compatriots in Israel. There had been considerable fear that the liberal Jews of the Diaspora might decide to turn their backs on a Jewish homeland that, at its religious core, disapproves of them. The overwhelming 73.7% vote in favor of the Reform and Conservative Zionist organizations

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Ellenson, "Liberal Judaism in Israel: Problems and Prospects," p. 67.

(ARZA and MERCAZ, U.S.A.) proved that the Israeli Orthodox had not yet sufficiently insulted the world's liberal Jews to secure their surrender. A second, more tangible outcome of the World Zionist Congress elections is the near-certain financial benefit that will come to Israel's liberal religious institutions. The victory will allot more influence to the Progressive and Traditional movements in the disbursement of the Jewish Agency for Israel's annual \$400 million budget.⁵² This will only serve to add to the already significant fiscal clout that the liberal movements possess in Israel because of the wealth and passion of their overseas companions:

When an issue pits Orthodox and Reform Jews against one another, it puts Israeli officials in a difficult squeeze between the Orthodox position likely to be favored by interests represented in the Knesset and the position of non-Orthodox Jews represented among overseas communities that contribute substantial funds to Israeli programs and support Israel's interests with their national governments.⁵³

The American World Zionist Congress elections serve as an unmistakable reminder to the Israeli Orthodox establishment that the Diaspora's liberal Jewish communities will not be ignored.

Indeed, it appears that the Progressive and Traditional religious communities in Israel, for better or for worse, for richer or for poorer, are here to stay. The question that remains is: What vision should guide these movements as they head into the twenty-first

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Ammiel Hirsch, "The Making of a New Zionist Platform," Reform Judaism, Volume 26, Number 2 (Winter 1997), p. 65.

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Sharkansky, p. 126.

century?

There is no dearth of opinions on the matter. Lee Levine, the Dean of the Traditional movement's Seminary for Jewish Studies in the late 1980's, proposes a program employing the movement's synagogue-centers, rabbinical school, overnight camps and public schools to spread *Torah*, *mitzvot*, and enlightened Zionism in accordance with modernity and the historical approach of Conservative Judaism.⁵⁴ Michael Graetz, writing his vision for Traditional Judaism in 1992, eschews the synagogue-center, turning his attention to mobilizing the individual citizen to join in the ambitious task of creating " . . . a religious movement that will become the majority, a movement that future historians will identify as Judaism."⁵⁵ Richard Hirsch espouses a plan for Progressive Judaism that emphasizes a willingness to elevate "the brotherhood of *Am Yisrael*" to the highest priority — calling for coexistence with the Orthodox, effecting a merger with Traditional Judaism in Israel, spearheading a movement to establish Hebrew as the second language of world Jewry, and devising new approaches to unaffiliated Jews.⁵⁶ Gerald L. Showstack, the Director of Education for the Council of Jewish Federations in New York, also stresses coexistence with the Orthodox as the top

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See Levine, pp. 79-92.

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Graetz, p. 70.

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Richard G. Hirsch, "Progressive Judaism: An Agenda for Relating to the Jewish State and the Jewish People," Towards the Twenty-first Century: Judaism and the Jewish People in Israel and America, Ronald Kronish, editor (Hoboken, New Jersey: KTAV Publishing House, Inc., 1988) pp. 57-64.

priority; his program consists of instituting reform in the Israeli political system, securing recognition for non-Orthodox religious strands, cultivating an environment in which real democracy can succeed, and reducing the social chasm that exists between Orthodox and non-Orthodox Israeli Jews.⁵⁷

These, of course, only represent a tiny sampling of the visions which have been suggested for the future of liberal Judaism in Israel. The challenge, it seems, will be for the beleaguered Progressive and Traditional movements to select any proactive vision at all, since mere survival continues to be such a significant struggle in the face of institutionalized animosity on the part of the Orthodox establishment.

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Gerald L. Showstack, "The Quest for Religious Freedom and Pluralism in Israel," Journal of Jewish Communal Service, Volume 71, Number 2/3 (Winter/Spring 1995), pp. 205-210.

Conclusion

This exposition of the state of liberal Judaism in Israel provides a necessary backdrop for our comparative investigation of the responsa literature produced by the Progressive and Traditional movements. As we examine Progressive, Traditional, and Orthodox *teshuvot* on identical topics pertaining to Israeli life, we will be guided by our understanding of the setting from which the responsa emerged: the humble origins of liberal Judaism in Israel; the challenges of representing religious movements that are small and unfamiliar; the Israeli political and legal systems; the impact of Israeli culture and nationalism upon the fate of liberal Judaism; the hopes and dreams of liberal Israeli Jews for their collective future.

Our task will be to view the legal reasoning of our *poskim* through the same prisms that they use to view their lives. In so doing, we may hope to gain insight into the potential role that this literature might play in the future landscape of Israeli religious life.

CHAPTER II

RESPONSA ON THE SERVICE OF WOMEN IN THE ISRAELI ARMY

Progressive Responsum

Moshe Zemer, הלכה שפ"ה, Chapter 24, "It Is An Obligation Upon Women to Enlist in the Israeli Army":

In the extensive public debate about the service of women in the army, most of the participants proceed from the erroneous foundation that the Torah prohibits Jewish women to serve in the army. It is worthwhile to check if the legal (*halakhic*) reasons used to exempt orthodox women from military service are, indeed, based upon the sources, and if they are consonant with the judgments of our Sages, of blessed memory.

A. "In a 'milchemet mitzvah' (commanded war), everyone goes forth (into service) "

In Tractate *Sotah*, the *Mishnah* explains the passage in the Book of Deuteronomy about those who are absolved from the obligation of military service, i.e., "anyone who has built a new house but not dedicated it," "anyone who has planted a vineyard but never harvested it," and "anyone who has paid the price of betrothal to a woman but not yet taken her in marriage." (Deuteronomy 20:5-7). At the end, the *Mishnah* establishes that these exemptions apply only when such a person's participation isn't vital to the people's

security:

What is meant by these words (that everyone is not obligated to military service)? In a '*milchemet ha'reshut*,'¹ but in a '*milchemet mitzvah*,'² everyone goes forth (into service), even a bridegroom from his bridal chamber and a bride from her wedding canopy. (*Mishnah Sotah* 8:7)

And, indeed, Maimonides also rules that in the case of a *milchemet mitzvah*, it is the duty even of a bride to go forth to service from her wedding canopy. (*Hilchot M'lachim* 7:4).

B. What is the role for women in war?

Opinions are divided on the roles for women in a *milchemet mitzvah*. R. David b. Zimra (the *Radbaz*, who died in Safed in 1573), interpreted the words of Maimonides (to indicate) that women do not customarily participate in combat, but "it is possible that in a *milchemet mitzvah*, women could supply their husbands with water and food, and such is the custom among Arab women." (from *Radbaz's Commentary on the Mishneh Torah*, *ad. loc.*) R. Sh'muel Strausson (the *Rashash*, who died in Vilna in 1872) established that although women are restricted to roles that are not on the front line, they are to offer aid not only to their husbands:

It means that women also are to go forth into military service, and this is an innovation (in the law). Maybe they are only to cook and to bake, etc., to meet the needs of the men, the soldiers of war. (*Annotations and Innovations of the Rashash on Sotah* 44b)

¹ "A voluntary war" for the purpose of procuring power or territory.

² "A commanded war" for religious purposes (e.g., assisting the Jewish people against an enemy that has launched an attack).

The intention of this is to say that women are not to serve only their husbands; rather, they are to serve all combat troops.

C. We are in a state of milchemet mitzvah

According to one of Maimonides' definitions, "*milchemet mitzvah*" is "giving aid to Israel against the hand of an enemy (*tzar*) that has come upon her." (*Hilchot M'lachim* 5:1) Maimonides' language is based upon the scriptural verse: "And when you shall come into war in your land against an enemy (*tzar*) who attacks you..." (Numbers 10:9) Unfortunately, this certainly describes our present state of affairs in Israel: the onslaught of terrorists and the permanent danger of the outbreak of war with the nations that surround us, who see themselves as in a state of war with us. Thus, R. Issachar Halevi Levin posited:

According to the present conditions, in which the land of Israel is surrounded by savage foes, such that almost every settlement is like a frontier city, and even those that aren't on the front line need to know to defend themselves. And almost always, they are in a state of "*milchemet mitzvah*." ("The Enlistment of Women," *The Torah and the State*, Shaul Israeli, editor. Volume 5, Tel Aviv, 5713, p. 59.)

In this state of self-defense against those who come to kill us, a woman is obligated to participate (in military service), at least in non-combat roles, for in so doing, she frees male soldiers to fulfill the roles on the front. In addition to that, there are many female soldiers who teach various courses, sometimes even combat courses. Their indispensability to the Israeli army and their contribution to Israel's security have been

established beyond a doubt.

D. The law does not distinguish between religious and secular young women

There is no basis for a distinction between a religious girl and one who is not religious.

In general, there are no legal distinctions made between religious Jews and those who are not religious in any connection to their obligations — what is forbidden to one is forbidden to the other, and what is permitted to one is permitted to the other.

The reason for exempting religious girls from an obligation that is imposed upon girls who are not religious is rooted in coalition (i.e., political) bargaining, and not in any legal (*halakhic*) source.

E. Morality and seclusion at home

The claim that Jewish tradition obligates Jewish women to spend most of their time in the home and amongst the family is a claim based upon a tenuous *midrashic* interpretation of the verse, “The daughter of the king is all glorious within.” (Psalms 45:14)

Rabbi Shaul Israeli, a member of the Council of the Chief Rabbinate, confirms the determination, mentioned above, of the *Radbaz*, which obligates women to supply provisions for the army, and he rules:

And there is (an obligation upon women with respect to) the supply of water, food and the like in war because of the duty to save a life (*pikuach nefesh*).³ Certainly, the (potential for) loss of life⁴ supersedes any interpretation of the verse from Psalms,⁵ "The daughter of the king is all glorious within." "The Enlistment of Women," The Torah and the State, Shaul Israeli, editor. Volume 4, Tel Aviv, 5712, p. 223, Comment 2.)

It is quite possible that R. Sh'muel bar Yitzhak, a Palestinian Amora in the fourth century of the common era, better described the standing of women in his time:

The way of the woman is to be staying in her house; the way of the man is to be going out to the marketplace and learning wisdom from other men. (*Genesis Rabbah* 18:1)

But the reality in our day is most definitely different, and the great majority of Israeli women, whether religious or not, can be found in the market, the workplace, the university, and even helping with the housework in others' homes. The archetype of the "Woman of Valor" in the Book of Proverbs, who attends to a livelihood, the market and the home, is much more reflective of the reality of our lives today.

It is unproven that the negative effect of the army upon the morality of Israeli women is any greater than the effect of any other communal framework. Those who make that assertion must be extremely careful not to commit the grievous sin of slander (*lashon hara*) in bringing a bad reputation upon the large community of Israeli women who

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See Deuteronomy 22:2 and *Sanhedrin* 73a.

4

A *Toraitic* obligation.

5

A part of *divrei kabbalah* (the Hebrew Bible exclusive of the first five books).

faithfully serve the people and state of Israel.

F. It is forbidden to exploit the Torah for personal gain⁶

There is a basis for the assumption that a large portion of the women who declare that "reasons of religion and conscience" or "religious lifestyle" prevent them from military service are not declaring the whole truth. Other motives, such as fear, the aversion to living in a rigid social framework, and the desire to head out immediately into the marketplace to work or into university study, are among the real reasons for their requesting exemption from the army — and they are not "reasons of religion and conscience." One who acts in this manner obviously violates the prohibition: "Keep yourself far away from a false matter." (Exodus 23:7)

There is no legal (*halakhic*) basis for bestowing special merits upon a religious person because of his faith or the fact of his observance of commandments (*mitzvot*). The very exploitation of one's religiousness in order to gain exemption from obligations of citizenship which are imposed upon everyone and to attain advantages of years at work or study is tantamount to receiving the reward for carrying out a commandment in *this* world (*ba'olam hazeh*). This is inherently flawed reasoning, since such a person is exploiting the Torah for personal gain.

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R. Zadok said, "Make (the words of the *Torah*) not into a crown for magnifying yourself nor a spade for digging . . . anyone who derives benefit in this world from the words of the *Torah* removes his life from the world." (*Pirkei Avot* 4:5.)

Great sages of our day rule in both directions on this issue before us, in the spirit of the pluralism of the law across the generations. But from the arguments which have been raised above, it becomes clear that it is not only groundless to prohibit women to serve in the army — rather, it is even a *mitzvah* for the daughters of Israel to serve in the Israeli army.

Traditional Responsum

Rabbi Robert Harris, The Rabbinical Assembly of Israel, Law Committee,

Responsa, 5747, Volume 2, “Responsum in the Matter of Enlistment of Women in the Israeli Army”:

Question: It is well known that the number of young women who define themselves as “religious” for the purpose of gaining exemption from service in the Israeli army is ever increasing. Moreover, we are hearing the opinions of rabbis which establish that it is not only indecent for women to serve in the Israeli army, but that Jewish law forbids them to serve. In light of this, what is the ruling of Jewish law (*halakhah*) with respect to the service of women in the Israeli Army?

Answer: Our Sages, of blessed memory, already ruled on the topic of the service of women in a Jewish army. In *Mishnah Sotah, Chapter 8*, the sages interpret the passage from the Book of Deuteronomy 20:1-9 — especially verses 5-9: “And the officers shall speak to the people, saying, ‘anyone who has built a new house but not dedicated it shall go and return to his house, lest he die in the war and another man dedicate it . . .’” And in the last *Mishnah* of that chapter (8:7), it is taught: “What is meant by these words (that everyone is not obligated to military service)? In a *milchemet ha’reshut*⁷. But in a *milchemet mitzvah*⁸, everyone goes forth (into service), even a bridegroom from his bridal

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See note 1.

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See note 2.

chamber and a bride from her wedding canopy.” Regarding this section of the *Mishnah*, R. Sh’muel Strausson (the *Rashash*) wrote in his *Annotations and Innovations* (on *Sotah* 44b): “It means that women also are to go forth into military service, and this is an innovation (in the law, in that it cannot be derived from any existing law concerning women’s roles). Maybe they are only to cook and to bake, etc., to meet the needs of the men, the soldiers of war.” This means that while he is surprised by the implication of the *Mishnah*, the *Rashash* does not reject it on that basis. From his final words, one might derive that it is possible that he is suggesting that women are not to serve in fighting units, but he does not oppose their service in other types of units. Truthfully, there is no conclusive proof that the *Rashash* opposes even service in fighting units, making it possible that his surprise arises from the familiar reality that women in his day did not do such things, and not from any legal (*halakhic*) reason.

Maimonides (the *Rambam*) rules, in language similar to that of the *Mishnah* in *Sotah* mentioned above (*Hilchot M'lachim* 7:4): “What is meant by these words — that these men should return from the battle lines of war? In a *milchemet ha'reshut*. But in a *milchemet mitzvah*, everyone goes forth (into service), and even a bridegroom from his bridal chamber and a bride from her wedding canopy.” In the Book of Precepts, *Shores* 14 (toward the end), the *Rambam* writes: “. . . when I mention (in the text of the *Sefer Hamitzvot*) the commandments to which women are not obligated — both positive and negative commands — I will say, ‘And this (is a commandment) to which women are not obligated.’ And it is well known that women don’t serve as judges or witnesses, nor do they offer up sacrifices with their own hands, **nor do they fight in a *milchemet***

ha'reshut" — this means that they do fight in a *milchemet mitzvah*, as he ruled in the *Mishneh Torah*. The clear conclusion from these sources is that every person among Israel is obligated to go out (into military service in the case of) a *milchemet mitzvah*, women and men in unity.

In light of this conclusion, there is reason to ask if the present-day situation in the land of Israel is a state of *milchemet mitzvah*. In *Hilchot M'lachim 5:1*, the *Rambam* defines "*milchemet mitzvah*": "And what is a "*milchemet mitzvah*"? It is a war with non-Jews, a war with Amalek, and giving aid to Jews against an enemy that has come upon them." The third definition of the *Rambam*, "and giving aid to Jews against an enemy that has come upon them," describes in sure form, to our great sorrow, the situation in the state of Israel today.

It is worthwhile here to point out the existence of a common opinion held by all the streams in Judaism in the matter of defining our present-day state as one of *milchemet mitzvah*. With regard to this judgment of the *Rambam*, Yechezkel Cohen, writing in the name of *Hakibbutz Hadati*⁹ — *Ne'emanai Torah V'avodah*¹⁰ (who rely upon the *halakhic* opinions of orthodox rabbis), says, "The third component of the *Rambam's* definition . . . is a precise fit for Israel's wars in the latest generation." Cohen cites and elaborates upon the words of Rabbi Shlomo Goren, who perceives participation in today's Israeli wars to

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The *kibbutz* movement of the *Mizrachi* party in Israel.

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The labor and agricultural wing of the *Mizrachi*.

be an obligation derived from the *Torah*, in light of the verse, “Do not stand by while your neighbor bleeds” (Leviticus 19:16), “which comes to impose an obligation upon each person in Israel to save (others) with one’s very soul.”¹¹ Also in reaction to this judgment of the *Rambam*, Rabbi Moshe Zemer, in the name of the movement for progressive Judaism, writes: “Much to our dismay, this describes our present state of affairs in Israel: the onslaught of terrorists and the permanent danger of the outbreak of war with the nations that surround us, who see themselves as in a state of war with us.” (“It Is An Obligation Upon Women to Enlist in the Israeli Army,” *Shalhevet*, Autumn 5739)

From what is stated above, it is understood that in a *milchemet mitzvah*, women are obligated to participate, and we presently find ourselves in a state of *milchemet mitzvah* — in other words, **women are obligated to enlist in the Israeli army in the state of Israel today**. (Cohen and Zemer reach the identical conclusion).

However, there are legal (*halakhic*) opinions which forbid the women of Israel to enlist in the armed forces, and indeed, the majority of “religious” women do not serve in the Israeli army, or they perform “national service” in place of military service. Therefore, it is incumbent upon us to point out the arguments which forbid (women’s military service) and to judge them critically.

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“Yechezkel Cohen, “The Enlistment of Women and National Service: A Study in *Halakhah*” (*Hakibbutz Hadati — Ne’emanei Torah V’avodah*, 5742), p. 12.

The Prohibition on "The Implements of Males"

One of the sources that is cited in an effort to prove that it is forbidden for women to participate in war is *Nazir 59a*: "R. Eliezer ben Jacob says: From what scriptural source do we know that a woman should not go to war bearing fighting implements? Scripture says: 'A woman shall not wear the implements of a man.'" (Deuteronomy 22:5) This indicates that one of the arguments against the enlistment of women in the army is that the *Talmud*, with regard to this matter, "establishes" that it is forbidden for women to carry arms. (And there are those who conclude from that teaching that there is not only a general prohibition (for women) with regard to the carrying of weapons, but also with regard to going out to war at all.)¹²

In fact, Yechezkel Cohen, in his book, The Enlistment of Women and National Service, already rejects this argument. Thus, he writes: "However, those who rely upon this source are overlooking the explanation of the *Rambam* for this prohibition, as well as the conditions and restrictions, for the prohibition applies only if they are preserved (here, he cites the words of the *Rambam* from the Book of Precepts, "Negative Commands," Commandments 39-40): "And any woman who adorns herself in men's jewelry — items which are known **in that locale** to be **especially for men** — she shall be flogged. And any man who is adorned or dressed in items which are known **in that locale** to be

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Arieli and Bachya are two *poskim* who take this position, according to Yechezkel Cohen.

especially for women — he shall be flogged. And know that such an act — that is to say, women adorning themselves in men's jewels or men in women's jewels — can arouse a degenerate nature in some people, such as those who are well known among the peoples. And there are those who will be led into **idolatry** (by such a practice), such as those who are well known in the special books for that." From the words of the *Rambam*, it is understood that it is forbidden for a woman to dress in certain attire if two conditions, with respect to the garment and the one wearing it, are fulfilled:

A. It is clearly known and accepted that the article of clothing is an **indubitably male garment** according to the custom **in that locale**.

B. It is clear that the woman wants to wear such a male garment in order to gain assistance in doing **forbidden acts** within the sexual boundary or the boundary of idolatry.

Is it possible to say, in our generation, that weapons are clear implements of men?! And furthermore, is a weapon an adornment which assists a woman in performing acts of sexual degeneracy or idol worship?!"

In continuing, Cohen brings the words of Rabbi S. T. Stern and Rabbi Y. Levi-Levin, who indicate the difference between carrying a weapon as an adornment and carrying a weapon for the purpose of self-defense, and they rule that, in times of war, **the**

prohibition does not apply at all. Likewise, Rabbi Zemer writes, citing the words of our Sages, of blessed memory, "If one comes to kill you, rise early to kill him": "In a situation of self-defense, saving a life (or possibly saving a life), or participating in a *milchemet mitzvah*, the prohibition does not apply . . ."

One might add the words of the *Bayit Hadash* on *Tur Yoreh De'ah* 182: "But if they wear (the so-called "forbidden" items) in order to protect themselves from the sun in days of heat, or from the rain in days of rain, there is no prohibition . . ."

And if it is permitted to "wear" armor and the like to protect oneself from the sun and rain, is it not likewise permitted in a time of war (to gain protection) from the enemy?!

Modesty

Every discussion of the question: "Is it permissible for a woman to carry a weapon?" focuses upon the matter of **modesty**; that is to say, does service in the army, at its essence, blemish the honor of a woman? This is found in *Sifrei* on Deuteronomy (*Ki Tetze, Chapter 226*), which is a parallel to the *sugya* from *Nazir 59a*, which was mentioned above:

"**'A woman shall not wear the implements of a man,'** does this verse come to teach us that a woman should not wear white garments, nor should a man cover himself in colored clothing? Scripture says (that this is) an **abomination** — a thing which causes one to fall into the way of abomination. This is the general principle of the matter — that a woman should not dress in the way a man dresses **and go among men**, and a man should not adorn himself in women's jewelry **and go among women.**"

Ibn Ezra, who interprets Deuteronomy 22:5 according to the spirit of the two opinions from *Sifrei*, agrees regarding the principle concern associated with the service of women in the armed forces: "And if women are sent off to war with men, she will fall into harlotry along the way." However, this conclusion is not necessary. Indeed, more than such a worry reflects reality concerning women in the Israeli army, it casts doubt and **spreads slander** upon the thousands of Jewish women who have served in the Israeli army without injury to their honor or modesty. We should not belittle the question of modesty: each Jew is obligated to worry about the standard of his or her own behavior. And we are obligated to be vigilant with regard to the special questions which arise in the Israeli army in connection with the privacy of the individual. But this problem is not particular to the military alone; it is pervasive, and we must deal with it in every sphere of society. And if we are not to prevent women from active participation in the general society, there is no reason to think that it is proper to prevent them from military service.

"The daughter of the king is all glorious within"

Because the matter of a woman's modesty *vis a vis* her service in the military is derived from an interpretation of the biblical verse, "The daughter of the king is all glorious within" (Psalm 45:14), we must devote some words to this topic. R. David Ibn Zimra (the *Radbaz*) encounters difficulty with the ruling of the *Rambam* that was mentioned above (*Hilchot M'lachim* 7:4), and this is his response:

The *tannaitic* source is according to the language of the *Rambam*, but there is a difficulty, in that it asserts that it is the way of women to make war, as it says, "**And a bride** from her wedding canopy"! But it is written in scripture: "**The daughter of the king is all glorious within.**" One might say that it thus teaches: since the bridegroom is to go forth (into military service) from his bridal chamber, the bride is to go forth from her wedding canopy, in that she does not observe the practices of her wedding days. And it is possible that in a *milchemet mitzvah*, women could supply their husbands with water and food, and such is the custom today among Arab women.

It is incumbent upon us to point out that this second interpretation ("And it is possible that in a *milchemet mitzvah*, women . . .") completely contradicts his literal interpretation of the early authorities, for even if women only go out to supply their husbands with water and food, their action, in essence, contradicts that which he wants to conclude from the passage, "The daughter of the king is all glorious within." It appears from his words that it is simply difficult for him to accept the *Rambam's* ruling, despite the evidence of the *Mishnah* which supports it, and he is **compelled** to offer an alternate interpretation. And in this pursuit, he brings **aggadic material** ("The daughter of the king is all glorious within," etc.) in an attempt to contradict *halakhic* material (the *Mishnah* and the *Mishneh Torah*), which only weakens his position. As Yechezkel Cohen writes (page 19): "The mixing of the legal (*halakhic*) expressions and these which are based upon *aggadah* does not contribute to the clarification of the legal truth of the matter."

In his book mentioned earlier, Yechezkel Cohen already rejected the motto, "The daughter of the king is all glorious within," as a legal basis to exempt women from service in the Israeli army. Particularly, he brings proof from legal experts in our generation who rule directly in the matter of the military service of women. But as I will

point out, the great majority of the sources in classical rabbinic literature in which this biblical passage comes to bear do not generally permit the usage of this verse as a determinant in the matter of women's military enlistment.

The biblical verse in question appears in more than thirty sources in rabbinic literature, but the great majority of them are *aggadic* in nature. And even in the majority of these, the conclusion is not that it is prohibited for a woman to **go out** of the house, rather that a modest woman deserves greater respect. For example, there are many stories about the woman *Kimkhit*, all seven of whose sons served as High Priest — two on the same day (!) — and the sages wanted to know what caused her to receive this great honor. Look, for example, at the version found in *Pesikta D'Rav Kahana*:

"The sages entered her home, and they said to her, 'What righteous acts have you done?' She said to them, 'They shall testify upon me — if the rafters of my house have ever seen the hair upon my head.' (This implies that she covered her head **even inside the house**, and not only when out) . . . and they recited this verse about her: **"The daughter of the king is all glorious within."**

As Rabbi Mandelbaum interprets: "The biblical verse (Psalm 45:14) concludes, '**Her clothing is inwrought with gold**' — it is fitting for the High Priest — one whose clothing is inwrought with gold — to be the progeny of a modest woman. (This interpretation appears in Rashi's commentary to *Yoma* 47a in the Palestinian *Talmud*.)

Likewise, there are many *aggadic* sources in which this verse is expounded with respect to Moses and Aaron (e.g., *Numbers Rabbah* 1:3; *Tanhuma* to Numbers 3). On the other hand, there are also *aggadot* which utilize this biblical verse to show that awful things

happen when a woman leaves her house at all.

For example, in *Tanhuma Vayish'lach* 6, the *Midrash* deals with the story of the rape of Dinah in Genesis 34, and it warns: "This is the meaning of the verse, 'The daughter of the king is all glorious within' — this is to say that Dinah should not have gone out of her house at all." (*Ruth Rabbah* 4:9 also cites this verse in support of the idea that it is proper for women to stay in the house.)

Moreover, when Psalm 45:14 is utilized in connection with legal (*halakhic*) concerns in the *Gemara*, our Sages, of blessed memory, in fact, **do not** conclude from the verse that it is forbidden for women to leave the house (e.g., *Gittin* 12a; *Shavuot* 30a). But there is reason to react especially to the words of the *Rambam*, *Hilchot Ishut* 13:11:

"... but it is disgraceful for a woman to be always away from the house, sometimes outside, sometimes in the streets. **And a husband may prevent his wife from doing this**, refusing to allow her to go out except, perhaps, for **one time in a month** or twice in a month, as necessary; **for it is unsavory for a woman to be spending time anywhere other than home**, and with reference to this, it is written, 'The daughter of the king is all glorious within.'"

(Similar teachings are found in the *Arba'ah Turim*, *Even Ha'Ezer*, 73, at the end.)

As Yechezkel Cohen shows, the *Rambam* does not, with his ruling, speak at all for our society today, in which the great majority of women, whether "religious" or "secular," go out into all of the city streets and work at every type of profession. Furthermore, in connection to the matter of women going out, this ruling does not refer to times of

milchemet mitzvah, for if it did, the *Rambam* would be contradicting his own ruling that **"in a *milchemet mitzvah*, everyone goes forth (into service)."** In addition, one who speaks of the *Mishnah* must write here: "It has already been explained above that **everything goes in accordance with local custom . . .**" And it is very clear that this is not our custom.

In the *Shulkhan Arukh* (*Even Ha'Ezer* 73), Rabbi Joseph Caro does not even mention the *Rambam's* ruling at all. In our editions, the line appears briefly in parentheses: "And a woman should not accustom herself to going out often, for it is unsavory for a woman to be spending time anywhere other than home." But there is doubt as to whether this statement has the force of law, or if it should be seen (simply) as good advice. Indeed, Caro rules, "If **in that locale** it is not the way of women to go out to the market until the veil of the canopy covers her entire body . . ." — it is very clear from reading this item from the *Shulkhan Arukh* that Caro was not offering judgments in a society that was at all like ours, in which women customarily dress completely differently and go out for every type of event according to their own will.

It is possible to consider another matter — the question of the role for women in the Israeli army and "national service" in place of military service. Yechezkel Cohen devotes several pages (from page 26 forward) to this question, and he finally proposes that the military should enable religious women to serve in special units, such as *Gar'ini Nakhal Livnei Akiva*, or "national service" in place of service in the armed forces. Even though

we would be happy if all the "religious girls" in Israel would choose one of these two options — just as we would be happy if "yeshiva boys" would serve in *hesder* units, at the very least! — the law does not make such solutions available. First of all, we have already proven that it is agreed that, today, we are in a state of *milchemet mitzvah* — a state in which "everyone goes forth (into service)" — and therefore, there is no possibility for either a boy or girl to evade service in the Israeli army. Rightly, Rabbi Zemer wrote:

Jewish law does not distinguish between religious and secular — any distinction made between a religious girl and one who is not religious has no basis in Jewish law. There is no legal distinction whatsoever made between religious and non-religious Jews with regard to their obligations: what is forbidden to one is forbidden to the other, and what is permitted to one is permitted to the other. If religious girls are excused from an obligation which is placed upon non-religious girls, the reason is coalition bargaining, and not any legal (*halakhic*) source.

Secondly, since there is no possibility for all Israeli women to make use of these options (special units, "national service," or exemption from service), then it is not proper to grant special dispensation to a minority.

In summary, service in the Israeli army, for women as for men, is a **Jewish legal (*halakhic*) obligation** which one may not dodge. On the contrary, it is fitting to point out for their praiseworthiness the youths of *Hakibbutz Hadati* who, in concretizing their religious feelings, are taking upon themselves an **additional year** of service in the Israeli army.

As for every religious problem that the military framework creates, whether pertaining to modesty, *kashrut*, Sabbath observance or any other topic, there is no reason to think that a

man can overcome them with any greater success than a woman.

It is the obligation of each woman, as it is of each man, who serves in the Israeli army to deal with all of the problems brought about by service, and to try to overcome them in the light of *Torah* and Jewish law.

Analysis

It would appear, from an examination of these two responsa on the topic of the conscription of women into the Israeli army, that the liberal movements — which share the same position on the matter — are operating from a position of strength *vis a vis* the *halakhah*. They both draw upon the words of *Mishnah Sotah* 8:7, which explains the exemptions from military service that are found in Deuteronomy 20:5-7. The *Mishnah* acknowledges that exemptions are only upheld in instances of voluntary war — and that even brides (much less other women) must go forth into military service under the circumstances of *milchemet mitzvah*. Maimonides echoes that ruling in *Hilchot M'lachim* 7:4, where he asserts that women are exempt specifically from service in voluntary wars, thereby implying that they are obligated to serve under conditions of *milchemet mitzvah*. Finally, the *Rashash* lends further validity to this interpretation, indicating that the clear duty of women to serve in the armed forces in the case of a *milchemet mitzvah* should be seen as a *chidush* (a legal innovation which cannot be derived from another existing law). Zemer, in his Progressive *teshuvah*, suggests that the *Rashash* only commits women to non-combat roles, while Harris, in formulating the Traditional responsum, notes that the *Rashash* gives no *explicit* ruling that women are not to serve even on the battle front. The disagreement between the two liberal *poskim*, in this case, is insignificant in the formulation of their final rulings; they both concur that the overwhelming corpus of Jewish legal sources support the military service of women in cases of *milchemet mitzvah*.

With that legal principle understood, the lone remaining mission in affirming the

place of women in the Israeli army seems to be the establishment of Israel's current situation as a state of *milchemet mitzvah*. Each of the liberal responsa accomplish that task expediently, turning to Maimonides' third definition of *milchemet mitzvah*, found in *Hilchot M'lachim* 5:1 — "giving aid to Jews against an enemy that has come upon them." Our *poskim* find it impossible to deny that Israel is under a constant security threat from its aggressive neighbors — a reality that is tantamount to *milchemet mitzvah*. In addition to making their own cases along these lines, both Zemer and Harris lean upon the writings of like-minded *Mizrachi* rabbis who confirm Israel's condition of *milchemet mitzvah* in the voice of Orthodoxy.

The important differences between the two *teshuvot* begin to emerge when we examine their respective approaches to the matter of refuting the legal reasoning of Orthodox *poskim* who rule *against* the participation of women in the Israeli army. Harris' treatment of the normative Orthodox arguments is much more extensive than that of Zemer, whose opening sentence flatly declares the opinion that the Torah forbids Jewish women to serve in the military to be "erroneous."

Zemer does offer a brief refutation of the familiar Orthodox justification, based on Psalms 45:14, for barring women from the military to protect their morality. In it, he utilizes the ruling of *Mizrachi* Rabbi Shaul Israeli, who claims that the *Toraitic* obligation to save a life (as evidenced in Deuteronomy 22:2 and interpreted in *Sanhedrin* 73a)

certainly supersedes the legal weight of any verse from Psalms, which, as a part of *divrei kabbalah*, necessarily takes secondary authoritative status to the Pentateuch. But Zemer's argument is concluded with a statement that is grounded less in *halakhah* than in modernity. In essence, he simply alleges that the vision of a Jewish woman frequently derived from Psalms 45:14 is hopelessly dated. He maintains that Rabbi Sh'muel bar Yitzhak, writing in *Genesis Rabbah* in the fourth century of the common era, might have expected women to be at home constantly, but such an expectation is unfounded in modern Israel. Zemer likens the modern Israeli woman to the "Woman of Valor" found in the Book of Proverbs, whose role extends in a host of directions, both in and out of the home. She is not "all glorious within" in the manner in which she might have been in past generations. Consequently, Zemer cautions that any legal statement based upon Psalms 45:14 which suggests that army service leads to the moral degradation of women can only bring an unwarranted and slanderous bad reputation to those women who have served (and who continue to serve).

Harris devotes considerably greater effort to investigating the Orthodox arguments forbidding the military service of women. Unlike Zemer, Harris acknowledges the presence of such arguments without pre-judging them as erroneous. He expresses a genuine interest in considering them carefully and judging them critically, and the overwhelming majority of his *teshuvah* is dedicated to that pursuit.

Harris selects two main topics for examination: the prohibition which forbids women to wear the "implements of males" and the concern that a woman's modesty and honor will be sacrificed if she enters into military service. In each instance, Harris

constructs a *halakhic* case which invalidates the argument as a religious basis for preventing (or even discouraging) women from enlisting in the army.

The impetus for banning women from the military on the grounds that carrying weapons would require them to appear as men is found in a talmudic passage in *Nazir* 59a. Here, Rabbi Eliezer ben Jacob bases his assessment on Deuteronomy 22:5 — “A woman shall not wear the implements of a man.” Harris rightly notes that numerous *poskim* through the ages, such as Bachya and Arieli, have expanded this ruling to include not only a ban on the carrying of weapons but also a restriction upon service in the military in any capacity. To be sure, such a generalization of the law is rather questionable unless it can be supported by the sources, however Harris chooses to attack the entire argument by proving that the ruling from *Nazir* 59a is inapplicable to the current situation in Israel.

This line of analysis is based upon Maimonides’ treatment of the negative command upon the wearing of male implements by women which is found in *Sefer Hamitzvot*. The key point is that Maimonides’ ruling establishes two conditions which must prevail in order for a woman to be in violation of the prohibition from *Nazir* 59a. First, she must be wearing a garment that is indisputably associated with men only in the place in which she lives; second, she must elect to wear the garment for the purposes of pursuing actions pertaining to sexuality or idolatry which are forbidden. Harris, of course, points to the fact that weapons in twentieth-century Israel are in no way the private domain of men. Moreover, he professes that the weapons that women carry in Israel are certainly not tools for the perpetuation of sexual debauchery or the worship of

false gods. Therefore, Harris is inclined to conclude that the ruling from *Nazir* 59a does not pertain to the situation under consideration.

Harris buttresses his point by indicating that the sources overwhelmingly recognize that the prohibition against women carrying weapons is to be overridden under justifiable circumstances. Here, Harris brings two examples. First, he cites the rulings of Rabbis S.T. Stern, Y. Levi-Levin, and our Sages, of blessed memory, each of whom affirm that women are permitted to carry a weapon for self-defense purposes in wartime. Second, he directs the reader's attention to the *Bayit Hadash* commentary to *Tur Yoreh De'ah* 182, in which the very "male" items which are typically forbidden to women are permitted — if they are worn as shields against the elements (e.g., sun, rain, etc.). Harris deduces that the *Bayit Hadash* would certainly validate the wearing of "male implements" by women for protection from a threatening enemy, since these articles of clothing or weaponry are already viewed as permissible as protection from the sun and rain.

Having countered the arguments against permitting women to bear arms on the grounds that they are "implements of males," Harris turns his attention to the matter of modesty (*tz'niut*) as a justification for prohibiting the military service of women. There are a wide variety of rabbinic sources that trumpet the virtue of modesty for women, and these passages are frequently invoked in an effort to suggest that military service might tarnish that respectability. The example with which Harris begins is culled from *Sifrei* to the same verse we have examined above — Deuteronomy 22:5. Here, it is suggested that a woman who dresses in the manner of men and then places herself in male circles is subject to falling into the way of abomination. Ibn Ezra applies this teaching to the issue

of women's enlistment in the armed services, insisting that women who go off to war with men will inevitably stray into harlotry. Harris denounces this ruling as inaccurate and even morally suspect, since it preserves a slanderous image of women who have enlisted in the Israeli army but have experienced no moral decay. In this point, Harris echoes the words of Zemer, which we considered earlier.

This leads Harris to Psalms 45:14, which, as we have seen, Zemer rejects as a biblical proof-text that the honor of women could be endangered by military service. Harris begins by instantly shooting down the self-contradictory statement of the *Radbaz*, who suggests that "the daughter of the king is all glorious within," yet a woman may provide food and water for her husband in the case of a *milchemet mitzvah*. The confusion over the permissibility of women to participate in any capacity in war, claims Harris, emerges from the *Radbaz*'s apparent incredulity at the *Rambam*'s ruling in favor of women's military participation. This leads the *Radbaz* to commit a critical error in his legal reasoning. He relies on *aggadic* material, such as that related to Psalms 45:14, in attempting to override a ruling based upon *halakhic* sources, such as the *Mishnah* and the *Sefer Hamitzvot*. Harris turns once again to Yechezkel Cohen, the *Mizrachi* rabbi, in asserting that this type of argument only serves to weaken — not strengthen — his claim.

This sort of *aggadic* argument based upon Psalms 45:14 is familiar in rabbinic literature. However, Harris points out that the vast majority of such arguments do not *forbid* women from leaving the house; rather, they simply certify that modest women are worthy of great honor. He cites instances of this kind in *Pesikta D'Rav Kahana*, *Numbers Rabbah*, and *Tanhuma* to Numbers, among others. Some, such as *Tanhuma*

Vayish'lach 6 (which addresses the rape of Dinah in Genesis 34), go so far as to demonstrate that horrible things await the woman who goes out of her home. But when Psalms 45:14 is brought to bear upon *halakhic* matters, as it is in *Gittin* 12a and *Shavuot* 30a, the upshot is *not* the prohibition of women leaving their houses.

Harris does acknowledge that Maimonides, in his *Hilchot Ishut*, declares it to be "unsavory" and "disgraceful" for women to be away from their homes. He bases this judgment upon Psalms 45:14. However, Harris, joining with Yechezkel Cohen, affirms that Maimonides' declaration is inapplicable in a society where even religious women are so customarily outside of their homes in the marketplace and at work. Moreover, he notes that Maimonides cannot be advancing the notion that it is unsavory or disgraceful for women to serve in a *milchemet mitzvah*, since he has already ruled in *Hilchot M'lachim* that women are obligated to such service. Lastly, Harris indicates that Maimonides' objection to women leaving their homes is left out entirely from most editions of the *Shulkhan Arukh*, and even those editions which do include it insert it as a parenthetical remark that appears to lack the force of law. As we have seen, Harris, representing the Traditional movement, feels much more obliged to offer detailed refutations of normative Orthodox arguments than does his Progressive counterpart, Zemer. In fact, it is interesting to note that Zemer, in his entire responsum, cites only one source — Rabbi Sh'muel bar Yitzhak, the fourth-century Palestinian *Amora* — that departs from his own viewpoint, and even then, he selects an *aggadic* passage from *Genesis Rabbah* which is not connected to a scriptural passage and does not even speak directly to the matter of women in the military. Zemer does, of course, draw upon

Orthodox sources who agree with him — mainly Zionist *Mizrachi* authorities whose constituents already embrace the service of women in the Israeli army. But there is a palpable absence of the legal arguments which continue to hold sway in Israel today, paving the way for Orthodox women to refrain from military service. Harris has already addressed some of them; we shall discover some more of them when we examine a representative Orthodox *teshuvah* on this same topic a little later in our analysis.

Just as Harris and Zemer differ in their usage of Orthodox source materials (both those which support and those which reject their views), the two *poskim* employ notably different approaches to the utilization of one another's legal writings. Zemer elects to stand alone in constructing an argument based exclusively upon *Mishnah Sotah* 8:7, *Hilchot M'lachim* 7:4 and 5:1, the *Radbaz* and *Rashash*, assorted *Mizrachi* decisors, and his own legal reasoning. Harris, by contrast, chooses to bolster his opinion by demonstrating unanimity between the three movements wherever possible.

In establishing that Israel is, in fact, in a state of *milchemet mitzvah*, Harris is motivated to declare that there is a common perception held by adherents of Orthodox, Traditional, and Progressive Judaism. He maintains that all three strands accept the designation of *milchemet mitzvah* with reference to modern-day Israel. To substantiate this, Harris first draws attention to the Orthodox perspective of Yechezkel Cohen (although he seems cognizant that the use of a *Mizrachi* source to represent Orthodoxy

leaves him open to questioning, hence he carefully qualifies Cohen and his followers as Jews "who rely upon the *halakhic* opinions of Orthodox rabbis"). Next, he cites Moshe Zemer's response to Maimonides' third definition of *milchemet mitzvah*, in which he asserts that the constant prospect of war with Arab neighbors constitutes a state of *milchemet mitzvah*. Harris, writing officially on behalf of the Traditional movement, clearly delineates that Cohen and Zemer speak for their respective religious movements, and it seems that he believes his argument gains strength from that religious cross-section of opinion.

Harris once again connects his own view with those of Orthodox and Progressive *poskim* in his rejection of the prohibition on the "implements of males" as a reason for barring women from military service. Yechezkel Cohen, interpreting Maimonides' teaching in *Sefer Hamitzvot*, reappears as one of an assortment of Orthodox rabbis who indicate that the specific circumstances in which Israeli women find themselves today render the prohibition inapplicable. The words of Rabbis S. T. Stern, Y. Levi-Levin, and the *Bayit Hadash* are invoked along with Cohen's own, comprising what one might consider a well-documented Orthodox position. However, Harris also includes Moshe Zemer's useful reminder about the admission of our Sages, of blessed memory, that the prohibition on the "implements of males" does not pertain in instances of self-defense or potential *pikuach nefesh*.

When Harris takes up the question of whether or not it is appropriate to permit religious women to enlist in "national service" in place of military service, he leans upon Moshe Zemer's argumentation for a third and final time. As we read earlier, it is Zemer's

assessment that *halakhah* does not allow for a variation in obligations between religious and secular Jews. Harris embraces this statement fully, dismissing the notion that an Orthodox "compromise" (i.e., allowing their women to serve in special units or "national service") would be acceptable. Here, the Traditional and Progressive *teshuvot* are united; *halakhah* is *halakhah*, regardless of one's observance patterns.

Interestingly, Zemer makes no similar effort to incorporate the literature of the Traditional movement into his Progressive responsum. Harris' approach communicates an implicit message that all forthright *poskim*, regardless of their denominational background, should be seated at the *halakhic* table if their arguments are well reasoned; Zemer's approach seems to imply a different message altogether. By largely ignoring the Orthodox arguments which are inhospitable to his position and the Traditional arguments which attempt to harmonize the movements in order to find the legal truth, Zemer produces a *teshuvah* which is decidedly polemical in nature. As we discovered above, his very first sentence dismisses arguments which suggest that the Torah forbids Jewish women to serve in the military as simply "erroneous." He proceeds to construct a ruling which refutes none of the normative Orthodox lines of analysis used to ban the participation of women in the army, concluding with a polemical suggestion that Orthodox women who opt out of military service are exploiting the Torah for personal gain. Consequently, Zemer appears to be proposing that there *are* no *halakhic* arguments worth debunking; there is simply a desire on the part of Orthodox women to hide behind their religiousness in order to accommodate their fears, their preference to avoid the strictness of military life, and their motivation to "get a leg up" on their secular

counterparts by pursuing study or work before such options become available to enlisted Israelis. Perhaps this approach is designed to compel secular Israelis, resentful of Orthodox Jews who refrain from military service, to sympathetically embrace the Progressive approach to Judaism and Jewish law as legitimate, worthwhile, and in accordance with the mainstream of Israeli life.

Harris appears to be selling a different product. His *teshuvah* is filled with subtle "advertisements" for the positive historical approach which the Traditional movement employs in its *halakhic* decision-making. For instance, Harris rejects both the argument concerning the "implements of males" and the case made for protecting the modesty of women largely on the grounds that *they do not apply in contemporary circumstances*. To grant legitimacy to his "advertisements," he demonstrates that many commonly acknowledged *halakhic* sources share this viewpoint. *Maimonides* writes that the prohibition on the "implements of males" only applies when the items in question are clearly identifiable as male garments in that historical locale. *The Mishnah* contains the assertion that "everything goes in accordance with local custom," rendering the teachings about women's modesty in staying at home inapplicable in modern Israel, where women are customarily found in other places. *Joseph Caro* assents in the *Shulkhan Arukh* that restrictions on women leaving their houses are only relevant legally if, *in a given historical locale*, they represent women's custom. Harris clearly enlists the help of these established *halakhic* authorities in making the case for his brand of Judaism.

Our analysis of the liberal *teshuvot* on the topic of women in the military would be incomplete without presenting an exposition of a representative Orthodox responsum on the same issue for purposes of comparison. With this goal in mind, I will offer a brief abstract of Rabbi Sh'lomo MinHahar's *teshuvah* on the participation of women in the armed forces.¹³

MinHahar, who will ultimately rule against the enlistment of women, begins by acknowledging the difficulty posed by *Mishnah Sotah* 8:7. However, he proceeds to inquire as to whether the *mishnah* is to be taken literally. He concludes, of course, that an alternate interpretation should be seen as legitimate. He proposes two that our liberal respondents have already addressed — that of the *Rashash* and that of the *Radbaz* on Maimonides (which includes the now-familiar reference to Psalm 45:14) — in positing that, perhaps, women could be authorized to serve provisions for male soldiers. However, he also uses the text of the *Radbaz* to suggest that women may simply be obliged to refrain from religious observances associated with their wedding; that is to say, a bride “goes forth from her wedding canopy” by leaving her wedding feast.¹⁴

MinHahar's responsum continues with a series of *halakhic* justifications for prohibiting the service of women in the army which we have not yet examined. The

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הרב שלמה מן-ההר, “שיתוף נשים במלחמה,” תחומין, ד'. גוש עציון: צמת, תשמ”ג, 68-78.

¹⁴

Ibid., pp. 68-69.

following are a few of the most noteworthy:

War is exclusively for men, according to the Sefer Hachinuch on

Commandment 525. The thirteenth-century Spanish book known as *Sefer Hachinuch*¹⁵ indicates that the commandment not to fear the enemy, rooted in *Parshat Shoftim*, is intended only for observance by men, "since it is their (task) to make war."¹⁶

The commandment to blot out Amalek, which is a national obligation, applies only to men, according to Sefer Hachinuch, Minchat Chinuch and Mishneh

*Lamelech*¹⁷. Commandment 603 in *Sefer Hachinuch*, which obligates Jews to remember Amalek and obliterate any remnant of Israel's ancestral enemy, is also deemed applicable only to men on the grounds that war is in their exclusive domain. However, the authors of *Minchat Chinuch* and *Mishneh Lamelech* are careful to delineate between the role of women in fulfilling this *mitzvah* and their role in fulfilling the duty of blotting out any remnant of the seven Canaanite nations (i.e., those who inhabited what is now the state of Israel before the Jews entered it for the first time). Women are obligated to perform the

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The author of *Sefer Hachinuch* is unknown. The popular book lists all 613 commandments according to the order of the weekly *parashot*. The discussion of each commandment is divided into four parts — the biblical and *talmudic* sources of the command, the rationale for the command, the laws pertaining to the command, and the practical application of the command. For further information on *Sefer Hachinuch*, see Menachem Elon, *Jewish Law: History, Sources, Principles* (Philadelphia and Jerusalem: Jewish Publication Society, 1994), pp. 1265-1267.

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See responsum by MinHahar, p. 69.

¹⁷

Minchat Chinuch is the best known commentary on *Sefer Hachinuch*, written by 19th century Polish *halakhist* Joseph Babad. *Mishneh Lamelech* is another prominent commentary on *Sefer Hachinuch*. For more information, see Elon, p. 1267.

latter *mitzvah*, for it is a duty for which *each individual Jew is responsible*, not an act of collective war. The obligation to obliterate Amalek is a collective *mitzvah* which is to be carried out by the entire male community. In connection with this interpretation, *Mishneh Lamelech* likens the *halakhah* with respect to war to the *halakhah* with respect to serving as a legal witness (which is also a responsibility that does not devolve upon women). Sh'lomo MinHahar requests that his reader accept this ruling from *Sefer Hachinuch* (as seen through *Mishneh Lamelech*) without corruption or emendation.¹⁸

Women are not to participate in war because of their proclivity to be fearful, which is grounds for abandoning battle, according to Deuteronomy 20:8. In this biblical verse, we learn that anyone who is overcome with fearful thoughts in wartime is obligated to remove himself from battle, in order to prevent the spread of his fear to his fellow soldiers. Maimonides (in *Hilchot M'lachim* 7:15) confirms that a person who remains in battle after possessing such thoughts of weakness is in violation of Jewish law. Women are particularly prone to such thoughts, hence they are to be dismissed from battle responsibilities.¹⁹

Women are to be forbidden from mixing with soldiers in wartime due to the fear of licentiousness. MinHahar bases his argument upon Deuteronomy 23:10: "When your camp heads out against your enemies, be on guard against anything untoward." Similarly, in *Ketubot* 46a, Rabbi Pinchas ben Ya'ir teaches that "a man should not engage in morbid thoughts by day that might lead him to uncleanness by night." This, according

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See responsum by MinHahar, pp. 69-71, pp. 75-77.

¹⁹

Ibid., pp. 71-72.

to MinHahar, necessitates the prohibition on inviting women to the front lines.²⁰

The wars documented in the Torah and the Talmud make it clear that women are not obligated to supply male soldiers with food and water (or any other type of assistance) in the case of a milchemet mitzvah. In *Yebamot* 76b-77a, we learn from Deuteronomy 23:5 ("For they did not meet you with bread and with water") that men — not women — are to meet wayfarers. MinHahar also offers prooftexts from Numbers 22:3-4 and *Eruvin* 45a which document instances in which men provide for *themselves* in times of war. A further example is the war of Gid'on with Midian, in which the combatants took provisions for *themselves* in their own hands (Judges 7:8). MinHahar completes this argument by deducing that the earlier teaching from the *Radbaz* (with regard to Maimonides' literal interpretation of *Mishnah Sotah*) simply indicates that women are obliged to refrain from religious observances associated with their weddings — not that they are to bring provisions to the battlefield.²¹

²⁰

Ibid., p. 72

²¹

Ibid., p. 74-75.

Conclusion

We are left to conjecture as to the reasons why our two liberal *poskim* chose not to address and refute some or all of the *halakhic* arguments which appear in MinHahar's responsum. Of course, we cannot expect a point-by-point refutation, since each of these *teshuvot* were prepared autonomously. However, it is reasonable to assume that some or all of MinHahar's arguments appear elsewhere in Orthodox legal literature.²² Why might Zemer and Harris have allowed these arguments to remain free of rebuttal?

In Zemer's case, the reason seems somewhat clear. As we established earlier, Zemer chooses to expend little effort in refuting Orthodox *halakhic* arguments which are designed to substantiate any conclusion different from his own. His apparent objective is to simplify the *halakhic* matter, making it more accessible for his reader. From Zemer's perspective, the case for holding women responsible for military service is irrefutable. *Mishnah Sotah* 8:7 is not unclear; Maimonides' ruling on it is indisputable. Thus, it should come as no surprise that the Progressive responsum we have examined includes so few arguments formulated specifically to invalidate Orthodox positions. In essence, Zemer attempts to invalidate the official Orthodox stance in this matter by practically ignoring it altogether in his own *teshuvah*.

Harris' choice to allow so many Orthodox arguments in favor of prohibiting the service of women in the military to pass without refutation is more curious. As we have

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In fact, the responsum which immediately follows MinHahar's in *Techumin* ("Women in a *Milchemet Mitzvah*" by Yehudah Shaviv) revisits some of these arguments — particularly the matter of the female obligation to perform *mitzvot* which devolve upon the community at large. It is interesting to note that Shaviv rules in favor of women's participation.

noted, his apparent *modus operandi* has been to build a legal case based upon the sources of all three movements, while simultaneously demonstrating the illegitimacy of detracting *halakhic* views and promoting the positive historical approach of his own movement. It is rather surprising that Harris, in this light, does not choose to include even a simple statement that *Sefer Hachinuch* is veritably alone as a *halakhic* source which overtly states that women are not, in fact, obligated to participate *in any way* in a *milchemet mitzvah*. *Radbaz*, *Tiferet Yisrael*, and *Rashash* all carefully delimit the role which women are to play in a *milchemet mitzvah*, but they do not patently prohibit women's participation like *Sefer Hachinuch*. The *Rishonim* are in virtual unanimity with Maimonides. Consequently, it would seem that a *halakhist* who bases his argument for overturning Maimonides' ruling on a single dissenting text is leaving himself open for considerable challenges. After all, it is hard to deny that MinHahar's *teshuvah* would be *halakhically* neutered without the material from *Sefer Hachinuch*. Thus, we must conclude that it is MinHahar — not the liberal *poskim* — who employs "creative" legal reasoning on this issue, ignoring the *halakhic* consensus and constructing a case based almost exclusively upon *Sefer Hachinuch*'s analysis of the commandment pertaining to Amalek. Still, Harris — perhaps for reasons of length, perhaps for reasons of strategy, perhaps out of resistance to clouding the issue with material that is seemingly incongruent with the body of *halakhic* works on the matter — refrains from commenting on the rulings of *Sefer Hachinuch* and MinHahar's other arguments, many of which might be easily and briefly dismissed.

While the reason for that choice remains unknown to us, there is one fact that

becomes clearly known through our study of these three responsa: social reality has a definite and profound impact upon the *halakhic* process. Each of our respondents acknowledges the apparent permission for women to participate in the army which emerges from the core *halakhic* sources (e.g., *Mishnah Sotah*, *Hilchot M'lachim*). Yet each one places that permission into a framework that best suits his aims. Our earlier discussion revealed the manner in which this is true of our Progressive and Traditional responsa. As for the Orthodox responsum prepared by MinHahar, perhaps it is best for us to allow another Orthodox rabbi to comment on the process which leads the Orthodox establishment to forbid women to join the army:

In reviewing rabbinic literature on the practical application of the prohibition "a man's garment shall not be worn by a woman," we are led to conclude that the biblical verse, according to most authorities, need not present an impediment to a woman's carrying or using weapons in time of war. Furthermore, a historical analysis of rabbinic opinion leads to the realization that many rabbis have found no other major *halakhic* obstacles for their bearing arms. Yet that is a long, long step from arriving at the conclusion that in a Jewish state, women may be drafted for military service. As we have seen, there are many other factors at work in arriving at the final *halakhic* decision (*psak*) in any given situation. The social, religious, and political context in which a situation arises can have an overwhelming effect upon the manner in which this issue is viewed *halakhically*, for the moral and societal impact of its implementation are crucial elements in any solution. At all times, authentic Jewish leadership is not constricted by the niceties of academic precedent but acts from a broader and deeper appreciation of *halakhic* norms, which may take precedence over other considerations.²³

The "other factors at work" to which Rabbi Alfred Cohen refers in this statement are the circumstances, in modern Israel's infancy, which led the Orthodox establishment to object vehemently to the efforts of the Israeli government to compel girls to join the

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Rabbi Alfred S. Cohen, "Drafting Women for the Army," Journal of Halacha and Contemporary Society, Number XVI (Fall 1988), p. 42.

army. Cohen recalls that the Chazon Ish led a fierce opposition to the government's attempt, denouncing any rabbinic opinion which suggested that women might serve the army in any capacity as completely worthless. The Chazon Ish saw the issue at hand as a clear matter of morality which stood at the core of Judaism. He and his followers declared themselves ready to desecrate the Sabbath and even die to uphold their principle. Consequently, the *halakhic* ruling was rooted not in a mountain of sources and precedents; rather, it emerged from a violent, emotional reaction to a perceived threat to the purity and status of Jewish womanhood.²⁴

It appears that Cohen is correct in this representation, for there is little reason to reject the rulings in *Mishnah Sotah* and *Hilchot M'lachim* on the basis of written sources. Thus, we can surmise that our Orthodox *teshuvah* is every bit as skewed by a specific moral, political and religious agenda as are our Progressive and Traditional *teshuvot*. To a certain degree, it appears that each responsum begins with a preconceived answer; the journey to that answer, in each case, meets with the needs and aspirations of the author and his constituency.

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Ibid., pp. 26-29.

CHAPTER III

RESPONSA ON THE HANDLING OF THE ADMINISTERED TERRITORIES

Progressive Responsum

Moshe Zemer, הלכה שפירא, Chapter 14, "The Intifada and The Halakhah":

The crisis in the administered territories is (characterized by) more than violent clashes with the Arabs. The central point is that of our being a conquering power, an experience which stands in contradiction to our self-image as people and as Jews. We are descendants of a people that, across the generations, has taken a moral stand with respect to the question of the treatment of the weak by the strong. Presently, we find ourselves suppressing by force a civilian population in revolt.

What must our moral reaction, both as Israelis and as Jews, be to the disturbances, the attacks, and the spilling of blood in Judea, Samaria and the Gaza Strip? How should we react to the killing of hundreds of Arab citizens and the wounding of thousands, many of whom are children and women? By comparison, relatively few of our soldiers and our Jewish settlers have been struck. Without a clear reply, many Israelis are left in (a state of) spiritual shock.

We had pinned our hopes upon the government and religious leaders to teach us the way, but their reaction has been to deal almost exclusively with (this situation from the standpoint of) security, engaging in political and legislative matters while ignoring the moral aspect.

We have searched in vain for a moral compass which might show us the way out of the entanglement. We have sent our sons to use their rifles and clubs as representatives of a detested conquering government. But what standards of guidance have we to give to them? In this article, I will make an attempt to show that within our Jewish heritage and conscience, the solution for our internal difficulties is hidden. For upwards of two decades, I have been lodging public criticism with regard to a few of the policies of the state, and at the same time, I have brought up these arguments: the people of Israel is the heir to the covenant of four thousand years, and the state of Israel is the historical realization of that covenant. The state of Israel has the privilege and the obligation to protect its citizens. It must take steps in self-defense whenever a threat to life or property surfaces.

However, this covenant between God and the Jews is founded upon the condition that the people of Israel is to observe the moral commandments. Moses and the prophets repeatedly cautioned our ancestors that if they did not carry out their legal obligations, "you shall perish quickly from upon the land which *Adonai* gives to you." (Deuteronomy 11:17); "And Israel shall surely be delivered into exile from upon its land." (Amos 7:17)

As an act of living up to the privilege of the Jews on this land, it is incumbent upon us, then, to ask the painful question with respect to Israel's moral responsibility, in light of our Jewish heritage, to the trampled Arab population which has lived under our rule for a quarter of a century. The rabbinic authorities mentioned in this chapter laid out guidelines, both legally (*halakhically*) and morally. They emphasize the responsibility of the Jew to the non-Jew who lives under his rule, detailing the Arab's rights according to Jewish law, and ultimately, they also go in search of the paths by which peace might be procured.

A. Relations with the individual in a hostile population

The Talmudic maxim most frequently cited by the ordinary Israeli, and especially by the members of the *K'nesset*, is: "If one comes to kill you, rise up to kill him." (Babylonian Talmud, *Sanhedrin* 72a). This maxim is based upon the biblical verse, "If a thief is found sneaking underground (to break in), and he is beaten in such a manner that he dies, no blood shall be shed on his account." (Exodus 22:1)

A number of years before the *Intifada*, Rabbi Hayyim David Halevi, the Chief Sephardic Rabbi of Tel Aviv, was asked by an ex-member of the *K'nesset* if this legal judgment applies also to the matter of Israel's relations to the hostile population in the administered territories. The questioner wanted to know the meaning of this Talmudic ruling, for if the Jewish public is authorized to perceive every Arab as "sneaking underground (to break

in)," then the teaching does, in fact, pertain to a hostile population, and it is therefore permissible, and even obligatory, to distrust the Arab, who is always, in a sense, "one who comes to kill you."

Rabbi Halevi replied:

It is most surprising, this foolish idea to see some one and one-half million Arabs, the great, decisive majority of whom live their private lives in quiet and serenity, as hostile people possessing definite enmity toward any given Israeli, whom they see as a conqueror, just because there exist among them terrorists, undoubtedly comprising the tiniest of minorities, who attack us and come (with the intent) to kill us. Should a death sentence be brought forth upon one and one-half million people on account of this tiny minority? (*Aseh L'cha Rav*, Tel Aviv, 5741, Part 4, Number 2, pp. 34, 38.)

The rabbi summed up:

It is not permissible to kill an individual, even if he or she belongs to a community which includes hostile people — even hostile extremists — so long as this animosity is expressed in actions on the part of individuals among them who have taken lives in attacks but are impossible to identify. (*Aseh L'cha Rav*, p. 38.)

This legal ruling has important implications for the handling of instances of mass commotion and upon the investigations of suspicions with respect to acts of terror. It is understood from this ruling that Jewish law does not condone beatings and shootings without discernment that (such an act falls) within the limit of the immediate command to save a life. The sanctified value of every individual life, even if he or she belongs to a hostile population, must always be a light for our path. In a democratic country, a person is to be judged on the basis of his or her actions, and not on the basis of his or her thoughts. This is the principle component in relations between people — so much the

more so between peoples.

B. Territories in exchange for peace

One of the bitter debates on the topic to be considered centers on the question of whether Jewish law permits or forbids Israel to return the administered territories in exchange for peace.

Here, I shall offer the conclusions of one of the greatest *halakhic* authorities in Israel, Rabbi Ovadiah Yosef, the ex-Chief Rabbi of the Sephardic communities. His keen argumentation is based upon the supposition that a real peace is impossible unless Israel retreats from certain administered territories. If there is no peace, it is doubtless that war will break out, and this leads to (violations of) the command to save life.

Rabbi Yosef cautions against the intervention of rabbis in the establishment of the conditions or the timing of these concessions. There are objective factors which can only be established by experts — factors upon which the experts must base their decisions.

Such is the matter when one speaks of the problems pertaining to the laws of medicine, which oblige us to take the advice of a doctor. But who is the expert who can establish what the conditions and circumstances should be for making peace with our enemies?

On this matter, Rabbi Ovadiah Yosef replies:

If the heads and commanders of the armed forces, together with government officials, were to establish that the commandment to save life comes to bear in this matter — that if the administered territories are not returned by Israel, the danger of imminent war with our Arab neighbors would be perpetuated, and thus and thus, will the sword consume¹ . . . (heaven forbid?) yet if the administered territories are returned to them (the Arabs), the danger of war will be removed, giving way to prospects for a lasting peace, it appears to be indisputable that it is permissible to return administered territories from Israel for the sake of achieving this objective, for there is nothing which stands above the commandment to save life. (*Torah She'b'al Peh*, 21, edited by Yitzhak Rafael, Jerusalem, 5740, p. 14.)

This responsum carefully interweaves a legal and moral stance with a feasible approach and understanding of "real politics," a stance that has many adherents within legal circles in Israel.

In 1921, the Chief Rabbi for Yafo and the surrounding areas, Rabbi Ben-Zion Uziel, said these words to a group of Arab rioters:

We extend a sincere and faithful hand in peace to you and say: surely the whole land is before us — shoulder to shoulder have we worked it, discovered its treasures, and lived in it as brothers dwelling together. Know and believe that the word of God will stand forever. Make peace with us, and we will make peace with you. And together, all of us will enjoy God's blessing upon His land in stillness and serenity, love and brotherhood.

Our cousins! Abraham, our shared father, father of Isaac and Ishma'el, saw that Lot, his brother's son, had dug in his feet and claimed that they could not dwell together, and this gave rise to a dispute between the shepherds of the two flocks. He said to him, "Please let there be no quarrel between me and you, nor between my shepherds and your shepherds, for we are brothers." (Genesis 13:8) We, too, say to you (that) the land shall support all of us, provide for all of us, and we shall put a stop to the

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II Samuel 11:25.

quarrels between us. We are brothers. (Shabtai Don Yich'yeh, *Rabbi Ben-Zion Chai Uziel — His Life and Teachings*, Jerusalem, 5715, pp. 75-77. See also: Abraham Joshua Heschel, *Israel: An Echo of Eternity*, New York, 1969, pp. 176-178.)

We have seen that some of the greatest rabbinic authorities have given us moral directives which facilitate friendly living with those Arabs who are living under our rule and a life of peace with our neighbors. Many fear that there is more of a danger to Israel than a prospect for peace in these directives. However, it is in the power of all those who see in these moral directives words of the living God to employ them.

Israel has proven time and again its might in the battlefield, and it has fashioned one of the most distinguished armies in the world, perhaps the most distinguished for a nation of its size. But these times call for a different type of might.

Rabbi Abraham Isaac Ha'Kohen Kook offers these words in interpreting the blessing found in the morning prayers, "Blessed are You, *Adonai* our God, Sovereign of the Universe, who girds Israel with might.

Israel's might is of a special sort — a might distinguished not by conquests which conquer, subdue, or exterminate others. Rather, it is a might that, at its core, is bound up with the conquest in which a person conquers him or herself. The might of patience is greater than physical might, and one who rules in its spirit unites a city. This is the might by which Israel is girded, the might which is suitable for the moral and pure foundation which elevates the status of humans above that of the animals. (*Siddur Olat HaRa'ayah*, Jerusalem, 5723, Volume I, p. 70.)

Traditional Responsum

Rabbi Theodore Friedman, The Rabbinical Assembly of Israel, Law Committee, Responsa, 5747, Volume 2, "Responsum in the Matter of the 'Whole Land of Israel' and Jewish Law":

Question: The Chief Rabbinate of Israel has gone on record in the media saying that, according to Jewish law (*halakhah*), it is forbidden to concede even a smidgeon of the "Whole Land of Israel." What is the position of the Law Committee of the Traditional (*Masorati*) Movement in this matter?

Answer: In the sources — both biblical and rabbinic, including early and later sages — one does not find any notion such as a "Whole Land of Israel," nor any similar concept. The reason for this is quite obvious. One who performs even a cursory review of the subject of Israel's borders in biblical and rabbinic days will arrive immediately at the conclusion that the borders of Israel during the biblical period were expanded and reduced from time to time because of changes in political circumstances. In the rabbinic period, one cannot speak of fixed borders but rather of specific places that were declared to be part of the land of Israel and cities and towns that were declared to be outside of Israel. There is ample evidence from the Bible and from rabbinic literature to this effect, however we shall be satisfied with two or three examples.

Before we discuss this topic, we must start with the divine promise to our father Abraham in the Covenant of the Pieces (Genesis 15:18): "I have given this land to your offspring,

from the river of *Mitzrayim* to the great river, the river of *Perat* (Euphrates)." In the effort to identify the "river of *Mitzrayim*," there is disagreement between biblical commentators. According to *Targum Yonatan*, *Rashi*, and *Radak*, this term corresponds to the Nile River, and it is, indeed, the one accepted by modern commentators as the obvious interpretation. However, *Rav Sa'adia Ga'on*, *Ibn Ezra*, *Rabbenu Bach'ya*, and *Abravanel* interpret this term to mean the river *Shikhur*, which is known today by the name "*Wadi El Arish*." Between the latter and the Nile extends a distance of nearly one hundred kilometers. Indeed, we find several biblical passages in which the southwestern border of the land of Israel is mentioned as either *Shikhur* or the river of *Mitzrayim*. The meaning of these two expressions is *Wadi El Arish*. In the Torah (Numbers 34:5), the river of *Mitzrayim* is already mentioned as the southwestern border of the land of Israel. Such references also appear in Joshua 13:3; Joshua 15:4, 6-47; I Kings 8:65; Isaiah 27:12.

As for the issue of exchanging borders in light of geo-political reality, we must begin with those resulting from the conquests of King David. David's conquests bequeathed to the united kingdom of Judah and Israel the bordering lands of Amon, Moab, and Edom, eastward across the Jordan River, as well as the Aramean lands in southern Syria and at the beginning of the kingdom of *Aram-Tzuvah*. In the brilliant days of David's and Solomon's rule, Israel's sovereignty extended from the borders of the kingdom of Tyre and the land of *Chamat* in the north, and from the Euphrates River in the northeast, to the Sea of *Eilat* in the southeast and the Egyptian kingdom in the southwest (I Kings 5:1; II Chronicles 9:26). The term "land of Israel" took on a much broader meaning in this

period than it had previously.

However, this geographical expansion did not last long. Due to circumstances upon which there is no room to elaborate here, far-reaching changes began to take effect already in the final days of Solomon's reign, not to mention the changes which occurred after the kingdom was divided. It is told (in I Kings 9:11-13) that Solomon ceded "twenty cities in the land of the Galilee" to Hiram, the King of Tyre, as apparent compensation for the many materials which Hiram had bestowed upon Solomon for the building of the Temple and the king's palace. Henceforth, this zone in the upper Galilee has remained in the domain of the kingdom of Tyre. Israel's control eastward across the Jordan River was gradually reduced. Up until the death of King Ahab, the kingdom of Moab was included within Israel's borders, and those who managed to secede from the kingdom of Israel merited independence and became Israel's adversaries. The changes which took place with regard to the land of Israel's borders from the time of the divided kingdom until the end of the Second Temple period constitute a complicated story into which we will not delve here. But one clear lesson emerges from this story. In this entire lengthy period, it was impossible to establish iron-clad principles and say — this is where the land of Israel's borders begin, and this is where they end. Only one border has withstood any change at all — the Mediterranean Sea as the western border. But according to our Sages of blessed memory, a difference of opinion arose with respect to the question of which part of the Mediterranean was thought to be under the domain of the land of Israel, and which part was perceived to be outside of Israel (see *Gittin* 8a).

It has already been indicated above that one does not find, among the works of our Sages, of blessed memory, even the slightest hint of a notion such as a "Whole Land of Israel," upon which the sovereignty of a Jewish state ought to be established. The interest our Sages displayed regarding the question of Israel's borders does not emerge from any political argument. Surely, by the midway point of the first century B.C.E., when Pompey, the Roman general, intervened in the civil war between the Hasmonean brothers, Hyrcanus II and Aristobulus II, Jewish political sovereignty had already vanished. All of the concerns and determinations of our rabbinic sages with respect to the matter of Israel's borders were concentrated on the question of which territories, cities and villages were subject to the laws and commandments pertaining to the land of Israel, such as tithing (*t'rumah* and *ma'aser*) and first-fruit offerings (*bikkurim*), and which regions were considered to be outside of Israel, rendering them exempt from these laws and subject to the impurity of "foreign lands." The interpretation of this last notion is that a Jew who leaves the homeland becomes automatically impure. This law especially struck the priests, whose impurity prevented them from serving in the Temple when it was still standing, and ruled them out from receiving *t'rumah* (the priestly tithe) even after the destruction of the Temple. Therefore, our Sages, of blessed memory, spoke in terms of "permission" and "prohibition" concerning specific cities and regions. When they say about a certain place, such as *Cesarea* (*Tosefta Ohalot* 18:16), that it is "permitted," they mean that they have determined that *Cesarea* is included in the land of Israel, making it permissible for priests to live there, and obligating its residents with respect to *terumah* offerings, tithing, and the like. Conversely, when they determine that

a given place is "forbidden," they mean that the place is considered to be outside of the land of Israel — a priest who goes there or lives there becomes impure, and the place is exempt from *terumah* offerings and tithing.

This issue — the determination of Israel's borders by our Sages, of blessed memory — constitutes one of the most grave issues. The core of the difficulty is derived from the identification and pinpointing of places mentioned in the sources. The author of the booklet, "The Borders of the Land of Israel that Maintain the Residents of Babylonia," indicates in his opening words that, "there are places which appear on one list, but are absent on another." There are also spelling differences that are perpetuated in different manuscripts of a particular place. But from time to time, there are also qualitative differences. Sometimes, spelling differences between the sources cause differing identifications of a single place. For instance, the Palestinian Talmud refers to one place by the name סבל. In a writing from *Beit Shean*, the same place is mentioned using the name סגל. These places are quite far from one another. What is the original version? There is disagreement between the researchers on this matter. Moreover, the booklet includes two maps — one of the entire land of Israel, and one of the Galilee. On both of them, two lines appear to delineate the borders. One line indicates the border according to the words of researcher S. Klein (whose book was already mentioned), and one line indicates the borderline according to the thinking of researcher Isaiah Peres (*Encyclopedia of Israel*, Introduction to Volume I, Jerusalem, 5711, pp. 40-45.).

Between these two lines, there is a considerable difference. Everything stated above teaches us the extent to which there is no unanimity regarding the borders of the land of Israel in the *talmudic* period.

The extent to which the identity of the places mentioned in the sources as borders for Israel is foggy can be seen in the identifications of *Rekem* and *Hegar*. These two places appear in the *Mishnah* (*Gittin* 1:1), where *Rabban Gamaliel* determines that *Rekem* and *Hegar* are under discussion as being outside of the land of Israel, and anyone who brings a bill of divorce from one of these cities is obligated to say, "In my presence it was written, and in my presence it was signed." But where exactly are these places located? The answer inspires a difference of opinion between researchers of historical geography in the land of Israel. Researcher Isaiah Peres (*Tarbitz*, Volume III, 1931-32, pp. 328-336) rebuts the opinion of researchers who precede him — who identify *Rekem* with *Petra*. In opposing them, he locates this place along the southern border of the land of Israel, near *Midba* (?). Approximately twenty years after Isaiah Peres' article was published, Professor Benjamin Meisler produced research (*Tarbitz*, Volume II, 1949-50, pp. 316-319) in which he, in fact, identified *Rekem* with *Petra*. It was *Hegar*, which was (also) mentioned in the *Mishnah*, that he identified as a region in the south of the land of Israel — "The fortification line that was established after the destruction of the second Temple with the belt of land between *Refi'ach* in the west and the Dead Sea in the east that was taken from Judah" by the Romans. In a state of uncertainty such as this, who would dare to assert what the "historical borders" of the land of Israel are?

In these times, the problem occupies the best researchers who engage in the study of the historical geography of the land of Israel.

Thus, we are dismissed from entering into this grave issue, for our entire purpose here is to comprehend the factors which drove our Sages, of blessed memory, to determine that a particular place was a part of the land of Israel, while another place was thought to be outside of the land.

We shall endeavor to prove that our Sages, in their deliberations, were very pragmatic, and were not driven by historical reasons nor by abstract ideological fundamentals. From their vantage point, there was one single consideration — the number of Jewish residents in a specific place. If the percentage of the Jewish population in a specific place was thought to be considerable *vis a vis* the percentage of non-Jews in the population, then they determined that the place should be thought of as (being in) the land of Israel — if not, (the place was) not (considered to be a part of the land). It is from here that the difference of opinion among our Sages, of blessed memory, concerning the inclusion or exclusion of any particular place in the land of Israel stemmed. Moreover, the Jewish population in many such places was not stable. Over the course of time, it was liable to grow or to shrink. Therefore, we find many instances in which a city is initially considered to be outside of the land of Israel, but when its Jewish settlement grows, our Sages, of blessed memory, determine that the city should, in fact, be thought to be (a part of) the land of Israel. And sometimes, when there were arguments in both directions

regarding a specific city, our Sages established a compromise in the matter. That is to say, in one aspect of Jewish law, the place qualified as (a part of) the land of Israel, while in another aspect, the place was rendered as being outside of the land; there is no greater sort of "pragmatism" than this. These inclusions were fully verifiable by examples taken from the sources. Also, one could readily propose many examples for each inclusion indicated above; we shall be satisfied with one example for each ruling.

A percentage of the local Jewish population. As it is known, the city of *Cesarea* was built from scratch by Herod in 10 B.C.E. The city was a typical, pagan Roman city with all of its pagan manners, and the sages were not slow in declaring it to be outside of the land of Israel. One may assume that the outstanding idolatrous character of the city deterred Jews from living there (*Tosefta Ohalot* 18:13). But in time, and especially after the destruction of the Temple and the *Bar Kokhba* Revolt, the majority of the Jewish population could be found in the Galilee and in places near it. Consequently, the number of Jewish residents in *Cesarea* increased, and after a short time, the city was turned into a place of *Torah*. Therefore, in light of reality, our Sages, of blessed memory, reversed their decision, determining that *Cesarea* was to be included within the domain of the land of Israel (*Tosefta Ohalot* 18:16).

Along the coast, approximately twelve kilometers north of *Cesarea*, dwelled the city of *Dor* during the ancient period. It was conquered from the Greeks by Alexander Yannai, but in the invasion of Pompey, the Roman general, on the land of Israel in the year 63

B.C.E., it was completely destroyed. Several years later, it was rebuilt by Gavinius, the Roman governor in Syria. He populated it with Syrians and Romans. The Jewish residents in the city comprised an insignificant minority when weighed against the Christian population. Therefore, our Sages, of blessed memory, determined that *Dor* was to be considered outside of the land of Israel, even though it had been under Jewish control for nearly one hundred years (*Tosefta Shevi'it* 4:11).

Sometimes, economic considerations influenced the determination of our Sages, of blessed memory. To illustrate this point, we shall utilize the case of *Beit Shean*. In the sources (Palestinian Talmud, *Demai* 2:1; Babylonian Talmud, *Hullin* 6b), we read: "*Rabi* permitted (the produce of) *Beit Shean* (to be eaten without tithing, rendering it outside of the land of Israel), and everyone spoke slanderously about it." Or, in the words of the Babylonian Talmud, which is cited above, "His brothers and the others in his father's family combined to protest, saying, 'Will you regard as free (this) place which was judged by your parents and ancestors to be subject to tithing?'" That is to say, *Rabi* declared *Beit Shean* to be outside of the land of Israel, therefore making its fruits exempt from *terumah* offerings and tithing. Gedalyah Elon estimates with ample good reason that *Rabi's* argument to (exclude *Beit Shean* from Israel's borders reflected) the desire to lighten (the burden) upon the Jews who were residing in *Beit Shean* (and several places similar to it) "by strengthening their hold upon their land such that they would not be oppressed by the non-Jews" who comprised the majority in that place. An exemption from *terumah* offerings and tithing could be anything but insignificant in this effort.

We mentioned above that, sometimes, the Sages established a sort of compromise concerning a specific region — when, for one *halakhic* purpose, the place qualified as (a part of) the land of Israel, while for another, the place was rendered as being outside of the land. To illustrate this point, we shall utilize the case of the city of *Ashkelon* and its surrounding areas. The ancient opinion of our Sages, of blessed memory, saw the city of *Ashkelon* as being outside of the land of Israel (Palestinian Talmud, *Shevi'it* 3:1). But we learn from another source (*Tosefta Ohalot* 18:15) that the sages counted *Ashkelon* as pure, that is, as a part of the land of Israel. From this same source, it comes forth that this ruling held in the days of Rabbi Judah Ha-Nasi. This ruling of purity notwithstanding, the city of *Ashkelon* was regarded as being outside of the land of Israel on the basis of several standards of Jewish law, such that neither the laws of *terumah* offerings and tithing nor the laws of the sabbatical year applied there (*Tosefta Ohalot* 18:4).

Finally, we shall briefly discuss the status of the Jewish settlements that were located across the Jordan River in the time of the *tannaim* and the *amoraim*. Already, in the generation of R. Akiva, we find a dispute between the *tannaim*, R. Akiva and R. Ishmael, as to whether communities across the Jordan River are to be considered as a part of the land of Israel and whether their residents are obligated with respect to (the laws pertaining to) bringing the first fruits (for offering at the Temple). The phenomenon that we described in the previous paragraph — the ambiguity concerning the status of a specific place as a part (or not as a part) of the land of Israel — also remains relevant concerning Jewish settlements across the Jordan. The region of this land, with its eastern

border, is called *Hegar* by *Rabban Gamaliel* (of *Yavneh*). The settlement therein was half Edomite and half Jewish. The principal city in *Hegar* was *Rekem* (*Gittin* 1a). Its Jewish residents were considered "strangers and ones who have strayed (Christians)" concerning the laws of divorce and ritual purity. Therefore, R. Judah rules *Rekem* to be as the east with regard to matters of divorce (*Gittin* 1b). But in other matters, *Rekem* is perceived as being within the land of Israel, and it is found on a list of places within the domain of the land of Israel (*Tosefta Shevi'it* 4:11).

Once more, we find that the phenomenon that we have already observed concerning different places in the western parts of the land of Israel pertains to cities and localities which are across the Jordan River. When the local Jewish population grows, a place that was previously considered to be outside of the land of Israel is declared to be a part of the land. Originally, a list of places thought to be included in the land of Israel emerged from the academy of *Rabban Gamaliel* of *Yavneh*. This list was in force until the days of R. Judah Ha-Nasi, when changes and additions reflecting the realities of his time were introduced into it.

From this brief glance emerges the understanding that our Sages, of blessed memory, in determining whether places were to be considered within or outside of the land of Israel, were driven by pragmatic reasons. In their thinking on the subject, we do not find the notion of a border as a fixed and rigid line that distinguishes between the land of Israel and the territory which falls outside of it. Therefore, one who claims that it is forbidden

to concede even a smidgeon of the "Whole Land of Israel" finds no support from the perspective of Jewish law (*halakhah*). The dispute revolving around the question of the "Whole Land of Israel" is a political quarrel with no relevance to Jewish law whatsoever.

Analysis

It is clear from the outset that these two liberal *teshuvot* on the legal ramifications of exchanging land for peace (unlike those on the topic of women in the military) have very little in common. Zemer and Friedman attack this *halakhic* question from radically different vantage points, yet they reach similar practical conclusions.

Zemer indicates that there is a moral imperative for returning the administered territories to the Palestinians. His concern is that the Jews in Israel find themselves in the largely unfamiliar and morally suspect role of dominator. A rich biblical and rabbinic literature speaks powerfully of a charge to Jews to defend and uphold the rights of the weak against the strong, and yet the Jewish occupation of substantial territorial regions that are predominantly populated by non-Jewish Arabs places that value in jeopardy. Consequently, Zemer sets out on a search of the sources for moral instructions which might guide the Israelis to proceed in an authentically Jewish fashion.

From the outset of Zemer's *teshuvah*, the emphasis on moral — and not legal — interests is rather striking. He writes at length about the need for ethical guidance from the tradition before he first utters a word about Jewish law. In fact, even his first reference to a biblical or rabbinic text is designed to serve as evidence for the notion that the neglect of God's *moral* commands is punishable by exile from *Eretz Yisrael*. What makes this first appeal to Jewish law particularly interesting is that the text Zemer employs to support his point — Deuteronomy 11:17 — actually refers more generally to the obligation to observe *all* of God's commands in order to maintain a claim to the land. Certainly, Zemer's zeal to turn the question of the return of territory into a moral issue is

palpable. His blatant misuse of the biblical passage as a specifically moral proof-text confirms the pointedness of his agenda. Zemer further "substantiates" his claim that the observance of the *moral* laws provides for Israel's future on the land with Amos 7:17, and while Amos' prophecy does, in fact, refer more tangibly to Israel's moral "harlotry," it is unclear that Amos' message proves Zemer's exact point. Moreover, even if the verse from Amos does serve Zemer's purpose, it is doubtful that many Jewish legal masters would uphold the primacy of a passage from *divrei kabbalah* over Deuteronomy 11:17.

Still, Zemer proceeds in pursuit of a predominantly moral argument in this matter. His responsum has two components. First, he asserts that the Jew is obligated to treat each Arab living under Israeli rule *as an individual*, regardless of the hostility and violence which might be attributable to the collective. Second, Zemer declares that the return of territory for the purpose of procuring peace is mandatory for the Jew. In order to gain the fullest possible understanding of Zemer's strategy, we must consider the construction of each of these arguments separately.

In maintaining that each Arab must be treated *in accordance with his or her own actions*, not on the basis of the terrorist activities of a small minority, Zemer begins with a clarification of the often-cited teaching culled from *Sanhedrin* 72a: "If one comes to kill you, rise up to kill him." Based upon Exodus 22:1, this aphorism, claims Zemer, is one which politicians and other Israelis frequently use to justify the persecution (and even murder) of limitless Arabs who are peaceful residents in Israel, posing little or no security threat whatsoever. Leaning heavily upon the opinion of Rabbi Hayyim David Halevi, the Chief Sephardic Rabbi in Tel Aviv, Zemer categorically dismisses the idea that hundreds

of thousands of Arab residents in the administered territories — most of whom are not malevolent — can be viewed collectively as “thieves breaking in” with the intent to do damage.

It is evident that Zemer’s thrust is moral, not truly legal, in nature. He uses the ruling of Rabbi Halevi to establish a Jewish *ethic* regarding the fair treatment of individuals in a democracy. Zemer claims a connection to *pikuach nefesh* (the religious duty to save a life, which overrides nearly every other commandment) here, although he does not quote Rabbi Halevy with respect to it, nor does he include argumentation of any sort derived from either rabbinic or biblical law. Rather, Zemer draws upon the moral *conclusions* reached by an Orthodox *posek* in this matter.

Zemer’s case in favor of the exchange of territory for peace is more tangibly linked to *pikuach nefesh*. However, the objective he presents at the beginning of his responsum remains unchanged — he wishes to issue a moral directive, albeit one carefully veiled in *halakhah*. Consequently, Zemer chooses to incorporate the ruling of Rabbi Ovadiah Yosef, Israel’s former Chief Sephardic Rabbi.

Upon first glance, it is rather startling that Zemer and Yosef appear to be in complete agreement, since the great majority of Orthodox *poskim* use the *halakhah* to argue that the territories gained in the 1967 War may not be returned to Arab sovereignties. However, both Yosef and Zemer suggest that *pikuach nefesh* dictates the return of land if it can be determined that war and loss of life are the likely results of maintaining possession of the administered territories. Put simply, it is obligatory to trade “land for peace” (even for the prospect of peace) in order to save lives. Yosef

contends that non-rabbinic "experts" (*mum'chim*), such as the heads of state and military commanders, are the ones best positioned to postulate as to the best means for pursuing *pikuach nefesh* in a matter of national security. Hence, we are, in Yosef's view, best served by following their lead, surrendering territory when they certify that it is in the interest of protecting human life. Zemer appropriates this *halakhic* stance, proffered by as authoritative a source as can be found in Israeli Orthodoxy, for the purpose of building his moral case for the return of the administered territories and the humane treatment of the suppressed Palestinians. However, as we shall see shortly, when we examine Yosef's reasoning more closely, Zemer's reliance upon Yosef is extremely problematic.

Zemer attempts to buttress his position by introducing a thoroughly non-*halakhic* statement from Rabbi Ben-Zion Uziel, the Chief Rabbi of Yafo during the 1920's, in which Uziel pleads with Arab rioters to accept his offer of brotherhood and peaceful coexistence. Needless to say, this comment is of absolutely no *halakhic* import. One might intimate that the citation is somewhat useful in supporting a *moral* claim for returning territory to the Arabs, but even that use is questionable, since the circumstances in 1921 (when Uziel made his statement) were wholly dissimilar to the ones which motivate Zemer's *teshuvah*. Uziel did not speak as a representative of a people that had conquered and forcibly taken control of a large Arab population. The modern state of Israel was not established until twenty-seven more years had passed, making it highly unlikely that Uziel's speech was designed to disparage any moral wrongs committed in the name of Jewish domination. Since Zemer is specifically questioning the moral grounds for perpetuating a situation in which Arabs live without consent under the rule of

Jews, it would seem that Uziel's plea is a total non sequitur, and a dated one at that.

Zemer concludes his responsum with Rabbi Abraham Isaac Ha'Kohen Kook's interpretation of the *b'racha*, found in the traditional Jewish morning blessings, that offers praise to God for encircling Israel with might. Kook's teaches that Israel's might is not demonstrated with physical domination; rather, it is the embodiment of patience and self-discipline. Such might, he argues, leads to the moral elevation of humanity above barbarism. Even these final words are of no assistance to Zemer from a legal standpoint. The reader comes to an important realization — Zemer has not, in fact, constructed a *teshuvah* to a religious legal question at all. He has produced a modern parallel to pietistic literature, drawing from a series of religious sources in affirming a Jewish ethic to which he passionately subscribes.

The only noteworthy connection that Zemer establishes between his position and the *halakhah* is founded upon the principle of *pikuach nefesh*. In making his case that the Jewish duty to save life requires the return of land to the Arabs, Zemer points his reader to the ruling of prominent Orthodox Rabbi Ovadiah Yosef. While Yosef's words clearly support Zemer's argument, a more careful exposition of Rabbi Yosef's fully developed opinion on the exchange of land for peace will readily reveal that the two writers are unquestionably speaking different languages. To prove this, we shall follow Yosef's legal reasoning in a *teshuvah* published approximately nine years after the one which

Zemer employs.²

Yosef opens his responsum with the important qualification that the question of whether to return land to the Arabs for the sake of *pikuach nefesh* is, for the time being, moot. He defends this statement with two reasons. First, at the time he writes, Yosef sees no willingness to compromise demonstrated by the Arabs. They appear to him interested only in receiving the whole of *Eretz Yisrael*, including Jerusalem, leading him to characterize the current Jewish position with the words of Psalm 120:7: "I am a man of peace, but when I speak, they are for war." Since there are obviously no Israeli governmental officials or military leaders who would consent to such an arrangement, Yosef is clear that his words are not designed to be specific *halakhic* instructions for a present-day exchange of land for peace. Secondly, Yosef indicates that the intense disagreement among experts on Israeli security makes it impossible to determine conclusively whether the return of territory would *prevent* or *hasten* the loss of Jewish lives. In the absence of a clear solution to that dilemma, it is ill advised for a religious leader such as Yosef to advance a *halakhic* ruling in the name of *pikuach nefesh*. This is why Yosef expresses his willingness to rely upon security experts to act in the manner that *they* believe will save lives, regardless of the course of action that they choose to

2

The *teshuvah* from which Zemer quotes, published in *Torah She'b'al Peh* in 5740, is essentially built upon the same arguments (and offers the same solutions) which appear in Yosef's later work, which we will examine closely:

הרב עבדיה יוסף, "מסירת שטחים מארץ ישראל במקום פיקוח נפש", תחומין, י' (גוש עציון: צמח, תשמ"ט), 47-34.

take.³

Certainly, some might argue that developments in the peace process which have occurred in the nine years since Yosef's *teshuvah* was published could be seen as indicators of a road to follow toward *pikuach nefesh*. However, it is undeniable that Israeli experts are no closer to agreement on the matter of returning territory than they were when Yosef wrote. Thus, we can assume that Yosef, even today, would maintain the applicability of this first section in his responsum.

Having addressed the political realities which complicate the definitive pursuit of *pikuach nefesh*, Yosef turns his attention to a series of *halakhic* concerns which come to bear upon any decision to cede territory in *Eretz Yisrael* to non-Jews. He first gives consideration to the Jewish obligation to dwell in the land of Israel, as it is expressed in Deuteronomy 12:29 and related biblical and talmudic passages. Yosef builds a case on behalf of our Sages, of blessed memory, for the importance of living inside of the borders of *Eretz Yisrael* — even if it means living in a community that has more idolaters than Jews. The rabbis of the Talmud were so firmly convinced of the holiness of the land that they assumed Jews who chose to live outside of the land — even if they were fully observant Jews — to be godless.⁴ Conversely, Jews who lived in *Eretz Yisrael* but eschewed the commandments could be said to have a God. Yosef draws no conclusions from this rabbinic viewpoint; he simply uses it to confirm the significance that the land

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Yosef, pp. 34-35.

⁴

See *Ketubot* 110b, Leviticus 25 and I Samuel 27.

had for our Sages. However, one might easily surmise, on the basis of this, that our rabbinic forebears would not likely have looked kindly upon a decision to take portions of *Eretz Yisrael* and make them *chutz la'Aretz*.⁵

Yosef, at this point, changes his focus to the prohibition against giving encampments to the nations displaced from *Eretz Yisrael*.⁶ He brings the opinion of Maimonides (*Hilchot Avodah Zarah* 10:6) which generalizes this *issur* to include *all* non-Jews, not just those displaced in biblical times. This, of course, raises the possibility that the *halakhah* forbids the return of territory — or even cohabitation upon the land. However, as Yosef points out, both *Rabad* and Rabbi Moshe of Coucy⁸ reject the application of this prohibition to anyone other than the seven Canaanite nations, citing *Gittin* 45a (which addresses Exodus 23:33) and Rashi's comments upon it as proof. Thus, the correct *halakhic* application of the prohibition is a source of considerable controversy. Ramban applies Exodus 23:33 specifically to idolaters, and the prevailing opinion of the rabbinic majority excludes Arabs who are not idolaters from the scope of the *issur*.

5

Yosef, pp. 35-36.

6

This *issur* is known as "*Lo Techanem*" (Deuteronomy 7:1-2). A related *issur*, prohibiting the presence of non-Jews within *Eretz Yisrael* due to the threat of idolatry, is "*Lo Yeshvu*" (Exodus 23:33).

7

See *Rabad* on Maimonides' *Hilchot Avodah Zarah* 10:6.

8

See *Sefer Mitzvot Gadol*, *Siman* 49.

Yosef demonstrates that there is widespread agreement that the prohibition does not pertain to situations in which Jews lack the power to exile non-Jews from their land.⁹ However, Maimonides indicates that Deuteronomy 7:1-2 ("*Lo Techanem*") prohibits the sale of Israeli land to any and all non-Jews when Jews are not sovereign over the entire world.¹⁰ Yet even this prohibition, according to Yosef, has been frequently ignored in modernity, when leaders of Israel have sold land to Arabs because they believed that Deuteronomy 7:1-2 applied *only* to idolaters. Clearly, there is a wide range of viewpoints regarding the applicability of Deuteronomy 7:1-2 to Arab non-idolaters. *Chazon Ish* (in *Hilchot Shevi'it* 24:3) and Rabbi Joseph Karo (in *Beit Yosef* to *Choshen Mishpat* 249) apply "*Lo Techanem*" to Arabs; Meiri (in his commentary to *Avodah Zarah* 20a) and others do not. Yosef does not attempt to settle the dispute, but he does disclose that there have been instances in modern Israel in which the sale of land to non-Jews has been permitted (when it benefitted Jews, i.e., to meet the requirements of *sh'mitah*).¹¹

At this juncture in his *teshuvah*, Yosef offers the *halakhic* opinion upon which Zemer seizes — that since *pikuach nefesh* overrides all commands except for the prohibitions against idolatry, sexual violations, and murder, Israel must be prepared to return territory to the Arabs if such an action, in the estimation of military and political experts, will result in a decreased risk of loss of life. Yosef argues for a lenient ruling

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See *Hilchot Avodah Zarah* 10:4.

¹⁰

Ibid. This is based upon the *Tosafot* to *Avodah Zarah* 20a.

¹¹

Yosef, pp. 37-39.

here, likening this situation to that of a sick person who has been permitted by many doctors to observe a religious fast, but has been warned of health risks by only a few. In such an instance, the sick person is obliged to eat, leading Yosef to offer a parallel assertion — that a similar leniency must be applied with regard to the return of land in exchange for peace. If a disagreement exists as to the necessity of returning territory, Yosef posits that land must still be relinquished in order to avoid the threat to *pikuach nefesh* which would arise from war.¹²

It is important to note that Yosef includes a crucial addendum to this ruling. He acknowledges that some *poskim* suggest that Jews are to trust in *God* to save life in times of war, not to make concessions to the enemy for the sake of saving life. As substantiation for this position, there is *Pesachim* 56a, in which King Hezekiah is admonished by the *Sanhedrin* for making a deal to procure peace instead of trusting in God. Yosef rejects this argument, claiming that Hezekiah's generation was especially noteworthy for its faithfulness. They might have been able to rely on God for a miraculous rescue from death, but the same conclusion, says Yosef, cannot be reached for the present generation living in Israel — a generation that has abandoned *halakhah*, denigrated proper Jewish education, promoted the immodesty of women, and neglected the Sabbath and festivals. Yosef sees no choice but to return territory in order to save life, but he is comforted by the traditional notion, found in the daily *Tefilah*, that God will

¹²

Ibid., p. 39. For the *halakhic* source on the fasting obligations of the sick, see *Shulchan Arukh, Orach Chayim* 618:1 (in addition to many later sources).

reclaim all of *Eretz Yisrael* for the Jews and bring the exiles back to their homeland once the entire people repents and dedicate itself to living in accordance with *Torah*.¹³

Yosef takes up two remaining *halakhic* considerations, and in each case, he offers an interpretation that paves the way for returning the administered territories for the sake of *pikuach nefesh*. First, there is the question of whether or not there is a "commanded war" (*milchemet mitzvah*) to conquer *Eretz Yisrael*, possess it solely, and preserve it as a Jewish state henceforth.¹⁴ If such a command is in effect, then the duty to save life might be waived, as it is in times of war against the seven Canaanite nations.¹⁵ Yosef rejects this proposal on the basis of *Ketubot* 111a, which indicates a prohibition against Jewish revolt among the world's nations. If, in fact, the Jews are not "commanded" to return to Israel until the time of the Messiah, when each Jew will be repentant and *Torah*-true, then the concept of such a *milchemet mitzvah* would be inapplicable under present circumstances. Modern Israel is not the result of a *complete conquest* that invokes the command of preserving; Jews do not even possess a strong enough hold over the land to exile the non-Jewish idolaters without inciting the wrath of other nations. Drawing upon such sources as *Divrei Issachar*, *Siman* 149, Yosef asserts that the commandment to settle *Eretz Yisrael* is incumbent upon the individual, not the community as a whole — making

¹³

Ibid., pp. 39-41.

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This matter is connected with Ramban's commentary on Maimonides' *Sefer Hamitzvot*, Commandment 4.

¹⁵

See *Minchat Chinuch*, Commandment 604.

it unacceptable to violate the obligation to save life by waging war to maintain "control" over the barely-controlled administered territories.¹⁶

The final *halakhic* question that Yosef addresses in his responsum is: Can the *halakhah* regarding the defense of border cities¹⁷ be used as a paradigm for establishing *halakhah* regarding the return of the administered territories? Some authorities reason that it is permissible to violate the Sabbath to wage war to protect a border city, which is particularly vulnerable, for the sake of *pikuach nefesh*. However, Yosef counters by questioning the relevance of the "border city" *halakhah* in a situation such as that in modern Israel — in which rapid air strike capabilities essentially render a border city just as defensible as an inland territory. Moreover, Yosef cannot accept the use of the "border city" *halakhah* as a paradigm for the matter at hand because the *future* threat of life loss (which could arise upon the loss of a border city) is not equivalent to the *present* threat of life loss (which could be caused by holding onto the administered territories). Obviously, the present threat takes precedence. Hence, if governmental and military officials maintain that there is a clear and present threat to human life if the administered territories are not returned, Yosef can see no alternative but to relinquish the territories in question.

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Yosef, pp. 42-44.

¹⁷

See Maimonides' *Hilchot Shabbat*, 2:23; *Eruvin* 45a; and *Shulkhan Arukh, Orach Chayim* 329:6.

Our exposition of Rabbi Ovadiah Yosef's *teshuvah* reveals the problematic nature of Zemer's choice to lean so heavily upon Yosef in finding *halakhic* ground upon which to stand. Yosef's willingness to accept the decisions of military and political experts with regard to the return of the administered territories is in no way rooted in the ethical concerns which Zemer espouses throughout his responsum. Moreover, Yosef's *teshuvah* is hardly a vote of confidence for the modern Israeli state. In fact, it can be said that Yosef approaches this *halakhic* matter from a decidedly anti-Zionistic stance. He shares none of Zemer's loyalties to the modern state; rather, he chastises the great majority of its population as sinners who have strayed from *Torah*, delaying the day when exiles *should* return to the land. This, according to Yosef, explains the predicament in which modern Israel finds itself — the Jews in Israel would be able to depend on *God* to save their lives if they belonged on the land in the first place. While Zemer seeks a peace that will secure the future of the state of Israel, Yosef scornfully belittles a country whose weakness serves as the most irrefutable proof that it should not exist at this time under these circumstances.

For Zemer, the motivation to return the administered territories is a moral desire to coexist peacefully with Middle Eastern neighbors; for Yosef (who opens his *teshuvah* by expressing sincere doubt that returning territory can establish peace), the motivation is the avoidance of death for Jews who happen to live in *Eretz Yisrael*. Thus, it is undeniable that Zemer and Yosef are conveying entirely different messages when they

write that land may be exchanged for peace for the sake of *pikuach nefesh*. Zemer's use of Yosef's statement — taken out of its context — to support his argument is highly suspect and arguably irresponsible.

Orthodox Rabbi Shaul Yisraeli, in a response to Yosef's *teshuvah* published in the same volume of *Techumin*, expresses his fears that Yosef's responsum will be manipulated in just such a manner by liberal-minded Jews arguing for the exchange of land for peace. His is a more normative Orthodox position; he sees the conquering of the administered territories in the Six Day War as occurring "by means of a miracle and a watchful eye on High."¹⁸ He laments that Yosef's *teshuvah* can only serve to confuse the Orthodox community, while permitting the government to surrender land under the guise of *halakhah*. Yisraeli is horrified by the prospect of leftists — to whom he attributes the goal of blurring the distinctiveness of the people of Israel — strengthening their position by using Yosef's words while Orthodox religious settlers, who live as exemplars in the administered territories, will be expelled from their homes. For these reasons, Yisraeli feels compelled to express his disagreement with Yosef publicly.¹⁹

Zemer ignores this vehement reaction within the Orthodox movement to Yosef's position — presumably because it does not serve his purposes. However, Yisraeli's response only confirms the incompatibility of Yosef and Zemer on this *halakhic* issue.

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הרב שאול ישראלי, "מסירת שטחים מא"י במקום פיקוח נפש," תחומין, י"ג. גרש
עציון: צמת, תשמ"ט, 48.

¹⁹

Ibid.

Let us now revisit our Traditional responsum, for it addresses the matter at hand from a completely different angle than that of Zemer or Yosef. Friedman is attempting to refute an official position of the Chief Rabbinate of Israel — that *halakhah* forbids the relinquishing of any part of the "Whole Land of Israel" for any reason. To combat this statement, Friedman devotes all of his energy to proving one essential point — that in biblical and rabbinic history, there is no such concept as the "Whole Land of Israel" upon which the ruling of the Chief Rabbinate could be based.

Friedman begins by examining the borders of *Eretz Yisrael* as they are expressed in Genesis 15:18. In citing the divergent opinions of numerous medieval biblical commentators, he firmly establishes that the borders described in the Covenant of the Pieces are unclear. However, even if they had been clear, we would still encounter great difficulty in attempting to identify an exact *Eretz Yisrael*, since the Bible reveals that the borders began to shift with the conquests of King David. David's successful expansion efforts gave the term "*Eretz Yisrael*" a broader meaning than it had previously held. The borders were once again redefined under King Solomon, who surrendered territory in his political bargaining. Subsequent kings of Israel saw the borders shrink further due to secessions. All of this biblical history serves to support Friedman's claim that it would be impossible to assert that the "Whole Land of Israel" is non-negotiable when the term has had so many different definitions.

When Jewish political sovereignty came to an end under the Hasmoneans,

Friedman argues that religious concerns assumed the predominant role in establishing the identity of a given locale as inside or outside of *Eretz Yisrael*. If a locality was considered to be inside the border, priests could reside therein, obligating its residents to tithe and prepare *terumah* offerings. Localities outside of the border were considered impure, thereby prohibiting priests from living therein and releasing residents from the obligations of tithing and *terumah*. The problem, according to Friedman, is that it is difficult to positively identify certain places by name. Sometimes, spelling variations complicate the process. In other instances, there are conflicting reports — one which includes a locality in *Eretz Yisrael*, another which leaves that same locality out. In still other cases, there is no hope of confirming the actual location of a particular place (such as *Rekem* and *Hegar*). Hence, Friedman concludes, it is no more possible to distinguish a "Whole Land of Israel" during the *talmudic* period than it is during the biblical period.

Friedman proposes that *pragmatism* — not history or ideology — was the driving force behind the choice of our Sages, of blessed memory, to determine that a given locality was either inside or outside of *Eretz Yisrael*. Quite simply, places that had large Jewish communities *per capita* were typically included in *Eretz Yisrael*, while places with a small percentage of Jewish residents were generally excluded. Friedman supports this assertion by demonstrating that in localities with unstable Jewish populations, there was a tendency to reclassify places as inside or outside of the land based upon the fluctuations of the Jewish populace. The cities of Cesarea and Dor are illustrations of this point. Cesarea, as it grew in Jewish citizenry and character, was reclassified as a part of *Eretz Yisrael*. Conversely, Dor, which had once been considered inside the border,

became progressively Christian over the course of approximately 100 years, leading the rabbis to reclassify the city as outside of *Eretz Yisrael*. According to Friedman, economic interests also had an impact upon the determination that a city was inside or outside of the border on some occasions (e.g., Beit Shean), and in some cases, a locality was thought of as inside *Eretz Yisrael* for one *halakhic* purpose, but outside the land for another (e.g., Ashkelon).

Friedman's entire responsum, which includes numerous citations from biblical, *talmudic*, and medieval rabbinic texts, is designed to prove that the transfer of Israeli territory to Arabs would not be inconsistent with *halakhah*. Friedman's claim is that, actually, it is *halakhah* that is inconsistent regarding the borders of *Eretz Yisrael*.

Conclusion

It is interesting to compare the different strategies employed by Zemer and Friedman in reaching similar conclusions *vis a vis* the permissibility of returning the administered territories to Arab sovereignties. Zemer, who composes a veritable polemic to Orthodoxy in maintaining that it is a *mitzvah* for women to enlist in the Israeli Army, suddenly befriends the Orthodox in his responsum on the topic of "land for peace." He spends no time criticizing or confronting the plethora of Orthodox *halakhists* who fundamentally disagree with him, but he hurries to embrace Orthodox writers who may enhance his argument. Zemer does not hesitate even to go back to 1921 to procure words from an Orthodox authority that might assist him. Consequently, one could actually mistakenly glean from Zemer's *teshuvah* that, according to the author, a source is somehow "better" if it is an *Orthodox* source, since Zemer relies exclusively on Orthodox *poskim* — who are viewed as *halakhically* authoritative by most Israelis — even in building an essentially *non-halakhic* case. As we discovered earlier, of the four Orthodox rabbis cited by Zemer, only Rabbi Ovadiah Yosef speaks directly to *halakhic* matters (and his inclusion is extremely problematic for reasons already explained).

By contrast, Friedman constructs a responsum that includes no references to Israeli Orthodox authorities whatsoever. This is a marked change from Harris' Traditional *teshuvah* on women in the military, which carefully and deliberately integrates Progressive, Traditional and Orthodox opinions which are supportive to the author's case. Here, there are no Orthodox prooftexts, but there are also no refutations of normative Orthodox opinions. Friedman attempts to circumvent the entire corpus of

Orthodox legal literature on the topic of exchanging land for peace by rendering it all irrelevant. That is to say, he hopes that his reader will conclude that if there is no such notion as a "Whole Land of Israel" in biblical or rabbinic law, then it can hardly be prohibited *on any grounds* to forbid the surrender of Israeli territory. The problem is that Friedman does not address the status of the *administered territories* throughout Jewish history. Thus, it remains possible that, for example, Hebron has *always* been viewed by the rabbis as a part of *Eretz Yisrael*. If this is so, then Friedman's *teshuvah* does nothing to support the notion that Hebron could *halakhically* be returned to Arab control. It does not really matter if Cesarea has moved in and out of the borders of the Land of Israel if Jericho (or any other locality in the administered territories) has not.

Still, Friedman's *teshuvah*, like Harris' on the military enlistment of women, is an excellent publicity piece for the Traditional movement's positive historical approach to Jewish tradition and law. Friedman's findings are based exclusively on the development of the issue throughout history, not on contemporary rabbinic opinions, which might be driven by political considerations (as Friedman suggests in his derogatory final sentence). Zemer's *teshuvah*, however, probably does not present Progressive Judaism at its *halakhic* best, since its form and content suggest that morality may be more important than law.

CHAPTER IV

CONCLUSIONS

Introduction

Our comparative examination of Progressive, Traditional, and Orthodox *teshuvot* on two *inyanei Eretz Yisrael* has already revealed a variety of noteworthy distinctions with respect to *halakhic* approach. We have observed one instance, involving the question of the enlistment of women in the Israeli army, in which the liberal handling of a *halakhic* issue yields a radically different response to that of an Orthodox approach. In our other case, concerning the question of returning the administered territories for the purpose of procuring peace, we discovered that Israeli Orthodox and liberal *poskim* are not always locked in disagreement, although our responsa reveal three discrete strategies for tackling the matter at hand.

Our task in this chapter is to look beyond the specific points of comparison concerning each *inyan* which we have taken up in Chapters II and III, hoping to reach some more general conclusions about the nature of the Israeli *halakhic* enterprise. Of course, we must be careful not to use our intentionally limited collection of *teshuvot* as a comprehensive barometer of the *halakhic* environment in Israel. Certainly, if we wish to ensure accuracy, any findings gleaned from our sample responsa must be examined in conjunction with the considerable literature describing *halakhah* in Israel. Therefore, this chapter will include numerous references to recent works written by Progressive,

Traditional, and Orthodox scholars — both in and out of Israel — who attempt to pinpoint the identifying characteristics of the liberal and Orthodox approaches to Jewish law in *Eretz Yisrael*. By using our collection of responsa as a prism through which to view this secondary material, we may endeavor to offer some insights into the theological, ideological, methodological, and historical nuances that might explain the vision, function, and future of liberal Israeli *halakhah*.

Length

Even the simplest investigation of our sample *teshuvot* reveals a discernible trend: the Orthodox responsa, in both cases, are considerably lengthier than those of the Traditional movement, which are significantly longer than the Progressive *teshuvot*. On the topic of women in the military, our Progressive responsum totals four pages and our Traditional responsum is six pages long, while both MinHahar's and Shaviv's Orthodox *teshuvot* require eleven pages. Our responsa dealing with the handling of the administered territories provide a similar result: Progressive responsum, five pages; Traditional responsum, five pages¹; Yosef's Orthodox responsum, fourteen pages; Yisraeli's Orthodox responsum, fourteen pages. One might be inclined to deduce, in general terms, that the length of Israeli responsa tends to be directly proportionate to the rigidity of the respondent *vis a vis* Jewish legal interpretation and ritual observance. However, we cannot reach such a conclusion without seeking confirmation through a broader survey of the responsa literature of the three Israeli movements.

In order to determine the degree to which the lengths of our sample responsa reflect the characteristic lengths of the *teshuvot* of the respective denominations, we can perform a statistical comparison between Zemer's entire collection of Progressive responsa in *Halakhah Shefuyah*, all four volumes published by the *Va'ad HaHalakhah* of the Traditional movement, and one complete volume of the Israeli Orthodox

1

The pages in the Traditional *teshuvah* are substantially denser than those in the Progressive *teshuvah*. Published in much smaller print, each page in Friedman's responsum is markedly "longer" than an equivalent page of Zemer's.

halakhic journal, *Techumin*². As we consider the numbers, we must bear in mind that the pages in the Traditional volumes are noticeably denser than those in *Halakhah Shefuyah*, and the pages in *Techumin* are clearly denser still. Yet, even despite that fact, the average Progressive responsum is just less than seven pages long, while the average Traditional responsum runs somewhat longer than eight pages, and the average Orthodox responsum is nearly eleven pages in length. Given the variations in the sizes of the print in these books, the differences in length between the *halakhic* literature of the three denominations are even more pronounced and even more difficult to dismiss without explanation.

Before we attempt to propose any such explanation, however, we must be careful to indicate that the pieces in *Techumin* are, in some cases, not normative responsa. Some of them are "law review"-style articles designed to present a comprehensive treatment of the full spectrum of opinions on a particular topic. By contrast, the items in *Halakhah Shefuyah* are frequently adapted from newspaper columns, whose restrictions on length can be extremely onerous. There are certainly noteworthy examples of lengthy liberal *teshuvot*, just as there is no dearth of short, but authoritative Orthodox responsa on a wide range of *halakhic* matters. Still, the trends regarding responsa length are irrefutable, and

2

Progressive responsa are found in:

משה זמר, הלכה שפוייה, תל אביב: דביר, תשנ"ד

Traditional responsa are collected in:

ועד ההלכה של כנסת הרבנים בישראל, א'-ד'. ירושלים: התנועה ליהדות מסורתית, בישראל, חשמ"ר-תשנ"ב.

The Orthodox volume used in this comparison is:

תחומין, י'. גוש עציון: צמת, חשמ"ט.

our study would be incomplete were we to refrain from making an effort to investigate their implications.

Certainly, the lengthier nature of the Israeli Orthodox *teshuvot* suggests that the *halakhic* analysis of the Orthodox *poskim* is somewhat more exhaustive than that of their liberal counterparts. The authors of these responsa consistently draw upon a wider range of rabbinic sources (*talmudic*, medieval, and contemporary) than do the authors of the liberal *teshuvot*. In most cases, they also appear to be more concerned with identifying the *halakhic* consensus on a given matter (although that is not necessarily true of the Orthodox responsa we explored in Chapters II and III) — a task that requires a lengthy survey of rabbinic opinion.

While it may seem unpalatable to Progressive and Traditional *poskim*, it is possible that the longer *teshuvot* of the Orthodox could indicate a greater seriousness about *halakhic* argumentation and observance. Indeed, American Reform scholar Peter Haas, in noting the steady *increase* in the length of Progressive/Reform responsa around the world, acknowledges this connection between length and sophisticated *halakhic* reasoning:

We see a . . . maturation, a sort of Reform-rabbinization, occurring within our own tradition. First of all, the responsa have grown from being short and at times cursory proclamations of the Responsa Committee, to fully developed essays which argue their point in detail and tie their results closely to rabbinic sources.³

3

Peter J. Haas, "Reform Responsa: Developing a Theory of Liberal *Halakhah*," *Liberal Judaism and Halakhah*, Walter Jacob, editor (Pittsburgh: Rodef Shalom Press, 1988), p. 65.

Haas is quick to point out that liberal *teshuvot* are becoming lengthier, and while they remain shorter than most Orthodox responsa, this increase in length, in his view, corresponds directly to an increase in *halakhic*, rabbinic "maturity."

Those who would defend the shorter liberal *teshuvot* against a charge of immaturity would, most likely, argue that brevity is intentional. Perhaps they would assert that additional pages would not serve to meet the needs or preferences of the reading audience; perhaps they would propose that shorter *teshuvot*, whose mission clearly is not to refute every existing Orthodox position, are in keeping with a liberal approach to *halakhic* reasoning. Our investigation of these possibilities in the sections of this chapter which lie ahead will help us to determine if, in fact, the brevity of the Progressive and Traditional responsa literature in Israel reflects the target audience, legal philosophy, and strategic plans of the authors.

Audience

As we discovered in Chapter I, Orthodox Judaism has become entrenched as the veritable official state religion of Israel, yet only a minority of Israelis consider themselves to be Orthodox Jews. Moreover, Orthodox jurisdiction over matters of religious recognition and personal status — and the historical unwillingness of the Orthodox establishment to entertain compromises in these areas — has encouraged widespread resentment and distrust of the official Israeli Rabbinate among the large numbers of non-Orthodox Israeli Jews:

Orthodoxy refuses to permit the State to recognize other trends in Judaism — the Reform, Liberal, and Conservative movements — which are nonetheless slowly gaining adherents in Israel. Nor are the Rabbinical Courts willing to modify their *Halakhic* interpretations governing Jewish marriages and divorces in Israel. Little wonder, then, that despite strong support for a connection between Judaism and the State, the Rabbinate is not a highly trusted institution in Israel, ranking eighth out of twelve.⁴

The questions raised by this mass animosity toward Orthodoxy are: Do liberal *poskim* in Israel see their *teshuvot* as a means for enfranchising secular Jews? Does the intended audience for liberal Israeli responsa include more than the community of adherents who are already loyal to the Progressive and Traditional movements?

One can make a strong case for an affirmative answer to these questions. Our sample liberal *teshuvot* offer *halakhic* justifications for positions that are widely held in Israeli society — namely, that all Israeli women, regardless of their religious affiliations,

⁴ Martin Edelman, Courts, Politics, and Culture in Israel (Charlottesville and London: University Press of Virginia, 1994), p. 72.

should be obligated to serve in the Israeli Army, and that there is no basis in Jewish law for refusing to cede any and all portions of Israeli territory to non-Jews, particularly when lives might be saved by so doing. A recent survey of Israelis demonstrated that 70% of the population supports the conscription of *all* young women — including those from Orthodox families — into the army; the figure rises to 80% when the possibility of an alternate form of national service is introduced for Orthodox women.⁵ The popular support for exchanging land for peace is somewhat more difficult to gauge, especially since the political landscape is so frequently reshaped by terrorist incidents. However, the significant percentages of Israeli voters that supported Yitzhak Rabin and Shimon Peres in recent elections confirm that many more Israelis identify themselves positively with the idea of returning land to gain peace than with the Progressive and Traditional religious denominations.

Are our liberal *poskim* attempting to appropriate these political positions, which are popular among secular Jews, for their respective religious movements? It seems almost certain that Zemer is making such an attempt on behalf of Progressive Judaism. Recognizing that most self-identified "secular" Jews are not, in fact, secular (rather, many embrace a personal set of religious observances in a manner which bespeaks Progressive autonomy), Zemer constructs his *teshuvot* to be accessible to a wide range of Israeli Jews.

5

Shlomit Levy, Hanna Levinsohn, and Elihu Katz, "Beliefs, Observances and Social Interaction Among Israeli Jews: The Guttman Institute Report," The Jewishness of Israelis: Responses to the Guttman Report, Charles S. Liebman and Elihu Katz, editors (Albany: State University of New York Press, 1997), p. 23.

His writings do not include lengthy recitations of rabbinic sources; instead, he draws strategically from a few selected *halakhic* authorities, building extremely readable religious/moral arguments around them. The fact that versions of Zemer's responsa have frequently appeared in the prominent Israeli daily newspaper, *Ha'Aretz*, is an indication that Zemer is speaking to more than his small assembly of Progressive followers. There is an implied hope that his brief, digestible articles — based upon, but not overwhelmed by, *halakhic* sources — will appeal to like-minded readers who share an allegiance to their Jewishness, a disdain for Orthodoxy, and a common perspective on the matters of the day.

It is more difficult to determine the degree to which Traditional *poskim* are employing their *teshuvot* as tools for preaching to the unconverted. Our two representative Traditional responsa, like most others in the *Va'ad HaHalakhah's* four-volume collection, are not as readily accessible to the *chiloni* reader. There is a greater reliance upon voluminous rabbinic source material, and the emphasis on morality and personal conscience is absent. Consequently, the Traditional *teshuvot* are not as likely to make interesting reading for an Israeli who is not already inclined to seek out *halakhic* answers to contemporary questions. It appears, instead, that the Traditional authors are specifically targeting their own followers — and, perhaps, liberal-minded Orthodox Jews who could conceivably conclude that the Traditional *halakhic* interpretations are the correct ones. Reuven Hammer, writing in 1987, attests to the proposition that the responsa of the Traditional movement are intended for *practicing Traditional Jews* who see these rulings as authoritative:

... the coming of age of the *Masorati* Movement in Israel will have and indeed is having a profound effect upon the *halachic* activity of the movement ... The Rabbinical Assembly of Israel *Halacha* Committee has just published its first booklet of *teshuvot* dealing with a variety of questions put to it by individuals and groups in Israel ... A second booklet is on the way with discussions of army service for men and women, attitudes towards non-Jews, etc. This high level of activity and the quick publication of these decisions can be understood in light of the reality of Israeli life and the fact that, as an ultra-Orthodox newspaper grudgingly remarked, in Israel there exists a community of Jews attached to the movement which is committed to the observance of the *halachic* decisions of this body. These are not theoretical matters but questions of daily life and immediate importance and they are addressed not to rabbis but to a vibrant community. The publication of these pamphlets is already having a profound effect upon the image of the movement. As one reviewer remarked, these *teshuvot* must be acknowledged and taken seriously by the Israeli rabbinate. These decisions must be taken into account by them.⁶

Hammer's statement seems predicated upon the assumption that writing *teshuvot* for the followers of Traditional Judaism is, in itself, a substantial and complete task. If these responsa are to have an influence outside of the Traditional community, it will be because they comprise a literature worthy of serious consideration by others interested in *halakhic* matters, not because they provide a more accessible route back to Judaism for the disenfranchised.

There are those associated with Conservative/Traditional Judaism around the world who strongly concur with Hammer's point of view. Charles Liebman denounces Progressive Judaism for lacking *halakhic* seriousness in stating that Traditional Jews need not concern themselves with the task of establishing their denomination with those who outside the fold:

6

Reuven Hammer, "The Role of Halacha Within the Conservative - Masorati Movement," *Masorti*, Issue 1 (1987), pp. 28-29.

One should not pretend that there will soon be a mass movement of *Masorti* Jews. Jews who take *halakhah* seriously are attracted to Orthodoxy. Jews who don't take *halakhah* seriously do not take religion seriously, but have the option of Reform Judaism. There are no social pressures to join a synagogue in Israel. Hence, there is little motivation to reformulate the synagogue and the service to satisfy religiously marginal Jews. But I don't believe that the potential "market," least of all the short-run market, should be decisive in the movement's considerations. Rather, it is important that *Masorti* Jews have their own framework to satisfy their religious needs, and that Israeli society have religious alternatives to Orthodoxy.⁷

Indeed, Hammer is not alone in suggesting that the Traditional movement and its *teshuvot* need not be directed toward a broader constituency than its present ranks. However, there are also many others affiliated with the movement who take the opposite stance. Leaders such as Stanley Rabinowitz, for example, have expressed concern that neither Progressive nor Traditional Judaism can hold off the attacks of Orthodoxy without the other.

Consequently, Rabinowitz advocates cooperative efforts with the more liberal Israeli Progressive movement:

To strengthen our position, we should collaborate more with the Reform Movement. For too long among Conservative Jews, anti-Reformism was a substitute for an ideology. In this, our second century, we should have the security to collaborate without fear of loss of identity. Israel's Reform rabbinate also separates itself from those American Reform practices of which we disapprove, particularly patrilineal descent and condoning rabbis who participate in mixed marriages. Our challengers on the Right reject both of us. If they divide us, they will prevail. Conversely, neither movement will succeed in Israel without the other.⁸

7

Charles S. Liebman, "Strategies for the Conservative/*Masorti* Movement," Deepening the Commitment: Zionism and the Conservative/*Masorti* Movement, John S. Ruskay and David M. Szonyi (New York: The Jewish Theological Seminary of America, 1990), pp. 85-86.

8

Stanley Rabinowitz, "The Conservative Movement and Israel," Deepening the

Such a desire to collaborate with the Progressives might help to explain instances in which similarities exist between Progressive and Traditional responsa in terms of length and content. It is likely that some members of the *Va'ad HaHalakhah* share Rabinowitz's concerns; if so, they may be writing for a broader audience, similar to the one which Zemer seeks to reach, in the hope of bolstering liberal Judaism in Israel.

If, in fact, there are efforts being made by *poskim* of the Progressive and Traditional movements to call upon the assistance of *chiloni'im* in their struggle for legitimacy, they must proceed with caution, for perceived secular Israeli support might be a mere mirage. Tabory elaborates upon the hazards of pursuing the secular audience:

Secular Jews have . . . joined Reform and Conservative leaders in viewing Orthodox Judaism as their counter role. The problem that the Conservative and Reform movements face in Israel is that the secular Israeli might identify and sympathize with those movements only because they share similar counter roles as opponents and not because they are interested in more Jewish involvement. The dilemma for the movements is that the admiration expressed for them might be based on their being perceived as *antireligious* organizations.⁹

It is patently obvious that the Progressive and Traditional movements seek to avoid such an identification. However, their potential for growth and official recognition may

Commitment: Zionism and the Conservative/Masorti Movement, John S. Ruskay and David M. Szonyi (New York: The Jewish Theological Seminary of America, 1990), p. 93.

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Ephraim Tabory, "The Identity Dilemma of Non-Orthodox Religious Movements: Reform and Conservative Judaism in Israel," Tradition, Innovation, Conflict: Jewishness and Judaism in Contemporary Israel, Zvi Sobel and Benjamin Beit-Hallahmi, editors (Albany: State University of New York Press, 1991), p. 149.

depend upon the degree to which they succeed in reaching the secular audience.

Therefore, the liberal movements in Israel are forced to walk a tightrope of identity.

Zemer is clearly willing to take the risk of courting secular Israeli Jews with his responsa literature; the path of the Traditional *poskim* is much less clear.

Approach to Halakhic Reasoning

Our sample *teshuvot* reflect three distinct approaches to the construction of a *halakhic* ruling. In order to understand more fully the styles of reasoning which are employed the Progressive, Traditional and Orthodox *poskim* whose works we have read, we must look more generally at the principles which undergird the pursuit of *halakhah* in each of the three religious denominations.

In describing the normative Orthodox conception of rabbinical law-making, Immanuel Jakobovits establishes three guidelines.¹⁰ First, there is the function of the *Mara d'Atra* — the rabbinical authority of a given locality or community. The rulings of the *Mara d'Atra*, according to Jakobovits, are traditionally binding upon the residents of that community. The authority of such a local *posek* cannot be challenged, even by a rabbi or rabbinic organization deemed to be superior to the *Mara d'Atra*. The only proviso to this authority is that it applies only on the local level over which the *Mara d'Atra* has jurisdiction. The second component of Jakobovits' structure is that of consensus. Quite simply, there is a clear preference in Orthodox *halakhah* for the majority opinion over the minority. When a new *halakhic* problem comes to bear upon the community, a large number of *poskim* offer *teshuvot* on the matter, but only after a discernible trend emerges from these responsa can an authentic ruling be promulgated.

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Rabbi Dr. Jakobovits was a prominent 20th century Orthodox figure, having served as Chief Rabbi of the United Kingdom and Ireland. The explanation of Orthodox *halakhah* which we are employing here is derived from Dr. Immanuel Jakobovits, Studies in Torah Judaism: Jewish Law Faces Modern Problems (New York: Yeshiva University Department of Special Publications, 1965), pp. 15-16.

An opinion which is endorsed by the clear majority of respondents assumes the force of law. Finally, Jakobovits indicates that *halakhah* can be affected by a single rabbinical authority if he is perceived to be one of the *gedolei hador* — the great sages of his generation — by the public. One earns such status in popular opinion only due to exceptional scholarly distinction and religious esteem. In such rare instances, the ruling of a particular *posek* may remain unchallenged.

For our purposes in examining the reasoning displayed in Orthodox responsa, the role of the *Mara d'Atra* is inapplicable, since *teshuvot*, as a general rule, are designed to proffer a ruling that is binding upon more than a single locality. In fact, the responsa literature is the usual medium through which local rabbis seek to have *their* questions on *halakhic* matters answered by *poskim* of broad authority. Thus, we are left with Jakobovits' final two principles, both of which are rooted in the power of *consensus* in rabbinical law-making. From an Orthodox perspective, nothing takes authoritative precedence over the clear demonstration of a majority opinion on the part of respected *poskim*. This, of course, explains the lengthiness and intense reliance upon the widest range of rabbinical sources found in our sample Orthodox *teshuvot* (and, for that matter, in the overwhelming body of Orthodox *halakhic* literature). The responsum on the service of women in the military by MinHahar is somewhat of an exception, since he leans so heavily upon *Sefer Hachinuch* in reaching his conclusion, although even he draws upon sources such as *Radbaz*, *Rashash* and others to construct his argument.

By contrast, the Traditional *halakhic* enterprise, as we have seen, is characterized by a value upon the flow of history. Reuven Hammer, arguing on behalf of

Conservative/Traditional *poskim*, maintains that *halakhah* throughout history can be characterized by flexibility, responsiveness to changing circumstances, and the creativity of the individual:

Halacha is a legal system which contains within itself specific *halachot*, the decisions of an authority or *posek*. It is characterized by continual change and development, by differences of opinion and opposing decisions frequently determined by the conditions of time and place as well as by the disposition of the individual authority. I do not believe that our approach to *halacha* is new or revolutionary except in its mode of complete self-awareness. The flexibility we have shown and the possibility of lenient decisions is not revolutionary. On the contrary, these have always been the characteristic of *halacha*. The lack of flexibility which characterizes the approach of certain groups is in itself a departure from traditional *halacha* caused both by the refusal to accept the results of unprejudiced scholarship and by the defensive attitude which has been adopted in the face of perceived threats to Judaism.¹¹

With these words, Hammer, in essence, forsakes the contemporary Orthodox legal establishment, declaring *it* to be the aberrant force in the *halakhic* dialogue. Louis Jacobs reiterates this perspective in his book, A Tree of Life:

... the *Halakhah* has always possessed the vitality to assimilate new knowledge. ... The *Halakhah* is a living corpus whose practitioners were far more than mere transmitters of a noble heritage. They were creative thinkers, responding both intellectually and emotionally to the challenges and needs of the age in which they lived, with their quota of human temperament and failings, as well as being highly gifted leaders who tried to pursue the truth objectively as a divinely ordained task.¹²

Since the matter of rabbinic consensus goes completely unmentioned in the words of

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Hammer, pp. 27-28.

¹²

Louis Jacobs, A Tree of Life (Oxford: Oxford University Press, 1984), pp. 246-247.

these Traditional *halakhists*, we might assume that Traditional Judaism regards the overriding commitment to accepting the will of the majority among Orthodox *poskim* to be at least one factor which leads Orthodoxy to become static and unbending. Certainly, it becomes a rather daunting task to alter a previously established Orthodox *halakhic* decision if a majority of respondents are required to effect the change. Hundreds of years worth of consonant rulings would have to be outweighed by an enormous number of contemporary judgments to the contrary. This, no doubt, gives rise to the argument embraced by Orthodox authorities from the *Hatam Sofer* to the modern Israeli Chief Rabbinate that the *halakhah* has never changed and *will* never change.

We can see the principles described by Hammer and Jacobs embodied in the Traditional responsa we studied in Chapters II and III. Harris' responsum on the conscription of women into the military rejects a series of *halakhic* arguments used to bar women from the army (e.g., the prohibition on women wearing male implements, and the encouragement for women to stay at home which is implicit in Psalm 45:14) on the grounds that *local customs* — that is, changes in time and place — render the claims inapplicable in the modern Israeli setting. Friedman builds his responsum on the topic of "land for peace" exclusively upon a mountain of history, claiming that there is no historical basis by which one could establish the borders of a "Whole State of Israel." Neither Harris nor Friedman concerns himself with determining the consensus of legal opinions on these matters; rather, they create *halakhah* that responds to the conditions of the time and the dictates of historical experience.

The Progressive movement offers still another approach to *halakhic* reasoning.

Zemer has written extensively about the principles which, in his view, guide the construction of Progressive *halakhah*.¹³ He typically begins with the Traditional value of historical experience as his starting point. *Halakhah*, maintains Zemer, only receives its sanction through Jewish history, which encapsulates the life experience of the people for whom Jewish law is intended. Thus, Jewish law is malleable and responsive to circumstance. Zemer continues by declaring *halakhah* to be pluralistic, citing the *makhloket* between the schools of Hillel and Shammai on the topic of forbidden marriage.¹⁴ The ruling, in this instance, allowed for freedom to follow either viewpoint. Zemer also argues that *halakhic* pluralism is embodied in the role of *Mara d'Atra*, since, as Maimonides established in his introduction to the *Mishneh Torah*, *halakhah* in contemporary times is local in nature.¹⁵

Drawing from liberal sources such as John Rayner and Jakob J. Petuchowski, Zemer argues that the goal of *halakhah* is ethical behavior. Hence, laws that contradict the moral values of the people as a whole may be discarded; laws which are not rooted in holiness (as it is experienced in a given time and place) may be replaced; and laws which

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My summary of Zemer's *halakhic* philosophy is based primarily on two of his articles: Moshe Zemer, "Halakhah: Developmental and Pluralistic," *Jewish Law Annual* VIII (1989), pp. 259-268. Moshe Zemer, "Authority and Criteria in Liberal *Halakhah*," *Dynamic Jewish Law: Progressive Halakhah, Essence and Application*, Walter Jacob and Moshe Zemer, editors (Tel Aviv and Pittsburgh: Rodef Shalom Press, 1991), pp. 9-23.

¹⁴

See *Tosefta Yebamot* 1:11; *Eruvin* 10b; *Eruvin* 13b.

¹⁵

Orthodox Jews, after the time of Ravina and Rav Ashi, have followed Maimonides' guideline that while the Babylonian Talmud remains authoritative for all Jews, only the rulings of the local *beit din* are binding upon any particular locality.

are not consonant with an individual's conscience may be set aside. Of course, Zemer never dares to claim that these *halakhic* guidelines are embraced on any level by normative Orthodox legal authorities at any time in Jewish history. However, it does not appear that such an Orthodox endorsement would make any difference to Zemer, since his goal is not to seize control of the entire Jewish *halakhic* enterprise. Rather, he seeks only to gain recognition as a legitimate authority for those Jews who would wish to affiliate with his brand of Judaism:

... it takes more than knowledge on the part of the rabbi. He must have the attribute of human sensitivity, a sense of justice, the will and courage to act. These are qualities given to man created in God's image but developed by the individual ... there are certainly sensitive and knowledgeable spiritual leaders in all the religious movements who can be trusted to deal with and solve the crucial problems of their own adherents.¹⁶

This statement, it would seem, establishes a much more attainable goal for Progressive *halakhah* than was established by the Traditional *halakhists* for their movement. Zemer does not claim that only the Progressive approach leads to authentic Jewish law, but he asserts that his criteria should at least be regarded as authentic for those Jews who derive meaning from them.

The sample Progressive *teshuvot* that we have considered are clearly constructed with these principles in mind. Zemer's declaration that women's service in the Israeli army should be seen as a *mitzvah* is based a creative mixture of biblical and rabbinic law, historically-oriented interpretations of political reality, and modern Israeli morality. The

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Moshe Zemer, "Halakhah: Developmental and Pluralistic," Jewish Law Annual VIII (1989), p. 268.

teshuvah that Zemer authors with respect to the handling of the administered territories is, more than anything else, a Jewish ethical treatise based upon a small collection of rabbinic opinions that are more anecdotal than legal in nature. Both *teshuvot* fall well within the limits which Zemer has established for those who wish to craft Progressive *halakhah*. Whether they meet the commonly acknowledged requirements of *halakhah* in other Jewish circles is highly debatable, but this is clearly not a primary concern to Zemer.

Barriers to the Success of Liberal Israeli *Halakhah*

From this analysis of the respective "ground rules" for *halakhic* reasoning in the three Israeli religious denominations, we see Orthodoxy portrayed as unjustifiably intractable by the two liberal movements. Interestingly (and problematically for adherents of Israeli liberal Judaism), many Orthodox sources are just as willing to acknowledge the role of social reality in *halakhah* as are their Progressive and Traditional counterparts. It is true that the role is much more carefully delimited in Orthodoxy, just as it is true that social reality may lead Orthodox respondents to rule one way and liberals another, but there is reason to question the liberal assumption that Orthodox *poskim* are thoroughly disinterested in considering the conditions of time and place in fashioning rulings. At the conclusion of Chapter II, we learned that American Orthodox Rabbi Alfred S. Cohen unabashedly acknowledges the role of political, societal, and ethical norms in the formation of *halakhah* on the subject of women in the Israeli army.¹⁷ Rabbi Aaron M. Schreiber offers a similar acknowledgment on our second topic of inquiry, the handling of the administered territories:

... the Land of Israel occupies a unique and central role in the Jewish religion, both *halachically* and ideologically and is the subject of intense religious emotional feeling. Accordingly a *halachic* decision concerning relinquishing the heartland of the Land of Israel cannot be made on the basis of a purely cold, analytical and dispassionate process without considering religious perspectives, policy and passions on the issue. The decision process concerning relinquishment of the Land of Israel

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See Chapter II, Footnote 23.

is not the same as would be if the issue were whether or not to give up New York, Chicago or Melbourne.¹⁸

If, as it seems, the Orthodox are willing to join their liberal adversaries in admitting that social reality plays an undeniable role in the *halakhic* process, then perhaps we must conclude, as Jacobs does, that the *posek's* world view is the driving force behind a Jewish legal system that is "rigged" to yield one's own desirable outcome:

... there is sufficient evidence to allow us to reject as one-sided the conventional picture of the traditional *Halakhist* as an academic lawyer who, when he sits down to investigate his sources dispassionately and with complete objectivity, never knows beforehand what his conclusions will be. In many instances, even when the *Halakhist* follows the accepted *Halakhic* methods, he knows full well, before he begins his investigation, that only one conclusion is acceptable, not because the sources he is about to examine will inevitably lead to that conclusion but because his general approach to Judaism compels him to come up with a conclusion that must not be at variance with Jewish ideas and ideals as he and his contemporaries or his "school" sees them.¹⁹

This perspective might rightly be regarded as cynical, but one can hardly deny that the three religious groups in Israel have allowed themselves ample enough retreat to social reality, creativity and conscience to guarantee "authentic" *halakhic* opinions that support practically anything and everything they wish them to support. American Reform Rabbi Eugene Lipman concurs on this point with respect to his own movement's legal literature, alleging: "... informed or not, conscience is unreliable. It is too easy to rationalize for

¹⁸

Rabbi Aaron M. Schreiber, "Relinquishing Yehudah and Shomron: A Response to Rabbi Bleich," *Journal of Halacha and Contemporary Society*, Number XVIII (Fall 1989), p. 100.

¹⁹

Jacobs, p. 11.

convenience, comfort, advantage, especially for rabbis."²⁰ Since, in fact, it appears that the *halakhah* can be manipulated within the rules of its proprietors to reflect their personal opinions and values, then it should come as no surprise that Israeli *halakhah*, which is officially dominated by the Orthodox, seems to have no room for liberal reasoning.

This is but one harsh reality that faces the liberal *poskim* in Israel. There is also an inherent problem with the strategy that Progressive and Traditional *halakhists* employ in situating themselves against the Orthodox. Of the four liberal *teshuvot* that we have examined, only one (Harris' Traditional responsum on the issue of women in the military) includes any attempt to invalidate the normative Orthodox arguments which are used in deciding a *halakhic* issue. There are many efforts made at drawing upon Orthodox sources that *support* the liberal interpretation of the law, but relatively few efforts are expended to prove that the *halakhic* consensus yields a different answer than the one posited by the Orthodox authorities. This makes it practically impossible for liberal *teshuvot* to gain any real credibility, since, as we have learned, the most significant Orthodox principle in formulating *halakhah* is that of following the clear rabbinic consensus. Mark Washofsky asserts that this strategic error on the part of liberal *halakhists* is the key barrier to their achieving a place of respect in the *halakhic* "marketplace":

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Eugene Lipman, "Liberal *Halakhah*: Description, Appreciation and Critique," *Liberal Judaism and Halakhah*, Walter Jacob, editor (Pittsburgh: Rodef Shalom Press, 1988), p. 130.

The ultimate goal of liberal *halakhic* writing is to encourage among the observant community an openness to alternative interpretations of Jewish law. Liberals cannot accomplish this objective by ignoring the *halakhic* consensus, a functioning and decisive element in the process of *halakhic* judgment.²¹

It is easy for Progressive and Traditional *poskim* to make this mistake, since there are almost always a handful of traditional rabbinic sources that can be enlisted on any given topic in support of a liberal ruling (e.g., *Mishnah Sotah* 8:7 and *Hilchot M'lachim* 7:4 on women in the military; Rabbi Ovadiah Yosef's *teshuvah* on the prospect of surrendering Israeli land to obtain peace). However, utilizing scattered Orthodox sources as *positive* prooftexts is not the same as combating the Orthodox conclusion drawn from the *consensus* of legal opinion. Zemer's *teshuvot* are so far afield from the accepted object of *halakhic* pursuit (locating and following the *halakhic* consensus) that they are largely ineffectual as tools for procuring legitimacy for Progressive *halakhah*. The Traditional positive historical approach, argues Washofsky, produces responsa that are no more effective at speaking a language that can be recognized and respected by the dominant Orthodox legal establishment:

Halakhah, like law, is a normative, rather than a historical discipline. An innovation in law is legitimate, not because lawyers have always made innovations, but because this innovation is justified by the criteria of validity recognized by the relevant legal system. Historical factors which induce changes in a legal system are not to be confused with the internal rules that govern the system and its procedure. That sages in the past have rendered decisions which can be seen as "liberal" does not

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Mark Washofsky, "The Search for Liberal *Halakhah*: A Progress Report," Dynamic Jewish Law: Progressive *Halakhah*, Essence and Application, Walter Jacob and Moshe Zemer, editors (Tel Aviv and Pittsburgh: Rodef Shalom Press, 1991), p. 45.

by itself establish the *halakhic* validity of any particular innovation suggested to contemporary authorities.²²

The consistent refusal of the Progressive and Traditional movements to seek credibility by playing the *halakhic* "game" according to its accepted rules explains why, according to Jacobs, "... it is quite unknown for any of the traditional *Halakhists*, down to the present day, to quote unorthodox *Halakhic* theories except, as we have seen, for purposes of refutation."²³ Indeed, Orthodox *poskim*, when referring to liberal rabbis in their *teshuvot*, frequently use the English word "rabbis" ("רבאים") instead of the Hebrew equivalent "... to indicate that they are not real rabbis and that they are foreign."²⁴ Obviously, such pejorative references to Progressive and Traditional rabbis are designed to keep them well outside of the *halakhic* fold in Israel.

The problem of rejection by the Orthodox establishment brings us back to the matter of the audience for liberal *teshuvot*. As we discovered earlier, Zemer's Progressive responsa appear to target not only Progressive Jews, but also secular Israelis who might be willing to identify religiously with a less rigid Jewish framework. The Traditional responsa of the *Va'ad HaHalakhah*, by contrast, might not be targeted for a broader audience than the Traditional community itself. However, the prospects of success for the liberal responsa literature in Israel, ultimately, will not be dictated by the

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Ibid., p. 29.

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Jacobs, p. 237.

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Tabory, p. 140.

degree to which liberal *poskim* reach those audiences; the essential audience which must be added to the liberal *halakhic* agenda is the *Orthodox* community. Unless the rabbinical establishment is willing to read and accept liberal *teshuvot* as a part of the *halakhic* equation in Israel, this literature will continue to be relegated to the status of "*mamzer*" — much like the movements from which it originates.

Final Thoughts

As an aspiring Reform rabbi, I find myself discouraged by the findings of this rabbinical thesis. Neither the Progressive nor the Traditional movement seems well poised to rescue liberal *halakhah* from obscurity, at best, and disdain, at worst. Moshe Zemer remains the near exclusive voice of Progressive *halakhah* in Israel. There is no official *halakhic* body representing Progressive Jews in Israel, and Zemer's material, as we have established in this chapter, is not designed in a manner that will likely gain positive attention from the official Israeli Rabbinat. One might suppose that Traditional Judaism, which asserts an unbroken connection to the divinely revealed and binding nature of *halakhah*, represents a more viable answer. But when Lee Levine, Dean of the Seminary for Jewish Studies of the *Masorti* movement in Jerusalem in the late 1980's, published his vision and program for the future of Traditional Judaism in Israel in 1988, he spoke of synagogues, a rabbinical school, camping experiences, and Traditional public schools — without a word about Traditional *teshuvot* (which were already being published by the *Va'ad HaHalakhah*).²⁵ Apparently, Levine did not see the development of a rich Traditional responsa literature as a linchpin in the agenda for his movement.

I am left to wonder whether liberal Jews in Israel might best be served by simply ceding the *halakhic* enterprise to the Orthodox. To be sure, I am not the first liberal Jew

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Lee Levine, "Masorti Judaism in Israel: Challenge, Vision, and Program," Towards the Twenty-First Century: Judaism and the Jewish People in Israel and America, Ronald Kronish, editor (Hoboken, New Jersey: KTAV Publishing House, 1988), pp. 79-92.

who has entertained that thought. Rabbi Gunther Plaut, among others, has suggested that liberal Judaism abandon the term "*halakhah*" in favor of some other nomenclature that connotes a sense of covenant and personal religious commitment.²⁶ John Rayner has also expressed a mixture of sympathy and hesitancy regarding such an idea.²⁷ Indeed, there is little reason to maintain hope that liberal *halakhah* will find its way into the mainstream fabric of Israeli religious life anytime soon. Peter Haas explains in extremely pessimistic terms the impasse between liberalism and *halakhah* — particularly for the Progressive movement:

... responsa have to presuppose that the past proclamations of rabbinic culture are in some sense true or at least normative. Why else cite them as authorities? It also presupposes that the most important academic framework out of which the rabbi can speak, **as rabbi**, is the world of rabbinic learning. Finally, responsa assume that there is an answer to an individual's religious questions that can be found outside of that individual. The answer is to be found in the collective wisdom of the Jewish people that was maintained in the collective mind of the rabbinate. Without these presuppositions, the entire enterprise of responsa writing is a meaningless exercise.²⁸

I have great difficulty agreeing with Haas' suggestion that the activity of responsa writing — rooted as it is in past rabbinic rulings, dependent as it is upon collective rabbinic

²⁶

Lipman, p. 115.

²⁷

John D. Rayner, "Between Antinomianism and Conservatism: The Need to Evolve an Alternative *Halakhah*," Dynamic Jewish Law: Progressive *Halakhah*, Essence and Application, Walter Jacob and Moshe Zemer, editors (Tel Aviv and Pittsburgh: Rodef Shalom Press, 1991), pp. 127-128.

²⁸

Haas, p. 50.

thought, as opposed to individual autonomy — is *meaningless* for liberal Jews. However, his statement does, in fact, raise the possibility that liberal *teshuvot* are not actually *teshuvot*, in the normative sense, at all. Perhaps this is why Sidney Brichto, the Director and Executive Vice-President of the Union of Liberal and Progressive Synagogues, declared in 1989 that, "For the preservation of *Klal Yisra'el*, I am prepared to entrust the *halakhah* to the Orthodox. Why? Because there is no one else."²⁹

I am not yet prepared, like Brichto, to equate *halakhah* with Orthodoxy, to leave the collective religious well-being of my liberal Israeli compatriots to Orthodox *poskim* who look upon Progressive and Traditional Jews with scorn and, in some cases, downright hatred. In the days immediately preceding the submission of this thesis, the Israeli press was littered with a vitriolic rabbinic pronouncement, signed by a large cross-section of Ashkenazic and Sephardic authorities (including Rabbi Ovadiah Yosef), that referred to the Progressive and Traditional movements as sects designed to destroy Judaism and to counterfeit the *Torah*. Liberal Jews were called "criminals" in the pronouncement, and those who give aid to liberal Jews were called "God haters."

In times such as these, it is hard to advocate the relinquishment of *halakhah* to rabbinic figures who detest liberal Judaism so vehemently. However, if the *poskim* of the Progressive and Traditional movements wish to stake a legitimate claim on the *halakhic* playing field, they will have to rededicate themselves to fighting their battle from *within*

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Sidney Brichto, "Halakhah With Humility," *Jewish Law Annual* VIII (1989), p. 248.

the framework of normative *halakhah*. They will need to negate the consensus opinions of Orthodoxy instead of ignoring them. They will need to build a literature that is capable of swaying Orthodox authorities who are willing to give fair consideration to well-reasoned liberal arguments. Most of all, they will need to be patient and determined, since the present rigidity of Israeli Orthodoxy would probably make the Israeli Rabbinate unresponsive to such a literature even if it were already in place. Progressive and Traditional *poskim* will have to be ready to strike when the moment is right — when the cycle of religious extremism in Israel runs its course. If liberal Israeli *halakhists* are not armed with responsa that can encourage compromise when that day arrives, Israel — ironically enough — may be destined to remain the only place in the free world where liberal Jews are denied religious freedom.

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