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"Haim David Halevi's Aseh Lecha Rav : Halacha in the Secular Jewish  
State. (An annotated translation of selected responsa)."

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## Digest

In 1974 , Rabbi Haim David Halevi was asked to host a radio program for the Israeli state radio network "Kol Yisrael". The program was called "Aseh Lecha Rav" ("Acquire for yourself a Rabbi") and its stated purpose was to present responsa , by a respected contemporary orthodox rabbi, that applied to all aspects of life in a secular state. The responsa presented in the program were intended to encompass the broad range of subject matter of interest to Jews living in a Jewish state, whether secular or religious. Rabbi Halevi subsequently published his responsa from the radio program, together with some additional responsa, in the form of a nine volume collection titled : Aseh Leha Rav. This thesis is an annotated translation of a few selected responsa from this collection.

The responsa address three areas of concern to both secular and religious Jews in the contemporary Jewish State: Women, Shabbat, and the Armed Forces. A chapter is devoted to each of these areas. Each of these chapters contains a translation , followed by an explanation of the sources cited in each responsum , and an analysis of Halevi's argument. The annotation accompanying the translation includes a full investigation of the sources cited by Halevi in these responsa, in an attempt to

determine how he is using these sources, and whether he has a bias in his interpretation.

In the conclusion, we assess Halevi's accomplishment, using his stated objectives as criteria for evaluation. We attempt to glean some insight from Halevi's work, into the range of flexibility of traditional Halakhic methodology in the hands of a master teacher whose agenda demands an openness to modernity and diversity. Finally, we speculate as to the ways in which Halevi's efforts might be of interest to the Reform Jewish community.



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## Chapter 1

### Introduction : The Halakhic Philosophy of Hayim David Halevi

In his essay entitled "Halakhah"<sup>1</sup> David Hartman discusses the polarity within halakhic practice between the individual and the community : "The covenant invites an appreciation of halakhah both as an ordered political system and equally as a framework for the individual to respond to God's invitation to a personal love relationship. Halakhah as an expressive framework allows the individual to find his personal mode of covenantal love for God outside of explicit rules. Halakhah as a legal framework requires obedience. As an expressive system , it requires knowledge. Halakhah as law is concerned with Israel as a political national unit."<sup>2</sup>

Hayim David Halevi's collection of contemporary responsa, Aseh Leha Rav , reflects this polarity as it plays itself out in the arena of the modern Jewish state. In fact, in Halevi's halakhic philosophy , the particular historical context of Modern Israel provides a sort of resolution

<sup>1</sup> In Contemporary Jewish Religious Thought, Arthur A. Cohen and Paul Mendes-Flohr ed. , pp 309 - 316.

<sup>2</sup> Op. Cit. p. 315.

of the polarity between the individual and the community in halakhah. It is his belief that once the individual Jews within the state are brought to accept halakhah through appropriate education about the aggadic roots of halakhah, the state itself will naturally evolve into a halakhic state. In a sense, the personal will have become political.

Halevi is a member of the second generation of rabbis of the Mizrachi<sup>3</sup> movement. He studied at the Sephardic Porat Yosef Yeshivah under Ben - Zion Meir Hai Ouziel. When Ouziel was appointed Rishon le-Zion (the Sephardic Chief Rabbi) Halevi acted as his private secretary, and he was regarded as Ouziel's most outstanding disciples. He did not succeed Ouziel in his post as Sephardic chief rabbi of Tel Aviv until 1973.

In 1974 Rabbi Haim David Halevi was asked to host a radio program for the Israeli state radio network "Kol Yisrael". The program was called "Aseh Lecha Rav"<sup>4</sup> ("Acquire for yourself a Rabbi [or Teacher]

<sup>3</sup> The Mizrachi movement were the Orthodox Zionists who believed that Jewish statehood was inseparable from Torah, an expression of the beginning of the coming of redemption. See Ha-Tsiyonut Ha-Datit ed. by Yosef Tirosh, (Jerusalem, 1978) and Religious Zionism after 40 years of Statehood, edited by Shubert Spero and Yizhak Pessin (Jerusalem 1989).

<sup>4</sup> In his first responsum in volume 1 (p.1) of Aseh Lecha Rav Halevi gives us the source in Tractate Avot for the title. Yehoshua Ben Pirchiya says "Aseh leha rav", which Halevi interprets as instruction in methodology of Torah study. One should have a

" ) and its stated purpose was to present responsa , by a respected contemporary orthodox rabbi, that applied to all aspects of life in a secular state. The target audience was not necessarily traditionally observant Jews. Rather, the intended audience was all Jews living in the Jewish State. Hence the nature of the questions addressed encompassed a broad range of subject matter. Ultimately these responsa were published as a nine volume set of contemporary halakhic responsa, a small sample of which form the subject of this paper.

Ouziel, Halevi's mentor, had been an important voice among the religious Zionists in the years directly preceding the creation of the state, and in the early years of statehood. He ardently believed, along with his Mizrachi comrades, that the new Jewish state was an expression of the "Atchalta De'geulah", the beginning of redemption. He also believed that such a state must be founded on halakhah, and that rabbinic law could serve as a basis for regulating all aspects of Jewish national life. Along with other Mizrachi rabbis , Ouziel devoted himself to finding halakhic

justification for the right of the Jewish State to govern the People of permanent Rabbi from whom to learn Scripture and Mishnah, and halakhic and Aggadic midrash. Halevi continues to interpret this passage to mean that: "The rabbi in Israel has never been only a posek, ruling on matters of purity and impurity, but rather, and perhaps, primarily , he has been an advisor to each member of his congregation on every problem, whether small or large."

Israel in the Land of Israel.<sup>5</sup> In the early days of Statehood, when it still seemed possible that the legal system of the State might be founded completely on halakhah, Ouziel argued for a reconvening of the Sanhedrin as the authoritative legal institution of the state.

Halevi shared with his teacher the belief that the modern Jewish State represents the "Atchalta De'geulah".<sup>6</sup> Like Ouziel, he believed that halakhah is essential to Jewish life in a Jewish State. However, as reflected in the collection of responsa in Aseh Leha Rav, and in the very fact of his radio program, Halevi's focus was not in the arena of political theory, but in the more practical arena of the life of the individual in the

<sup>5</sup> The attempt to find a halakhic foundation for the sovereignty of the State of Israel is the subject of an article by Mark Washofsky "halakhah and Political Theory" in which he outlines and critiques the major theories advanced by representative Mizrahi Rabbis in justification of the Toraitic foundation for the sovereignty of the modern Jewish state. Washofsky demonstrates that the assumptions of the Mizrahi Rabbis, "that Jewish law in its existing format both recognizes the phenomenon of modern Jewish statehood and affords the state the full political authority necessary to the attainment of its legitimate ends", are difficult to prove because there is no objective traditional proof for the Toraitic legality of a state that is created without the sanction of prophet or Sanhedrin, two institutions which no longer exist in modernity. Washofsky concludes that the halakhah created by the Mizrahi Rabbis is reflective of an ideological stance, which he calls "Zionist halakhah." See the article for a complete discussion.

<sup>6</sup> The concept of "Atchalta De'geulah" is central to the philosophy of religious Zionism. Essentially, it is the belief that final redemption is a gradual process rather than a one time event, and the establishment of the Modern State is seen as an early phase of final redemption. The fact that the State is secular is seen as a temporary step toward a religious state which, once achieved, will herald in the final redemption. See the article "Atchalta De'geulah" in Shragai, S. Z. and Y. Rafael, (eds.) Sefer Hatziyonut Hadatit for a more detailed explanation of the concept.

new Jewish State. His responsa reflect an acceptance of the fact that, in the interim, the new Jewish state is not governed by halakhah. Halevi thus focuses on the ways in which individual Jews living in the state can be brought closer to halakhic observance, and on the demands observant Jews have the right to make of the Jewish State.

His approach reflects the practical reality of a state already in existence when he began his mature rabbinic career. It is, however, no less ideological than the approach of the political theorists of the previous generation. Halevi's understanding of God's working through Jewish history brings him to the conclusion that the state will eventually be founded on halakhah, but he believes that this cannot come about until the Jews within the state have accepted halakhah in their personal lives.

In his introduction to his collection of halakhic essays Mekor Chayim<sup>7</sup> Halevi states his belief that the current generation of Jews is in a religious crisis, a crisis of faith which he attributes to the abandonment of the study of Torah. Halevi calls this abandonment of Torah "the disease of our generation."

<sup>7</sup> Mekor Hayim , p.10.

Following Harav Kook, Halevi understands Jewish history to contain four major stages. The first, the "Golden Age", was the period between Sinai and the completion of the Tanach. During this golden period, the People of Israel lived in their Land, in complete political independence. This period was followed by the "night" during which the spirit of prophecy ceased in Israel, and the period of commentary and Mishnah began. During this period, Halevi believes, the lack of prophecy created a spiritual decline, which was accompanied by a political loss of independence. The third period, the period of "complete darkness", was the period of the exile. This was also the main period of the development of halakhah. Halakhah functioned to replace political sovereignty, and in so doing, to protect the national framework of the Jewish people.

Halevi understands the antinomianism of modern times to be a result of the psychological effect of law which has been separated from its ideational source. This phenomenon occurred, he maintains, during the exile, the third period of our history. Law, devoid of its spiritual and moral sources "restricts the spirit and sucks the marrow from the life of

the intellect and the imagination ."<sup>8</sup> People are left with fear of the law, and no access to it's healing powers.

Halevi believes that we are now in the period of "The Beginning of Redemption" (Atchalta De'geulah) which will again become a Golden Age for the nation. This coming Golden Age will be both political and spiritual, once the nation returns to love of God and Torah. If modern rabbis unstop the "wells of knowledge" which sustain the laws, the love of law and the practice of Mitzvot will naturally follow. This then, in Halevi's' view, is the primary role of the Modern Rabbi in the Modern State.<sup>9</sup> Education is the key, and the rabbis are the educators. If people, through education , can be made to understand the spiritual and intellectual sources of the law, they will embrace halakhah out of love, and not as a result of coercion. When this happens, the nation will rebuild itself in it's true glory, and redemption can be completed.

As Bialik did before him, Halevi argues that both halakhah and

<sup>8</sup> Ibid. p.11.

<sup>9</sup> In fact, according to Halevi the modern Rabbi has an even greater obligation to teach halakhah in this way than did the rabbis of previous generations, because of the "illness" of the age and the proximity of redemption.



aggadah<sup>10</sup> are essential for the rebuilding of the Jewish spirit. The cure for the "disease" that grips our generation, according to Halevi, is the "unlocking of the door between halakhah and aggadah"<sup>11</sup> - a reconnecting of the law to its spiritual sources. How does he hope to achieve this? His methodology involves "excavating" each halakhah to find its Scriptural basis. Working forward from the scriptural source, he hopes to trace the strands that nurture both halakhah and aggadah from their common root. Halevi believes that it is easy to find the common roots of halakhah and aggadah, but that it is more difficult to trace the development of the different threads, without one losing sight of the other. He attempts to maintain the contact between halakhah and aggadah by avoiding cumbersome legalistic language in his presentation of halakhah. He writes, he claims, for the halakhically naive Modern Jew. In short, his aim is to make halakhah linguistically accessible. Following Rambam, Halevi also strives to show the rational underpinnings of halakhah.

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<sup>10</sup> Halevi defines his use of "Aggadah" in the broadest sense, to include "stories from Scripture, traditional tales that motivate the nation to keep the Mitzvot, Talmudic and Midrashic Legends, religious philosophical literature, Medieval Commentaries, etc." . Ibid. p. 14.

<sup>11</sup> Ibid. p. 13.

But , for Halevi, the clarification of halakhic rationale, and even the reconnecting of halakhah to agaddah for the halakhically illiterate Jew, remains a secondary purpose. His primary purpose is redemptive. As a Religious Zionist he believes that we are already on the last leg of the journey towards the Messianic Age. Halevi believes that proper study of halakhah<sup>12</sup> leads inevitably to love of halakhah. Love of halakhah leads inevitably to practice of halakhah . Knowledge is thus the key towards increasing the practice of traditional halakhic Judaism among the general Israeli population, and he believes that this increase in practice of mitzvot is the necessary next step in our historic journey towards redemption. When all Jews in Israel have returned to Torah, the "disease" of Modern Jewry will be cured, and we will be ready to receive the Messiah.

Halevi is aware that in order draw the Jewish general population to halakhah, the contemporary rabbi must , however , do more than demonstrate the richness of halakhah, and the spiritual rewards of aligning one's life with God's will. It is also necessary to demonstrate the flexibility and relevance of halakhah, the ability of halakhah to provide answers in a modern context. Halevi must convince his radio listeners,

<sup>12</sup> Proper study here means halakhah connected with its aggadic sources.

and the readers of his books, that halakhah can help them live their modern lives.

His belief that halakhah is capable of doing so is a major tenet of Halevi's faith, and rests at the core of his halakhic philosophy: "The simple truth is that rational halakhic solutions can be found for most of the problems which plague modern society in every generation. Anyone who thinks otherwise is nothing short of an apostate. For it is one of the foundations of the faith that Torah is from heaven, and that God preordains history, and can see to the end of all generations. Is it then possible that the Torah, which He gave us, not be useful in this modern era? There is no apostasy greater than this."<sup>13</sup>

Despite this strong belief in the applicability of halakhah to all modern circumstances, there is a area of halakhah which Halevi acknowledges is difficult and obscure. This is precisely the area of state government. He points to the vagaries of the halakhah concerning the monarchy which led to disagreement among the rabbis as to whether the monarchy was commanded or optional. However Halevi concludes that

<sup>13</sup> Halevi "Peace and It's Implications" in Torah Shebeal Peh, Vol 21, p.39.

the vagaries of halakhah on issues of governance and economics have a purpose. They allow for halakhic flexibility in each generation. These are the areas of life, he claims, which change radically over time. But God's Torah is timeless. Therefore, the Torah intentionally veered away from dictating clear and specific law in these areas. Instead, Torah allowed for free choice in the specifics of systems of government and economics, providing only guiding principles which can be applied to any government, in any generation. The main purpose of these is the prevention of the abuse of power. It is to these principles that Halevi will turn when confronted with issues of sovereignty or political rights. We will see an example of this sort of analysis in his essay on military service and halakhah which is discussed in the fourth chapter of this paper.

Halevi's purpose in Aseh Leha Rav, then, is complex. He hopes to attract non observant Jews to halakhah by teaching the aggadic sources of the laws, and thus awakening the reader to the spiritual beauty of halakhic observance.<sup>14</sup> He also seeks to attract non observant Jews to observance by demonstrating the applicability of halakhah to all areas of personal and public life. Finally, he hopes to provide guidance to the

<sup>14</sup> The latter is primarily the objective of Mekor Hayim, but both goals find expression in Aseh Leha Rav.

observant Jew living in the secular modern Jewish state . This guidance is intended to encourage the sometimes contradictory objectives of strict traditional observance and whole hearted support for the Zionist state, secular though it may be.

The length of Aseh Leha Rav (nine volumes) is one indication of the scope of this enterprise. Volume nine contains a topical index that extends for over one hundred pages. Halevi intends to provide comprehensive guidance , in all aspect of life in the modern state. He also wants his guide to be user friendly. Immediately before the index he provides a summary of the practical conclusions from the responsa in all of the nine volumes, devoid of source material and aggadic support. In this summary section his primary goal would appear to be simple practical guidance.

However, most of the rest of Aseh Leha Rav comes in the form of detailed responsa to problems that were first raised on the radio programs. The responsa contain a plethora of references to traditional source material that is relevant to the key issues addressed in the responsa. Here Halevi's broader educational goals are clearly paramount.

Some of the entries are in response to letters which Halevi receives from listeners, including , at times, other rabbis. Halevi also presents short essays on topics that he believes to be of interest to his readers.<sup>15</sup>

In this paper , we will examine selected responsa from three topic areas : Chapter Two will look at responsa on women, in their public roles as citizens of the state, and in their private roles as social beings. Chapter Three will look at the laws of Shabbat as they are effected by modern technology and work in the modern state, and Chapter Four will look at an essay on military service, and the implications of biblical exemption laws to contemporary service in a Jewish State.

The responsa topics were chosen because they reflect characteristic halakhic issues that arise in any attempt to bridge the gap between traditional halakhah and life in a modern secular state. Together the responsa give us insight into the challenges which Halevi must face as he struggles to fulfill his self defined role as a Zionist Rabbi in a secular Jewish state. While these responsa represent only a very small percent of Halevi's ambitious collection, they do begin to frame a picture of the

<sup>15</sup> For example, an essay on Torah study taken from a sermon , see Vol.5, p.116, or an extended essay on Hanukkah , Vol. 5, p. 140-156.

parameters of his rabbinic vision. We can see what is possible when a traditional rabbi who is committed to Zionist ideology and to the education of a modern secular public uses traditional halakhic methodology and source material. Reading these responsa one can almost feel the halakhic muscles straining as Halevi reaches towards his secular audience.

The chapters are organized as follows: Each responsum is translated and annotated as to the source material which Halevi uses to build his arguments. Brief background material on his sources, as well as a more detailed presentation of the relevant material in each source is presented in the second part of each responsum. Finally, in the third part of each responsum, an analysis of Halevi's methodology is presented, with particular attention to the way he uses traditional source to arrive at his ideologically (relatively) liberal conclusions.

In the final chapter we will attempt to draw some conclusions as to the overall success of Halevi's endeavor. Does he indeed present halakhah in such a way as to attract a less traditional reader into the fold? Does he demonstrate his thesis that halakhah has guidance to offer

the non-observant Israeli Jew in these very different aspects of his/her public and private life? How does he use traditional methodology to further his objectives?

Halevi has defined the role of the rabbi in the modern state of Israel as educator and guide along the road toward a Jewish State governed by halakhah because the Jews in the state choose to observe halakhah. Such a rabbi must remain open to diversity within the Israeli community which he is trying to reach. This liberal stance however does not imply a lack of religious zeal. In his essay "Religious Zionism - Compromise or Ideal"<sup>16</sup> Walter Wurzbarger observes that the understanding of Torah as a "Torat Chayim - addressed not merely to a religious elite but to all segments of the Jewish people as a blueprint for life in here and now - holds the greatest promise for reclaiming the loyalty of Klal Yisrael in Torah. But to achieve this goal, we must pursue it not with cool detachment but with fiery commitment befitting the Esh Dat. It is up to us to demonstrate that our "moderation" reflects not lack of passion but our fervent commitment to our Torah ideals." It remains for us to examine whether this fervent commitment, which so clearly

<sup>16</sup> In Religious Zionism After 40 Years of Statehood edited by Shubert Spero and Yizhak Pessin, p. 31.



motivates Halevi's enterprise, can indeed be translated into a language that is both relevant and convincing to the modern Israeli Jew.

## Chapter 2

### Aseh Lecha Rav: Nashim (Women).

This chapter will examine five responsa from Aseh Lecha Rav which address issues concerning the social status of women in the modern state. Each responsum is presented in translation, followed by a section that elucidates the sources used in the responsum. These are presented in the order that they are cited in Halevi's text. A third section of each responsum analyzes Halevi's argument and explores his methodology. General conclusions about the ways in which these responsa answer the questions raised in the introduction are reserved for the concluding chapter of this paper.

#### I. Is it Permissible to Teach Torah to Girls?<sup>1</sup>

##### A. Translation

##### The Query:

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<sup>1</sup> Halevi, op. cit., vol. 2, Sheela 52, p. 190.

"Is it permissible, in our times, to teach Oral Torah to Orthodox girls (who have already completed high school)?

To clarify the meaning of your words, you added an explanation of the phrase "in our times": At such a time as this, when the world is full of immorality and it is necessary for girls too, particularly for those who study other disciplines at an advanced level, to study Torah more intensely and "our perfect Torah will not be , etc."<sup>2</sup>

"And perhaps, it is also possible to add [in support] the version in the Tur that contradicts the version in the Rambam. Also because of "It is time to work for the Lord, etc."<sup>3</sup> Thus far, [I have directly quoted] the language of the question.

### The Response:

<sup>2</sup> This quote appears twice in the Babylonian Talmud. In Bava Batra, 116: "Our perfect Torah shall not be like your nonsense." In Menahot ib. : " Fool! Should not our perfect Torah be as convincing as your idle talk?"

See below in section IB, for clarification of the references.

<sup>3</sup> In Mishna , Berahot 9:5 it says: " And it is written, 'It is time to work for the Lord: they have made void thy Law.' (Ps. 119) Rabbi Nathan says: They have made void thy Law because it was time to work for the Lord." (Translation from Herbert Danby, The Mishnah, Oxford U. Press, Oxford, 1933. The questioner is suggesting a possible second rationale for allowing men to teach their daughters Torah. See below in section IB for clarification of reference.

The source of this halakha is a dispute among the Tannaim in Tractate Sota (20 a).<sup>4</sup> Ben Azai claims that a man must instruct his daughter in Torah, etc. Rabbi Eliezer claims that anyone who teaches Torah to his daughter, it is as if he teaches her immorality.

First we must note that, despite the use of the word "obligation" [in Ben Azai's words] that a man teach Torah to his daughter, neither the word "forbidden" (אִסּוּר) nor any other prohibitive language appears in Rabbi Eliezer's words, rather he says "anyone who teaches ... it is as if, etc." which falls short of the language of prohibition and is rather that of annoyance or disapproval.

But the Rambam did not agree, rather he saw in the words of Eliezer a command not to teach a girl Torah, and I quote: "The sages commanded that a man not teach his daughter Torah, since most women are incapable of learning [cannot concentrate on study]<sup>5</sup>, rather they, in

<sup>4</sup> See explanation in section 1B below

<sup>5</sup> Translation is mine. Translation in brackets is from Maimonides Mishneh Torah, Hilchot Talmud Torah, translation and commentary by Rabbi Eliyahu Tueger, Moznaim Publishing Corporation, New York/Jerusalem, 1989, p.176.

accordance with the weakness of their intellect [their lack of understanding], convert words of Torah to words of nonsense [idle matters].” ( Mishneh Torah, Hilhot Talmud Torah chapter 1, halakha 13)<sup>6</sup>

And the Rambam concluded: “This is said with regard to Oral Torah. With regard to written Torah, in principle (lechatchilah), Written Torah should not be taught to her , but if is taught (bediavad), it is not as if he teaches her immorality.”<sup>7</sup>

Your desire to use the Tur’s version, of the words of the Rambam, which is the opposite of that which is before us [Rambam in Hilhot Talmud Torah 81}, is not plausible, since it is very likely that the words of the Tur are the result of a scribal error. Maran Beit Yosef (Karo) has written as much (on the words of the Tur, in siman 237)<sup>8</sup> where he cited

<sup>6</sup> See explanation in section 1B below

<sup>7</sup> Tueger, op. cit.. p. 177 translates תפלות as “tales and parables” based on his understanding of Rambam’s commentary on the Mishnah (Sota 3:3). he also offers , in a note, that Meiri renders it “vanity”, explaining that a woman who studies will boast of her achievements.

<sup>8</sup> The Tur version can be found on p. 180 of Machon Hatam Sofer edition , Jerusalem, 5770. The Karo Beit Yosef commentary is in the margin. There he does indeed note the Tur’s “scribal error”. “What is written is true for Written Torah, but he must not teach her Oral Torah ‘batchilah’, etc. we have here a scribal error since in Maimonides books the opposite is written, the matter is true concerning Oral Torah but not concerning Written Torah, etc., and thus the matter is proven”. See elaboration in section 1B below.

the words of the Rambam as those quoted above, and concluded: "And thus the matter is proven", and he did not append an explanation of why, as though the matter were self explanatory. For how is it possible to teach Oral Torah without Written Torah which is the foundation of it all, and moreover, how is it possible not to teach all the foundations of faith in God and his Torah, as they are presented in Written Torah?<sup>9</sup>

An additional clear proof that the version in the Tur is a scribal error, comes from an investigation of the origin of his (Rambam's) words. From whence did the Rambam derive this distinction between Written and Oral Torah, which is not mentioned in the words of the dispute of the Tannaim in Tractate Sota mentioned above?

In the Shulkhan Arukh (Yoreh Deah siman 246)<sup>10</sup> too, this halakha is recorded, and there Hagaon Rabbeinu Eliyahu of Vilna in (Note 25 to

<sup>9</sup> This last question is an expression of Halevi's understanding of why Maimonides interpretation must be the correct one. Given the primacy of Written Torah, teaching Oral, but not Written, as the Tur suggests, doesn't make sense.

<sup>10</sup> Here Karo reiterates the Rambam's position that despite the fact that women who study Torah gain merit, one should not teach one's daughter Oral Torah. He agrees with Maimonides that this applies to written Torah "lechatchila" but not "bediavad".

Shulkhan Arukh Yoreh Deah 246)<sup>11</sup> noted the Rambam's source as that which is explained in Tractate Nedarim (35b) concerning one who is forbidden to enjoy the benefits of another's work, in the words of the Mishnah : "And he may teach him the halakhic and Aggadic Midrashim (these are the Oral Torah ) but he may not teach him scripture, yet he may teach his sons and his daughters scripture." Clearly the "heter" (permission) for the instruction of the daughters refers to scripture, and this is the source of Rambam's words. From this we conclude that his is the correct version.

It would seem that this is clearly a prohibition against teaching Oral Torah to girls.

But reality has already proven that many girls departed from this custom, studied Torah, and succeeded greatly, and Rabbi Chayim Yosef David Azulai in "Shem Hagdolim" (part "resh" entry "rabanit")<sup>12</sup> in the name of Rabbeinu Shimshon, says that a woman is mentioned in a baraita

<sup>11</sup> Halevi accurately reflects this note, where the Gaon of Vilna gives the source in Nedarim, and also says that Maimonides did not copy the words "his daughters" since, from the first (delchatchila) teaching them is forbidden, thus addressing the fact that in Maimonides quote of this text, the words "his daughters" is missing.

<sup>12</sup> I couldn't find this reference.

which disputes the Tannaim. (In Tosefta Kelim Chapter 1 Bava Metziyah)<sup>13</sup>, and he notes that it is a novelty to find a woman among the Tannaim. Azulai adds that the woman was Beruria, the wife of Rabbi Meir (he refers us in a note to Masechet Pesachim 62 b and Eruvin 53) and he elaborates there, and notes that the רשב"ץ,<sup>14</sup> the greatest of teachers, brought a proof (תירוץ) in the name of a rabbi's wife, and the author of the Sefer Meirat Eynaim<sup>15</sup> brings two rulings in the name of his mother, the rabbi's wife, and notes other books in which rabbis wives ask questions, etc., see there for full discussion.

However, anyone who wants to reject all this may easily do so, since the prohibition is only against a father, that he not teach his daughter Torah. But we have never found a prohibition forbidding a woman to teach herself, and it is possible that all the women mentioned

<sup>13</sup> The reference is found in a discussion about the purity or impurity of pots and other vessels that are made from combinations of pure and impure materials. Beruria disputed with Rabbi Tarfon and the sages. The matter is brought before Rabbi Yehoshua who says: "Beruria spoke well" In the Babylonian Talmud, Vol 20 of the Otzar Hasefarim edition, 1958, N.Y., p.48 in "Hagahot V'chidushim Al Masechet K elim.

<sup>14</sup> Rabbi Shimon Ben Tzemach, a fifteenth century dayan from North Africa. See ש"ת הרשב"ץ, חלק ג', סי' ע"ח.

<sup>15</sup> Sefer Meirat Eynaim is a commentary to Choshen Mishpat (Shulkhan Arukh) by R. Yehoshua Falk Katz (16th - 17th century).



above were self taught.<sup>16</sup>

Nevertheless, this is, in itself, very difficult. Why would it be forbidden to a father to teach his daughter Torah, when it doesn't explicitly state that women not study [herself], for isn't the concern that they will turn Torah into nonsense valid in either case?

It thus seems to me that one might discover an innovation ("chidush") in this halakha, and through it find an opening to allow a person to teach Torah to girls.

Let us preface by saying that the basis of the reason for the prohibition, as it is presented in the words of the Rambam, is sufficient to prove that there is no total prohibition, since he wrote: "since most women are not suited to be taught, etc." The word "most" demands explication, since there must therefore be [by implication] a minority who are worthy of studying Torah, without concern lest they turn words of Torah into words of nonsense. From this we may conclude that when we know for certain that a particular woman sincerely wishes to study Torah,

<sup>16</sup> This distinction is made in Kinat Eliyahu, as noted in Tueger ibid. p. 177

and that her intellect is complete and stable, then it is clear that she is not among the "most" who are forbidden to study Torah.

Now it may be understood, that the prohibition against a father teaching his daughter Torah pertains only to his young daughters, since a man cannot know [the extent] their sincerity nor their stability, and it is uncertain whether, when they grow up, a distortion might result from their study. But when a daughter is grown, and her intellect has matured, and she expresses a sincere desire to study Torah in the proper way, she has thus proven that she does not belong to that "majority" of women whose intellect is not suited to be taught.

I will address one more consideration which you mentioned in your question: "in our times" and "particularly for those who study other disciplines at a high level." For it seems that in earlier times, when a woman was simply a housewife, and girls did not study at all, there was reason to fear lest the study of Torah, that is all wisdom, and about which it is stated "I wisdom dwell in deceit" (see in the Gemarah Sota 32)<sup>17</sup> would perhaps cause harm to those women who were far from any

<sup>17</sup> I couldn't find this reference

other sort of wisdom. So they were only permitted to study those laws which they required [for proper observance]. But in our time, when they engage in general studies in all appropriate seriousness, why should they be prevented from studying Torah?

Therefore, it is permitted to teach Torah, which is the elixir of life to those who engage in it, and in the fulfillment of the commandments, that were intended "for our good for all time and to keep us alive as on this day," to girls who wish to study Oral Torah in high schools, when the very act of study indicates their intellectual maturity and desire for learning and knowledge.

#### B. Analysis of the sources (sheela 1)

##### B1. Mishnah Berahot 9:5

The Mishnaic source quoted by the questioner is traditionally understood as a "safety hatch" which permits the rabbis to bend or break a Toraitic law if they believe that the true spirit of the Law cannot otherwise be upheld. In times of emergency the Law might best be

served by breaking it . (Talmud Bavli 99a/b is another source of this principle - "There are times when setting aside the Torah is the only way to preserve it.") As Menachem Elon points out, this type of permission to alter divine law is only possible because of "the basic principle regarding the exclusive competence of the halakhic authorities to identify completely with the spirit and purpose of Torah."<sup>18</sup> The questioner offers it here as an easy out for Halevi , should he choose to support the teaching of Torah to daughters, however, Halevi does not take this out, preferring to ground his argument in Talmudic and Post Talmudic sources.

## B2. Bava Batra 116a and Menahot 1b.

This is the second source offered by the questioner for possible use in justifying instructing daughters in Torah. The quote "Our perfect Torah shall not be not like your nonsense" appears twice in the Babylonian Talmud. The Bava Batra reference is a baraita which discusses a dispute between the Saducees and the Pharisees concerning the laws of inheritance. Rabbi Yohanan Ben Zakkai debates with a Sadducee, using an initial weak argument to refute the Sadducee's a fortiori argument. When

<sup>18</sup> Menahem Elon, Jewish Law . History Sources and Principles , Volume 3, p. 503

the Sadducee objects to his reasoning, Ben Zakkai says: "Our perfect Torah shall not be like your nonsense." and proceeds to give a more solid argument to refute him. Rashbam explains that Rabbi Yohanan Ben Zakkai initially attempted to avoid revealing to the Sadducee the true refutation of his *kal vachomer*, because one should not teach principles of Torah to a Sadducee. His exclamation, which is quoted by the questioner in our *sheela*, comes to say that, in order to preserve the reputation of Torah, he will now break this rule (against teaching principles of Torah to Sadducees).

The *Menahot* reference is taken from a dispute between Yohanan Ben Zakkai and the Boethusians concerning the date of the Feast of Weeks. The Boethusians argued that it must always be held on the day after the Sabbath. Again, Ben Zakkai attempts at first to dismiss him with a false argument, but when the Boethusian refuses to accept the argument, Ben Zakkai, exclaims "Fool! Should not our perfect Torah be as convincing as your idle talk?" He then proceeds to teach the true halakhic argument.

The phrase has thus come to mean that at times one must bend

or break the rules about not teaching Torah to inappropriate students for the sake of upholding the honor of Torah. Again, as in the quote from Brachot 9:5 above, the questioner presents Halevi with a convenient escape clause on which to hinge an argument in support of teaching Torah to girls. Halevi prefers to base his argument on Maimonides use of the word "the majority of women". He probably sees both Brachot 9:5 "time to act" and Bava Batra 116a "that our perfect Torah not be like your nonsense" as principles that must be kept only for use in extreme situations, when it is not possible to defend your position through more conservative material. He does not believe that the case before him warrants their use.

### B3. Sota 20a

The debate among the Tannaim takes place in the context of the description of the trial by ordeal of the suspected Sota. Once the suspect drinks the dissolved scroll, her face is expected to turn green, her eyes to protrude, etc., if she is guilty. However, these effects can be delayed, for as much as three years, if she is otherwise a woman of merit. In this context, Ben Azai declares that a man should teach his daughter

Torah that she may know that merit suspends the reaction. Presumably, knowing that she has committed adultery and survived the ordeal unscathed, she might doubt the efficacy of the ordeal, and continue to indulge in immoral practices, or possibly lead other women astray by telling them that the bitter waters are ineffective.<sup>19</sup> The purpose of teaching Torah to women is very specific here. It does not appear to be a broad principle, but rather, permission to teach them what they need to know in order to prevent misunderstanding the specific ritual of the Sota. Rabbi Eliezer's comment could, at face value be read as a response to the particular context : Whoever teaches his daughter Torah simply to know the intricacies of the Sota ritual<sup>20</sup> teaches her an obscenity. At any rate, Halevi is right that no mention is made of any prohibition here.

B4. Maimonides' Mishneh Torah, Hilchot Talmud Torah, Chapter

1:13

Maimonides instruction that one should not teach his daughter Torah follows a paragraph in which he states that a woman who studies

<sup>19</sup> See Steinsaltz, Tractate Sota, note p. 88

<sup>20</sup> My underlined comment added.

Torah will receive a reward, though not as great a reward as a man, since she is not commanded to do this mitzvah. Clearly Maimonides is aware that there is a difficulty here. He prefaces the statement quoted by the phrase "even though she will receive a reward..." In the following paragraph, he makes the distinction between Oral and Written Law: He forbids teaching oral law to daughters. But with regard to written law, he makes the distinction between "lechatchila" and "bediavad": "At the outset (lechatchila) one should not teach her, but if one already has taught her, it is not as if he has taught her immorality." Halevi accurately quotes Maimonides here.

Maimonides sources for this distinction are unclear. Tueger's commentary points to Mishnah Nedarim 3:3 which mentions in passing a daughter studying Written Torah. (The same Mishnah which was originally suggested by the Gaon of Vilna as it appears in the Babylonian Talmud in Nedarim 35b). But Rambam's text of this Mishnah lacks the words "or daughter". Another possible source is Chagigah 3a which describes the reading of the Torah by the king during the Hakhel celebration, which women were required to attend. Tueger also notes the reversal of the text in the Tur, giving permission to teaching women Oral Torah rather



than written, which Halevi addresses. Tueger prefers this reading (thus disagreeing with Halevi) because it suits his rationale, that women should be taught only Torah that relates to laws that she is obligated to fulfill. Written Law, by contrast to Oral Law, is a "less closely defined" field of study, and therefore "a greater possibility exists that women will misinterpret it."<sup>21</sup> Tueger's theory suits the context of the Tannaitic statement in Sota, where Rabbi Ben Azai makes his remark specifically concerning the laws of the bitter waters, but is a more restrictive interpretation than that offered by Halevi.

#### B5. The Tur, Yoreh Deah , Talmud Torah 237

The Tur quotes the Ramban that a woman who studies Torah has a reward , although not as great as a man's, since she is not commanded to do so and one who does a commandment gets the greater reward. He then states that despite the reward a man should not teach his daughter Torah, etc. He notes that *bediavad* it is permitted to teach written Torah to daughters, but not Oral Torah (which if he does, it is as if he has taught her immorality), in direct contradiction to the Rambam. The note

<sup>21</sup> Tueger, op. cit., p. 177

tells us that in Maimonides and Samag (סמ"ג) the Oral and Written Torah are reversed. The note also states that Karo wrote in Beit Yosef and in the Shulkhan Arukh that this is a scribal error. But he also notes that one should give some credence to the Tur's version. Rabbi Halevi notes the same sources for dismissing the Tur's version, but he chooses to emphasize these, and not to give weight, at all, to the Tur's version.

#### B6. Nedarim 35 b

Halevi suggests that this passage is the possible source for Maimonides' "issur" concerning the teaching of Oral Law to girls.<sup>22</sup> The context, in the Mishnah, is a description of how one must behave if one is forbidden to benefit from another's labor. The Mishnah reads: "He may separate his Terumah and his tithes with his consent. (The gemarah discusses whose consent is meant). He may offer up for him birds of sacrifice, etc. ... He may teach him Midrash, Halachot, and Agadot, but not scripture. Yet he may teach scripture to his sons and daughters."<sup>23</sup>

<sup>22</sup> He learns this from the Gaon of Vilna, see note 6 above.

<sup>23</sup> The passage appears on p. 71 in the Soncino edition of the Babylonian Talmud. The note by Rabbi Dr. H. Freedman draws the same conclusion as Halevi: "From this we see that it was usual to teach the Bible to girls, in spite of the Talmudic deduction that daughters need not be educated. (Kid. 30a) The opposition of Rabbi Eliezer to teaching Torah to one's daughter (Sota 20a) was probably directed against teaching Oral Law, the

This last line is quoted by Halevi. His point is that it constitutes proof that sons and daughters both were taught scripture in the time of the Mishnah, and thus Maimonides learned that the negative stance of Rabbi Eliezer must have referred only to oral Torah. The passage in Nedarim is not about teaching women. Halevi suggests that Rambam drew his conclusion from the assumption that underlies the statement which is directed at a completely different issue (what is permissible for one who may not benefit from another's labor.)

#### B7. Pesahim 62 b

Halevi mentions this source along with Eruvin 53, as two Talmudic sources noted by Azulai that demonstrate the expertise of women in Oral Torah in Talmudic times. The context is Rabbi Simlai coming to Rabbi Yohanan asking him to teach him the Book of Genealogies (a commentary on Chronicles). He proposes that they learn it in three months. Rabbi Yohanan throws a clod of dirt at him and says: "If Beruria the wife of Rabbi Meir, and daughter of Hanina Ben Teradion, who studied three higher branches of study. [Maim. Yad. Talmud Torah I, 13.]. Yet even in respect of this, his view was not universally accepted and Ben Azzai (a. l.) regarded it as a positive duty to teach Torah to one's daughters. The context shows that the reference is to a higher knowledge of biblical law. In point of fact there were learned women in Talmudic times, e.g. Beruria, wife of Rabbi Meir (Pes. 62 b)."

hundred laws from three hundred teachers in one day , could nevertheless not do her duty [study the Book of Genealogies adequately] in three years, how can you propose to do it in three months!" Here Beruria, a woman , is held up as a standard of exceptional scholarship of Oral Torah, both in speed and in depth.

#### B8. Eruvin 53 b

This second citation quotes Beruria in two stories. In the first R. Jose the Galilean meets Beruria on a journey. He asks her by what road does one go to Lydda. She rebukes him saying, "Foolish Galilean, did not the Sages say this, 'Engage not in much talk with women?' You should have asked: 'By which to Lydda ?'" Even though the content of her remarks is hardly complementary to women (perhaps she was speaking in irony?) Beruria is shown here quoting Aboth 1:5, and thus demonstrating proficiency in Oral Torah.

A second story about Beruria follows immediately, in which she demonstrated her ability to use midrashic technique. In this story she rebukes a student for studying in a whisper rather than aloud. She

quotes II Samuel 23 "Ordered in all things and sure" to teach that learning Torah is "ordered" in his 248 limbs, and if he neglects to use one of them in the study of Torah (in this case the organs of speech) how can his study be "sure". Apparently Beruria was aware, as modern educational theory confirms, that the more senses one engages in the study process, the more likely one is to retain the information.

#### C. Analysis of Halevi's argument:

Rabbi Halevi appears to be predisposed to permit women to study Torah, and seeks to find halakhic justification for his predisposition. His bias reflects his belief, as stated in the introduction of Aseh Lecha Rav, that Torah has something to say to everyone, in all aspects of life.

Halevi first deals with the issue, raised by the questioner, of the contradictory passages between the language of the Rambam and the Tur. The Rambam says that Written Torah is permitted, "bediavad", while the Tur says that only Oral Torah is permitted "bediavad". Halevi proves that the Tur's language is a scribal error. In accepting Maimonides, he

also shows that it is permissible to teach daughters Written Torah. His rhetorical question at the end of the discussion of the Tur's version indicates that he believes that Maimonides permission of teaching Written Torah is also defensible as reasonable, considering that Written Torah is the foundation of faith in God and Torah, something that women also must be taught. He now is able to restrict his own argument to Oral Torah.

Halevi constructs this phase of his argument on the Rambam's phrase "most". If Halevi can prove that women who wish to study Torah are not members of "the (feeble minded) majority" he can allow their instruction without contradicting the Rambam. By defining girls as suitable for instruction by the simple fact of their sincere desire for instruction, he renders the proviso that they be "of age" meaningless. Their sincere desire proves that they are "of age". His permission is thus as broad as possible, without contradicting the Rambam. He does not have to reject the clear prohibition (issur) of the Rambam, because he is able to read the Rambam's ruling (pesak) as incorporating "our time" in the form of "flexible response". If "most women" do not fit the

Rambam's description, then his issue does not apply. In all likelihood, this was not Rambam's intention. He probably felt that he was simply describing an immutable reality - most women (he believed) are and always will be intellectually incapable of the studying Torah. However, his use of the phrase "most" women, provided Halevi with the foothold needed on which to support a more flexible interpretation.

This is the core of his responsum. However, there are three other interesting aspects to his argument. First, he, in essence, subtly preempts the Rambam by noting the Tannaitic controversy in Sota 20, thus indicating that there is Tannaitic precedent for permitting instruction of women in Torah. Then, he presents the evidence of the scholarly activity of rabbinic women (Beruria, etc.). Although he admits that this evidence is not persuasive, since the women could have been self taught, it helps him to build the psychological case for the fact that there have always been women worthy of the study of Torah. Finally, Halevi takes advantage of the opening provided by the questioner by the phrase "in our times", to indicate that the situation of women may have changed since the time of the Rambam. Without explicitly stating it, he implies that the "majority" may now have become the "minority". Thus, he can

remain faithful to Maimonides' stated intent (to protect Torah from frivolous misinterpretation) while leaving open the possibility of a different evaluation of women's intellectual capabilities in our own time.

## 2. Women Religious Judges, Jurists, and Singers (Poets) <sup>24</sup>

### A. Translation:

#### The Query:

I hereby acknowledge the receipt of your letter from the twelfth of Shevat, with your question "concerning two midrashim that appear to contradict well known halachot, specifically the midrashim that mention female Levite singers." ( We will reference and explain below.)

First you cited the midrash on a verse in Chronicles II (35 : 25), "Jeremiah lamented over Josiah and all of the male and female singers said their dirges, etc." This verse was expounded in Pirkei de Rabbi

<sup>24</sup> Halevi, op. cit, vol. 8, Sheela 78-79 , p.246



Eliezer ( Chapter 17).<sup>25</sup> Rabbi Meir claims that the male singers were the Levites who stood on the Dukhan (the priestly stage where they pronounced the benediction) and the female singers were their wives. Rabbi Shimon claims that the passage does not refer to Levites and their wives, but rather to all the skilled women , etc.

#### The Response :

From this midrash it appears as if there were, in your words, "female Levite singers". However this not necessarily the case, since the point of the language of the midrash is that they sang on the Dukhan in the sanctuary (and not, in your words: " that the female singers sang in the Precinct of the Women, as we find that women sang for themselves at the Song of the Sea.") Rabbi Meir's words are accurate here, when he claims that "these are their wives" only, for they were truly female singers , but they did not sing on the Dukhan, nor in the sanctuary. We may conclude that the wives of the Levites who were professional poets, were also singers, and that they also lamented over Josiah.

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<sup>25</sup> See below, section 2 B.

The second verse is in Ecclesiastes (2:8) "I acquired men singers and women singers, and the delights of the sons of men, women very many."<sup>26</sup> Concerning this verse you noted the midrash (in Yalkut Shimoni Ecclesiastes 968<sup>27</sup>) "These male and female singers were male and female poets. These שִׁדְּהָ וְשִׁדּוֹת are male and female religious judges."

It appears to me that you mean to say that both female singers and female religious judges contradict known halakha. But there is no contradiction here concerning female singers, since neither Levites nor the Dukhan is mentioned. The reference is merely to female and male singers who entertained King Solomon.

Perhaps, you mean to say that, since "kol isha (the voice of a woman) is an obscenity", these midrashim contradict accepted halakha, and so how could King Solomon have established a choir of female singers? This is self evidently not a difficulty at all with regard to Solomon, considering his general behavior as related in scripture [Solomon disregarded many standards of moral behavior]. Nevertheless, truthfully,

<sup>26</sup> Translation from Harold Fisch, Jerusalem Bible, Koren Publishers, Jerusalem, 1992, p. 876. The correct translation of שִׁדְּהָ וְשִׁדּוֹת is uncertain.

<sup>27</sup> Yalkut Shimoni, Halevi here accurately quotes the entire reference.

it is the opinion of the majority of the great Poskim that the halakha that "the voice of a woman is an obscenity" is only a Rabbinic ruling, and that in the days of Solomon this prohibition had not yet been determined. (See Mekor Hayim Livnot Yisrael <sup>28</sup>, Chapter 5, paragraph 10, and that which is cited there in Sdei Hemed, section "Klalim", collection 100 rule 42.<sup>29</sup>)

### Female Religious Judges

With regard to "male and female religious judges" about whom they expounded in midrash, it does appear to contradict a known halakha. But Rabbi David Luria wrote (in commentary to Ecclesiastes Rabbah) to explain, "not necessarily female religious judges, since women are not eligible to judge, but rather, female judges to supervise that they not 'rule' (it seems to me that this should be 'send') women when a woman lifts her hand against another woman, and in the Yalkut the version of the passage is לַיָּדָיִים for male judges and לַיָּדָיִים for female judges. It is possible that it is used like לַיָּדָיִים and is meant to mean laws that relate to

<sup>28</sup> Halevi, Mekor Hayim Livnot Yisrael, Hamodiya, Tel Aviv 1977, p. 31. See discussion in section 2B below.

<sup>29</sup> In Rabbinical Encyclopedia "Sde Chemed", "Kehot" Publication Society, Brooklyn, 1959, p. 1295. See discussion in Section 2B below.

men or to women exclusively."<sup>30</sup>

I agree that this explanation of the midrash is forced. But the assumption that there was in Israel a status [of women] "who judged to supervise that they not send women when a woman raised her hand against another", in our terms, a policewoman, is correct, see what we have written in our book Davar Mishpat (part 1, chapter 1, halakha 1-2) on police who are judges, and see also in Aseh Lecha Rav (part 3, halakha 48).<sup>31</sup>

But the language of the midrash is straightforward, especially with regard to the version in Ecclesiastes Rabbah, "male and female religious judges", and this topic is as broad as the land and as wide as the sea, and it is impossible for me to deal with it at length, but let me note, that the status of a woman as a religious judge is not simple and clear-cut in the halakha. One should look in Tractate Niddah 49<sup>32</sup>, and in the Tosafot there beginning with the word כל (printed on page 50), and in all the

<sup>30</sup> This is a verbatim quote of Rabbi David Luria's comment in the Midrash Kohelet Rabbah (p.14 in the Vilna edition.)

<sup>31</sup> See below section 2B for a discussion of both references.

<sup>32</sup> See explanation in section 2B below.

sources cited there in the Tosafot (in Bava Kamma, Gittin and Shavuot) and also in the ruling of halakha in the Shulkhan Arukh (Choshen Mishpat, Siman 7, paragraph 3)<sup>33</sup>, and its commentary, and as stated, the matter is lengthy, but I will quote a digest of everything that is said in this halakha from the short and pointed words of the author<sup>34</sup> of the Hinuch (Mitzvah 77) and I quote <sup>35</sup>:

“ This precept applies to men but not to women, since they do not judge [court cases], as we have stated above in many places. Now, let it not be a difficulty for you that it says in scripture about Deborah the prophetess “that she was a judge in Israel” [Judges 4:4] . We can answer that the verdict [in a case] was not decided by her word, but rather, she was a wise woman and a prophetess and they would discuss and consider with her, even questions of ritual law, and so too cases of monetary law<sup>36</sup>, and therefore it is written of her that she was “a judge in Israel”.

<sup>33</sup> See explanation in section 2B below.

<sup>34</sup> Sefer HaHinnuch is ascribed to Rabbi Aaron ha Levi of Barcelona. Others ascribe it to Aaron's brother.

<sup>35</sup> This translation is by Charles Wengrov, Sefer HaHinnuch, Vol. 1. Feldheim Publishers, Jerusalem, N.Y., 1978

<sup>36</sup> The footnote 25 in Sefer HaHinnuch (p.308) explains: She would act not as judge but merely to instruct them in the law (Tosafot to Talmud Bavli Niddah 50a, s.v. kol); but the male judges would give the verdicts.

Or we can say that the leaders of Israel accepted her [granted her the authority] to judge for them, and following them everyone would decide cases by her word. For upon acceptance [as judges] all are properly fit [to sit in judgement], since any stipulation [accepted] in matters of goods and possessions remains in force.<sup>37</sup>

In any case, though, all this that we have said, that women do not judge [cases of law], is according to the view of some authorities, and by the ruling of the Jerusalem Talmud (Sanhedrin 3:9)<sup>38</sup> for so it is to be found there explicitly. In the view of certain other authorities, however, they are fit to be judges, etc."<sup>39</sup>

From this it is conceivable that the above midrash is of the opinion that women are fit to be religious judges, or that Solomon and his counsel accepted these women as judges, and certain acceptance is effective,

<sup>37</sup> The footnote 26 in Sefer HaHinnuch (p. 308) explains: So Talmud Bavli Ketubboth 56a, etc. In other words, all agreed to abide by Deborah's rulings in civil cases; she did not judge capital cases.

<sup>38</sup> Sefer HaHinnuch also footnotes Talmud Yerushalmi Shavuoth 4:1 quoted in Tosafot. (p.310)

<sup>39</sup> Halevi ends his quote here. However there are a few more relevant lines in Sefer Ha Hinnuch. See explanation in section 2 B, below.

and all are fitting to judge according to "kabbalah"<sup>40</sup>. It is sufficient for the leaders of the community to accept the authority of the judge, and it is not necessary that the litigant accept the authority. And so we find "women judges" in the midrash, and this does not contradict halakha.

## B. Analysis of the Sources

### 1. Pirkei De Rabbi Eliezer Chapter 17

The passage in Pirkei De Rabbi Eliezer is in a chapter devoted to the mitzvah of loving kindness to mourners. The full passage reads: "Rabbi Meir said: "The singing men' refers to the Levites, who stood upon the platform singing; 'and the singing women' refer to their wives. Rabbi Simeon said: These terms do not refer merely to the Levites and their wives; but to the skilled women, as it is said " Thus saith the Lord of hosts, Consider ye, and call for the mourning women, that they may come; and send for the skilled women, that they may come; and let them make

<sup>40</sup> If all parties agree to accept their judgement.

haste, and take up a wailing for us" (Jer. 9:17-18)<sup>41</sup> The questioner here has left out only the extended biblical reference, and he has presented the meaning of the text fully. In his response, Rabbi Halevi agrees with Rabbi Meir, that the women involved are wives of Levites who indeed sang, but not on the Dukhan.

## 2. Mekor Chayim Livnot Yisrael, Chapter 5, paragraph 10

In this earlier work, Halevi attempts to provide guidelines to women concerning which Mitzvot are obligatory for women, and which are permissible for her to fulfill, and in what way. In the subtitle of the book, he explains that it is intended to allow women of different communities to behave according to the law and the minhag of their own community. The paragraph he refers to here, is part of a chapter entitled "Cleanliness and Modesty in the Worship of God". It reads as follows:

"In the home, it is customary that all members of the household, including women and girls, sing the Birkat Hamazon aloud. Similarly, it is customary, in the home, to sing Sabbath songs and holy songs at the

<sup>41</sup> Translation by Gerald Friedlander in Pirke De Rabbi Eliezer, Hermon Press, New York, 1916, p.122.



Sabbath meal, and on festivals. Simply, one must not be too strict [about Kol Isha] since the men in attendance are not intentionally seeking pleasure from their [the women's] voices, particularly since two voices are not clearly distinguished, and all are singing together. Even if men who are not members of the family are seated at the table, there is room [in the interpretation of the law] to permit singing Sabbath Songs, Holy Songs, and Birkat Hamazon.<sup>42</sup> But at other parties of men and women, singing together is simply forbidden, for even sitting together is forbidden. In special circumstances, one should ask the advice of a certified Rabbi."

In this passage Halevi articulates the principle that if the men do not have the intent of being entertained by the women, and are participating in Sabbath Songs, Holy Songs, and Birkat Hamazon, and if the women's voices are blended indistinguishably with those of the men, then "Kol Isha" does not apply. He does not, however, address the issue of "Kol Isha" as being a rabbinic rather than Toraitic decree.

3. Sdei Chemed section "Klalim", collection 100 rule 42.

<sup>42</sup> Here he footnotes Sdei Hemed, see below.

Sdei Chemed is a comprehensive encyclopedia of halakhic literature, with emphasis on the responsa. The relevant sources are cited and summarized. The book was written by Hayim Hezekiah Medini (1832 - 1904) who served as a dayan in Constantinople, and later was a rabbi in Crimea. He made aliya to Jerusalem, and subsequently served as the rabbi of the Jewish community in Hebron until his death. Sdei Hemed is divided into two parts. General rules (kelalim) arranged alphabetically make up the first part. The second part is Compilation of Laws (Asefat Dinim) and is an alphabetic composition of main titles containing laws pertinent to its subject.

The passage which Halevi refers to is from the first part of Sdei Hemed. The passage begins "The voice of a woman is immorality" is only a Rabbinic ruling, so wrote the Rabbi "Chayei Adam" in Nishmat Adam Rule 4, Seif 1. It continues to provide support for this statement from a number of achronim.

4. Davar Mishpat (part 1, chapter 1, halakha 1-2) and Aseh Lecha Rav (part 3, halakha 48).

Halevi in Dvar Mishpat,<sup>43</sup> elaborates his argument justifying his understanding of the term "dayanim" (judges) to mean "shotrim" (police) in many rabbinic texts. He begins with the Rambam's description of the jobs of the police (Hilchot Sanhedrin Chapter 1, halakha 1), where he describes the "shotrim" as "dayanim". Halevi also cites this usage by the Vilna Gaon, and in the Gemarah of Yebamot 86, and Rashi on Mishneh Kiddushin 76, and numerous other sources. He understands the role of the police to be both the enforcement of the decisions of the dayanim and the punishment those who break laws of fair commerce, as well as the enforcement standards of moral conduct.

In Aseh Lecha Rav vol. 3<sup>44</sup> Halevi repeats much of the argument in Dvar Mishpat, and brings in many of the same sources to support his theory. He posits the possibility that there were two types of police: 1. Permanent police in the Bet Din, who were certified dayanim with authority to judge cases and punish offenders and, 2. Police who circulated in the marketplace and in the streets to correct weights and

<sup>43</sup> p.28-31

<sup>44</sup> p.226

measures, and to ensure that everyone was abiding by the law. If they found offenders, they would bring them to the Beit Din for judgement. The second type of police did not have the authority to judge, or to imprison, but merely to take suspects to judgement in the Beit Din. The first type, who had such authority, were required to be true dayanim, in the sense that they had to be qualified to make the rulings that they were expected to enforce. Presumably it is this second type of policing that could be done by women, though Halevi does not mention women in this Sheela.

#### 5. Babylonian Talmud Tractate Niddah 49b

In the Mishna of Niddah 49b it states: "Whoever is eligible to act as a judge is eligible to act as a witness. But one may be eligible to act as witness and not as judge." Women are not mentioned in the discussion in the gemarah but the passage has been used to explain why women, who cannot serve as witnesses cannot be judges. This appears in the beginning of Chapter 1 of Shevuot Haedut 30 where it says: "Oaths of testimony are customary for men but not for women. Since a woman is not eligible to serve as a witness she is also not eligible to serve

as judge."

6. Shulkhan Arukh (Choshen Mishpat, Siman 7, seif 3.)

The cited passage reads: "There are those who say that one is only allowed to serve as judge from the age of eighteen and up, and having grown at least two hairs. And there are those who say from age thirteen and up is permissible, even if he has not grown two hairs." Seif 4 reads: "A woman is not eligible to serve as a judge." Halevi in all likelihood intended to cite this section.

The commentary Pitchei Teshuvah<sup>45</sup> cites the Teshuvah Pri Tvuah siman 46 and also refers to the Sefer Chinuch passage that Halevi cites. The Vilna Gaon refers to Niddah 49b, the same passage cited by Halevi. He also cites the Jerusalem Talmud perek 3 of Sanhedrin - "since a woman cannot be a witness she cannot be a judge." The Vilna Gaon also refers to Tosefta Shevuot 29b beginning with the word "shevuot". The summary in Sefer Hinuch is a good summary of the issues raised in the

<sup>45</sup> Commentary on Shulkhan Arukh by Zevi Hirsch Eisenstadt that emphasizes the importance of knowing the laws contained in the responsa. His compilation is a sort of Shaarei Teshuvah for the remaining three parts of the Shulkhan Arukh not covered in Shaarei Teshuvah, which dealt only with Orah Hayim.

commentaries to the Shulkhan Arukh, which is the reason Halevi quotes it at length.

### 7. Sefer Ha Hinnuch halakha 77

The passage in Sefer Ha Hinuch is part of a section dealing with the law: "A judge who argues for innocence in a capital case should not argue for guilt afterward." It is based upon the Tosafot and the Nahmanidean commentary to the relevant sugiyot.<sup>46</sup> It deals with a series of laws designed to make it more difficult to convict in a capital case, many of which are derived from "neither shall you respond over a controversy to incline to follow (Ex.23:2)". The section Halevi quotes comes at the end of the passage, and is brought in to restrict the previous statements as applying only to male judges. Interestingly, Halevi ends his quote from Sefer Ha Hinuch before the end of the relevant passage. The text continues: "and they asserted that this is a direct full [ruling by] a verse, since it is stated, 'she was judging'. As to what our Sages said in tractate Sanhedrin (34b) that whoever is not qualified to bear witness is not qualified to act as judge, and women are certainly not qualified to act as

<sup>46</sup> See, for example, Tosafot Bava Kama 15a, s.v. אמר.

witnesses, as is proven there- perhaps they would say, following their view, that this is because we do not draw specific inferences from general rules.<sup>47</sup> It would seem right, though, from the subject matter and from logical reasoning, that they do not belong in the judgement of court cases, as we read in the Jerusalem Talmud, and as is apparent from the [relevant] Talmudic passages in their plain meaning." Halevi thus leaves out the summary in which the author of Sefer HaHinnuch comes down on the side of excluding women from being judges, preferring to leave the possibility open.

#### 8. Jerusalem Talmud Sanhedrin 3:9

The passage reads: "The law governing an oath of testimony applies to men and not to women, to those who are not related and not to those who are related, to those who are suitable to bear witness, and not to those who are not suitable to bear witness." The Mishnah on which this passage is based is M. Sheb. 4:1. The main point is that the

<sup>47</sup> Footnote 28 in Sefer HaHinnuch p. 310 explains: "Wherever we learn a general rule [in the Talmud] we do not say there are no exceptions, since there can be a general rule under which certain matters are not covered (Rashi, Babylonian Talmud, Eruvin 27a).

oath of testimony applies to court, and one who cannot give testimony in court is therefore not liable, should he or she take an oath of testimony and turn out to violate it or to have lied.

### C. Analysis of Halevi's Argument

In this passage Halevi deals with two difficult issues in modern Israel, women singers and women judges. If he remains true to his stated purpose of showing the relevancy of halakha to modern Israeli life, he must find a way to be as lenient as possible with regard to the role of women. His hands, of course are bound by halakha.

His task is directed by the nature of the question, which asks only if there is a contradiction between halakha and the evidence of the midrash as to what actually occurred. The questioner is not asking for a judgement about modern practices, but about whether we might infer that ancient practice differed from halakha.

In the first case, that of women singers, Halevi begins by addressing the easier issue. Since the questioner does not specify which



halakha he believes is contradicted by the midrash, Halevi first assumes that it is the halakha against women on the Dukhan, and quickly proves that there is no contradiction here. Yet, since there is also no Dukhan in modern Israel, this is not particularly topical. It is the halakha against "kol isha" which is usually invoked today, and concerning this halakha, Halevi can only say that it is Rabbinic rather than Toraitic, thus satisfactorily addressing the issue of contradiction between Torah and midrash, but leaving the "kol isha" halakha itself standing. Hardly a satisfactory response for most modern Israelis.

He does however, in the section of Mekor Hayim Livnot Yisrael which he cites (see explanation above), attempt to limit "kol isha" by pointing to situations when it does not apply, notably, when the intention of the men is to pray, and not to "enjoy" women's voices. Also, when women's voices are blended with men's so that they are not clearly distinguishable, Kol isha does not apply. Here, however, he is content to note that "Kol isha" is "only" a rabbinic ruling. This is the best he can do.

Halevi also finds it easier to be flexible in areas of politics and public law, than in areas of ritual practice. As mentioned in the introduction, he

believes that halakha is intentionally vague in the arena of political law precisely in order to allow such flexibility. He is also more successful in taking a liberal stance with regard to female religious judges, because he has more sources upon which to rely. In the Sefer Hinuch it states that there is a minority opinion that explicitly permits this practice. The issue has also been dealt with in the literature concerning Deborah. The rabbis explain Deborah's status in one of two ways. Either her role was purely advisory, or that she was able to rule in monetary cases, as long as all parties accepted her authority to judge. Halevi relies on the rule that if all parties agree to the authority of a judge in monetary cases then that judge is an acceptable judge. He even allows that only the leaders of the community need agree. Thus, women judges would be permissible in all monetary cases if the rabbinic authorities in the modern state would agree to abide by their decisions. Halevi, however, does not go there. He is content to have proven that the existence of female judges attested to in midrash does not necessarily contradict halakha. This is all that the questioner has asked.

### III. Mixed Gender Society<sup>48</sup>

<sup>48</sup> Halevi, op. cit., vol. 4, Sheela 56, p. 283

A. Translation:

I hereby acknowledge the receipt of your letter of the 18th of this Adar, concerning the problems that arise when men and women are intermingled in a common settlement. Truthfully the questions which you raise are valid from the halakhic point of view, but it is difficult, and perhaps even impossible to find their solutions in the halakha, since the very existence of these problems results from the lifestyle to which our generation has become accustomed, and this life-style did not even exist, and could not have existed in the days of our first rabbis (rishonim), nor in the days of the latter rabbis (achronim).

The life-style of our fathers was "all the honor of a princess is internal"<sup>49</sup>. A woman's place was in her home, caring for children and running her household. At most, in certain specific places, a woman might engage in some sort of commerce close to home in order to assist in the maintenance the family. Therefore, none of the issues which arise

<sup>49</sup> Psalms 45:14. The verse is used to indicate that a woman's place is in the home.

today in our public domain could have come before our great rabbis, whose waters we drink.<sup>50</sup>

For example, those questions which you have raised. Who ever heard of 1. Women sitting in the company of men to rule on city or community affairs, or 2. [Women] participating in general public meetings to discuss and decide on current problems on the agenda?

Therefore, we have no basis for halakhic rulings on such matters, because these matters are unprecedented. The perspective of received tradition is clear and known, that "the honor of a princess is internal".

In this spirit, I have responded to the religious girls who are in the youth movement or in national service, and similar occupations, when they asked me about the limits of permissible and forbidden behavior in a mixed gender society. I responded that mixed gender societies do not exist in halakha since the whole premise is forbidden, so from whence could I deduce the limits of ritual law?

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<sup>50</sup> An expression: in whose footsteps we follow.

3. However, the great rabbis of the latter generations (the achronim) did write concerning the matter of the woman's right to vote and to stand for elected office. See the questions and responsa Mishpatei Ouziel ( Choshen Mishpat , Siman 6).<sup>51</sup> However, it is possible to debate the interpretation of that which is written concerning the right to stand for elected office. Perhaps it is necessary to distinguish between the election of a woman to public office and the election of a woman to a particular post but it is difficult to [make this distinction].

4. Concerning lessons in Torah, I remember that during my childhood, in Jerusalem, it was customary for families to gather, on Shabbat, in private homes to listen to words of Torah. The men would sit in one room and the women in another, and the teacher would sit in the middle. And it seems that the explanation was that since the audience was passive, there was concern lest their thoughts wander [hence they should be separated, so as not to lead to temptation]. The teacher, on the other hand, would be focused on his task [and therefore was not at risk of being distracted by the women, and could sit near them]. It's obvious that women are permitted to ask questions.

<sup>51</sup> Ouziel does permit women to serve as elected officials. See section 3 B.

5. I have already written concerning participation in mixed gender meals, etc., and this responsum was published in Aseh Lecha Rav part 3, siman 40.<sup>52</sup>

### 3B. Explanation of the Sources

#### 1. Mishpatei Ouziel ( Choshen Mishpat , Siman 6).<sup>53</sup>

Mishpatei Ouziel is a collection of responsa by Ben - Zion Ouziel, the former chief Sephardic Rabbi of Israel , who was also Halevi's mentor. When the Women's Equal Rights Law was enacted by the Israeli Keneset in 1951, it was for the most part consistent with the position of Jewish law, as it had developed<sup>54</sup>. To the extent that specific provisions may not have been consonant with Jewish Law, the halakhic authorities have the power to enact appropriate Takkanot, that would respond to the contemporary social situation. Ouziel proposed a number of such Takkanot in the early days of the state, but was resisted by other

<sup>52</sup> See this responsum below.

<sup>53</sup> Ouziel, Mishpetei Ouziel, p.32

<sup>54</sup> According to Menahem Elon, op. cit. , p. 1760

halakhic authorities. In the orthodox context, he can be seen as a liberal on halakhic issues relating to women.

His responsum concerning participation of women in elections is divided into two parts : The right of women to vote and the right of women to stand for elected office. He sums up his conclusions as follows:

1... A woman has complete voting rights in order that she might be included in the general disciplinary responsibility to those who are elected to lead the nation.

2... A woman may be elected with the agreement and mandate of the public.

#### Analysis of Halevi's Argument

Here Rabbi Halevi acknowledges the limits of his enterprise. Some things, he admits, are simply not within the reaches of halakha. It is telling that he cites only one halakhic source in the entire responsum, and

this is a contemporary.<sup>55</sup> Certain areas of modern life are so outside the realm of the conceivable, from the perspective of the ancient rabbis, that the rabbis of past generations have nothing to say about these issues. Simply put, the issue of women's participation in public life stumps Halevi. Here, the only thing he can say is that the rabbis have nothing to say. Their world view, that a woman's place is in the home, is irrelevant to modern society. Although Halevi admits that there were always some women who worked in the public domain, he fails to find rabbinic precedent for regulating their behavior in this domain. The only source he cites in this responsum is that of his teacher, Rabbi Ouziel, concerning the rights of women to vote and to stand for public office, and even this ruling causes him some discomfort.

There are, however several, qualifications to this position. He cites the Achronim concerning a woman's right to vote and to stand for public office. While he acknowledges that his interpretation of the latter is open to debate, he characteristically comes down on the liberal side of both of these issues. He is also able to find a precedent in his childhood experience for permitting men and women to (sort of) study together.

<sup>55</sup> His use of Psalm 45:14 refers to halakha indirectly. In Shevuot 30a the verse is cited as a proof for a woman's way of life.



The principle he invokes here with regard to the teacher (that if one is focused on one's studies and actively engaged, there is no fear of the mind wandering to forbidden things) might be seen as a precedent allowing men and women to study together in a more mixed setting (maybe even the same room!), although Halevi himself does not state this explicitly.

We will now look at the responsum which he cites above concerning mixed gender dining.

#### IV. Procedures for Maintaining Modesty at Weddings <sup>56</sup>

##### A. Translation

##### The Query:

Is it legally necessary that there be a complete separation at a wedding feast [between genders] in separate rooms, or by means of a high and opaque partition, or is it sufficient to divide the same room into

<sup>56</sup> Halevi, op. cit., vol.3, p. 201, responsum 40

two sections, one for men and one for women? If a partition is necessary, must it be a complete partition or is a token partition sufficient? Is mixed seating around the same table permitted at a small feast for the relatives of the bride and the groom? Must the genders stand separately during the wedding ceremony itself, and is a partition necessary?

### The Response :

From the sugiya in Tractate Sukka 51 b<sup>57</sup> one can learn that it is obligatory to have a complete partition between men and women. We learn thus: On the evening of the first day of Sukkot they would go down to the Precinct of the Women and established a great enactment (Tikkun). And the Gemarah explains, "at first the women were inside and the men were outside, but they became frivolous, so they 'established etc.' . They established that the women should sit outside in the outer court of the temple mount and the rampart". According to this, the place in which they used to become frivolous was apparently the point of contact between the men and the women, between the precinct and the outside, the Temple Mount and the rampart. Or in passing inside the

<sup>57</sup> See explanation of Sugiya in section 4B below.

women had to pass before the men, etc. They therefore determined that it was proper to establish porticos for the women within the Women's Precinct, and this is what the Mishnah refers to by the words "a great enactment" (Tikkun Gadol). We conclude that there was a need for complete separation with a separate entrance in order that they not become frivolous either when passing one another or at the point of meeting.

Apparently all of this was according to the law and not a mere restrictive measure<sup>58</sup>, as Maimonides ruled (in Hilchot Lulav Chapter 8, halakha 12) and I quote: "They would regulate in the Sanctuary a place for women above, and for men below, so that they not mix with each other".<sup>59</sup> And for what purpose would the Rambam write in his book of Halachot a description of what our ancestors did in the Sanctuary, if not to teach the halakha for future generations? And it is possible that Maimonides himself learned this halakha from the difficulty in this

<sup>58</sup> A measure to add strictness to the law to ensure its compliance, but not required by the law per se.

<sup>59</sup> Halevi is quoting from Mishne Torah, Sefer Moed, the section which deals with the day of special rejoicing in the Temple during the festival of Sukkot. The separation between men and women is mentioned with regard to the procedure for celebrating on the eve of the first day of the festival. Halevi accurately quotes Maimonides.

Gemarah, "How could they do this?" (Since they added and changed Solomon's building by adding the porticos in the Women's Precinct) when "All this, he said, is put in writing by the hand of the Lord who instructed me."<sup>60</sup> And the Gemarah explains that they justified it from the case of the eulogy, since "even during a eulogy men and women are separate, and even more so, during times of joy, etc.". Hence they tried, originally, to separate inside and outside in order not to change Solomon's building, but when they saw that this did not prevent them from becoming frivolous, they agreed to change the building from the form transmitted to Solomon through the prophets of the generation. They would not have done so simply as a restrictive measure.

It is obvious that, there must be a real complete partition and not merely a token one, and this can be learned from the words of Maimonides in his explanation of the Mishnah, and I quote: " 'a great enactment' means for a great purpose, etc., and the women's place is above the men's place, in order that the men not look at the women."

This is applicable to the issue before us, that a partition must be of a

<sup>60</sup> 1 Chronicles 28 verse 19. Halevi is quoting the scriptural verse used in the Gemarah to emphasize that the original temple was built precisely to God's specifications, and that, therefore any change in the structure demands explanation by the rabbis.

height that they [the men and the women] not be able to look at each other.

However it is possible to defend those who make do with dividing the hall , half for men and half for women, since , to our chagrin, in recent generations there is much transgression in matters of modesty, and all are accustomed to the intermingling of men and women on the street and at the office, in commerce and in industry, so there is no concern about merely "seeing" the opposite sex.

A sort of proof for this comes from that which the author of Bayit Chadash<sup>61</sup> wrote (in Even Haezer at the end of Siman 62) to explain the custom of the community of Cracow "that they did not used to say the blessing "that happiness is in his dwelling"<sup>62</sup> at a wedding feast that they held on the second night, etc. since this feast was small and they would seat men and women together in one room, and it is written in the Minhagim collection, that they do not say the blessing "that happiness is

<sup>61</sup> Rabbi Yoel ben Samuel Sirkes wrote Bayit Hadash, a commentary on the Turim. See section 4b below.

<sup>62</sup> A special insertion in the zimun of Birkat Hamazon when recited at wedding feasts.

in his dwelling" in a situation where we know that there is a consideration lest they think sinful thoughts, etc."

In Sefer Hachasidim (siman 393)<sup>63</sup> mention is already made that there are [sinful] thoughts in a place where women sit among men, and it is not possible to say the blessing "that happiness is in his dwelling" but the author of Halavush<sup>64</sup> (in the end of section Orech Chayim in Yalkutei Haminhagim siman 36) made a good argument on behalf of those who were accustomed to say the blessing "that happiness was in his dwelling" even when there was a combination of men and women, "since at that time it was usual for many women to be among the men all of the year, and to see each other without concern for the worldly appearance concerning sinful thoughts."<sup>65</sup> Rabbi Hayim Yosef David Azoulai (in Responsa Yosef- Ometz siman 47 ot 2) noted the words of the author of Halavush cited above, and we may assume that he agreed with him.<sup>66</sup>

<sup>63</sup> Sefer Hachasidim is attributed to Judah Ben Samuel the Chasid. See section 4b below.

<sup>64</sup> Rabbi Mordecai Jaffe wrote Halavush, a commentary on the Shulkhan Arukh (see below section 4b).

<sup>65</sup> This is a direct quote from Halavush:

<sup>66</sup> Azoulai, in his responsa volume, Yosef Ometz, does indeed quote the responsum of Jaffe, concerning this custom, although it is actually in the first, not the second paragraph of Section 47.

Even though the words of the author of Halavush above do not constitute a complete permission lechatchila<sup>67</sup> to seat men and women together, God forbid, but his intention is to defend the position of those who were accustomed to saying the blessing "that happiness is in his dwelling" in a place where there are both men and women. In any event, we learn from his words, that one should take into account that in an era, when there is much mingling of men and women all the time, requires a more lenient rule regarding the concern lest this lead to sinful thoughts, and his words make sense. And if this is so, it is applicable to the case before us. When a person divides a large hall in half, a half for the men and a half for the women, one should no longer object, even though it is obviously better to put up a real partition, as do those who are completely faithful to Torah.

From the words of the author of Bayit Chadash above we can also learn the answer to the additional question: "Is it permissible to have mixed seating around the table at a small feast for the relatives of the

<sup>67</sup> Lechatchila and bediavad are technical terms. A distinction is made between "lechatchila", in an ideal situation (most stringent) when something is actually permitted, and "bediavad", after the fact, when something is merely tolerated (less stringent).

bride and the groom?" For the words of the author of Bayit Chadash include also this custom which was customary in Cracow, and he noted that when it was a small meal they would seat men and women together in one room. And, of course, only members of the same family are present at a small meal in one room. And ,even so, it was not customary to say the blessing "that happiness is in his dwelling", so we may conclude that such seating is forbidden. Therefore if we want to defend this custom as well, which is certainly very widespread, it is best to instruct them that all the men should be seated at one end of the table, and all the women at the other end. In this way, as for the author of Halavush, the prohibition is weakened in our times, when we are used to mixed gender society , and certainly they could then also say the blessing " whose happiness is in his dwelling."

And by simple logic, there should also be a complete partition during the chuppah ceremony itself. However at that moment there is much confusion and disorder, and it is most difficult to enforce the use of the partition, since everyone is pushing forward to greet the bride and groom. Similarly, it is a brief moment, and it is not possible to put up partitions just for that [short] time, and apparently this is the reason



that people are not strict about enforcing the separation during the chuppah ceremony, and "Israel should be left alone."<sup>68</sup>

May God grant that we merit seeing the house of Israel based on the holy and pure foundations of our holy Torah.

#### 4B. Analysis of the Sources

##### I. Tractate Sukka 51 b

This passage is the key sugiya on which Halevi bases his initial argument for the necessity of having a partition. The Mishna describes the ceremony of Rejoicing of the Water Drawing at the conclusion of the first day of Sukkot. In the description they mention the "great enactment" which was made after they descended to the court of the women. The gemarah asks the question: What was the "great enactment"? R. Eleazar responds that it was the creation of a separate woman's gallery. The rabbis explain that because of the levity that

<sup>68</sup> An expression, meaning that their minhag should be respected and the strictness of the law need not be enforced. This phrase is taken from Babylonian Talmud Beitza 30a, see explanation in section 4B below.

resulted from the original mixing of men and women in the Temple courtyard, this alteration was enacted. The Gemarah then questions how they could have altered Solomon's original plan, quoting the verse from 1 Chronicles 28 (verse 19) which Halevi quotes in his outline of the argument. The response, which Halevi also alludes to, from Zecharia 12:12, describes a mourning ceremony in which the men and women are separate. The argument is an a fortiori argument. If they had to be separate during mourning, when the Evil Inclination is at its weakest, then certainly they had to be separate during rejoicing, when the Evil Inclination is at its height. Halevi accepts this reasoning for the validity of having a partition in principle, and bolsters the importance of the requirement with Maimonides in Hilchot Lulav. He then proceeds to argue bediavad.

## 2 .Bayit Hadash (in Even Haezer at the end of Siman 62)

Bayit Hadash is a commentary to the Turim written by Joel Sirkes (1561-1640), one of the outstanding leaders of Polish Jewry. He strongly opposed making halakhic rulings based solely on the Shulkhan Arukh and advocated in depth study of the Talmud. The Bayit Hadash

was intended to be the first part of a longer work on the Shulkhan Arukh which he never completed.

The phrase under discussion, that is quoted by Halevi, deals with when Birkat Hachatanim is to be recited. This phrase is traditionally added to the zimun of the Birkat Hamazon at a wedding feast before the usual words "she'achalnu mishelo". Sirkes specifies that the addition "that happiness is in his dwelling" is to be omitted when men and women are seated together in the same room, because there is no happiness in his dwelling when sinful thoughts are present, and sinful thoughts are necessarily present when men can see women. It is an argument which Halevi accepts in principle.

### 3. Sefer Hachasidim Siman 393

Sefer Hachasidim was written in Regensburg Germany in the second half of twelfth century, at a time following the carnages of the second crusade. It is a book of guidance to the pious, which gives a sense of

what life was like for Jews in medieval Germany .

The relevant section referred to by Halevi concerns staring at women , and reads as follows:

“The true strength of a person’s piety is demonstrated under the following circumstances: a devout person does not cast off his piety even when people ridicule him; whatever he does he does for the sake of heaven; he does not look at women. His piety is put to the test especially when he is in the company of other men in a situation where women are usually around - for example, in a wedding hall where women are dressed in elegant gowns, and all are gazing at the women, and he does not stare. For that he will be rewarded with abundant good...”<sup>69</sup>

Halevi is correct in saying that the author of Sefer Hachasidim understands sinful thoughts to be present whenever men can see women. However, no mention is made of the blessing here. Halevi, in mentioning Sefer Hachasidim, also let’s the reader know that mixed seating , without partitions , was a commonplace at weddings as early as the twelfth

<sup>69</sup> Yehudah Hachasid, Sefer Chasidim, p. 393

century.

4. Levush Malchut, by Rabbi Mordecai Jaffe in Sefer Haminhagim siman

36)

Levush Malchut was written by Mordecai Jaffe (1530-1612) who was a student of Maharshal and Rema. He served as rabbi in Lublin, Prague and Poznan, and was a member of the Council of Four Lands. Levush Malchut (Royal Robes) is a ten volume work, each book being a specific robe. The text quoted by Halevi is in Levush Tchelet (Blue Robe), the first book of Levush Malchut. ( Tchelet (Blue) is the first word following the words "royal robes" in the verse from the Book of Esther which was the source of the title of the work.)

Like Maharal , Jaffe rejected Pilpulistic method of study. This rejection led Maharal to oppose the composition of codificatory books. Jaffe, agreeing with the premise, disagreed with this conclusion, and composed his Levush Malchut. His initial intention was to produce an abridged version of Karo's Beit Yosef. He wanted to compose a work

that would briefly summarize each law together with its underlying rationale, so that the search for truth, rather than mental gymnastics, would again become the objective of the study of halakha. When Jaffe arrived in Venice after the Jews were expelled from Prague, he discovered that Karo had written his own abridgement of Beit Yosef, the Shulkhan Arukh. He thus changed his plan, writing his Levush Hamalchut as a corrective commentary to the Shulkhan Arukh, adding Ashkenazic law which Isserles did not add in the Mappah, and giving rationales that Karo left out in the Shulkhan Arukh.

At the very end of the first book, which covers laws treated in the first part of Orech Chayim, Rabbi Mordecai Jaffe discusses customs at wedding feasts. Specifically he is commenting on Shulkhan Arukh, Even Ha'ezer, Hilchot Kiddushin 62, which specifies when Birkat Chatanim (the blessing of the bridegroom that is inserted in Birkat Hamazon) should be recited.

In paragraph 36 of his commentary, Jaffe quotes Sefer Hachasidim. In Sefer Hachasidim he found that the section of the Birkat Hamazon which states "and joy in his dwelling place" is not recited at

feasts, like wedding feasts, when men and women can see each other since there can be no joy before God, when there are sinful thoughts present. Jaffe qualifies his statement by saying that this custom is not followed in his own time, perhaps because women and men are often in mixed company in his time, and are accustomed to this, so that we can no longer assume that sinful thoughts are caused by their being in mixed company. Halevi picks up on this analysis, and uses it to excuse contemporary mixed seating, arguing that what applied in the time of Jaffe applies also in our day.

### 5. Beitzah 30a

The concept of "Israel should be left alone" is elaborated in the Talmud. In Beitzah 30a an instance is raised in which the custom of the people violates the halakhic ruling of the rabbis, yet they choose not to rebuke the people. Despite the Rabbis having learned from the Mishna that we may not clap hands nor slap our thighs, nor dance on holidays or on Shabbat, the people persist in doing so and are not corrected by the Rabbis. A second example, of the rabbis not protesting a violation is

given, concerning the laws of where one may sit on Shabbat.

The phrase "Israel should be left alone" is introduced by the Gemarah as a reason why the Rabbis do not rebuke in these cases. It continues "since they will not change their ways even if rebuked. It is preferable that they be unintentional violators than deliberate violators." In other words, the Rabbis recognize the power of minhag. If minhag is so strong that people will not change their custom even after being reprovved, it is better to leave them alone, rather than force them into a greater, since it now would be deliberate, sin.

The Gemarah qualifies this policy to apply only to Rabbinic, not Toraitic law. Concerning Biblical law, violators must be rebuked in all circumstances. However, even this qualification is rejected, and the principle is made to apply to both Rabbinic and Biblical law. If we know people will not listen, we don't rebuke them. Apparently, this rationale works for Halevi in the instance of mixed seating at wedding feasts.

#### Analysis of Halevi's Argument



We have again , the familiar pattern in which Halevi first attempts to explain the most strict position, and then modifies it as much as he possibly can, without contradicting the halakha. In the best of all possible worlds, Halevi acknowledges, the separation of men and women at weddings would be thorough and complete. He supports this position through his reading of Tractate Sukka 51 about the building of the portico in the women's precinct in the temple, and the analysis of the Rambam concerning this passage. Again, he does not refute the Rambam, but he raises the issue of leniency in consideration of modernity. Basically the argument is that in our time, when men and women are accustomed to being together in public, the motivation for complete separation is weakened, since men are less likely to be stirred to "impure" thoughts as a result of being in the company of women , when they are accustomed by secular society to being so. Halevi backs his position up by citing Azoulai and Jaffe. He can thus point to instances of mixed seating in previous generations. As he often does , here too he resorts to the "lhatchila" and "bediavad" distinction, allowing room for leniency after the fact.

Finally, concerning mixed company during the actual chuppah

ceremony, he invokes the principle that halakha should not be enforced which creates too much of a hardship on the people Israel (this is the same principle Hillel used when enacting his famous prozbul). It is just plain too hard to put up an impenetrable partition for the short duration of the wedding ceremony. His approach is also practical. By using the phrase "let Israel alone" he is saying, essentially that this minhag is too deeply ingrained, and people will not listen if you forbid its practice. Halevi seems to be pushing the edges here. His acknowledgment of the need for real partitions seems almost like lip-service.

## V. The Law with Regard to Women Bearing Arms in Self Defense<sup>70</sup>

### 1. The Query

In our school, it is customary, to this day, to train women to shoot weapons, in the context of the "Gadna".<sup>71</sup> The training in the use of weapons qualifies the girls to serve as guards in the framework of the

<sup>70</sup> Halevi, op. cit. vol. 3, p. 92, responsum 24

<sup>71</sup> "Gadna" stands for "Troops of Fighting Youth", it is the military training program for students in Israeli high schools.

Civilian Guard .<sup>72</sup> (Girls serve as civilian guards from Grade 11, and their training takes place in grades 9 - 10.) I would be grateful to the Respected Rabbi if he would rule as to the halakhic acceptability or unacceptability of such training.

Responsum:

First let us divide this question into three parts: 1. Training under the auspices of the Gadna. 2. Girls as guards in the Civilian Guard. 3. Training in the use of weapons.

Concerning training under the auspices of the Gadna, it is clear and simple in my humble opinion that this is completely forbidden, since the Gadna trains boys and girls together, and this is forbidden above and beyond any doubt.

Service in the Civilian Guard is permitted dependent on the absolutely incontrovertible condition that the partners that go on guard duty together be either two men or two women. When the Civilian Guard

<sup>72</sup> The Civilian Guards are comprised of women and men who are not fit for active duty. They serve as neighborhood guards, and guards in public buildings.

was established in our city, I was asked to appeal to the public to volunteer, and I required a clear condition, that was publicized as part of the appeal, that they not send male and female partners (who are unmarried, of course) to guard together, since that too is pure and simply forbidden.

Concerning the above paragraphs, I see no reason to base my words on halakhic sources, since these are very simple matters, and their prohibition is known to all Jews. I will respond with detail and halakhic support to your third question, that is, as to whether it is permissible for a woman to train in the use of weapons, and under what conditions might she be permitted to use them.

Scripture states: "A woman shall not wear that which pertains to a man"<sup>73</sup> Deuteronomy 22:5<sup>74</sup>. And we learn in the Mishna: Rabbi Eliezer Ben Yakov states: From whence do we know that a woman should not go out armed with weapons of war? We learn it from "A woman shall not

<sup>73</sup> Translation by M. Freidlander in the Koren Bible p. 237

<sup>74</sup> The verse continues: "... neither shall a man put on a woman's garment, for all that do so are an abomination to the Lord."

wear that which pertains to a man ." (Nazir 59 a).<sup>75</sup> Rashi explained: She should not go out with weapons of war, as the Targum states: there will be no weapons on a woman. And so we find with Yael the wife of Heber the Kennite that she did not kill Sisra with weapons, but rather , as it states in scripture: " She reached for a tent peg." (Judges 5:26). The source of the Rashi is in the Targum of Yonatan Ben Uziel (Judges 5:26), and it is explained thus in the words of our Rabbis in the midrash: "That she did not kill him with weapons but rather with a tent peg , as it is written: "She reached forth her hand for the peg... in fulfillment of that which is written "a woman shall not wear that which pertains to a man." (Yalkut Shimoni to Judges ).<sup>76</sup>

This is one of the Toraitic commandments the reason for which is mentioned explicitly in scripture itself: "for all that do so are an abomination to the Lord." Even though scripture does not require additional explanation, we will quote one of the great commentators of the plain meaning of Scripture, Rabbi Abraham Ibn Ezra: " For if she

<sup>75</sup> See explanation in section 5b below

<sup>76</sup> See Yalkut Shimoni, Judges 5, paragraph 56. (p.708 in the Munson edition, Jerusalem, 1960.) The text is accurately quoted. It explains Yael's choice to use a tent peg because she was fulfilling the commandment not to "wear the "kelim" of a man."

should go out to war with men , she will be introduced to immoral sexual practice.”<sup>77</sup> His words are very clear.

The halakha is ruled by Rambam in accordance with Rabbi Eliezer Ben Yakov (Hilchot Avodah Zara chapter 12, halakha 10)<sup>78</sup> “ A woman should not adorn herself in the accessories of men , such as she should not put a scarf around her head<sup>79</sup>, nor a hat, nor should she wear armor or the like.” And Karo also ruled as did the Rambam (in Shulkhan Arukh Yoreh Deah seif 182, s. 5).<sup>80</sup> This halakha is clear and without dissenters.

Still there is room to examine the language of the Rambam concerning this halakha, since he changed the language from its rabbinic source. For the source states that a woman not “go out to war with weapons”. But the Rambam wrote that she not “wear armor or the like”

<sup>77</sup> See explanation in 5b below . Ibn Ezra's commentary can be found on p. 188 in Torat Chayim , Rav Kook edition.

<sup>78</sup> The Rambam Hilchot Avodah Zarah is in Sefer Mada of Mishneh Torah, and is accurately quoted here by Halevi.

<sup>79</sup> Presumably referring to Arab style turban, which was accepted male garb in Maimonides time.

<sup>80</sup> See explanation in section 5b below.

<sup>81</sup> It is not like Rambam to alter the language of the sources without reason. Apparently here the Rambam felt compelled to do so, since had he not done so, he would have had to expound at great length, since the prohibition, concerning all the clothing and accessories of a man, is very general. Rabbi Eliezer Ben Yakov specifically mentioned weapons, and the same rule applies to all other "male accessories". For this reason the Rambam made a general ruling "A woman should not adorn herself with the accessories of a man like... a scarf, a hat, armor, etc." If he wanted to teach in the language of Rabbi Eliezer Ben Yakov, he would have had to mention armor, and to elaborate, and therefore he, of necessity, changed the words of the source.

But it is more likely that Rambam wished to teach us an important halakha, that that which is mentioned in the source, that a woman not go out with weapons of war, is not specific [limited to war time], rather the use of weapons is forbidden to women even when there is no war. Rabbi Eliezer Ben Yaakov chose this language, since this is generally how people behave, going out with weapons in times of war, but the prohibition extends to times without war, and he (Rambam) therefore

<sup>81</sup> This phraseology of the Rambam is picked up also in the Shulkhan Arukh.

wrote simply "they shall not wear armor."<sup>82</sup>

From this we know that the use of weapons is forbidden to women even when there is no going out to war. The best proof of this is from Yael herself, for she didn't go out to war, rather Sisra, in his flight, reached her tent, and she killed him in his sleep. Nevertheless, "She reached for the tent peg" and not for the sword. And, as stated, the intention is that a woman not "wear that which pertains to a man", that she not resemble a man in any way, so that it is forbidden for a woman to carry a sword even simply for adornment. As we learn in the Mishna concerning that which it is permissible to take out [of a proscribed area] on Shabbat: "A man may not go out with a sword or a bow or a shield or a club or a spear; and if he did go out [with the like of these] he is liable to a sin offering. Rabbi Eliezer says: "They are his adornments." (Mishnah, Shabbat Chapter 6 Mishnah 4).<sup>83</sup> And here certainly, when there is no waging of war, it is self evident that this is forbidden to a woman.

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<sup>82</sup> In other words, Halevi believes that Rambam altered the words of the source in order to teach that the rule is applicable in both times of peace and times of war.

<sup>83</sup> See explanation in section 5b below.



In any event the prohibition appears to be against the use of a weapon for its primary purpose, that is, to kill a man, as in the case of Yael, or as an adornment, as above. But for use for some purpose for which it was not intended, this is not covered in the prohibition. I saw in the Torah Temimah,<sup>84</sup> (Deuteronomy, 22:5 ot 41) according to the author who brought the words of חגרי שׁוֹר from Volozhin ( as they were copied from Sefer Toldot Adam of the Rif from Vilna) that there is support for prohibiting a woman from taking a sword to cut thread or a rope. And he based his words on the story of Yael above, etc., but in my humble opinion this is not at all the same thing, and is not contained in the general prohibition. And the author of the Torah Temimah also refuted his words with a different rationale (see there).

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However, from Yael herself it is possible to derive also a certain permission. Since , in principle (lhatchila) she rejected the use of the sword , which would have been the usual way to kill a man, and used a tent peg in order not to transgress the commandment from the Torah “ a

<sup>84</sup> I found a reference to the passage in Nazir 59a in the Torah Temimah of Baruch Halevi Epstein, son of the author of Arukh Hashulkhan. There is however no reference to the additional material mentioned by Halevi. This was the only Torah Temimah I could locate at the H.U.C. Library.

woman should not wear that which pertains to a man". But if she had not found the stake, is it conceivable that she would have allowed Israel's greatest enemy to leave her home alive, simply in order not to have to use a sword? This is unimaginable. Undoubtedly, she would have killed him with a sword.

From this we learn that the principle prohibition is against making the use of weapons, as it is with men, a regular activity. This is what is forbidden to women. But in a specific instance, when an enemy of the nation, or a dangerous man, or the like, comes into her grasp, the use of weapons is clearly not forbidden. And it is not necessary to add that if a situation occurs in which a woman is required to defend her life, or the life of her children, or the like,, she is permitted, and she is commanded to use weapons, and to fulfill the commandment " Rise early to kill one who comes to kill you."<sup>85</sup>

(It should be noted that we cannot deal here, in the context of this short responsum, with the law concerning drafting women to war, and to what degree may women assist the army during war, and for which wars,

<sup>85</sup> This phrase appears in Sanhedrin 72a, see section 5b below

and the conditions and limitations. All of this has been explained in the halakha in Tractate Sota 44 , and in the Rambam Mishneh Torah Hilchot Melachim Chapter 7, halakha 4, and it has no place in the present context).

Therefore, in an even semi-regular military context, and the like, there is no place for permission, not for training, and certainly not for service, but in a defense context, on the condition that our life is under threat by criminals and murderers, there is a broad foundation for permission, since we are obligated to protect our very existence, and no one is exempt from such an obligation, particularly those who live in the border areas. It is obvious, that even women must learn how to use weapons for defense, to defend their lives and the lives of their families, against whatever emergency may occur. So students in high school are obligated to know how to use weapons for their own defense, for schools have already been attacked in the past by these riotous murderers. Therefore, women too must learn how to use defense weapons, but , as stated, not for regular service, but for defense, and under these conditions:

1. The training must be done in a separate framework than that of the

boys, and not with the boys under the auspices of the Gadna.

2. In the event that there are sufficient male volunteers for the Civilian Guard, women should not be permitted to stand guard while bearing arms, since then it would appear that they are on regular duty, in any context.

3. In the event that there is an urgent need, and a shortage of manpower in the Civilian Guard, then it becomes a situation of one who, in effect, defends himself, and we already explained above that this is clearly permissible, except that in this case there must be a clear prohibition, under any circumstances, against placing women on guard duty together with men. In these circumstances, girls should stand guard with female partners only.

May God who creates peace bring peace swiftly upon Israel, that Jacob may dwell in peace and tranquility, and no one shall be afraid.

#### 5b. Explanation of Sources

##### 1.Nazir 59a

Rabbi Eliezer Ben Yaakov's statement that we can derive that women should not bear arms from Deuteronomy 22:5, is in a Baraita. (The Baraita is initially brought as an argument in a discussion as to whether the prohibition against the removal of body hair is Rabbinic or Scriptural.) He understands "keli" as weapons specifically, and is disagreeing with the previous Rabbi who understood it to refer to wearing men's clothing and sitting in mixed company.

## 2. Ibn Ezra's Commentary

Ibn Ezra was one of the greatest of all the peshat commentators. He lived at the end of the Golden Age of Spanish Jewry, and travelled throughout Europe spreading the analytical and grammatical approach of Spanish commentary to other Jewish communities. His comment on Deuteronomy 22:5 is based on the principle of "simuchin", since the prohibition is found in Parasha "Ki Tetzei" which begins with regulations concerning behavior when one goes out to war. Hence he makes the association between "klei gever" and weapons.

### 3. Shulkhan Arukh Yoreh Deah seif 182, s. 5

In the Shulkhan Arukh, Karo does agree with the interpretation, as Halevi says although the emphasis of his understanding of the pasuk is clearly on the issue of dressing like the opposite gender in order to deceive, rather than on the armor per se. He specifies that a woman should not wear a scarf or a hat or armor, or the like, nor shave her head. He thus picks up on the Rambam's phraseology as noted by Halevi.

### 4. Mishnah Shabbat

The context of the Mishnaic quote is in a series of lists of things which are forbidden to be transported from within proscribed areas on the Shabbat. Halevi uses the list because of the comment at the end by Rabbi Eliezer that such things are merely adornments. He is building his case that even when weapons are not intended to be used as weapons, women should not carry them. The Mishnah passage continues: "But the Sages say: They are naught save a reproach, for it is written: "And they shall beat their swords into plowshares and their spears into pruning hooks: nation shall not lift up sword against nation, nether shall they learn

war any more."<sup>86</sup>

### Sanhedrin 72a

This is the famous passage that discusses the Mishnah of the thief who breaks into the house stealthily. Understanding that if theft is done stealthily one can assume that the thief intends bodily harm, the victim has permission to defend himself, even to the point of killing the thief. The rabbis build their argument for the right of self defense around this passage. The phrase: " Rise early to kill one who comes to kill you." Which Halevi quotes, expresses the Rabbis belief that self defense is more than a right, it is a commandment, and one must be proactive in this regard. The Talmudic passage does not specifically mention women in this context, but Halevi assumes the universality of the principle.

### Sota 44 b

This sugiya deals with draft exemptions in time of war. Specifically , the distinction is made between voluntary and obligatory war . There

<sup>86</sup> Isaiah 2:4

are two definitions in the Mishna - the Rabbis and Rabbi Judah. The rabbis distinguish between voluntary wars in which draft exemptions apply, and wars commanded by Torah. Rabbi Judah distinguishes between wars commanded by Torah in which draft exemptions apply and obligatory wars, wars of defense, in which exemptions do not apply. The Gemarah looks at the difference between Rabbi Judah and the Rabbis.<sup>87</sup> In any case, women are mentioned in this context only in the Mishna. In the case where exemptions do not apply," the bridegroom goes forth [to war] from his chamber and the bride from her canopy." This is not commented on by the gemarah, though later commentators interpret it to mean that women provide food for the troops.

Rambam mentions the obligation of the bride to go forth out of her pavilion in the case of war for a religious cause in Mishneh Torah Hilchot Melachim Chapter 7 halakha 4, again without elaboration.

### Analysis of Halevi's Argument

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<sup>87</sup> See Chapter Four below for a complete discussion of this distinction which Halevi offers in his analysis of the right of Yeshivah students to be exempt from military service.



Halevi begins by clarifying the question. He divides the question into three parts, thereby accomplishing two things. First, he can begin with a stringency. As in the previous responsa, he seems to prefer to begin with a strict negative answer, building credibility along the way, and then to work his way gently to the more liberal position. Here, he begins with a firm "no" in response to the Gadna part of the question. His "no" is based on the fact that girls and boys train together in Gadna, and thus addresses the issue of mixed company, related to the previous responsa, but not to the core issue of military training for women. The second part of the question is also addressed in these terms. Here he permits service in the Civilian Guard, as long as the rules of mixed company are not transgressed.

The third part of the question, the issue of whether women may bear arms, gets the most attention. Halevi begins with the Toraitic source of the prohibition of women to bear arms, in Deuteronomy 25:2. He traces the sources through the Mishnah, Midrash, Commentary and Talmud, Mishneh Torah, and Shulkhan Arukh. One would think that the evidence is overwhelming against women bearing arms, yet Halevi manages to turn the argument around.

His foothold is the use of Yael in the proof texts. Yael is used by Rashi, and in Yalkut Shimoni as the example of a woman who used a tent peg rather than a weapon in order to avoid breaking the commandment. Halevi mentions this as he explains the development of the halakha, but then, when he gets to the crux of his argument, he turns it on its head. (Note that the text contains a line of asterisks at this point, to indicate the shift in approach.) Halevi speculates what Yael would have done had she not had a stake readily available. His answer : She would have had to use a weapon. She would have saved her people in this extraordinary circumstance in which she found herself with the opportunity to do so..

So Halevi concludes that the restriction is only against regular, routine use of weapons<sup>88</sup>. Use of weapons in extraordinary conditions, when the nation is in danger or when she is in danger herself, is permitted. It is interesting that Halevi focuses here on the "National Emergency" aspect of the problem. It is a clear Zionist position - We are

<sup>88</sup> Here we see why he made the point, earlier in the argument that Rambam changed the language of the Talmudic statement in order to emphasize that the restriction applied in peace time as well as in war. Halevi's argument would not make sense if the restriction was limited to war. By including peace time, he can now imply that when Israel has peace, the unusual circumstances would be over, and women would no longer be permitted to bear arms.

a nation threatened by dangerous enemies and this justifies unusual measures to guarantee our self defense. (Hence the name if the Israeli Defense Force.) Not only are women permitted to bear arms, but they are required to do so, in self defense, (here he uses Sanhedrin 72 a ) and so must be trained to use weapons effectively.

Halevi concludes with a strong statement in favor of separate training of women in the use of weapons, and in favor of service in the Civilian Guard with women partners. Basically he has pulled this position out of the fire on the strength of the Talmudic argument of the "thief who comes stealthily" , and on his speculation as to Yael's hypothetical behavior had she no tent peg readily at hand. His strong Zionist identification cannot allow him to do otherwise.

### Chapter 3

#### Aseh Lecha Rav: Shabbat

We turn now to examine a few of Halevi's responsa concerning the laws of Shabbat. The structure of the chapter will follow the model outlined in the beginning of Chapter Two. Again, brief analyses of methodology follow each responsum, but general conclusions about the responsa concerning the laws of Shabbat are reserved for the concluding chapter of this paper.

#### I. Concerning Making Decrees (Gezerot<sup>1</sup>) After The Canonization of the Talmud (The Law with regard to an Electronic Watch on Shabbat).<sup>2</sup>

##### A. Translation:

I hereby acknowledge the receipt of the letter from the 28th of Tevet 5745, in which the author of the letter commented as follows:

"Concerning the ruling which the author wrote in his book Aseh Lecha Rav

<sup>1</sup> The concept of Gezera is crucial to this responsa. See definition in section 1B below.

<sup>2</sup> Halevi, op. cit. vol.7, p. 154.

Volume 4, Responsa 30<sup>3</sup> about the prohibition of the use of an electronic watch on Shabbat, even if it doesn't have a button to push in order to illuminate it at night, and certainly , if it does have [such a button]. The Rabbi himself noted that the Rabbi Ovadia Yosef (May he live a long and good life, amen) in his book Yechaveh Daat Part 2, Chapter 49<sup>4</sup> ruled that "it [the wearing of an electronic watch] was permissible and let each person choose [which ruling they wish to follow]." I wonder that the Rabbi [Halevi] disputes Rabbi Ovadia Yosef (May he live a long and good life, amen) with no proof, for he [Halevi] should have brought arguments to refute his [Ovadia Yosef's] proofs, and his reasons, etc."

First and foremost, I wish to express my thanks to the author of the letter, since, as a result of this comment, I returned to study and to write the justifications for this prohibition. At the time, I wrote in brief, and expressed my opinion in sparse language, due to time constraints, but now, with God's help, we will clarify this important Halacha from its sources and rationales.

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<sup>3</sup> See section 1 below.

<sup>4</sup> See section 1b below

## The "Muktzeh"<sup>5</sup> Prohibition

It is true that in my book Aseh Lecha Rav , Part 4, I wrote in brief that in my humble opinion, any electronic watch is forbidden because of "Muktzeh" even if it does not have a button which, if pressed, illuminates the watch. I meant , simply, that the [use of the] electric battery which is inside the watch is forbidden on Shabbat and it also makes the use of the watch forbidden.<sup>6</sup> Come and see, that the sages of our generation , and of the previous generation, debated concerning [the use of] a hearing aid by the deaf. Some of them ruled that its use is forbidden [on Shabbat and festivals]. And even those who permitted [the use of hearing aids on Shabbat and festivals] (and I am among them) supported their argument by the fact that it [using a hearing aid] has an element of "pikuach nefesh"<sup>7</sup>: If he [the deaf person without the hearing aid] should ,

<sup>5</sup> Muktzeh means literally "set aside". It is a technical halachic term for an item which may not be picked up or handled on Shabbat and Festivals because its normal use involves an activity which is forbidden on these days. There are different categories of "muktzeh" : 1. "Muktzeh because of itself" - raw materials not prepared in advance for use on Shabbat. 2. "A utensil whose function is prohibited on Shabbat" - like a pen, or a scissors. 3. "Muktzeh because of repulsiveness" - an item which is dirty or repellent in some way. 4. "Muktzeh because of monetary loss" - a valuable item intended to be sold for its value. 5. "Muktzeh Bayadayi" (literally "with the hands") - an item specifically set aside not to be used on Shabbat. (This definition is taken from Steinsaltz, The Talmud . a Reference Guide, p.212.)

<sup>6</sup> The watch would thus fall into the second category of Muktzeh as outlined in footnote four, because the use of the battery is forbidden on Shabbat.

<sup>7</sup> "Pikuach nefesh" is a technical halachic term which means literally "the

while walking, cross the street and not hear the honking of a horn, etc. Also, for the sake of his being able to fulfill a mitzvah, [the use of the hearing aid would enable him ] that he might hear "Kaddish", "Kedusha" and the reading of the Torah, etc.<sup>8</sup> Although we went to some lengths and difficulty to permit a hearing aid<sup>9</sup>, what purpose would be served in doing the same to permit an electronic watch on Shabbat? Rabbi Ovadia Yosef (May he live a long and good life, amen) ruled to permit carrying a watch of this sort, supporting [his ruling] by the words of the [author of] Chazon Ish in Hilchot Shabbat (Siman 13 ot 16).<sup>10</sup> But I believe ( literally "let ourselves see"<sup>11</sup>) that if we used the reasoning of the [author of]

Chazon Ish, along with the other reasons given above, in order to permit saving of a life". "Pikuach nefesh" supersedes all the commandments of the Torah, both positive and negative , with the exception of idolatry, murder, and forbidden sexual relations. Even fairly unlikely dangers are considered to be "pikuach nefesh". For complete definition see Steinsaltz, Op.Cit., p. 245.

<sup>8</sup> There are thus two justifications for permitting the use of the hearing aid which are not valid in the case of the watch. First, the hearing aid could save the person's life, by allowing him to hear warning sounds, like , for example , the honking of a horn when he crosses the street. Second, it enables him to perform other Mitzvot which he otherwise would be unable to perform. Halevi by emphasizing these features of the hearing aid, answers the hypothetical claim that since he permitted a hearing aid, which is an instrument which runs on batteries , he should also permit the watch.

<sup>9</sup> Halevi means to say that in order to justify the use of the hearing aid , the rabbis had to resort to arguments of "pikuach nefesh" and "for the sake of doing a mitzvah" both of which are invoked to bend or break halachic rules in extraordinary circumstance. They are extreme halachic measures and are not used lightly.

<sup>10</sup> Chazon Ish was written by Abraham Isaac Karelitz. He is considered by Elon (Op cit. p. 702 )to be one of the "leading Halachic authorities of our time".

<sup>11</sup> "Let ourselves see" ( נַחֲדִי אֲנִי ) is a Talmudic term used when scholars propose to clarify an issue on the basis of their own independent reasoning.

the use of a hearing aid, this would still not justify permitting [the use of] a watch as described above. For who can say that tomorrow people won't come to permit themselves the use of other appliances that are battery operated, using the watch as precedent. It is not necessary to elaborate this point further for obvious reasons. God's honor requires us to conceal this.

For this reason, I will stand my ground and despite the fact that hearing aids are permitted to the deaf, we cannot permit the use of electronic watches, and let each person make his choice [between the two contradictory rulings].

The prohibition of the electronic watch that has the potential of "kindling"<sup>12</sup>

However, a watch that does have a button that lights the watch when it is pushed, must be prohibited on Shabbat even according to the position that Muktzeh is not an issue here, lest he forget and push the button and this would be prohibited because of [the prohibition against]

<sup>12</sup> Kindling a fire being one of the activities that are forbidden, in scripture, on Shabbat. The term "kindling" refers to all things which fall under this restriction.



lighting a fire [on Shabbat]. It is true that the Rabbi Ovadia Yosef (May he live a long and good life, amen) permitted [the use of] even a watch that has this sort of button [on Shabbat], with the condition: "Only if he is careful not to push the button". He declined to make a Gezerah<sup>13</sup> against the possibility that he [the one who wears the watch] might forget and push the button as he is used to doing on other days. His reason was that "we are not qualified to make Gezerot or precautionary measures (Sayagim) based on our own opinion since the sealing [closing the canon] of the Talmud etc."<sup>14</sup> See his remarks there.

A Gezerah that has a paradigm in the Talmud is not considered to be "based on our opinion"

However, in my humble opinion, this matter [the wearing of the watch with the button for illumination] is forbidden, and there are several reasons for this. First, this is not a new decree, since we have found a number of decrees exactly of this sort, that were made by the sages - the decree lest someone sin with coals, because of which they required

<sup>13</sup> See definition of Gezerah in section 1B below.

<sup>14</sup> See discussion of Rabbi Ovadia Yosef's responsum in section 1B below.

raking and covering as is known.<sup>15</sup> This [raking and covering coals] is exactly the same thing [as prohibiting a watch with a button that might get pushed out of habit] and so, this [a prophylactic decree concerning possible use of the light on the watch face] is not a new decree. And this is not like that which the Rosh referred to when he wrote (in Shabbat chapter 2, seif 15)<sup>16</sup> to express wonder at the Geonim concerning the ruling on the recitation of "Aneinu"<sup>17</sup>, etc., "lest one be found to be praying a lie". He wondered at them, how they could make a new decree, etc., since that was truly a new decree, that has no paradigm in the Talmud. But as long as there is a paradigm in the Talmud, it is not to be considered a new decree. This is what the author of the Maggid Mishneh<sup>18</sup> wrote (in the laws of Chametz and Matzah, chapter 2, halacha 20)<sup>19</sup> in the ruling concerning kneading dough with wine, oil, and honey, etc. which is really a new decree, etc., which is not true for the issue under

<sup>15</sup> The Mishnah requires that a fire which is put out before Shabbat be raked and covered so that one might not inadvertently use a coal that is still hot for forbidden purposes on Shabbat.

<sup>16</sup> This is the source of the position adopted by Rabbi Ovadia Yosef that a new ordinance cannot be made as a preventive measure. See section 1B below.

<sup>17</sup> The special prayer inserted in the Amidah on fast days (see discussion below).

<sup>18</sup> The author of Magid Hamishneh is Vidal of Tolosa (fourteenth century). The Magid Mishneh is commentary to Rambam's Mishneh Torah. See 1B below for explanation.

<sup>19</sup> Halevi's reference is mistaken. The correct reference is actually Magid Mishneh chapter 6, halacha 20.

discussion, as has been said.

And the Maran Beit Yosef [Karo] (in Orech Chayim, seif 462 ) supports our opinion, for he wrote there these words of the Kol Bo<sup>20</sup>:  
 “One should not make Matzah which cannot be used during the seder in any way during the first two days<sup>21</sup> that he not [inadvertently] exchange the matzah with matzah with which he fulfills his obligation of eating matzah.” And the Maran Beit Yosef concluded in his own words: “ There is no reason to this custom to forbid or to make new decrees concerning a matter that the sages of the Talmud and the Achronim<sup>22</sup> were not concerned about.” What was deficient in his statement :“There is no reason to this custom to forbid or to make new decrees that the sages of the Talmud did not decree”? So why did he add “on matters which the sages of the Talmud were not concerned about?” From this [addition] we learn that the sages of each generation have the power to make decrees

<sup>20</sup> The author of Sefer Kol Bo is uncertain. It was written sometime at the end of the thirteenth century, and is related in structure to Sefer Orchot Chayim. It contains 148 chapters and includes laws of benediction and prayer, personal status, divorce and levirate marriage, civil and ritual matters, mourning , the first born, and the Land of Israel.

<sup>21</sup> The first two days are understood to mean the two days prior to the holiday.

<sup>22</sup> Achronim are the most recent sages of the previous generation. Halevi does not chose to address their inclusion in the statement at this juncture, but he will come back to it, as we shall see.

“on matters that the sages of the Talmud were concerned about” and, as was said above, on all matters that are similar to their decrees, since this need not be considered a “new” decree.<sup>23</sup>

### New Decrees On Matters That Are Given to All Are Permissible

In addition, even if there were no [Talmudic] decree similar to the one under discussion, we would be permitted to make prohibitions and to make new decrees since the Rivash<sup>24</sup> [Isaac Ben Sheshet Barfat] himself in siman 390 wrote in his ruling that we may not make new decrees of our own accord, see there. Yet we find that he himself found that there are circumstances when it is permissible to make new decrees, even beyond the decrees of the sages, since he wrote (in siman 125) and I quote: “It is therefore good to draw water for the Mikvah as long as there is mostly kosher water in it, which is more than twenty seahs<sup>25</sup> of kosher water,

<sup>23</sup> Halevi believes that the statement was clear without the phrase “on matters which the sages of the Talmud were not concerned about”. He therefore concludes that Karo’s purpose of including the phrase was to teach that the prohibition against making new preventive decrees was only against making decrees in things that the sages were not concerned about. If, on the other hand, they expressed concern over an issue, and we can prove this by pointing to a paradigm legislation, then we too can enact a restrictive legislation on a like matter.

<sup>24</sup> See explanation in section 1B below.

<sup>25</sup> A seah is a Talmudic unit of measure - according to Steinsaltz in the reference guide to his Talmud, p. 287 it is one thirtieth of a **כור** or 144 eggs.

and we must not make a decree that they not draw water or not add [to the water], since we must not make our own decrees more than that which the sages decreed, and [this would be true] even if they were not well versed in Torah [which they are in this case] since the koshering of a mikvah is not given to everyone, but only to the diligent and to the experts [in Jewish law]." From this we learn that concerning a matter which is given to all men and not just to those who are diligent and expert, as in the case of the mikvah, there is room to make decrees of our own, if they [those effected by the Gezera] are not well versed in Torah.

So , since this watch is available to everyone, and since one might be used to reaching for the watch to press the button, there is a real concern that he will also, by habit, do so on Shabbat. Concerning matters like this, we even have the authority, in my humble opinion, to make completely new decrees. But, as we said, all of this is superfluous verbiage, since we have already stated above that this is not really a new decree at all.

We Have Permission to Make New Decrees on Matters that do not

Constitute Any Uprooting of Words of Torah or of the Scribes

In researching this , I found in the words of the Gaon , the author of Sdei Chemed<sup>26</sup> (Klalim Ot gimel, siman 11) that he wrote in the name of Sefer Beit Shlomo (חיי'ן ד' Siman 29) in a comment by the son of the author) that" the words of the Rosh are not to be understood literally, that we are not to make any decrees. God forbid we should say so, for all four parts of the Shulkhan Arukh are replete with Takkanot and protective measures ( Sayagim) for generation after generation, concerning issues that are permitted according to Talmudic law, and there were many. Rather, his intention is [he meant to say] that the sages of the Talmud had power to make Takkanot, even to uproot something from the Torah, by means of "sit and don't do"<sup>27</sup> (shev v'al ta'aseh), but after the canonization of the Talmud, there is no longer this power to make a Takkanah in a matter that would involve uprooting the word of Torah or

<sup>26</sup> See chapter II , section B , for a description of Sdei Chemed. On p. 159 of vol. 1 of the 1949 edition, the passage begins" Decrees which may not be enacted after the sealing of the Talmud, and gives a list of references. The section outlined by Halevi begins on p. 160, with the words "And this..". Halevi accurately quoted the passage.

<sup>27</sup> The phrase "sit and don't do", sometimes used in contrast to "get up and do" is used to explain refraining from any action. Here it refers to the fact that the Sages occasionally overrode a positive Toraitc commandment in view of other considerations by commanding inaction. A classic example would be refraining from blowing the Shofar on Shabbat.

the words of the Sofrim through "sit and don't do".

The author [of Sdei Chemed] himself<sup>28</sup> repeated in Peat Hasadeh his objection to that which the author of Beit Yosef (Karo) wrote, which we quoted above (concerning the law of baking enriched Matzah on the two days preceding the festival) since there is no reason for this custom forbidding and making a decree on a matter about which we find that the sages were unconcerned. "This proves that he is not comfortable [making decrees] even in a matter which does not involve any uprooting of words of Torah or words of the Sofrim through inaction." This appears to be a very strong proof. But upon examination we shall see that careful analysis of the Maran's (Karo's) words overturns the proof of the author of Sdei Chemed. For what does this language really say when he says "there is no reason for this custom of forbidding"? Surely we are not permitted to do so, to make new decrees based on our own opinion after the closing of the Talmud. As the strong language of the Rosh put it, as we noted above (in Shabbat Chapter 2 Halacha 15) when he objected to the Geonim and wrote: "I also wonder how the Geonim could make new decrees after Rav Ashi sealed the Talmud."

<sup>28</sup> Hayim Hezekiah Medini (1832 - 1904) author of Sdei Chemed who is also the author of additions to Sdei Chemed entitled Peat Hasadeh.

It seems to me that this strengthens the claim of the editor the responsa "Beit Shlomo" above, since in the ruling of the Rosh, the Geonim were afraid to allow the "Aneinu" prayer, to be said in the morning and evening, lest something should happen to him (the one who prays), he might fall ill, or become ravenously hungry and not be able to taste anything, and thus be rendered a liar in his prayer [since he didn't, in fact, fast], and therefore the Rosh objected with great vehemence, because of their fear, and in these decrees they uprooted the words of the Sofrim by inaction (shev v'al ta'aseh), as is explained (in Taanit 11)<sup>29</sup>: An individual that took upon himself a fast, even if he should eat and drink all night must still pray the Taanit [Aneinu] prayer. But the decree concerning enriched matzah two days before the festival does not uproot anything<sup>30</sup>, as is easily understood by anyone who investigates [the issue], and therefore Karo's objection was very moderate, ie. even if it were true that the sages in every generation have the power to make decrees that do not constitute an uprooting of the words of Torah or of the Sofrim, there would still be no reason to make a decree forbidding a

<sup>29</sup> See explanation in section 1B below.

<sup>30</sup> In other words, no one is asked to abstain from doing a positive mitzvah as they were in the case of the Aneinu prayer.



matter which was not of concern to the Talmudic sages. In other words, even if the permission is given, it is a unreasonable, since no one was concerned about the matter, neither among the Talmudic sages nor among the Achronim.

A very probable concern is not to be considered to be a Gezera, and we too have permission to mandate [a prohibition when there is very probable concern].

In addition, this is not to be considered a Gezera at all<sup>31</sup>, and the rule that we are not permitted to make a Gezera from our own opinion does not apply. For I saw that the author of Sdei Chemed noted there that which he himself wrote in A letter to Hezekiah (Responsa Orech Chayim siman 25 p.1 beginning with "And in any event") and I quote: "And in any event, concerning this matter, it seems to me, that in such a case, it is certainly forbidden. Also the author of Pri Chadash<sup>32</sup> ( who was very wary of making new decrees after the sealing of the Talmud)

<sup>31</sup> If the likelihood of transgression is very high, this is no longer a preventative measure, just in case, but rather an ordinary issur.

<sup>32</sup> Pri Chadash (New Fruit) was written by Hezekiah De Silva in the seventeenth century). It can be found in the back of the Shulkhan Arukh.

acknowledges that this is certainly not an instance of a decree about which it was said that we should not make a decree based on our own opinion, since according to my very humble opinion , it is a very probable fear, and if so, he must act to contemplate in the Torah etc." See his words there, since we cannot give the full quotation.

From his words, we can clearly see that they did not say that we may not make decrees based on our own opinions. This applies specifically to certain ordinances, that is to say, when the matter it is not very usual, but might possibly happen occasionally, for example the decree concerning raking and covering, when it is not so likely that he will sin, since a man generally knows that it is Shabbat, but certainly it is possible that he will happen once to forget, and err, and sin. So also with the decree that one must not read by the light of a candle, lest he sin, and the like. But in this case ( in his book A letter to Hezekiah) it is a very probable concern, since one who contemplates a book will be moved to speech (see there), and this should not be called a decree that we do not have the permission to make based on our own opinion, but rather a very probable concern, and permission is given to every generation to be concerned and to make a preventive decree.

This applies also to our case of the electronic watch which has a button that may be used in order to illuminate the watch. There is reason to fear, (even for one who is not concerned about the prohibition of "muktzeh") that, because he is accustomed, during weekdays, to push the button and illuminate [the watch], he will also do so on Shabbat. So this is not a decree at all, but rather a very probable concern. Therefore we must forbid the use of the watch on Shabbat even to one for whom "muktzeh" is not the issue here.

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And now we will further prove, from the language of the author of Beit Yosef (Karo) cited above (upon which the aforementioned disputants supported their stand against making new Gezerot) that it is possible also for recent Dayanim to make new Gezerot, since he wrote in the words quoted above: "There is no reason for this custom of forbidding and making a Gezera on a matter that was of no concern to the sages of the Talmud nor to the recent (Achronim) sages." To what was he referring when he said "nor to recent sages"? And who gave them [the Achronim] permission to make new Gezerot? From this we learn that of course every generation is permitted, in the ways mentioned above, to make

Gezerot. So every generation that intends to make a new Gezera must find a clear basis for it in the words of the Talmudic sages or in the words of the recent sages that preceded it [the current generation], and then they are also permitted to make a Gezera.

On the strength of all of the above it seems to me, in my humble opinion, that even someone who is not concerned for reasons of muktzeh, and permits the use of an electronic watch on Shabbat (though, as I said, this is not acceptable in my humble opinion) there is still reason to make a Gezera to forbid it's use on Shabbat, and certainly there is very real concern in the case when that watch has a button that, by pushing on it, can illumine it [the watch face].

Subsequently, I found , in the course of my studies, a strong support to the principle of our rationale in the above responsum, that the sages of every generation are free to make Gezerot that have paradigms in the Talmud, since this is not considered a new Gezera. It is from the words of the Rosh (Rabbeinu Asher) in a responsum (klal 35). The author of Beit Yosef quotes these words of the Tur in Even Ha'ezer at the end of siman 36) and this is the responsum of the Rosh (responsum

3)<sup>33</sup>:

“As to your question whether a father can become an emissary to engage his daughter in marriage as an agent of the mekudash (the groom), and you wrote that Rabbi Shlomo Ben Adrat did not permit such a thing, it is a great wonder, and I could not find reason or proof for his ruling in the Babylonian Talmud or in the Jerusalem Talmud, nor in the Tosafot. When someone says such astonishing things he ought to support his words so perhaps one might demonstrate to him or prove to him that he did not rule well, since these words are nothing more than prophetic words <sup>34</sup> and they should not be listened to until he brings cogent proofs. But perhaps it is as if he is making a Gezera, because of his minor daughter, that if he becomes an emissary to receive the Kiddushin for his adult daughter, they will say that she is engaged, by his acceptance, like his minor daughter, but this is a new Gezera the like of which is not found in the Gemarah”.

And his words are clear, from the above, that any Gezera that has

<sup>33</sup> See section 1B below for explanation.

<sup>34</sup> By “prophetic words” he means words based not on reasoning but on revelation which requires no proof.

no paradigm in the Gemarah is to be considered a new Gezera that we are not permitted to make since the closing of the Talmud, but a Gezera that has a paradigm in the Talmud is not to be considered a new Gezera and the sages of every generation are permitted to make such a Gezera.

And from this comes the ruling to forbid an electronic watch on Shabbat (even to those who might allow it on considerations of Muktzeh) if it has a button that can be used to light the numbers, since this is a Gezera that has a paradigm in the Talmud as explained above. And this is my final word.

## 1B. Explanation of References

### 1. Gezera and Takkanah<sup>35</sup>

The legislative activity of Halachic scholars is called a Gezera when it is a directive aimed at deterring someone from doing a prohibited act. A Takkanah is a directive aimed at imposing a duty, a positive act.

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<sup>35</sup> The definitions of these terms are taken from The Principles of Jewish Law, ed. Menahem Elon.

The authority of halachic scholars to enact Takkanot is said to come from two places in the Torah. From Deuteronomy 17:11 :  
 "According to the law which they teach thee and according to the judgement which they shall tell thee, thou shalt do; thou shalt not turn aside from the sentence which they shall declare unto thee, to the right nor to the left." And from Deuteronomy 32:7 : "Ask thy father and he will declare unto you, thine elders and they will tell you."

The authority to enact Gezerot is from Leviticus 18:30 : "Therefore shall you keep my charge." Which is interpreted to mean "Make a safeguard to keep my charge."

## 2. Aseh Lecha Rav Vol 4 , Chapter 30<sup>36</sup>

In this initial ruling on the subject at hand, Halevi is, indeed, very brief. He answers the question of the watch on the basis of Muktzeh, pointing to the differences between the watch and the hearing aide which he elaborates in detail in our Responsum. He doesn't give any sources and he totally ignores the issue of the Gezera, which is the main point of

<sup>36</sup> Halevi Op. cit. p.189

our responsum. He does , however, mention the opposite ruling of Ovadia Yosef, ending with the phrase “and let the chooser choose” [ It’s your option to choose between two contradictory responsa.]<sup>37</sup>

### 3. Yechaveh Daat Part 2, Chapter 49

Yechaveh Daat is a collection of Responsa that, like Aseh Lecha Rav, were originally presented on Israeli radio, on Friday afternoons in the program “Halachic Corner”. Rabbi Ovadia Yosef does indeed rule to permit the wearing of electronic watches, with buttons that can be used to illumine the dials, on Shabbat, as long as the buttons are not used on Shabbat. He begins by discussing the wearing of any kind of watch on Shabbat, and proceeds to a discussion of electronic watches. He discusses the analogy to hearing aids, and ultimately does, indeed, base his permission on Chazon Ish , as Halevi indicates.

In Chazon Ish the discussion centers on an oil lamp. It is permitted to move an oil lamp, if it is not lit. Ovadia Yosef reasons that a hearing aid is like the unlit lamp, containing the elements passively , and from

<sup>37</sup> For the implications of this statement, see analysis in section 1C below.



there derives his conclusion concerning the watch. He references Mishneh Rabbi Akiva a responsa by Akiva Sofer who forbids the wearing of the watch, as a precaution, lest one forget and push the button to light it on Shabbat. But he disagrees with this position because "we are not permitted to make Gezerot and precautionary legislation based on our own opinion since the sealing of the Talmud." Here he references the Rosh on Shabbat Chapter 2, Siman 15, and the Magid Mishneh (see below), as well as a long list of other Poskim. (Halevi, in quoting Ovadia Yosef, somewhat shortens this list.)

#### 4 Rosh in Shabbat Chapter 2 Halacha 15

The Rosh is Rabbeinu Asher Ben Yehiel who wrote his commentary on the Talmud in the second half of the thirteenth and the beginning of the fourteenth centuries. It follows the pattern of Alfasi's Sefer Ha-halachot in both external structure and in its content - a synopsis of the Talmudic discussion followed by a definitive statement of law. His commentary can be found at the back of the Vilna edition of the Talmud.

The Rosh here is commenting on the section of the tractate of the

Talmud Shabbat 24 a that deals with whether or not one should mention the Rosh Chodesh blessings (Yaaleh Veyavo) in the Birkat Hamazon on Rosh Chodesh. The question has arisen because the rabbis have just concluded that Al Hanissim need not be said during Birkat Hamazon on Channukah because it is a Rabbinic festival, so the implication might be that , since Rosh Chodesh is Toraitic, rather than Rabbinic, Yaaleh Veyavo must be said during Birkat Hamazon on Rosh Chodesh. Alternatively, they suggest that the determining factor might be whether one is forbidden to engage in the performance of labor (and not whether the holiday is Toraitic or Rabbinically decreed), and since, on Rosh Chodesh, one is not forbidden, then, on Rosh Chodesh, one should not recite Yaaleh Veyavo during Birkat Hamazon.

The Gemarah goes on to report a dispute on this matter between Rav, who says one should say Yaaleh Veyavo, and Rabbi Chanina , who says one should not.

The Gemarah supports Rav's position with a Baraita from Rabbi Oshaya. In the Baraita Rabbi Oshaya teaches that on days when there is an obligation to bring a Musaf offering, like Rosh Chodesh, and

intermediate festival days, then one prays the full Amidah and recites a prayer that reflects on the specific occasion during the blessing for the return of the Temple, which is part of the Amidah (i.e., the Retzeh).

There is no Kedusha over wine, but there is mention of the particular occasion in the Birkat Hamazon, according to R. Oshaya in the Baraita.

Thus the Baraita supports Rav.

The continuation of the Baraita is then given. It is in this continuation that we find the statement which will serve as the basis for discussion by the Geonim, which ultimately leads to Rabbeinu Asher's key statement about Gezerot. The Baraita continues that on those days when there is no Musaf, such as Monday, Thursday, and the following Monday of fast days and on Maamadot (when members of the Maamad who were not at the Temple would fast for four days) during the evening, morning and afternoon recitation of the Amidah, they would recite a prayer which reflects the occasion. According to Rashi, this prayer was the "Aneinu" prayer. This prayer however, is not recited during the Birkat Hamazon of the evening before the fast, nor after breaking the fast.

This last point is the point which interests Rabeinu Asher. He brings in the teaching of Rav Huna in Taanit 11 (see below) that an individual who takes a fast upon himself, even though he is eating the night before, should pray the fast prayer. Rabbeinu Asher quotes Rashi to the effect that he found in the responsum of the Geonim a Baraita that says that there are times when a man is engaged in fasting and doesn't say the prayer, and other times when he is not fasting and does say the prayer. The latter occurs when he is about to begin the fast (the evening before) and the former, when he is at the end of his fast, and reciting his final Amidah. But the Geonim continue that it is not customary in their time to say the Aneinu prayer in the evening before the fast, nor even in the morning, lest someone have a mishap, or become ill and be unable to fast, and thus would have been lying when he said the prayer. They solve this by having the Shaliach Tzibbur say the prayer, since they assume that there will be at least one person in the community able to complete his fast. Rabbeinu Asher expresses his surprise at this last comment, since he understands this to be a Gezera of the Geonim (telling people not to say the prayer the evening before the fast, as a precaution against possibly breaking their word by not fasting). It is in this context that he makes the key statement, from the perspective of our discussion of the

issue of the electronic watch : "And I wonder, further , how the Geonim can make a new Gezera after Rav Ashi has sealed the Talmud."

#### 5. Magid Mishneh Chapter 6 Halacha 20

Magid Mishneh was written by Vidal of Tolosa, a colleague of Nissim Gerondi (ran) who, according to Elon<sup>38</sup> was a leading Spanish Halachic authority in the fourteenth century. In Magid Mishneh he attempted to explain the Mishneh Torah, indicate Halachic sources, and to suggest reasons why Maimonides made the choices he did between conflicting views. His goal was to defend the Rambam , particularly against the Rabad.

The discussion in this section of the Mishneh Torah concerns what is permissible to add to Matzah dough. He permits kneading the dough with water, oil or honey, or milk, for use on all but the first day, not because it would be Chametz, but because it must be "Bread of Affliction". Since only the first day must matzah be a reminder of the Bread of Affliction, this restriction is only for matzah used on the first

<sup>38</sup> Op. cit. p.1232

day.

In his commentary, Vidal of Tolosa mentions various Rabbis who try to extend the restriction but concludes by defending Rambam's position saying "But I say we are not permitted, since the generation of the Geonim, to make Gezerot based on our own opinion." Halevi agrees that in this case, it really would have been a new decree and therefore accepts the principle that new Gezerot are forbidden in situations such as this. Ovadia Yosef also cites this example to bolster his argument. Halevi doesn't disagree, he just continues to point out in which ways the case of the watch with the button is different than this example.

#### 6. Beit Yosef in Orech Chayim, Section 462

Beit Yosef is Joseph Karo's attempt to collect, into a single work, the different opinions concerning the rules of Halacha up until his time . He formulated a methodology, in Beit Yosef, to determine which opinion should be selected as law. The Shulkhan Arukh was written as a complement to the Beit Yosef, in order to make the conclusions conveniently accessible. Beit Yosef is found in the margins of the Tur.

Karo , in the cited passage , is discussing the question of matzah which has been enriched with wine, honey and oil. He particularly mentions, as Halevi quotes, the Kolbo , who says that we ought not make enriched matzah for consumption on the first two days, lest we inadvertently use it as fulfilling the mitzvah of eating (unenriched ) Matzah. Karo, however, disagrees, and says he is against this custom. We are precluded , he concludes, from making Gezerot concerning issues that were not of concern to the Talmudic sages or to the last sages. Halevi's point is that by adding the phrase "that were not of concern to the Talmudic sages or to the recent sages", Karo is telling us that , if in fact we can show that these matters were of concern to them, then we have permission to make Gezerot on such matters.

#### 7. Rivash (Isaac Ben Sheshet Barfat) Siman 390

The Rivash (1326-1408) is a Spanish Talmudic authority. He was a student of the Ran (R. Nissim Ben Reuben). He fled Spain and ultimately settled in Algiers. He is the author of 417 responsa which reflect Jewish life in the fourteenth century. They were valued by Karo and others. His

responsa were first published under the title Shelot u- Teshuvot at Constantinople in 1546-7.

### 8. Taanit 11b

In Taanit 11b we have a recurrence of the same Mishna which was brought in Shabbat 24a<sup>39</sup>. Rabbi Zeira said in the name of Rav Huna, regarding an individual who had committed himself to a fast. Even if he ate or drank the whole night before the fast, in the morning he prays the Aneinu prayer of the fast, during the Amidah. Eating and drinking at night does not abrogate his fast. But if, at the end of the day of his fast, he decides to wait until morning to eat, he does not repeat the prayer in his Shacharit Amidah, even if he has not yet broken his fast.

The Gemarah proceeds to analyze this ruling of Rav Huna. Rav Yosef asks for the explanation for the end of Rav Huna's ruling, that the Aneinu is not recited in the morning. Perhaps the person's fast after the end of the day is to be seen as a new fast, which begins at night and goes until morning. But if so, no clear amount of time has been stipulated for this new fast. It is open ended and it could be broken at any

<sup>39</sup> See analysis of the Rosh in Shabbat Chapter 2 Halacha 15 above.



time, and therefore no Aneinu should be recited in the morning (in a sense it is not a "real" fast because a full time frame was not stipulated.) Another explanation is that a partial fast is real, and cannot be broken at any time, but not long enough to require Aneinu, because it is not a full (second day) fast.

Abaye proposes a third explanation of Rav Huna's ruling. In general, a partial fast is significant enough to warrant saying the Aneinu, but in this case (as described by Rav Huna) it is not a real fast, because the person did not declare a new fast, but simply extended his old fast, without a commitment.

### 9. Rosh Responsum 3

This responsum is about whether a father can represent the groom in the negotiation of a marriage of his adult daughter. Since the father has the right to arrange a marriage for his minor daughter without her consent, his acting as an agent for the groom, when negotiating a marriage with his adult daughter, might get misconstrued as his acting without her consent, (ie. as not differing from his role in the marriage of

his minor daughter) and therefore, the Rosh speculates, the decree against the father acting as the groom's agent was made. But he objects to this Gezera, on the grounds that there is none like it to serve as a paradigm in the Gemarah. This point is the support Halevi sees, in this responsum, for his own argument.

### 1C. Analysis of the Argument

Halevi begins by reviewing his argument against wearing any kind of electronic watch on Shabbat, even if it does not have a button which is used to illumine the face of the watch. This phase of the responsum is merely a backing up of his previous ruling in Aseh Lecha Rav part 4 Halacha 30, with halachic sources and rationales, which is, indeed, all that the questioner has really requested. Halevi believes that such a watch is muktzeh, because batteries are forbidden for use on Shabbat. He feels that it is necessary to explicitly spell out the difference between a hearing aid and an electronic watch, since he has previously permitted the use of hearing aids on Shabbat and they also have batteries (also because Rabbi Ovadia Yosef bases his argument to permit wearing the watches on analogy to hearing aids). Halevi explains that this case is

different because of the "pikuach nefesh" issue with regard to hearing aids , and because hearing aids enable the deaf person to perform other Mitzvot. Electronic watches, which do not fall into this category, are, according to Halevi , Muktzeh, because of their batteries, and should not be permitted , for fear that they will set a dangerous precedent for use of other battery run appliances on Shabbat.

The argument could have ended here, but Halevi goes on at great length to address the issue of watches with buttons to illumine their dials. Why? It is not required by the question itself, which is really satisfactorily answered by the Muktzeh argument. Yet the bulk of this responsum addresses the issue of the watch with the button. In fact, as we can see from the heading of this responsum, Halevi's main concern is to elucidate an important aspect of Jewish law, the right of contemporary Poskim to make Gezerot. This is of crucial concern to him, as a contemporary Posek who is trying to make halacha usable in the modern state. Without the ability to make Takkanot and Gezerot, the adaptability of Halacha to contemporary society is greatly restricted. His argument is necessary to insure the flexibility and adaptability that is required, if Dayanim are to be able to stay within Halacha and still accommodate the

needs of contemporary Israeli society. For this reason, Halevi elaborates his reasoning at length. He must build a strong foundation for this crucial issue.

Halevi approaches his argument by analyzing the phrase, "we are not qualified to make Gezerot or precautionary measures (Sayagim) based on our own opinion since the sealing [closing the canon] of the Talmud etc."

This principle is found in both the Rosh and the Magid Mishneh, as quoted by Ovadia Yosef. Halevi does not disagree with the principle, but rather chooses to narrow its scope and definition, by analyzing each phrase.

First he looks at the phrase "based on our own opinion." Halevi's argument is that if we can find a precedent in Talmud that serves as a paradigm case, then our Gezera is not "based on our own opinion" but, rather, is simply a variant of a Gezera based on the opinion of a Talmudic authority. Halevi bases his reasoning on Karo's statement in Orech Chayim which he quotes. Basically, his argument is that Karo would not have qualified his statement about not making Gezerot with the phrase "concerning a matter that the sages of the Talmud and the Achronim

were not concerned about" for no reason. Therefore, he must have meant that, if it was a matter over which the sages had also expressed concern, then we must be permitted to make Gezerot concerning this matter. He has already stated that he believes that the matter under consideration (the button on the watch) is the same general problem as that posed by the live coals that ought to be raked to prevent their thoughtless use, through habit, on Shabbat.<sup>40</sup> Thus he finds reason for his Gezera because the issue is not "based on our own opinion" but based on a concern previously expressed, by the Tannaim, in the Mishnah.

Again, the argument could have ended here, but Halevi's concern is no longer the watch, but rather, an exploration of the boundaries of the restriction on modern halakhists to enact Gezerot. Halevi goes on to limit the definition of "new decrees" to only decrees which are not "given to all", i.e., which are targeted to an elite segment of the population, specifically those learned and strict in following the Torah. When a Gezera is general, and includes people who are not necessarily knowledgeable in the laws of Torah, then a new decree is permitted. He bases this part of the analysis on the Rivash's statement in the case of

<sup>40</sup> In Mishnah Shabbat, see above.

the Mikveh . The Rivash makes a statement against making new Gezerot. Halevi dissects his statement against making new Gezerot, and much as he did in the case of Karo's statement, finds an allusion in the phrasing of the Rivash's statement, which can be turned around, and used as a permission to make Gezerot in specific instances. In this case, the use of the phrase "even if they were not well versed in Torah" opens the door for Halevi's understanding that, a general decree which covers people who are not well versed in Torah usually would be permitted. In other words, this mikvah case is an exception which proves the rule.

Next Halevi tackles the issue of Gezerot which do not uproot words of Torah or the Sofrim. He begins with the passage, which he found in Sdei Chemed , that the words of the Rosh, which we looked at, are not to be taken literally. If they were, it would invalidate a great deal of Halacha which has developed since the Talmud, as he points out. Rather , according to this passage from Sefer Beit Shlomo quoted in the Sdei Chemed , the Rosh meant to say that since the Talmud, Dayanim no longer have the power to make Gezerot which would result in uprooting words of Torah or Sofrim by allowing non compliance with a Toraitic commandment. (For example, in the Taanit case, it would require

someone who should be saying Aneinu during the Amidah on the evening of their fast not to do so.) This, Halevi agrees, is unacceptable. However, that leaves the way open for any Gezera which does not uproot words of Torah, as in the case of the enriched Matzah on the two days before Pesah, for example, where no uprooting of Torah law has occurred. (No one is asked to refrain from doing any positive commandment). Of course, Halevi points out, this specific example would be ruled out for other reasons, namely that it was not a matter of previous concern to the Talmudic sages or the Achronim, as we already discussed. So, we conclude, if the Gezera that a modern Dayan proposes to make is of a general nature, does not involve uprooting of Torah law or laws of the Sofrim, and has some sort of precedent in a concern expressed in the Talmud, then there is no reason that he cannot do so.

The final limitation of the restriction against making new Gezerot is to define the restriction as applying only to Gezerot which are against actions which are relatively unlikely to occur. Unacceptable actions which are extremely likely to occur, however, must be guarded against, and laws against these cannot even be defined as Gezerot, according to Halevi. This argument is based on the words of the author of Sdei

Chemed. Each generation has the right to legislate as necessary to prevent such highly likely infringements.

In his addendum Halevi brings one more proof for his contention that the sages of recent generations have the right to make Gezerot under the conditions as he has outlined. Here again he uses the very words of Karo which are understood to be against the right of modern sages to make Gezerot to prove the opposite. He returns to the phrase "that were not of concern to the Sages of the Talmud nor to the recent sages (Achronim)". He points out that the inclusion of the Achronim in this restriction implies that they themselves could, in fact make Gezerot, even though they came after the closing of the Talmud. If they could, he reasons, then whatever reasons allowed them to do so, must also apply to the contemporary Posek. By this reasoning Halevi is making an important assumption - that there is essentially no difference between the Achronim of the previous generation and the Poskim of today (who will be the achronim of the next generation). If one post - Talmudic Dayan can make a Gezera, then any can. This perspective agrees with the perspective of the Rambam in the Mishneh Torah, who understands that, after the Talmud, all Poskim are alike in terms of their ability make



halacha.<sup>41</sup>

Halevi's main concern in this responsum, as has been said, is establishing the right of making Gezerot, within specific parameters, for contemporary Poskim. At issue is the flexibility of contemporary applications of Halacha. In this context, his statement that "the chooser must choose" is interesting. Here we have another acknowledgment of the importance of flexibility. Halevi disagrees with Ovadia Yosef, but in his initial responsum on this issue, short as it was, he took the time to note that there was a dissenting contemporary opinion by a respected Dayan. In fact, it was this reference to Ovadia Yosef which prompted the question that initiated this second, more important responsum. It seems to me that Halevi takes this issue of choice seriously. In a contemporary society, we have access to many different opinions by a variety of Dayanim. Here too, lies the path of flexibility. Jews who are serious about Halacha have the opportunity to listen to a variety of rationales of different Poskim and to choose that which holds up the best in their opinion. In this free marketplace of Poskim, perhaps we can find the

<sup>41</sup> Not all Rabbis agree with this historical perspective. Karo, for example believes that Halacha should be determined by following the rulings of the Great Ones of past generations.

flexibility that Halevi takes such pains to defend. In this context, it is significant that both Halevi and Ovadia Yosef choose to produce radio programs. They both understand the importance of media exposure to Poskim who are competing in the market place of Halacha in the contemporary state.

## II. Security Service on Shabbat<sup>42</sup>

### A. Translation:

I hereby acknowledge the receipt of your letter from this nineteenth of Kislev, which arrived this week, and I hasten to respond.

You asked me if it is permissible to work as a police detective on Shabbat, since the job requires working on Shabbat etc. and they are not willing to release you from working on Shabbat, etc. You noted that this job has an element of Pikuach Nefesh<sup>43</sup> etc.

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<sup>42</sup> Aseh Lecha Rav, vol.5, Halacha 50, p. 358.

<sup>43</sup> See note 7 above.

This matter is a matter of controversy among the great Poskim of our generation. There are those who think that all work in the area of security, both military and police, when it is an observant Jew's turn to work on Shabbat, is permitted as long as there is an element of Pikuach Nefesh involved, and one must not impose the duty on fellow workers who are not observant. On the other hand, there are those who claim that if, in theory, all of Israel were observant Jews, then certainly this work would be permitted, since it has an element of Pikuach Nefesh. However, at this time, to our sorrow and dismay, there are many who are not observant, so how can one even consider allowing an observant Jew to desecrate the Sabbath, when, at the same time, there are others who are desecrating the Sabbath in their homes. Therefore they are of the opinion that observant Jews should not be permitted to work on Shabbat, even if it is a case of Pikuach Nefesh.

I have a long Responsum on this subject, but I would never publish it since I do not wish to insert myself between a rock and a hard place [literally: between two mountains] concerning this difficult question, and let he who chooses choose.

## 2.B. Analysis of the Argument

Here we have Halevi at his most practical. In contrast to the first responsum we looked at, which Halevi used as an excuse to develop the halachic sources of his belief in the right of contemporary Poskim to make Gezerot, here, Halevi refrains from taking a position, or from presenting the Halachic background to either argument. He merely states two positions. One permitting the work, on the basis of Pikuach Nefesh. The other forbidding, on the basis of the sad reality that there are non-observant Jews ready to work in his place. The two positions reflect different attitudes towards non-observant Jews. The first, respecting them as Jews, despite their choice not to observe Mitzvot, the second, relating to them almost as if they were non Jews.

Halevi maintains a stance of neutrality. He relies heavily on the right of the modern observant Jew to choose between the rulings of Poskim who take contradictory positions. He is candid in his rationale for this approach, choosing not to embroil himself in a debate that could have no practical benefit (since both positions have been clearly articulated by others.) His reticence points to his awareness of the

precariousness of his enterprise. Halevi treads a fine line in the Haredi community and is cautious about maintaining his credibility as he attempts to stretch Halacha to accommodate the needs of the modern state.

### 3. Crossing the Street on Shabbat<sup>44</sup>

I hereby confirm the receipt of your letter from this twentieth of Sivan, and in response, it seems to me very correct to refrain from crossing the street on the Holy Shabbat when there is an approaching vehicle for the very correct reason that you wrote, that the driver would then be forced to decelerate and afterwards to accelerate. All of this would be caused by one's crossing the street. I behave accordingly on Shabbat, in that I do not cross the street unless it is completely clear [of traffic], or unless there is a vehicle at so great a distance that it is apparent that he would not be required to change his speed on my account.

Thank you very much for all of your faithful greetings and I return

<sup>44</sup> Aseh Lecha Rav, vol. 5, Halacha 52, p. 360.

to you also blessings on your household that God grant all the desires of your heart for good and for blessing.

### 3 B. Analysis of the Argument

Again, a simple responsum in which Halevi deals with the practical implications of modernity, and the problems implicit in living in a contemporary Jewish State. One must confront the use of forbidden technology by non-observant Jews. The issue, as in the responsum above, is the avoidance of being the inadvertent cause of another's desecration of the Sabbath. In a Jewish state one's responsibilities on Shabbat extend beyond one's own observance to the effects of one's actions on the observance, or lack of observance, of others.

#### 4. Sending a Telegram to the United States on Saturday Night<sup>45</sup>

The questioner also asked for a ruling concerning an incident that occurred when he sent a telegram to the United States on Saturday night, and requested that it not be delivered until the next day at 10:00. But

<sup>45</sup> Aseh Lecha Rav, vol. 5, Halacha 56, p. 361.

he found out, afterwards, that it is customary there to inform the recipient of the telegram of its contents by telephone. Because of this, it turned out that the information was given to the recipient when it was still Shabbat where he lived. It appears simply that one should not do this, in the future, under any circumstances. Suppose the recipient of the telegram is an observant Jew, who observes the Shabbat, then the post office there will bother him with a phone call on that very Shabbat. Since he will not answer the phone, he will remain disturbed and worried on Shabbat and it is obvious that this is [a source of] distress for one who observes the laws of Shabbat. If the recipient of the telegram is not an observant Jew, then he will pick up the receiver in order to receive the call. And then the sender of the telegram will be the cause of this. Therefore one must simply refrain from doing so [sending the telegram on Saturday night].

#### 4 B. Analysis of the Argument

This responsum is similar to the previous one in that it attempts to address religious issues as effected by modern technology. It is interesting, that from his perspective in the Modern Jewish State, Halevi

here assumes that the recipient of the telegram in America is Jewish, and that the only question is whether or not he is an observant Jew.

### 5. Is It Permissible to Prepare for Tests on Shabbat ?<sup>46</sup>

#### The Query:

I am a young observant Jew who studies in a religious High School. During the period of examinations, we are burdened with an unusual amount of studies, and I am therefore accustomed to studying on Shabbat in order to prepare for exams in general studies, like History, Literature and the like. My friends remarked that this is forbidden on Shabbat. Is this true?

#### The Responsum:

Your question is a matter of dispute among the great [Rabbis] from among the Rishonim. The Rambam wrote (in Perush Mishniyot, Masechet Shabbat Chapter 23 Mishneh 2)<sup>47</sup> that on Shabbat and on Festivals it is forbidden to study anything other than the Book of Prophets and their

<sup>46</sup> Aseh Lecha Rav, vol.1, Halacha 36, p. 115.

<sup>47</sup> This is an accurate quotation from Rambam's commentary to the Mishnah. See p.89 in the Mosad haRav Kook, 1963 edition.



commentaries , even if the book [that one wished to study on Shabbat] was the wisest of the wise, and other Poskim from among the greats of the Rishonim follow him [ rule according to Maimonides' opinion].

On the other hand, the Rashba permitted consulting astrolobes<sup>48</sup> on Shabbat, and his reason : "That the law of instruments applies to it. (He means that it is not Muktzeh.) Every instrument is permitted for it's own purpose, even an instrument whose function is forbidden, and even more so when it is only one of the books of wisdom, since what difference is there between something written on copper tablets with an iron pen, and something written in a book." And in the continuation of his words he even permitted the removal of the charts and their return, etc. And the Ramban also permitted the study of medical texts on Shabbat since they contain wisdom. It is apparent from their words that the study of books containing wisdom is permitted on Shabbat, and others among the great Poskim agree with them.

From the words of the author of the Shulkhan Arukh <sup>49</sup>( Siman

<sup>48</sup> Instruments for viewing the stars.

<sup>49</sup> See explanation of the text in section 5B below.

307, seif 17) it appears that he tends towards forbidding, since, in the beginning, he only wrote the opinions of those who forbid it, and afterwards, he wrote [the opinions of] those who permitted it. According to the rule of Halachic judgements, the opinion of the author is according to the opinion he wrote first , in this case, those who forbid. For this reason, it is certain that one should refrain from studying wisdom books on Shabbat "other than the books of the Prophets and their commentaries" as the illustrious [literally the golden] language of our teacher the Rambam states. These words are worthy of him who said them, since one should sanctify the Sabbath day with holy words, and this [restriction] applies to [words of] general wisdom, even if they are for the sake of pure scientific truth, with no offense to the values of the tradition, on the Holy Sabbath.

However, since your question concerns preparation for an examination, and I have no doubt that it would cause you grief and distress to refrain from this study, we can rely on the opinion of "there are those who permit it" that Karo suggested (since this is his intent in quoting the second opinion, to teach us that it is possible to rely on it in times of stress, for if not, why did he mention it at all). Therefore,

according to this, it would be permissible in periods of examinations to study general studies [on Shabbat] , and the principle thing is that all of your deeds be for the sake of heaven.

#### 5B. Explanation of the Sources

##### 1. Shulkhan Arukh Orech Chayim, Hilchot Shabbat ( Siman 307, seif 17)

Karo says that it is forbidden to study anything other than words of Torah in Shabbat, even words of wisdom. He goes on to say that there are those that permit it, (Be'er Hagolah tells us that this is the Rashba) and even permits consulting astrolabes on Shabbat. Halevi accurately reflects Karo here.

#### 5C. Analysis of the Argument

Halevi begins by presenting both sides of the issue in dispute and coming down on the more stringent side. This is a pattern that is familiar to us. He uses the sources to set the stage, and argues the stringency to establish his credibility. Then comes the twist. The twist in this case

is the issue of stress and grief which should be avoided on Shabbat. This weighs the scales in the direction of the more lenient rulings. Halevi's technique seems to be to find the permission in a dissenting opinion and then to find a principle in the current situation which justifies using the more lenient interpretation. When he can find no such principle, he reverts to "let the chooser choose", but when he does find the principle which demands leniency he rules unequivocally in favor of the leniency, always provided there is an opinion in the literature to back him up.

## Chapter 4

### Aseh Lecha Rav: Tzahal (The Army)

In this chapter we will examine an essay by Halevi which he included in the third volume of Aseh Lecha Rav. While not exactly a responsum, it clearly comes to answer the unasked question : Should Yeshiva students be exempt from military service in the Modern State? This comprehensive essay touches on many of the key halakhic themes which are raised by compulsory military service in the Jewish State, and afford us an opportunity to explore Halevi's understanding of this critical issue in Israeli life .

#### 1 A. Translation:

##### 1. Military Service in Halakha<sup>1</sup>

##### Those who are subject to the Draft

"And the Lord spoke to Moses... on the first day of the second month... Take the sum of all the congregation of the People of Israel... from twenty years of age and up , those who are are able to go to war in

<sup>1</sup>Halevi, Aseh Lecha Rav, Vol. 3, p.315.

Israel, you will number them for the purpose of military service.”

(Numbers 1: 1-3). Rashbam<sup>2</sup> explained: “Accordingly, from now on they are about to enter the Land of Israel, and those who are twenty years old are fit to serve in the military. Since on this, the twentieth of the second month, the cloud was lifted, as is written in the portion “Beha’alotcha”<sup>3</sup>. There it is written: “We are travelling to the place that God said” etc., and for this reason The Holy One Blessed Be He commanded, at the beginning of this month, to count them.”<sup>4</sup> Almost all Torah commentaries explain this [passage] similarly.

The Ramban<sup>5</sup> (Numbers 1:5) adds: “They needed to know the number of armed men for military service, and also the number of each

<sup>2</sup> Rashbam (Rabbi Samuel Ben Meir) is a French commentator, the grandson of Rashi. He is one of the Tosafists. He wrote in the early eleventh century. His commentary can be found in Torat Chayim. (See article on Samuel Ben Meir in The Jewish Encyclopedia, vol. 11, p.23.

<sup>3</sup> Numbers 10:11

<sup>4</sup> Halevi's footnote: “By the way, this date, the month of Iyar, deserves special attention, since it apparently was destined by divine attention for Israel's entrance into the Land, or at least the beginning of the journey by which they must come to enter the Land, had not sin intervened, see what we have written in our book Religion and State, p. 92.

<sup>5</sup> Ramban (Rabbi Moses Ben Nahman) also known as Nahmanides, was a thirteenth century Rabbi from Barcelona. He was a great Halakhist and Biblical commentator who bridged the Tosafists and the Sephardic traditions, and is also known for his mystic orientation. His commentary to Bamidbar can be found in Torat Chayim. See “Nahmanides” in Encyclopedia Judaica.

tribe ... since Torah does not rely on the miracle that "one might pursue a thousand"<sup>6</sup>, and this is the meaning of "Every one in Israel who must join the army ." Hence the census was for the sake of the military."

The Malbim<sup>7</sup> ( Numbers 1:3) adds: "They needed to know the numbers in the military and to order them by flags, like a camp that is about to go to war, which is arranged in review, each man by his flag and under the officers of thousands, and officers of hundreds."

This is the only place in the Torah where the obligation of the draft is made clear, in narrative form rather than as an explicit commandment for future generations. But it is clear that it was an obligatory draft, and thus the Torah explained the issue of the one who builds a house etc. as we will explain below. [The distinction is made between] the Optional War (Milchemet Reshut), meaning that everyone

<sup>6</sup> See Leviticus 26:8 "And five of you shall chase a hundred, and a hundred of you shall chase a thousand; and your enemies shall fall before you by the sword." Halevi seems to be paraphrasing this text.

<sup>7</sup> Malbim (Meir Lob Ben Jehiel Michael) was a Russian Rabbi, preacher and Hebraist who wrote at the beginning of the nineteenth century. He was known for his violent confrontations with German Reformers in Bucharest , Moghilef, and in Konigsberg. His commentary to Bamidbar is in his book Ha Torah Ve'Hamitzvah , a commentary on the Pentateuch and Sifra (Warsaw 1874-80). See "Malbim" in The Jewish Encyclopedia, vol. VIII, p.276

else was obligated [except the designated exemptions] and the Commanded War (Milchemet Mitzvah) in which there were no exemptions.

### Exemption of the Tribe of Levi

This is the reason that the Tribe of Levi was not counted, since they did not serve in the military, but they were counted for service in the Tabernacle. (See Rashbam to Numbers 1:47).<sup>8</sup> Despite this, Scripture states: "The Levitical Priests, all the Tribe of Levi, will not have a part or portion with Israel. They will eat the [offerings of] fire of God as its [the tribe's] Portion. (Deuteronomy 18:1).<sup>9</sup> Whoever does not go out to war, by law, will not receive a portion of the conquered territory, and not of the booty. Or, more accurately, whoever does not receive a

<sup>8</sup> See footnote 2 above.

<sup>9</sup> Halevi's footnote: And it seems to me, in my humble opinion, that the story about the priests of Egypt, who did not sell their land during the famine (Genesis 47:13-26) is the background to this commandment. It describes that when all of Egypt sold "Each man his own field, because the famine weighed heavy upon him" and they were uprooted, from one city to the next, from one end of the borders of Egypt to the other, as is described in Scripture, but the priests, in addition to their laws which Pharaoh gave them for their livelihood, also kept their land and their property in their possession. This did not contribute to honor or respect for the priests among the people. In contrast, the Torah promises the sustenance of the priests from the holy altar and the holy bread offering, but prevents them from having any territorial portion. For no story in the Torah is there only for its own sake [but to teach some lesson to future generations]. We already explained this in the introduction to our book Mekor Chayim. That is to say, that all of the Book of Genesis is a introduction to the entire Torah, its laws and its statutes (see there).



territorial portion, and who dedicates himself to worship<sup>10</sup> in the House of God, is not required by law to go out to war.

This is the wording of the Rambam<sup>11</sup> (Hilchot Shmita V'yovel Chapter 13, Halakha 10): "The entire Tribe of Levi were warned that they would not be given a portion of land in the Land of Canaan. And they were also enjoined to seize no part in the spoils of war when the towns cities were conquered, as it says [in Scripture]: "The Levitical Priests , all the Tribe of Levi, will have no portion nor inheritance with Israel." (Deut. 18:1) 'Portion' [refers to] spoils of war, and 'inheritance' [refers to] land. And so [Scripture] also says: 'In their land , you will have no inheritance, and you will have no portion among them.' [Which refers to] booty."<sup>12</sup>

"Why did Levi not merit, along with his brothers, a portion of the territory of the Land of Israel and of it's booty?" Because he was singled

<sup>10</sup> "Worship" in this context means cultic service .

<sup>11</sup> Maimonides, Mishneh Torah, Hilchot Shemita V'yovel, Seder Zeraim, Chapter 11 See explanation in section 1b below.

<sup>12</sup> Halevi here skips a section of Rambam, at the end of Halacha ten , that specifies the punishment that will come to the Levite who breaks this prohibition and seizes spoils of war , or land, and Halacha eleven. He picks up his citation with the beginning of Halacha twelve. He will return to Halacha eleven at a further phase in his argument, see below.

out to worship God and to serve Him, and to teach His true ways and His just laws to the multitude. As it is written: 'They will teach your laws to Jacob, and your statutes to Israel.' (Deuteronomy 33:10) For this reason, they were separated out from the ways of the world: They may not wage war like the rest of Israel, they may not receive territory, and they may not acquire anything for themselves by physical force. Rather, they are the army of God. As it is written [in Scripture] 'Bless, God, his army' (Deut.33:11) It is He, blessed be He, who acquires for them [ie. meets their physical needs], as it is said, "I am your portion and your inheritance." (Numbers 18:20) ( Hilchot Shemita Ve'yovel perek 13 Halakha 12).

This great and important Halakha, that the tribe of Levi are exempt from going out to war, is clear and unambiguous in Scripture, but nevertheless, its details require clarification.

#### Commanded (Milchemet Mitzvah) and Optional (Milchemet Reshut)

#### Wars

Since it is clear in Scripture that they [the Levites] were exempt

from the Wars of Conquest of the Land, it is therefore clear that they were exempt from all Commanded Wars. But Scripture explains about those who return from the front, he who has built a house and not inaugurated it, planted a vineyard but did not eat of its fruit [after the third year] , espoused a wife but did not consummate the marriage, and also the one who is a coward or faint of heart - that all of these concern [exemptions during] Optional Wars, but in Commanded Wars "Everyone must go out, even the bridegroom from his chamber, and the bride from her wedding canopy." (Sota 44 b)<sup>13</sup> "Which war is a Commanded War? . . . [ the war against the] seven nations<sup>14</sup>, the war against Amalek, and the [ the war in ] support of [the people of] Israel against an enemy who attacks them. But the Optional War is a war that is fought with the rest of the nations in order to expand the border of Israel and to increase its greatness and reputation." (Rambam, Hilchot Melachim Perek 5, Halakha1)<sup>15</sup> From this [we can deduce] that the Tribe of Levi were exempt even from a defensive war against an enemy and foe, since that falls under the category of Commanded War, like the War of Conquest of the Land, from which they were exempt.

<sup>13</sup> See explanation in section 1b below.

<sup>14</sup> The seven nations who inhabited the Land of Israel before the biblical conquest.

<sup>15</sup> See explanation in section 1b below.

It might be possible to argue that they were exempt specifically from the War of Conquest of the Land, which is explained in Scripture, because they did not take part in it, but that there is reason to obligate them with regard to defensive war, since they would be fighting for their very lives - but there is no basis for this in Halakha. And indeed we shall see that this argument is basically flawed. Despite the fact that they did not take part in the lottery for the division of the land, as did the other tribes, they did give them cities to dwell in and yards for "their cattle, their property and all of their livestock". (Bamidbar 35:3). For this reason, it would have been appropriate for them to fight. In addition, The War of Conquest of the Land also was as dangerous as any defensive war "from enemy or foe that rises against them", for if Israel had failed in the War of Conquest of the Land, danger would also loom over the lives of the tribe of Levi. Nevertheless, they were exempted from that war, and the real reason [for this exemption] is the one in the words of the Rambam: "Because it [the tribe of Levi] was singled out to worship God and to serve Him and to teach His true ways". And this reason is strong enough to exempt even from a war of defense "against an enemy that attacks them".

As a matter of fact, it is apparent from the language of the Rambam that the two things, that is to say, the fact that they do not receive a territorial portion, and the fact that they do not wage war, both are a consequence of having been singled out for service to God, as it is written: "Why did Levi not merit a territorial portion in the Land of Israel . . . because he was singled out to worship God . . . therefore ( see above, for this very reason, that he was singled out for the worship of God) they were separated from the ways of the world: They did not wage war"... It is clear that the two things result from the same cause, one is not derived from the other, so, for this reason, they were exempt even from a Commanded War of the type that was in defense against an enemy or foe.

Another clear and conclusive proof comes from that which the Rambam ruled in Halakha 11<sup>16</sup>: "It seems to me. that these words refer only to the land that was given in covenant to Abraham Isaac and Jacob, which their children inherited, and which was divided among them, but all the other lands that a King from among the Kings of Israel might

<sup>16</sup> Maimonides, Mishneh Torah. Zeraim, Mosad Harav Kook edition, p. 644 . See explanation in section 1b below.

conquer, the priests and Levites in those lands may partake , as does all the rest of Israel, of the booty.” Which means that in conquests outside the land of Israel, they receive a territorial portion, despite the fact that they do not participate in the war. For in the next Halakha, Scripture states simply that the Levites do not “wage war like the rest of Israel”, which means any war, not for conquest of the Land [of Israel] and not for conquest of other lands. From this [we may conclude] that there is no connection whatsoever between their not receiving a territorial portion in the Land [of Israel] and their exemption from the field of battle, rather, the reason [for each] is that they were singled out to worship God.

#### Those who are exempt from Optional Wars

Here we hope to focus on the explanation of the difference between Commanded War , in which all must participate, and Optional War, from which one who builds a house, plants a vineyard, or betroths a woman, as well as the cowardly or the faint of heart , return from the frontline for service in the rear. Similarly one who is newly wed, or builds a house but has not inaugurated it, or planted a vineyard but not

harvested its fruit, does not go out at all to war until a year had passed, not even to serve in the rear guard, as is explained in the Gemarah there [Sota 44 b]. For what reason did the Torah release these men from Optional Warfare? From Rashi's<sup>17</sup> commentary to the Chumash it appears that the Torah had compassion for these people because of the [potential] deep distress [which they would experience going to war under these circumstances]. One who had planted a vineyard, - another man would eat of its fruit "And this would be a matter of undue distress." ( the comments of Rashi to Deuteronomy 20:5). In other words, Torah does not want that such undue distress should happen as a result of Optional Warfare, and this is also the reasoning concerning one who betroths a woman or builds a house but does not consecrate it.

In the Ramban ( to Deuteronomy 20:5)<sup>18</sup> [we find]: "He commanded these three [categories of people] to return, since his mind would be on his house or his vineyard or on his wife, and he might flee [the battlefield]". Rabbi Avraham Ibn Ezra <sup>19</sup> already anticipated him

<sup>17</sup> Rashi is the eleventh century Biblical commentator par excellence. His commentary focused on the peshat meaning of the text and was based on Midrashic traditions. His commentary can be found in Torat Chayim.

<sup>18</sup> See footnote 5 above.

<sup>19</sup> See commentary to Deuteronomy 20:5.

[Ramban] with this reason. The [author of Sefer] HaChinuch (mitzvah 526)<sup>20</sup> also interpreted it in this way, and gave other different reasons along the same lines.

However all of these reasons are flawed, except for that of Rashi, for if it were so [if these reasons were sufficient to explain the text] why would they [those who were exempt] return specifically from Optional Warfare, certainly Commanded War would seem to require them to return for the same reason, particularly [in the case of] "the cowardly and the faint of heart", or in the opinion of Rabbi Yosi the Galilean "One who fears because of sins which he has committed [and not repented]"<sup>21</sup>. Certainly "there is no restraint on God's power to redeem by many or by few"<sup>22</sup>.

In the case of Gideon (Judges 7)<sup>23</sup> with three hundred men that did not

<sup>20</sup> Sefer HaHinnuch is ascribed to Rabbi Aaron ha Levi of Barcelona. See explanation in section 1b below.

<sup>21</sup> This alternative definition of the "fearful and the faint of heart" was introduced in the Sota passage which was referred to above. See section 1b below.

<sup>22</sup> In I Samuel 14:6. Jonathan says these words to his armour bearer, when they go together, unbeknown to Saul, to fight the Philistines on their own at Geba. Jonathan believes that God has given him a sign that he will prevail, alone with his armour bearer, against the Philistines.

<sup>23</sup> Judges 7 tells the story of Gideon's army which was about to fight the Midianites. God was concerned that the army was too large, and the people would think that victory was only a result of their strength and not of God's power. So he devised a plan for culling men from the ranks. First Gideon sent home the cowardly. The remaining men were divided by a "test" at the riverbank. Those who drank without bending their faces down to the water were selected for service. Judges 7 : 5- 7 : " So he



“bend their knees to drink water” a great redemption was achieved for Israel, and this was an Obligatory War [in defense against] the might of an enemy or foe that had attacked them. On the other hand, in the case of Commanded War , or, according to Rabbi Yehudah who calls it Obligatory War,<sup>24</sup> when the actual act of going to battle is a Mitzvah, it would be appropriate that God, the commander of the war, would go out to war with the army of Israel, and [even if the troops were] few in number, they would merit victory, so all of the above [those who are exempted] might be returned [from the front].<sup>25</sup> However, in an Optional War wouldn't there be a need to draft whoever can hold a weapon, and to rely less on God's providence in a war that He has not commanded?

### The Torah's Attitude to War of Conquest for the Purpose of Expansion

brought down the people to the water; and the Lord said to Gideon, Every one who laps the water with his tongue, like a dog laps, him shall you set by himself; likewise every one who bows down upon his knees to drink. And the number of those who lapped, putting their hand to their mouth, were three hundred men; but all the rest of the people bowed down upon their knees to drink water. And the Lord said to Gideon, By the three hundred men who lapped will I save you, and deliver the Midianites to your hand; and let all the other people go every man to his place.”

<sup>24</sup> Again a reference to the Sota passage explained in section 1b below.

<sup>25</sup> The idea is that since they are going to win regardless of who participates, since God , who has commanded the war is fighting alongside them, then it doesn't matter if they are reduced in number by allowing those who are exempted to return home. For more detailed explanation of the argument see section 1c below.

In the answer to this question, we must examine the nature of God's Torah and its view of Optional War. Let us first preface by saying that one is never permitted to depend on a miracle, rather, every deed must be done essentially according to the laws of nature, and afterwards one may expect God's providence, as Ramban said about the census of the children of Israel which we cited above : " Because the Torah does not rely on a miracle such that one individual might vanquish a thousand ." (see an explanation of this matter in part two of our book Mekor Chayim chapter 99 , "The Halakha of the Measure of Security for the Individual and for the Nation").<sup>26</sup>

It is known that, in the case of Commanded War, the king does not need to ask the permission of the Sanhedrin , "rather he goes out on his own at any time, and may force the nation to go out to war. However he may not force the people out to war for an Optional War except by decree of the Sanhedrin." (Rambam , Hilchot Melachim chapter 5, Halakha 1, and its source is known from Tractate Sanhedrin).<sup>27</sup> He already

<sup>26</sup> See explanation in section 1b below.

<sup>27</sup> Actually this is Halakha 2. See explanation in section 1b below.

explained before , and we cited his words above, that Optional War is in order to expand the boundaries of Israel and to multiply its fame and its reputation. Certainly the Sanhedrin would thoroughly investigate a request of the king to go out to war, to see if it is justified, and what degree of risk is involved, and would ratify his request accordingly. But the Torah wanted to limit the kings of Israel's passion for war, or in any event to guarantee that they only go out to war when the power that is at their disposal is absolutely sufficient, and there still remains reserves in the rear guard. For this reason, the man who was newly wed, the man who built a house and not inaugurated it, or planted a vineyard and not eaten from it, were all exempt from the frontlines, for reason of "he will be free to go to his house for one year". And so the betrothed man, the one who built a house and did not inaugurate it, and the coward and the faint of heart, and also the one who feared because of the sins he had committed were returned from the frontline to the rear. And if, after all of this thinning out [of the troops] , the king still thought that he had enough force to wage a war that was not absolutely essential to the security of the state, but was, rather, for the sake of expanding the boundaries and magnifying his name and his glory, and if the Sanhedrin also agreed that after all of this thinning out [of the troops], there was

no risk in this war - it was a sign that his power was really great and he was given permission to wage war.

In effect, all of the above were in the rear guard like a reserve force for times of danger, since, despite all this, they might err in judgement, and become endangered in an Optional War, and in the case of such a complication that would bring calamity on Israel, certainly no man would be exempted any longer from the war, since the situation would have been changed to one of "rescue from an enemy and a foe". What difference is there between an enemy that comes of its own initiative, and an enemy which Israel brings on itself through military initiative? The Chazon Ish has written as much explicitly (Masechet Even Haezer seif 23)<sup>28</sup>, that the nation does not become involved in an Optional War if it is not possible to fight without those who were exempted from service. However, after they have already engaged in war ... if there is a need for those who have returned [to fight] in order to achieve military victory, [then they must do so] even a bridegroom from his chamber and a bride from her chuppah, even if initially it was [only] an Optional War.

<sup>28</sup> Chazon Ish was written by Abraham Isaac Karelitz. He is considered by Elon (Op cit. p. 702) to be one of the "leading Halachic authorities of our time". He was previously cited by Halevi in chapter 3.

Clearly none of this applies to a Commanded War of any sort, since then there are no exemptions, as the Torah requires that the entire nation go out to such a war. In this instance, the king only establishes the most appropriate time for engagement, but no one is exempt from the obligation (to serve). There is no concern whatsoever, not that a man who is betrothed will be preoccupied with his bride, nor the other with his vineyard, or his house, and even the "weak will call himself a hero"<sup>29</sup>, and the coward and the weak of heart will become brave in a Commanded War. Even the one who is "fearful because of sins he has committed" will be commanded to return in complete repentance before going forth to battle, since it is natural that once a man knows that this war is essential in the sense of an obligatory commandment [from God ], he becomes strengthened and motivated to overcome [his fear]. But when doubt nestles in his heart, that a war is unjustified, and was, in essence, intended only for the sake of conquest of territories and the glory and honor of the kingdom - he does not have the spiritual strength

<sup>29</sup> In Joel 4:10 . This is the end of the verse that begins , : " Beat your plowshares into swords, and your pruning hooks into spears". It is a vision of the end of days and the cessation of all war. It is interesting that Halevi uses it here in the context of Commanded War. perhaps this is a hint to his belief that the Modern Israel (along with its army) is a beginning of the coming of redemption.

to overcome [his fear].

This new reason that we have presented is not in conflict with the reasons that were written by the Rishonim, rather it complements their position. The Torah intended to reduce the number of men that go out to war, in order to minimize the military aspirations of the kings of Israel. And [the Torah] chose these [exemptions] for very logical reasons. Men who are preoccupied with their betrothed who is at home, or their vineyard, or simply those who are sinners and faint hearted are the weak link in the military establishment .

From this [we learn] that those who think that the Torah of Israel is militaristic and war loving make a grave error. The opposite is the case. In the midst of a world which was entirely extremely militaristic, which resolved all conflict only by means of the sword , the Torah of Israel was the great educating force towards restraining these aspirations, as will be made clear.

According to Torah, How May the Boundaries Be Expanded?

However one must note, why should our rabbis call the expansion of the borders of the land an Optional War? Certainly, if Israel had been worthy and had not been exiled from their land, and had not been lost, through sword and destruction, among the nations, they would have been forced to expand the boundaries of their land, so why should this not have been considered a [divine] commandment? Can we not find in Halakha a distinction between expansion of boundaries for the sake of settlement of the Israelite population that greatly increased, and expansion of the boundaries simply for the sake of hegemony?

Here is the place to explain, with God's help, an important basic point concerning the expansion of boundaries according to the Torah:

We read in the Torah: "And it shall come to pass, if you shall give heed diligently to my commandments [which I command you this day, to love the Lord your God, and to serve him with all your heart and with all your soul]. . . That your days may be multiplied, [and the days of your children, in the land which the Lord swore to your fathers to give them,] as the days of heaven upon the earth."<sup>30</sup> Indeed our Rabbis expounded

<sup>30</sup> Deuteronomy 11:13 - 21. This is the scriptural passage incorporated into the Shema.

brilliantly concerning the length of life of an individual Israelite on the basis of the merit accrued by observing Torah and Mitzvot. (See Berachot 8, and Kiddushin 31, and elsewhere).<sup>31</sup> Yet, despite this, it is acknowledged that observing the Torah and fulfilling the Mitzvot has never been a criterion for individual success in this world, and the principle reward [for observing Mitzvot and Torah] is in the world to come. If this is so, what is Scripture teaching here? The explanation of [this passage of] Scripture is that the days of Israel's tenure on this land would multiply as the days of the sky's tenure on the land, in other words, forever - that they would not ever go into exile.

And now Torah comes to answer the question which arises almost of its own accord : If, by means of observing Torah and commandments, Israel will dwell in their land, in peace, forever , how can this small land, with it's borders (Bamidbar 34) be destined to contain the many millions that , through natural procreation will multiply mighty quickly, if their dwelling securely in their land for eternity is guaranteed?

In response to this question, the Torah continues (Deuteronomy

<sup>31</sup> See explanation in section 1b below



11:22-24): "For if you shall keep all these commandments . . . to walk in all his ways and to hold fast to him; then the Lord will drive out these nations from before you . . . Every place whereon the sole of your foot shall tread will be yours . . . from the wilderness to the Levanon, from the river to the River Perat, to the uttermost sea shall be your border."

In all these scriptural passages not a word about war is mentioned. Our Rabbis did well when they expounded (in Sifrei Ekev Piska 50)<sup>32</sup> on this passage wonderfully: "God will cause you to inherit' [ Deut. 11:23]- God causes you to inherit, flesh and blood [people] do not cause you to inherit. This would refer only to "these nations" [the seven nations of Canaan], from whence do we know that it is meant to include their allies" (by the way, this hints also to those who assist our enemies in our own day)? "Scripture states: "all the nations". "From before you", that you will continuously increase and they will continuously decrease, and for this reason Scripture states (Exodus 23:30): "Little by little I will drive them away from before you." And it [further] states: "I will not drive them out before you in one year [lest the land become desolate, and the beasts of the field multiply against you.]" (Exodus 23:29)

<sup>32</sup> See explanation in section 1b below

So Torah described the expansion of Israel in the Mediterranean region from the Porath to the Sea, when they “keep all of this commandment to do it”, conquest through settlement, multiplication and growing strength, in opposition to the deterioration of the others, these [the Israelites] continuously increasing and those [other nations] continuously decreasing, so that there is no military conquest and settlement but rather an expression of demographic reality, and there is no doubt that in this way the famous ancient nations, like India, and China increased and grew in power, in the expanse of their territories and their populations.

Neither is this merely a homiletical explication of text; rather it is a Halakhic truth. For every area from outside the land that Israel captures after the full conquest from the seven nations, becomes sanctified immediately with the holiness of the actual Land of Israel, for the purposes of all the Mitzvot that are customary within the Land. (Sifrei Ekev Piska 40).<sup>33</sup> How is it conceivable to impose the holiness of the Land of Israel on the areas that the king of Israel conquered for the sake

<sup>33</sup> Finkelstein, p.81. See explanation in section 1b below.

of the honor and glory of his kingdom, when these areas are devoid of Israelite population, for what holiness could be in them? Therefore, if the king of Israel needs a war of conquest in order to expand his boundaries, this [the expansion] does not come about out of a natural reality of conquest through settlement, it can only be an Optional War, and the Torah limits him with regard to the possibility of a general draft of the people, as we shall explain.

#### Return from the field of Battle- Obligatory or Optional

It will suffice to quote Minhat Chinuch<sup>34</sup> (Mitzvah 527) : "And it is unclear to me from the Talmud and from the Rambam whether the Torah gives those who return, like the one who builds. . . permission to return should they want to, but should they desire to participate in an Optional War, they have the option to do so, or whether they are obligated to return, since it says 'He should go and return to his house' it is incumbent on him, that he must return, and he is forbidden to go out to war. And so concerning the 'fearful' ... it is logical that he is obligated to return in

<sup>34</sup> Minhat Chinuch is a commentary to Sefer Chinuch by Rabeinu Yosef Babad. See explanation in section 1b below. See p. 306 in Sefer Hachinuch , Mifal Torat Chachmei Polin - Netania, vol. 3 . It is quoted accurately here.

order that he not cause others to become fearful, etc. but the others, like the one who builds . . . it is not clear. See Rashi to the Pentateuch, who writes: Lest, etc. "If he does not listen to the words of the priest he is worthy of death". It would appear that he is obligated to return, and in any event this is not clarified in the Talmud and in Maimonides and it requires further study."

Concerning the "fearful" about whom he [the author of Minhat Chinuch] wrote that it is logical, the matter is clarified in this passage concerning the "fearful" by the Ramban, on the verse "And he should not cause his brothers' heart to melt as his own", and I quote: "The author of the Halachot Gedolot sees this as a negative commandment, that he not refrain from returning so that he not cause his brethren's hearts to melt like his own."<sup>35</sup> It is simple and clear. However concerning the rest, it appears to me, in my humble opinion, that it is logical that he is not permitted to volunteer, for the reason that Rashi wrote, in order to prevent undue anguish, since the intention of the Torah is to prevent a tragedy. But the reason that Ibn Ezra, the Ramban, and the author of the Chinuch propose - that he not think about his wife, his house, or his

<sup>35</sup> Halakhot Gedolot is a Geonic work from the eighth century which includes a Minyan Hamitzvot, from which this one is taken.

vineyard and flee - [doesn't hold up as well because] if he comes and claims that his heart is set on war, and he wants to volunteer, it would be possible to permit him to fight. Or perhaps the Torah addresses his deeper feelings, that since this is only an Optional War, perhaps as the war heats up more, his heart will break because he did not merit marrying a wife or inaugurating his house, etc. It is not like Commanded War, when, since he knows there is no escape from it, he is continuously strengthened, but in this situation he was not obligated to go out to war, from the beginning.

The sages of our generation are already divided on this issue, and my own humble opinion inclines in favor of the opinion of my friend the great Rabbi Waldenberg (in his book The Laws of the State, part 2, section 5, chapter 5 Ot 4)<sup>36</sup> who wrote, in short, that one should learn from the Sifrei that is mentioned by the author of Minhat Chinuch, and from that which is written in Tosefta (Sota 87, Halakha 14)<sup>37</sup>: "Rabbi Shimon says: Whoever hears the words of the priest in the field of battle

<sup>36</sup> Waldenberg is a contemporary Israeli Posek. This quote may be found on p. 139 of Hilchot Medina, part 2. See explanation in section 1b below.

<sup>37</sup> This is a direct quote from Tosefta Sota quoted in Waldenberg p. 141 (See explanation of Waldenberg passage in section 1a below.

and does not return, his end will be that he perishes by the sword, and he will bring Israel down with him, and cause them to be exiled from their land, and others will come and dwell in their land." This appears also to be the plain meaning of the Rambam's words concerning these laws, since he wrote in each place : " he should return" or "this one returns", and did not "slip", even once, to hint at any other terminology, like "he is permitted to return" or "he may return if he chooses" or the like.

We have dealt with this issue at length to derive Halachic support from it for the ideas which we introduced above, that this whole filtering [of the troops] was set by Torah in order to cool the military fervor of the kings of Israel. Had the Torah not prohibited all of the above from going to war, but merely exempted them, the government would have already found appropriate means of declaring a draft of "volunteers", and would have in this way circumvented the commandment of the Torah and the full depth of its intention, however, since the Torah made it a prohibition, the purpose [of the exemption] was fully achieved.

Is the Tribe of Levi Permitted to Volunteer for War?

It is most clear that the priests and the Levites were permitted to volunteer for war, for we have learned as much in the Mishnah (Sota 44 a)<sup>38</sup> concerning Optional War: "He who is cowardly and faint of heart, this refers to one who is afraid because of the sins that he has committed [and not atoned for] . . . a widow for the High Priest, a divorcee or a levirate woman for the common priest." . . . and in another Baraita there: "He who betrothed . . . excluding the widow for the High priest, the divorcee and the Levirate woman for the common priest".<sup>39</sup> It is clear from this that priests did participate in Optional War. Hence, they would certainly be permitted to volunteer for Commanded War. And the Maran Hachidah already elaborated on this (in Birchei Yosef, Even Haezer, siman 6. Ot 6).<sup>40</sup> In the Mordekhai (Gittin at the end of Chapter 7)<sup>41</sup> [there is commentary] concerning a Kohen, if he can divorce his wife on condition, and from their words there, we can conclude clearly that the priests are

<sup>38</sup> Sota 44b was cited above as the primary Talmudic source for the rules of the Levite's exemptions. See explanation in section 1b below.

<sup>39</sup> Halevi's footnote: "From this we have proof for that which is written above, that those who returned from the front were obligated to do so, not just permitted to do so. Since priests in a war could only be volunteers from the start, and why say "one that betrothed a woman except for the widow for a high priest and a divorcee or a Levirate woman for a regular priest" since they were only volunteers?"

<sup>40</sup> Hachida is Chayim Yosef David Azoulai. The Birchei Yosef is a commentary to the Shulkhan Arukh. See explanation in section 1b below.

<sup>41</sup> The Chida is explaining the Sefer Mordekhai the 13th century halakhic compendium by R. Mordekhai b. Hillel (Ashkenaz).

permitted to volunteer. Maran Hachida brought proof of the above from Masechet Sota, and Hamordekhai brought up the question of the Gemarah there (Kiddushin 21 b): “ [Regarding a] Kohen,[what is his status in reference to the law of] the beautiful captive?”. To which Rashi explained : “In War”. So they were permitted to volunteer. And it would be pushing it to explain all of this concerning that very same priest that would read the passage before those who went out to war” look there for the full version.<sup>42</sup> The words are clear and simple, and the War of the Hashmoneans proves them, since a family of priests stood at its head, Mattithias the High Priest and his sons.

### The Draft of Torah Scholars

The Rambam, after he wrote the laws of the tribe of the Levi that we quoted above, their exemption from war, and the fact that they do not receive a portion in the land, continues (Hilchot Shmita V'yovel Chapter 13, in Halakha 13): “And not only the Tribe of Levi, but also each and every individual of those who come into the world , whose spirit

<sup>42</sup> Rashi's point is that it is not likely that all of this section in Kiddushin can be referring to the priest who announces the exemptions. There must have been other priests besides him in the army.



moves him and whose knowledge gives him understanding to set himself apart in order to stand before the Lord, to serve Him, to worship Him, and to know Him, who walks upright as God has made him do, and releases his neck from the yoke of the many speculations that the children of man are wont to pursue - such an individual is consecrated to the Holy of Holies, and his portion and inheritance shall be in the Lord forever and ever. The Lord will grant him in this world whatever is sufficient for him, the same as He had granted to the priests and the Levites. Thus, indeed, did David, upon whom be peace, say, 'O Lord, the portion of mine inheritance and of my cup, Thou maintains my lot.' (Psalm 16:5)".<sup>43</sup>

This too is most obvious. Just as the Tribe of Levi were permitted to volunteer for war, so too are Torah scholars permitted to volunteer even for Optional War and this does not require more explanation.

On the other hand, the value and importance of Torah Study to the point of exemption from military service is a matter at the foundation of deep faith of the heart. One who sees the study of Torah as only professional enrichment will not understand the exemption of Torah

<sup>43</sup> Translation from Klein, The Code of Maimonides, Book VII p.403. The citation is verbatim from Maimonides.

scholars from military service. But he who knows and believes in the depths of his heart that the living breathing soul of the nation is bound up with and inextricable from, the study of Torah, and that to the degree that the people of Israel increases its study of Torah, it increases, by this means, its security in the face of any enemy or foe,- he will understand the permission to exempt Torah scholars from military service.

The theoretical question has already been asked, what would happen if the entire People of Israel would desire to study Torah, would we then be relying on a miracle? And so we should not be surprised that there already was such a situation in the long and varied history of the People of Israel:

Sennacharib turned his thoughts towards Jerusalem. A prophet came and said to him: "For there is no weariness to him who is set against her" (Isaiah 8:23). [This means], the people that is tired out by [intensive study of] the Torah will not be delivered into the hands of her oppressor. It is not as the early generations, who rejected the yoke of the Torah; but as for the latter generations who strengthened the yoke of the

Torah upon themselves and are therefore worthy of having a miracle wrought for them, . . . should he [Sennacherib] reconsider [ his attack upon Jerusalem], it is well; but if not, I will render him the butt of the nations' scorn. " <sup>44</sup> After these things, and the truth thereof, Sennacherib, king of Assyria, came and entered into Judah, and encamped . . . 'After the Holy One, blessed be He, had anticipated [events] by an oath. . . That I will break the Assyrian in my land, and upon my mountains tread him under foot: . . . and the yoke shall be destroyed because of the oil. . . [This means,]<sup>45</sup> the yoke of Sennacherib shall be destroyed on account of the oil of Hezekiah, which burnt in the synagogues and schools. What did he do? — He planted a sword by the door of the schoolhouse and proclaimed, 'He who will not study the Torah will be pierced with the sword.' Search was made from Dan unto Beer Sheba, and no ignoramus was found; from Gabbath unto Antipris, and no boy or girl, man or woman was found who was not thoroughly versed in the laws of cleanliness and uncleanness." (Sanhedrin 94 b). Any further explanation would be superfluous.

<sup>44</sup> This is a quote from the Babylonian Talmud Tractate Sanhedrin 94 b, which is said by Rabbi Yohanan to explain the quote from Isaiah. For an explanation of the whole passage in Sanhedrin , see explanation in Section 1b below.

<sup>45</sup> Isaac the Smith is quoted here in the Sanhedrin 94b.

There are many sayings of our sages in the Talmud and in the Midrashim which speak of the value of the study of Torah to both the individual and to the multitude, in this world, and in the world to come, to the nation, to the Land of Israel, to the rebuilding of Jerusalem, and to the future redemption of Israel. We will mention one of them , that appears in the form of a narrative in the words of our Rabbis the sages of truth in the holy Zohar in Parashat Vayetze 151<sup>46</sup>: Rabbi Chiya saw Elijah the Prophet in his dream. He said to him: " I came to inform you that Jerusalem is about to be destroyed. (This refers to the Jewish settlement there after the destruction of the Temple). I came to inform you that the sages of this generation might be able to lengthen the years of Jerusalem , since as long as the Torah can be found in her midst, she will continue to stand on the merit of the Torah, which is the tree of life, and as long as the Torah can be found below, the tree of life will not depart from above. When Torah ceases below, the tree of life will vanish from the world. Therefore, as long as the sages of Israel occupy themselves with

<sup>46</sup> The Zohar is the central book of the Kabbalah. It is traditionally attributed to Simeon Bar Yochai. Three of the five books of The Zohar are arranged according to the weekly Torah portions. Both of Halevi's citations (see citation of Korach below) come from this part of the Zohar. Basically this section is a Kabbalistic midrash on the Torah. See Encyclopedia Judaica . vol.16 pp. 1194 - 1215 for further discussion of the Zohar.

the study of Torah . . . it is as though "the voice is the voice of Jacob", and the hands are not the hands of Esau. Rabbi Hiyya awoke and told his dream to the sages. Rabbi Yissa said: Everyone knows this! For Scripture states: "If God does not guard a city the human guard watches in vain"<sup>47</sup> This refers to those who occupy themselves with the study of Torah, for the holy city exists because of their merit, and not because of the mighty worldly heroes etc."

From this we may conclude, that a person who studies Torah and feels that in any case it is his obligation to be conscripted into military service for the sake of the security of the nation and the state, or in order to prevent slander against the students of the Beit Midrash, or because of whatever other reason, it is fitting that he should do so. But one who occupies himself with the study of Torah with great discipline, and is diligent night and day in such a way as he "kills himself in the Torah's tent", that is to say, that he doesn't think that his conscription would have any benefit for the security of the nation; If he is certain that the actual studying of Torah brings to the nation the greatest security benefit - it is clearly forbidden to draft such a person.

<sup>47</sup> Psalms 127:1

It is unnecessary to note, that all of this is not said concerning a real war ( it excludes a state of emergency), when the enemy is attacking the gates, since then it is certainly an obligation which is incumbent on every man, whoever he may be, with absolutely no exceptions, to mobilize [literally : to strengthen his senses] to gird himself to save Jewish lives , for no one is exempt from the commandment of Pikuach Nefesh<sup>48</sup>, but he is only thus obligated during that limited time when the battle is at its height. But from the moment that the fighting subsides, even if it is still a time of war and emergency, those who cling to Torah must return to the Beit Midrash to occupy themselves with Torah, and on the merit of Torah God will protect those who stand at the battlefield to achieve victories and to return to their homes, to good and peaceful lives.

The sages of truth already revealed that the redemption of Israel in ages past happened without Torah, and for this reason they were exiled again, but their last redemption will be by the power of Torah, and for this reason they will never be returned to exile . (See in the Holy Zohar , Korach, chapter 178 b, in רמב"ם and in our book Mekor Chayim vol. 2 ,

<sup>48</sup> See footnote 7 Chapter 3

in the introduction). Now Torah scholars of our generation entail a double obligation - to study Torah with great diligence out of faith that the time of the complete redemption of Israel in the complete Land of Israel is at hand and the building of the Temple and our glory soon and in our own time.

### 1.B. Analysis of the Sources

#### 1. Rambam "Hilchot Shmita V'yovel" Chapter 13, halacha 10 - 13

"Hilchot Shemita V'yovel" is in Seder Zeraim of the Mishneh Torah. Chapter 13 is the last chapter, both of "Hilchot Shemita V'yovel", and of the whole seder. It deals with the commandment to give Levites cities in which they may dwell, including the requirements for the cities (cemeteries etc.), and the rights of the Israelite who inherits land from his father but is married to a Levite woman. It ends with the passage quoted here by Halevi concerning the prohibition of Levites to inherit land in Canaan or to take booty, and the punishment they must receive if they do not obey this commandment.

The passage quoted by Halevi is a direct quote from Mishneh Torah, though he skips Halakha 11 to keep focused on his point, which is that the reason the Levites may not inherit territorial land or booty of war is that they have been singled out for special service to God. He returns to Halakha 11 and quotes it later in the argument, as further proof that the lack of territorial inheritance and the exemption from military service are not related by cause and effect, rather, both are the effect of the same cause which is the dedication of the Levite to the service of God.

In Halakha 13, Rambam draws a direct comparison between the Levite and a person in our own day who wishes to be like a Levite. Rambam offers no halakhic sources for this decision. The ruling, as we shall see below, is at the core of Halevi's argument to exempt yeshiva students from conscription into the Israel Defense Force.

## 2. Sota 44b

In the Mishna the rabbis discuss who is a "coward and faint of heart." Rabbi Akiva says it is simply one who cannot stand the battle and fears a drawn sword. However, Rabbi Yose the Galilean says that the scriptural passage refers to someone who is fearful because he has



sinned and not repented. Rabbi Yose further claims that the other exemptions (the betrothed, the vineyard and the house) are given by Torah in order to allow the sinner to leave the battlefield without public humiliation (people won't know which of the three reasons is the reason that he is leaving.) Rabbi Yose (a different rabbi than Yose the Galilean) now specifies the sins to be sins concerning marital laws : the widow married to the High Priest, the divorce and Levirate woman to the regular priest, the Israelite to the Mamzer , etc. (The implications of his statement in terms of proof that Kohanim actually did serve in the army are brought up toward the end of Halevi's essay.) The Mishnah further describes that once those who are exempt are allowed to leave, enforcers are stationed as guards at the rear flank, armed with iron bars with which to beat back any deserters, so as to prevent desertion from bringing down the troops. We now come to the relevant passage in the Mishnah, for Halevi's first citation, namely that the distinction between Optional and Commanded War.

The Mishnah states that all of the above concerns Optional Wars. But everyone must participate in Commanded Wars, even the bridegroom from his chamber and the bride from her chuppah. (This is the passage

cited by Halevi). But Rabbi Yehudah says that all of the exemptions apply to Commanded War, but everyone including the bridegroom etc. must go out to Optional War.

The Gemarah takes up this issue. It first looks at how R. Yose differs from Rabbi Yose the Galilean. It would at first appear that they are saying the same thing, that the coward etc. refers to the unrepentant sinner. The difference is that Rabbi Yose thinks that if their sin is transgression of a Rabbinic, rather than a Toraitic commandment, they still are exempt. Rabbi Yose the Galilean understands it only to apply to Toraitic transgressions. The rabbis continue by bringing in a Baraita to further account for the differences between Yose and Yose the Galilean. Ultimately they all concur that the reason for the return of the fearful and the faint of heart is, based on Deuteronomy 20:8, "that he not melt the heart of his brethren like his own heart." A man who is seen by all to be afraid, is likely to influence others to also be afraid.

The rabbis now try to distinguish between Optional and Commanded Warfare. (We are thus back the crux of Halevi's issue). Rabbi Yohanan says that Rabbi Yehudah is calling what the sages called

Optional Wars, "Commanded Wars", and the other way around. Rabbi Yehudah is trying to say that all wars are commanded. Rava specifies that everyone agrees that Joshua's wars of conquest are commanded. Everyone also agrees that David's wars of expansion were optional. They differ only, according to Rava, about wars that are waged to prevent an attack by strangers. Rabbi Yehudah calls such wars Commanded, and the sages say that they are optional. The passage ends with the saying: We learn from this that one who is engaged in a [time bound] Mitzvah is exempt from performing a [different] mitzvah.

Subsequent Halakha ruled according to the sages. According to Steinsaltz's note, a king must begin only with Commanded War - Commanded War (as per the Shulkhan Arukh) is defined as the war against the seven nations of Canaan, Amalek, and wars that come to save Israel from an attacking enemy. Afterwards the king may fight an Optional War - Optional Wars are wars against other nations in order to expand Israel's boundaries and gain fame for the king.

As far as Halevi is concerned, the importance of this passage is that it addresses the distinction between Commanded and Optional Wars.

He backs this up further with the reference to Rambam , "Hilchot Melachim" Perek 5, Halakha 1. (As mentioned he will later return to this passage as proof of the participation of volunteer Kohanim in wars.

### 3. Rambam Mishneh Torah "Hilchot Melachim "Perek 5, halacha 1

"Hilchot Melachim" is the last chapter in Mishneh Torah, "Sefer Shoftim". It deals with the laws concerning kings and their wars. The beginning of Section Five deals specifically with the distinction between commanded and optional war . The relevant section reads as follows:

"The primary war which the king wages is a war for a religious cause. Which may be denominated a war for a religious cause? It includes the war against the seven nations, that against Amalek, and a war to deliver Israel from the enemy attacking him. Thereafter he may engage in optional war, that is , a war against neighboring nations to extend the borders of Israel and to enhance his prestige and greatness."

Halakha 1 ends here , and makes the distinction as Halevi paraphrases it. Although Halevi does not mention it here, Halakha 2 is

also relevant to the distinction:

“There is no need to receive permission from the Beit Din in order to wage Commanded War. Rather, he [the king] can go out of his own accord and compel the nation to go out to war. However, he can only draft the nation to Optional War if it is decreed by the Sanhedrin.”<sup>49</sup>

#### 4. Sefer Chinuch Halakha 526<sup>50</sup>

Sefer Chinuch is an explanation of the 613 Mitzvot. Halevi has quoted the book in previous responsa (see Chapter 2). Here he is referring to the section “The commandment to anoint a priest for war”. The text reads as follows:

“The root of this mitzvah is well known, that during war it is necessary to rally the troops. . . Concerning the matter of the exemptions . . . this is also a matter that is fitting and proper since these are all weak people when it comes to waging war, for their minds are greatly

<sup>49</sup> Maimonides , Mishneh Torah, 1962 edition, vol. 17 p. 374.

<sup>50</sup> Sefer Hachnuch is ascribed to Rabbi Aaron ha Levi of Barcelona. Others ascribe it to Aaron's brother. See Sefer Hachinuch , Mifal Torat Chachmei Polin - Netania, vol. 3 p. 305.

preoccupied with those matters mentioned in Scripture [the wife, the vineyard and the house], and they will weary the hearts of their comrades, just as it says specifically in Scripture "that he not melt the heart of his brethren". So too, must the one who fears because of his sins be returned [from the front], lest others be infected by his sin, and all the ways of the Torah are true and faithful."

The author of Sefer Chinuch thus concurs with Ramban that the primary purpose of returning the exemptees is to prevent them from weakening the force either through distraction or through bad influence on their fellow soldiers.

#### 5. Mekor Chayim , Vol. 2, chapter 99<sup>51</sup>

Mekor Chayim is a five volume commentary by Halevi on basic Halachic concepts which are explained through the use of Midrashic and Aggadic sources. Chapter 99 deals with issues of individual and national security. Halevi raises the issue of the degree to which one may depend on miracles from God to insure one's security. Halevi brings the example

<sup>51</sup> Halevi, Mekor Chayim p. 251

of Noah's ark to illustrate the principle that one must first do everything in one's natural power to defend oneself, before one can trust in God's miracles.

God himself commanded that the ark be built. The specifications of the size of the ark were not sufficient to hold all the animals which needed to be in the ark. The miracle, in this case was that the ark was able to contain all its inhabitants. One might expect that Noah could have built an even smaller ark, knowing that God would, in any case, miraculously enable the ark to fulfill its function. But he didn't do this. He built the ark exactly as instructed by God, the best that he could build. Only after he had done so was the miracle possible. Halevi concludes: "The Holy One Blessed be He does not work miracles if a person does nothing on his [her] end, but once the person does everything in his [her] power, from then on it is time for the miracle. 'The miracle begins where nature ends.'" (Halevi quotes Ramban's commentary on Genesis 6:19 here.)

In Berachot 8a we find the following story:<sup>52</sup>

When they told R. Johanan that there were old men in Babylonia, he showed astonishment and said: Why, it is written: That your days may be multiplied, and the days of your children, upon the land; but not outside the land [of Israel]! When they told him that they came early to the Synagogue and left it late, he said: That is what helps them. Even as R. Joshua b. Levi said to his children: Come early to the Synagogue and leave it late that you may live long. R. Aha son of R. Hanina says: Which verse [may be quoted in support of this]? "Happy is the man that hearkeneth to Me, watching daily at My gates, waiting at the posts of My doors, after which it is written: "For who so findeth me findeth life." (In Proverbs 8:34-35). This passage both asserts the theory that diligence in prayer is rewarded by long life, and provides the scriptural proof for this assertion.

As far as I could see, there is no passage in Kiddushin 31a or b which illustrates that the rewards of long life come from doing Mitzvot. The daf deals with a variety of illustrations of the commandment for honoring mother and father, but I found no references to being rewarded

<sup>52</sup> Translation from Soncino Talmud.



with long life.

### 7. Sifrei Piska 50<sup>53</sup>

Sifrei Deuteronomy is a book of midrashim from the first centuries of the common Era. Halevi relies on it for his understanding that gradual expansion of territory through peaceful growth of Israel and decline of her neighbors is what was intended by Torah, rather than expansion through Optional Warfare.

This Piska begins , in a passage attributed to Rabbi Jacob, with the quote from Deuteronomy 11:23 : “ Then will the Lord drive out all these nations”. It expounds -“ The Lord will drive out, to mean that God and not human beings will not drive out . Halevi understands this to mean no warfare is involved.

Halevi correctly presents the continuation of the quote which understands the “all” to refer to the allies of the seven nations of Canaan, and thus to refer to territories outside Canaan, which would be

<sup>53</sup> Hammer p. 106

those covered in optional wars of expansion. The Sifrei passage continues as Halevi quotes , to say: "You will constantly grow more numerous, while they will constantly grow less numerous." Thus making the point for Halevi of gradual absorption as opposed to conquest by warfare.

### 7. Sifrei Piska 40

Halevi seems to find his evidence for the fact that all of the conquered lands became sanctified and held responsible for doing Mitzvot from the conclusion of the following passage from Sifrei:

" Another matter (davar aher) concerning "Doresh otah" [ here understood as "expound it" referring to Torah]. As Scripture states : "And you shall teach them to your children, to speak of them . . . in order that your days be multiplied, and the days of your children" and it also states " He gave the lands of the nations to them etc. . . that they may keep his statutes and observe his laws, etc (Psalms 105: 44-45)." In other words, the nations which God gives Israel as a reward will also observe his laws and commandments.

8. Waldenberg, The Laws of the State, part 2, section 5, chapter 5 Ot

4)

In his introduction to the second volume of his book The Laws of the State Waldenberg makes it clear that he is a strong Zionist, and a supporter of the Israeli Army. "When God returned us in our generation as in the beginning to live in the land, the inheritance of our fathers, with dignified bearing, and without the yoke of strangers upon our necks, we merited the establishment of our own magnificent Armed Forces, on land, sea, and air, that gives honor to the State through its wonderful authority and clothes with pride and girds with power all the members of its people, who are planted around it like olive trees . . ." <sup>54</sup>

However, Waldenberg is concerned about the lack of adherence to the commandments that is prevalent in the military, and his solution is to write this volume, which outlines the Halakha with regard to military service and the management of military affairs. The section cited by Halevi deals specifically with the issue at hand - the rules concerning

<sup>54</sup>Waldenberg, p. 10

those who are returned from the front.

Waldenberg believes that in the three categories of betrothed, builds a house, and plants a vineyard, there is no doubt that the exemption is obligatory. He quotes Sifrei "If he does not listen to the words of the priest he will end up dying in the war." and explains that this means that he has liability for the sin of not returning from the front, and that death in the war is his punishment. Waldenberg also quotes Tosefta Sota 14, the exact quote cited by Halevi: "Rabbi Simeon says that anyone who hears the words of the priest at the front and does not return will end up falling by the sword and will cause Israel to die by the sword, and will cause them to be exiled from their land, and others will come to settle their land etc."<sup>55</sup>

#### 9. Birchei Yosef Even haezer siman 6, ot 6

The issue under consideration in this passage of Birchei Yosef is whether Kohanim may draw up conditional divorce documents (conditional upon their not returning from battle, thus sparing their widows from becoming Agunot.) The answer is that they may. Then , the author

<sup>55</sup> Waldenberg, p. 141

notes that this is proof that there were Kohanim serving in the army. He refers to Sota 42 as proof that there were kohanim serving beyond the one whose function is to read the list of exemptions. He goes on to discuss issues that pertain specifically to a priest who serves in the army.

#### 10. Kiddushin 21b

The issue of the "beautiful captive" is raised in Kiddushin 21b after a discussion about the ways in which a Kohen differs from a Yisrael in the context of whether a slave who is a Kohen needs to have his ear pierced if he chooses to remain a slave or whether he is exempt from this procedure. In further discussing the status of the Kohen, the issue of the "beautiful captive" is raised. The gemarah states that one might argue that it is a novelty that the Torah permits anyone, Kohen or not, to have relations with a gentile woman. We find, says the Gemarah that the Torah permits this to all soldiers, without distinction between Kohanim and the others. The assumption behind this assertion is that Kohanim are sometimes soldiers, thus inadvertently proving that the exemption of Kohanim from military service is optional. This assumption, that a Kohen can be a soldier, continues throughout the continuation of the Talmudic

passage.

Sanhedrin 94 b

The passage quoted by Halevi appears in a section which asks where in the Torah the attack of Sennacharib on Jerusalem is ordained (in order to justify the verse in Kings II 18:25) which states that God told Sennacharib to destroy Jerusalem. In response, several verses are suggested, after which the Talmud asks, "If this is so, then why was Sennacharib punished for his attack? The answer to this question is the beginning of the passage cited by Halevi. It is not so much a quote as a paraphrase. In the Talmud the explication of the verse is attributed to Rabbi Eliezer Bar Berachia. The second part of the verse is then given: "At the first he lightly afflicted the land of Zevulun, and the land of Naftali and afterwards he afflicted her more grievously by the way of the sea, beyond the Yarden in the Galil of the nations.". The explication: This generation is not like the earlier one (like the generation of Ahaz), who were unworthy of a miracle, but this generation, because it studies Torah is worthy of being saved by a miracle of the magnitude of the generation that crossed the Reed Sea or that crossed the Jordan into the Land of

Israel. This is the passage quoted by Halevi. He brings this passage as evidence that there has already been a time that a miracle occurred and the nation was saved from attack because of the devotion of the whole people to Torah study.

#### 4.C Analysis of Halevi's argument

This essay appears in the end of Volume 3 of Aseh Lecha Rav. In a chapter entitled "General Topics". While this essay appears to be a theoretical analysis of Halachic attitudes towards military service, it actually is a carefully crafted argument concerning a particularly sensitive topic in Modern Israel - the issue of exemptions from military service for Yeshiva students. In a country where the general draft, (at the time that Halevi was writing) was almost universally enforced, and in which general draft to military service was seen as essential to national security, exemptions of any kind were extremely controversial.

Halevi begins his argument by discussing the Biblical foundation for military draft, which he understands to be the description (in Numbers 1:1-5) of the census undertaken by Joshua before entry into the land of

Israel. This understanding of the census is supported in the Biblical text itself as well as in several cited commentaries. Among the commentators mentioned is Ramban, who raises the principle that we are not permitted to rely on miracles, but must take an active role in our own salvation before we depend on God to save us. Halevi will return to this principle later in his argument.

Halevi points out that the Biblical passage in Numbers is the foundation for later Rabbinic distinction between Optional and Obligatory War, although the evidence here for the draft is narrative, and not a commandment for future drafts.

He now turns to the exemption of the Levites from this census and this draft. He argues that the Levites are excluded from the census because they have been excluded from military service. Whoever does not receive a portion of the conquered territory or the booty of war and who is dedicated to God for the purpose of worship ritual is exempt from war. Here Halevi focuses on cause and effect. He wants to stress the point, which he will elaborate at length, that the reason for the exemption is the dedication to the service of God. He brings in the



Rambam in Hilchot Shmita Veyovel to emphasize this point.

The next phase of the argument is his clarification of the distinction between Optional and Obligatory Warfare. These categories must be defined so that Halevi can make the generalization that the Levites are exempt from all Commanded Wars, not just those for the Conquest of Canaan described in Numbers 1. Specifically, he maintains that the Levites were exempted from defensive wars against an attacking enemy (which he argues, based on Maimonides "Melachim" Chapter 5, is a type of war included in the category of Obligatory War). Since Levites are excluded from all Obligatory Wars for the same reason, namely, their dedication to the service of God, then they are exempted also from defensive wars against an attacking enemy because they are dedicated to the service of God.

Halevi tackles the hypothetical argument that Levites were exempted only from some Obligatory Wars (those of conquest against the Canaanites) but not others (those of defense against an attacking foe) head on. First of all, though they were not part of the lottery for territory, they were given cities and cattle, so they did have a material

stake in the Wars of Conquest. Lack of ownership of land could not have been the cause of the exemption. Secondly, the Wars of Conquest were extremely dangerous, as much so as any Defensive War, so lack of extreme danger to the nation could not have been the reason for their exemption . (Or, conversely, the extreme danger posed by an attacking foe cannot be reason enough to include them in a defensive war). We are thus returned to Rambam's rationale for the exemption : They have been dedicated to the service of God. This rationale holds true whether the war is for conquest of Canaan or for defense from an attacking foe, and thus the generalization to all Commanded Wars makes sense.

Halevi finds further proof of this in Rambam Halakha eleven, which states that Levites could participate in the booty of war and in the acquisition of land through wars that might be fought for expansion outside the Land of Israel. Halevi points out that the exemption from war is not limited to war fought within the Land of Israel, but includes wars fought anywhere, so that Rambam's understanding implies that their exemption is not dependent on their right to take land or booty, but on their status as dedicated to the service of God.

Halevi now turns his attention to other exemptees, in an attempt to clarify the distinction between Optional and Obligatory War. Basing his understanding of the Sota passage which he already cited above, he explains that the other exemptees are exempt from all service in Optional war for one year, and after one year from service on the front (but they must serve in the rear guard). However, unlike the Levites, they must serve in Obligatory War.

Halevi relies on Rashi to make the point that these other exemptions have a different rationale than the exemptions of the Levites, and hence a different (more limited) scope. The exemptions of the newly betrothed, etc. are based, according to Rashi, on the desire of Torah to prevent undue distress (*ogmat nefesh*). Halevi mentions three other commentators, who present other reasons for the exemptions (Ramban, Rava and the author of *Sefer Hachinuch*). Their reasons, essentially are that the categories of people who are exempt are all people who will form a weak link in the force, through distraction, and might even influence others to weaken (in the case of the one who is fearful because of his sins). But Halevi dismisses all the reasons except Rashi's. Basically his argument is as follows:

If the issue is that they are a weak link, or might affect the morale of the troops, then one would expect them to do more damage in an Optional War, since in an Optional War, God is less likely to intervene and "fight" on the side of the troops. However they are required to fight in Optional Wars. On the other hand, since, by definition we know that we will win a Commanded War (since we are fighting for God) then why should we be concerned about these groups and their effect on the fighting power or morale of the troops? Therefore, since they are exempt only from Commanded War, there must be a different logic to the exemption, i.e., Rashi's logic of undue distress.

Halevi now proceeds to focus in on Torah's attitude to Optional War. He begins by returning to the point he noted in passing at the beginning of the essay, which was made by Ramban - We cannot rely on miracles if we do not first do everything we can for ourselves. He raises the issue in response to the question he posed at the end of the last section : Wouldn't it seem that we need everyone we can get to fight in an Optional War, when we can't depend on providence, to the degree that we could in a Commanded War? The answer is no! We cannot use

miracles that way.

Halevi understands Optional War as something which the Torah sought to limit as much as possible by imposing restrictions on the monarchs who might want to wage them. The restrictions included the requirement to get the permission of the Sanhedrin to wage an optional war, and the requirement to exempt men from the special categories (newly betrothed etc.) either totally, in the first year, or by moving them to the rear guard, as a sort of reserve unit, after the first year. He thus couples Rashi's undue distress argument, with a new argument, that of the intention to discourage the kings from frivolous engagement in Optional War. This would certainly account for the restriction of these exemptions to Optional wars only. Halevi is careful to point out that his innovative explanation is not in contradiction to the reasons of the Rishonim, it merely complements them. The reasons that they gave which didn't appear to make sense before, now are seen to contribute to the logic of his argument, if we take into account that the primary purpose of the exemptions was to discourage the kings from Optional Wars.

The argument now moves into the politically sensitive area, in modern Israel - wars for the sake of the expansion of territory. Halevi is still dealing with Ancient Israel, and it must be remembered that , as of yet , the territories conquered by Modern Israel still lie within the Biblical boundaries of the Promised Land, nevertheless, the implications of his argument do seem to reverberate with meaning for the modern state.

Halevi begins this section of the argument by observing that when the Torah promises long life on earth in exchange for the performance of Mitzvot it really means to say , not the life of an individual, but the long tenure of the people of Israel in the Land of Israel (no exile if we, as a community, keep the Mitzvot). But this promise gives rise to a potential problem. If we were never to be exiled, and we continued to multiply as promised, how could the land sustain us? Surely , we would need wars of expansion to sustain the growing population.

Halevi's answer is that Scripture promises expansion of territory but not by war. Rather, there will be a natural assimilation of neighboring cultures into the people of Israel, along with their territories, as Israel's population grows and strengthens and the neighboring nations weaken

and fade away. Thus, according to Halevi, ultimately, any War of Expansion would be pushing this natural process prematurely , and should be discouraged. In fact , he believes (based on his understanding of the Sifrei passage) that if the expansion occurs through natural growth and assimilation then the residents would have in fact become Israelites, and be held responsible for all the commandments. Such a result would be impossible as a result of conquest.

In the next phase of the argument Halevi sets out to prove that these exemptions, as in the case of the Levites, albeit for different reasons, are not optional. They are obligatory exemptions. First he establishes that all agree that in the case of the fearful one, who might cause others to be afraid, the exemption is obligatory. (Halevi brings Ramban and Minhag Chinuch as proof). The question is in regard to the other cases (owner of house, vineyard, and betrothed). Here Halevi returns to the Rashi rationale to support this contention that these too were obligatory. He brings in the contemporary Posek Waldenberg to further support his claim.

The issue is important to Halevi because , the obligation to be

exempt as opposed to the permission to be exempt, greatly strengthens his theory that the whole exemption idea was designed as an anti-militaristic restraint on the potentially imperialist aspirations of Israelite monarchs. The message behind the message to the leaders of the Modern State is never stated but, I believe implied. Conquest for the sake of fame or fortune is to be avoided.

The next step of the argument, returns us to the issue of the Levites, which is really the main point of the argument. Having established that the other exemptees were obligated to stay away from the front, Halevi proceeds to explain how and why the case of the Levites is different. The other exemptees have been used as a sort of foil to the case of the Levites, allowing Halevi to make his anti-militaristic point along the way.

First Halevi establishes that there were priests serving voluntarily in the army by reference to Sota 44a, Kiddushin 21b and commentators (Birchei Yosef and Divrei Mordecai, and, of course Rashi). Then he supports his contention with historical evidence - the Hashmonean dynasty. He is now ready to make his final move.



Supporting himself on Maimonides "Hilchot Shmita V'yovel" Chapter 13, in Halakha 13 Halevi extends the law concerning priests to include all Torah scholars who devote their lives to Torah. What has been proven about Levites now may be applied to them as well - service in the military is optional. It all rests on the ability extend the definition of Levites, responsibility for which rests on Maimonides (broad) shoulders. Further proof, Halevi tells us, is unnecessary.

Note that Maimonides is simply making an analogy between those who devote themselves to Torah (and metaphysics) to the Levites in terms of God providing for them. Halevi extends the analogy (without comment) to include the rights and restrictions of the Levites which he has already previously connected to the issue of God's providing for the Levite's needs. (This, we recall, is where he started his argument, concerning the territorial rights and rights to spoil.) Now we see why he emphasized so emphatically the connection between God's providing Levitical sustenance and the exemption from war, linking them to each other, but not causally. Rather he linked both to the issue of dedication to service to God. It is a tightly and beautifully constructed argument.

What has Halevi done? The primary issue here is clearly the right of the government to conscript Yeshiva students. It is a sensitive issue from two opposing standpoints. On one hand, non observant Israelis resent the fact that the Halachic community is taking a "free ride" by living in Israel literally at the expense of their own lives and the lives of their own children. On the other hand, the Haredi community opposes any participation in or support of the Israeli Armed Forces, even voluntary support, since they oppose the state per se. Caught in the middle, religious Zionists like Halevi (and Waldenberg) must prove to the one side that exemptions are appropriate and to the other, that they are optional. Halevi has finessed this neatly by keeping his argument on the level of theory (Levites during the Wars of Conquest and wars during the times of the biblical monarchs) and only at the last minute extending the argument to Modern Israel.

There are , needless to say, some powerful assumptions at work here. Halevi assumes , not only that Maimonides extension applies to the specific case at hand, but also that the laws which controlled the army in the time of the Israelite Kings are the legitimate basis for the laws of the

Modern Democratic secular Jewish State.

At this juncture , for Halevi, the Halachic case has been made. He now proceeds to a more emotional, Aggadic, tone. He acknowledges that those who do not share his deep faith in the redemptive power of Torah study cannot possibly understand his argument. He moves to attack the anticipated argument (presumably from such people as these), that this is a slippery slope, that if we are all committed Torah students, as is the goal of the traditional community, who will guard the gates? Would we not be then relying on miracles, which he himself has pointed out is not permitted? His response to this hypothetical objection is , again, history. This time it is the battle of Sennacharib against Jerusalem. In this case the enemy mysteriously retreated and the city was saved. Halevi relies on the Talmud (Sanhedrin 94b ) for his interpretation that this retreat was orchestrated by God because of the diligence of that generation in studying Torah. The redemptive effect of Torah study is further attested to in the passage from the Zohar on Vayetzai.

Ultimately Halevi leaves the determination of the status of the Torah scholar up to the individual, in a sense, sidestepping the issue. If

he truly feels that he serves the security of the nation best by Torah study then he may not be drafted. He is free to volunteer if he feels he can better serve in that way. This reliance on the individual's assessment of how he can best serve the nation , and indirectly God, has a surprisingly liberal ring to it. Halevi concludes with a call for rising to the challenge of the "double obligation" to Torah scholars in our day. He is referring to the double responsibilities of Torah Study and Faith in the imminent coming of redemption in the rebuilt Land. Thus ending on a note of support for the Zionist State at the same time that he asserts the Torah scholar's right to refrain from serving in its military force. Halevi is keeping both flanks covered.

## Chapter 5

## Conclusion

In the introduction to this paper, we articulated Halevi's major objectives in Aseh Lecha Rav . Halevi hopes to attract non-observant Jews to Halakhah by teaching the Aggadic sources of the laws , and thus awakening the reader to the spiritual beauty of Halakhic observance. He also seeks to attract non - observant Jews to observance by demonstrating the applicability of Halakhah to all areas of personal and public life. Finally , he hopes to provide guidance to the observant Jew living in the secular modern Jewish state.

As discussed in the introduction, Halevi's goal transcends these objectives. His goal is nothing short of messianic. Halevi believes that his approach will bring non- observant Jews into the fold, create a Jewish state which is founded upon Halakhah, and move the world toward redemption. In the absence of a sociological study to examine the degree to which listening to (or reading) Aseh Lecha Rav affects the Halakhic behavior of individual non- observant Jews, the success of this mission cannot be evaluated. However , the objectives outlined above can

provide a framework for a critique of Aseh Leha Rav.

The responsa we have selected are an admittedly small sample from a very large collection. It would be unwise and unfair to draw comprehensive conclusions about the success of Halevi's effort from such a small sample. Further study of his complete collections of responsa would be necessary to substantiate such a critique. Nevertheless, it is enlightening to examine our few responsa through the lens of Halevi's objectives. If we do so, we may glean some insight into the range of flexibility of traditional Halakhic methodology in the hands of a master teacher whose agenda demands an openness to modernity and diversity.

## Chapter Two : Halakhot Concerning Women

Halevi's attitudes towards women as expressed in the responsa which we examined in Chapter Two are mixed. Generally speaking, Halevi is most liberal on issues where the concern for the well-being of the state overrides all other concerns. This is particularly apparent in Responsum Five, where he turns the Yael precedent on its head with the hypothetical question : Would Yael have let Sisra go if she didn't have a tent peg just

because women are not supposed to bear arms? To say the least, this is a stretch. He finds biblical justification for his ruling in the "thief who comes in stealth" self-defense argument, but the bottom line is that his response is dictated more by his Zionist perspective than by Halakhic precedent. His analysis of the danger to the Jewish population in the modern State colors his perspective on the issue of whether women may bear arms.

Halevi's responsum on teaching Torah to women is also a good example of his use of traditional methodology to arrive at conclusions which are determined by his ideology. In this case, his conclusion is motivated by his ideology of inclusivity. Halevi is aware that women have an increasingly important role in contemporary society. If he truly believes that Torah is applicable to everyone in the new state, he cannot afford to eliminate half of the population of the state by denying them access to Torah study. Simply put, it is important to Halevi to demonstrate that women may be taught Torah. He needs this to support his theory that Torah speaks to everyone. He also needs it if he wants to remain attractive to his target, secular audience. He must find a way to permit Torah study to women. Yet he is confronted with a clear

statement by Maimonides forbidding Torah study to women. He cannot contradict the Rambam outright. Halevi rises to this challenge beautifully.

Rambam can be made to support Halevi's conclusion if we focus on the intent of Rambam's ruling, rather than the ruling itself. Rambam's intent is to protect the Torah from trivialization. Halevi agrees. One must never risk trivialization of the Torah. Rambam contends that "most" women are incapable of serious Torah study. Halevi agrees that most women, in Rambam's time, were incapable, but this is not so in modern times. If they were incapable, it would still be forbidden. Thus Halakhah has not changed. What has changed is social reality. Halakhah is flexible enough to accommodate this change. "Most" women, now, are like the minority then. The Rambam himself, Halevi seems to claim, would arrive at the opposite conclusion were he here today. It is a compelling argument.

On social issues, he is relatively liberal (for an orthodox Rabbi). He leans heavily on Minhag. He shows his tendency to try to accommodate modernity by arguing that women in the modern state are different than women in the past. They are better educated and hence able to handle



Torah study , both oral and written, (Responsum 1). They are used to being in mixed company, and thus less likely to motivate "impure" thoughts in men when they find themselves in mixed company (Responsum 4). Halevi evokes two principles when addressing these changes in modern women. First, he depends on the intent rather than the letter of the law of previous generations (as in his use of Maimonides discussed above). And, second, he gives weight to Minhag over Halakhah in issues of mixed company (as when he quotes the "Let Israel be" passage in discussing mehitzot at weddings.)<sup>1</sup>

Nevertheless, Halevi is far from liberal by contemporary western standards. He bemoans the fact that times have changed such that women do not stay in their place at home, the way they did in the good old days. He idealizes the mehitzah as the most pious choice. He fails to take sides in the "Kol Isha" argument, although he mentions that there are varying opinions. If we remember that Halevi's stated intention was to address the issues of all Jews, both religious and secular, in the Jewish State, his responsa on women seem woefully inadequate. If the questions he chooses to address are representative of the range of

<sup>1</sup>See discussion of Beitzah 30a in Chapter Two, Section 4B, paragraph 5.

questions concerning women which he received on his program, then it is clear that secular Jewish women are not sending him questions! Can we assume that this means that they are tuning their radios to another station? It is difficult to make the argument that Halakhah speaks to all modern Jewish women, if the issues which effect modern secular Jewish women are not addressed. Of course, it may well be that, in saying that he hopes to address all Jews, and hence all Jewish women, Halevi really means to address himself only to those who are sympathetic to what he understands as traditional Jewish values. He is, after all, an Orthodox rabbi.

He is more successful, in these responsa concerning women, in achieving his goal of enriching the reader's understanding of Halakhah by giving Aggadic sources of Halakhah. Certainly the Talmudic examples of women who studied Torah in the first query, and the Talmudic story of the creation of the division between men and women in the Solomonic Temple in the second query, add depth to our understanding of Halakhot concerning women. The Beruriah references are not necessary for the logic of his argument, as we remarked in Chapter Two, but they add a sense of the richness of the Halakhic tradition and subtly confirm that

contemporary reality always had a vote in the application of Halakhah. They certainly add to the appeal of the responsum to a secular reader.

The use of Deborah to explain the possibility of women judges, (though one wishes he had taken a more explicit stand on the implications of this in the modern state) in the third responsum, and the use of Yael, in the final responsum of the chapter, broaden our understanding of the Halakhah. Generally speaking, reading even these few responsa on women gives the reader a good grounding in the connection between the Aggadah and the threads of argument around which Halakhah regarding women is constructed. If Halevi fails in his assessment of the general relevancy of his responsa, he succeeds in his educational intent.

Halevi succeeds also in his attempt to offer guidance to traditional Jewish women as to the appropriate way to negotiate life in the secular state. He refrains from judging accommodations to modern life too harshly, giving credence to Minhag when possible, to allow leniency bediavad, as in the discussion about mixed seating. Perhaps most important, in terms of guidance to traditional women, is his responsum on women bearing arms. Here, his division of the issue into its component

parts allows women to clearly see the limits of participation in the military institutions of the state. By forbidding service in company of men, and training in company of men, but allowing service in self defense , he charts a course that straddles the line between the needs of the State and the Halakhic needs of the individual.

In the sample of Halakhot concerning women which are translated in this paper, we thus find that Halevi succeeds best when his sights are set on instructing observant women and when his goals are educational. He can make the Halakhah stretch towards modernity, and he can chart a course through the stormy waters of accommodation to the needs of the Zionist State. What he cannot do, is to change his essentially narrow orthodox perspective to permit himself to address the issues which are the most relevant to the lives of the modern secular woman in the Jewish State.

### Chapter Three: Shabbat in the Modern Jewish State

The responsa on Shabbat which were selected for this paper reflect Halevi's desire to prove the applicability of Halakhah to modern life. In

some ways, Halakhah concerning Shabbat restrictions is the most obvious challenge to the contemporary Posek. There is no way the ancient Rabbis could have imagined things like electronic watches with illuminated dials, telegrams to different time zones, or the mechanics of slowing a car to allow pedestrians to cross the street. Modern technology requires the Posek to rule by extension, and the technique of Halakhic adaptation is therefore in the foreground of these responsa. Clearly, this is true of the first responsum in Chapter Three, where one feels as if the halakhic technique is of more interest to Halevi than the actual problem being presented.

Interestingly, one does not get the impression, from the responsa on Shabbat which we have considered, that Halevi is as motivated, as he was in the women responsa, to take a more liberal stance. In the first responsum, he actually takes the most stringent position, disallowing the use of the watch, where others have permitted it. In the second he maintains a studied neutrality, allowing for the individual to decide for his/herself whether security duty on Shabbat is allowable, although he lets the reader know that he does have a ruling which he chooses not to share. In the third responsum, he again takes the most stringent

position, saying that one should try never to cross a street on Shabbat, and certainly not to do so when a vehicle is visible. Again in Responsum Four, he advises a stringency: that one should never send a telegram to the United States on Saturday night. Only in the final responsum of the chapter do we again see some of the Halakhic dance which was so beautifully executed in the responsa concerning women. Here we again see Halevi begin with stringency, and then reinterpret the sources to allow for leniency. In this case it would appear that the human concerns of the emotional needs of a teenager pushed Halevi to respond similarly to his response when considering the needs of women. Compassion yields Halakhic creativity.

However, the stringency of the rulings in the other responsa does not necessarily imply Halakhic conservatism. Particularly in the case of the first responsum, concerning the electronic watch, the Halakhic technique, as opposed to the ruling, is liberal. As we discussed in the analysis of the argument of this responsa in Chapter Three, Halevi is taking great pains to build an argument for a particular Halakhic principle - the principle that contemporary Poskim have the right to make Gezerot under specific circumstances. If Gezerot, then Takkanot. These are the

tools which the contemporary Posek must have in his arsenal as he scales the walls of modernity. As we saw in Chapter 2,<sup>2</sup> Halevi is reluctant to use extreme Halakhic tools such as these, if they can be avoided through clever reworking of the sources, but he still needs to know that he can use them when he needs them.

The second "liberal" methodology that presents itself in these responsa is the "Let the chooser choose" approach. We have discussed this in the analysis section of Chapter Three. It is sufficient here to point out that the implication that there might be more than one Halakhically acceptable answer to a given problem is remarkably enlightened in the Modern Israeli Orthodox context. Halevi's conclusions in this chapter may be stringent, but he has not abandoned his goal of inclusivity.

As in the previous chapter, the actual subject matter of the responsa in Chapter Three hardly seems geared to a secular audience. They are interesting, however, in that they assume responsibility for the secular population of Israel (as in considering the Halakhic implications of

<sup>2</sup> See Responsum One in Chapter Two where he rejects the "our perfect Torah should not" argument, as well as the "it is time to work for the Lord" argument. See discussion there.

causing a driver on Shabbat to decelerate, or the general availability of electronic watches.) The secular listener may not be concerned with his or her own level of religious practice, but it may interest him/her to know that the rabbi is interested. Whether this discovery will attract or repel a secular Jew from Halakhic observance is another question.

#### Chapter Four: Military Service

If in Chapter Three Halevi seems to assume responsibility for the secular community, in Chapter Four he appears to be assuming responsibility to that same community. His essay is an attempt to justify the Halakhic rationale of military exemptions for Yeshiva students.

The essay is also an excellent example of what Halevi means by "excavating the roots of Halacha". He begins at the beginning, thoroughly exploring the biblical sources of material about war, conscription and exemptions from military service. As he himself points out, the original texts are narrative in form. Beginning in this way highlights Halevi's philosophy that Halakhah is best understood by examining its Aggadic roots. Perhaps because this is an essay and not a



responsum, the educational aspect is stronger here than in any of the other texts we explored. Halevi gives us a thorough foundation in understanding Halacha about conscription, and this does, indeed, prepare us to take a more sympathetic view of his argument for Yeshiva student exemptions than we might otherwise have done.

Of all the chapters, this one comes closest to meeting Halevi's stated goal of reaching out to the secular community. Although he is talking about Torah student exemptions, the issue itself certainly is a hot topic for anyone living in Israel. Conscription and exemption from conscription is of universal interest, and affects all Israelis. If he is successful in explaining the rationale for religious exemption in terms of the good of the country, whether his readers share his beliefs or not, he will, at least, gain credibility for his community in the eyes of the secular public. They might be willing to see these exemptions as resulting from true conviction and not simply as a shirking of responsibility. Here then, is a case where Halacha is truly applicable to modern life, at least in so far as it can form a bridge of understanding between the orthodox and the secular communities in Israel. Of course one must be willing to go along with Halevi's giant leap of accepting the Rambam's unsubstantiated

equation of Torah students with Levites, and the expansion of this equation to include exemption from military duty, if one is going to buy into the argument. This may be asking a lot from a secular Israeli who sees her own sons go off to war, while her orthodox neighbor claims to defend the state from within the walls of his yeshiva.

We noted in the analysis of the argument in Chapter Four, that Halevi arrives at a strikingly liberal conclusion in this essay. Each Yeshiva student must determine for himself if his level of devotion to Torah merits exemption from conscription. How many students can arrive at such a conclusion with a clear conscience? Not many, I would argue. I would also argue that Halevi knows this. In a sense, his argument provides more support for those who wish to serve than justification for those who do not. This is, of course, consistent with his Zionist philosophy which would tend to support a strong military defense of the State, and a priority of national security.

Halevi's conclusion that each man must decide his degree of piety, and hence his eligibility for conscription, for himself, is reminiscent of his earlier statement: "Let he who chooses choose". It implies a belief that

an individual can exercise free choice within the Halakhic framework. We have, through the investigation of the few responsa presented in this paper, come to know Halevi as a cautious and deliberate thinker. He begins his discussions of Halakhah from a most stringent perspective, and stretches gently towards liberality when motivated by human compassion and supported by Halakhic precedent, albeit, sometimes, precedent which he has twisted to accommodate his perspective. Yet in his acknowledgment of the right to choose for oneself, Halevi seems to have crossed over the line into liberalism. Is there anything that the Reform community can learn from his approach?

Firstly, Halevi's belief that the beauty of Halakhah, once reconnected to its ideational source in Aggadah, can inspire the non-observant Jew, may be shown to have validity in a Reform context. This does not mean that the Reform Jew will necessarily choose to observe Halakhah, but it may mean that he/she can develop a sensitivity and love for the beauty of Halakhic thought, whether or not he/she makes the personal choice to alter his/her behavior. Halevi's educational approach might work in a Reform context. If he has been successful in his educational objective, he may have taught us a valuable lesson in the

richness of a portion of our heritage too often neglected, and often resented, in the Reform Jewish Community.

Secondly, Halevi's struggle to accommodate modernity within the Halakhic framework echoes a similar struggle undertaken by the nineteenth century reformers who are the forefathers of the Reform movement. As we examine Halevi's process, we may gain insight into the intellectual and moral struggle which propelled the founders of our movement into the twentieth century. The foundation of the State of Israel, of course, created an entirely new arena in which the issues of the contradictions between Halakhah and modern secular law could be played out, but the underlying dynamic between the traditional Jewish way of life and the demands of secular modernity remains the core of tension in both periods. Watching Halevi grapple with modern Israeli life can thus provide insight into the historical tensions which ended by creating Reform and Conservative Judaism as we know them today.

Finally, Halevi's work provides an excellent example of how Halakhah is created in the service of an ideology. In these responsa we have seen Halevi straining to mold his rulings to be compatible with the

Mizrachi understanding of the Zionist dream. Halevi's Zionist agenda is the compass by which he steers his path. As we have seen in his responsum on exemption from military service, he must, at times, walk a narrow path between the needs of the state and the needs of the orthodox community. Yet he is able to support his rulings through acceptable Halakhic reasoning. In most cases, his arguments are convincing, even when his bias is strongly apparent. Reform Jews who take Halacha seriously have a precedent here. We can learn from a master, that Halakhah is far from an objective or monolithic system. If Halevi can bend Halacha to fit his ideology without compromising the integrity of the system, we have permission to do the same. In this sense, Halevi's Aseh Lecha Rav can function as a model for the creators of Reform Halakhah. We have already noted how liberal Halevi comes to sound when he expresses his belief in the individual's right to assess his own eligibility for exemption for military service based on the nature of his Torah study. In fact, pushed by his Zionist ideology, Halevi seems, at times, to approach the boundaries of traditional orthodox interpretation of law. There is a moment in at least one responsum when he seems to have crossed even further, into the realm of actual reform.

On Tisha B'av , the fast day which commemorates the destruction of the First and Second Temples, a special prayer, "Nahem" is traditionally added to the blessing on Jerusalem at the Minha service. The prayer seeks God's comfort for those who mourn the destruction of the temple and Jerusalem. One sentence in the prayer describes Jerusalem as "laid waste in her dwellings, despised in the downfall of her glory desolate without inhabitants, sitting with her head covered." The description is in the present tense. Claiming that, since 1967 , this description no longer truly describes Jerusalem , Halevi has argued that saying this passage in modern Jerusalem is a "speaking falsehood before God"<sup>3</sup>. He quotes from Sefer Hachinuch: 606 , "We must learn to be precise in our words , and careful in the language of our prayers and supplications before God, to say only that which is accurate." His solution is to change the tense of the verb "sitting" to "sat". Halevi's Zionist perspective has resulted in the actual alteration of liturgy. Is this not reform?

Of course, it is absurd to represent Halevi as a Reform Rabbi. However , this lapse into actual reform of liturgical text does raise an interesting question. Is Reform the inevitable result of flexible Halakhic

<sup>3</sup> Halevi, op. cit. , Vol. I:14

philosophy? Certainly the fear of this result , and the fear of being accused of orchestrating such a result, lies behind Halevi's cautious wording and tentative liberality. It is clear from the many examples from Halakhic literature which are scattered throughout Halevi's work, that he takes great pains to establish himself well within the framework of tradition. He is concerned with drawing people in, not with being drawn out. Yet ,as much as he digs in his heels, it seems to me , that these responsa show the traces of Halakhic heel marks dragging across the pavement of modernity.

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