

HAMEVASER

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HAMEVASER

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Statement Of Purpose

By ISAAC D. CORRE

As long time readers will have noticed, Hamevaser has been undergoing a shift in scope and emphasis over the past year, a shift that will be completed by the next issue. In recent years, Hamevaser fulfilled its original purpose of twenty years ago: to inform the Yeshiva community of news relating to the Jewish studies divisions of the University. Two factors warrant the discontinuation of this arrangement. First, on a campus of this size, there is no need for two publications whose main purpose is to gather news, much of which is already known to the readers. Also, the separation of Jewish and secular news contradict the very purpose of Yeshiva University. In a paper that serves an institution that strives for synthesis, Jewish and secular news can share the same pages.

If, then, Hamevaser is not a newspaper what is it? Hamevaser, our masthead boldly asserts, is "A journal of traditional thought and opinion" (in contrast to *Commentator* which is the "official undergraduate newspaper of Yeshiva College"). We intend to live up to our stated purpose by discussing various issues—religious, social, political and Halakic—from the standpoint of orthodox Judaism. In doing so we are returning to format of Hamevaser as it developed in the mid-60s. Of course certain news events will fall within our scope and on those occasions we will cover the story, emphasizing the thought over the news.

This change in scope, we feel, dictates a change in format. We are abandoning our previous newspaper style in favor of a more magazine-like layout. This, we hope, will further the impression that Hamevaser is a magazine, not a newspaper.

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Shabbat in Y.U.— Why Not?

By DANNY MANN

While I was in yeshiva in Israel, a Rosh Yeshiva inquiring about Y.U. asked me how often I was permitted to return home for Shabbat. I was somewhat taken aback by the question. After all, I live in the New York area. After I explained to him that few students spend Shabbat in Y.U. unless they have nowhere else to go, he replied, "Then what kind of yeshiva is it?" Although at first annoyed by this attitude, after spending many inspiring Shabbatot in a yeshiva filled with talmidim, I began to understand his point. There seems to be a lack of yeshiva spirit and atmosphere in Y.U. that cannot be fully justified by the amount of time *mada* draws from torah.

It is my opinion that widespread participation in a legitimate, well-attended Shabbat program in Y.U. could prove instrumental in enhancing our religious experience in a number of ways. First and most simply, a Shabbat spent in the presence of a group of *bnei torah* with *divrei torah*, *zemirot* and *shiurim* is an end in itself. Unfortunately, I am incapable of expressing the beauty and importance of a Shabbat observed properly, but to be sure, Shabbat is much more than Kiddush and *issur melacha*. There is also a spiritual-emotional aspect to Shabbat, a day described as *Me'ein Olam Haba*. A yeshiva should be the most conducive place for living such a Shabbat; if it is not, blame rests on the yeshiva.

In addition, due to our busy schedules, we lack time for the learning of *musar* and *machshava* during the week, a problem discussed in one of last year's Hamevaser issues. Shabbat in yeshiva could be the perfect time to devote towards alleviating this problem.

Shabbat meals would also offer an opportunity for *bnei torah* from various shiurim to meet. Increased friendship would lead to the unity that is such an important feature of a yeshiva atmosphere. We might extend this friendship to our friends from other colleges, as well as potential students, and expose them to the inspiring atmosphere too.

There is yet more to be gained by an increased presence in Yeshiva on Shabbat. Why should out-of-towners be forced to find a place to stay every Shabbat, for lack of a viable alternative? Why must those unsuccessful in their search spend a depressing Shabbat in Y.U.? A well attended Shabbat program would offer much-deserved relief to non-New Yorkers.

I obviously do not feel it realistic to expect students to remain every Shabbat. Perhaps, increasing the S.O.Y. "In Shabbatot" to once every three weeks might be a possibility. Even this would not require everyone to come every time. In any case, I would like people to think about and discuss the idea, taking an active role in convincing others to support a Shabbat program when it is effected.

Of course there are reasons one might not be interested in this idea. People are itching to escape Washington Heights. Some have responsibilities at home or at N.C.S.Y. These are just a couple of legitimate excuses. My appeal is that those interested and able, make an effort to enhance their own experience and help start something to improve our yeshiva.

As it is the beginning of the New Year, 5745, we must take stock of the past year in order not to repeat our mistakes. I must admit to an error. In our last issue (May 28, 1984; 26 Iyar, 5744) Hamevaser published an article entitled "To MYP and Back" under the pseudonym Eric Aberman. Rabbi Charlot drew my attention to the fact that

this anonymity may have been a breach of journalistic ethics. I cannot reveal the name of the author, but I must ask the readers to reconsider the article in light of the fact that it was written pseudonymously. If it was a breach of ethics, I alone bear responsibility and apologize for all the parties involved.

Thoughts on Tzom Gedaliah

By LARRY YUDELSON

After two or even three days of festive eating, who would even think of eating on Tzom Gedaliah, even if it weren't a fast? And of course, being *Aseret Ymei Tshuva*, we would say *slichtot* and *avinu malkeinu* anyway. If this were not enough to make Tzom Gedaliah the least noticeable of all the fast days, it is overshadowed by Yom Kippur, the archetypal fast and the hardest, which is but one week away.

This is all most unfortunate, since I believe that Tzom Gedaliah has more immediacy and meaning to us than the other fasts which specifically recall the stages in the destruction of Jerusalem. Traditionally these days served to focus and contain our mourning for Jerusalem, but though we still weep for our long history, the ruins and desolation of Jerusalem do not bring tears to the eyes of us who are privileged to be living in *aichalta d'geula* (to me the terms *shomema* and *b'zuya* recall Washington Heights, more than the now thriving Jerusalem).

Tzom Gedaliah recalls a situation closer to our own. The Temple has been destroyed, Jerusalem is in ruins, and most of the Jewish people are in exile. Judah has but a faint glimmer of autonomy under its Jewish Governor Gedaliah ben Ahikam, but Babylon is firmly in charge. Still, the Jewish refugees who fled to Edom and Moab begin

to make their way back from their dispersion. Life begins again. There is wine and fruit to be harvested, and the harvest is good.

But Gedaliah was a quisling. He swore his loyalty to the Chaldeans; to Ishmael ben Nathaniah he was a traitor. So Ishmael, with the support of the king of Ammon (who also hated Babylon), assassinated Gedaliah and his men. Gedaliah, the Babylonian lackey, is dead—long live Free Judah! But the "freed" Jews saw what was coming—Babylon, looking to avenge the death of her governor—and fled to Egypt. The final act in the destruction of the Jewish state had been played.

Six hundred years later, when Judea was a Roman province, a rebellion was in progress. Some Jews would just as happily be Romans, others would settle for imperial dominion if they would be free to study Torah (Chazal fell into this category), and others would not settle for anything less than total freedom and political independence. This latter group was faced with a problem: their compatriots, willing as they were to compromise, were more inclined to sit passively through a long siege and negotiate a suitable settlement with the centurions than to risk their all in battle. They were not fighting hard enough. So the Zealots forced battle on them by burning the grain that would have fed Jerusalem through long years of siege. Now Jerusalem had no choice but to fight and win—or starve. And as

we still do every Tamuz and Av, they starved.

What do these tragic incidents have in common? Most obviously, a decision by a small group to decide the fate of *klal Yisrael*, without consulting either the people as a whole, or the religious leadership (Jeremiah and Yochanan ben Zakai). They thought they knew what was best for the nation, that they were the only ones fit to lead it. They lead us to tragedy and disaster.

There is another factor these groups share: their primary value. They were devoted to the independence of the Jewish state, but not to the Jewish religion. Better dead than Babylonian or Roman was their motto, unlike Jeremiah and Chazal, who saw the possibility of devotion to God even as prisoners and a conquered people. It was a devotion to nationhood as a goal in itself, and it led to an unwillingness to compromise, to accept anything less than total national sovereignty.

The application to our own times is obvious. In the past few years groups of Israelis have increasingly opposed attempts by the state to achieve peace, not through the appropriate means of democratic debate, nor through rallying the voice of our religious leadership, but by taking our national fate into their own hands, from Yamit to the Mosque of Omar. Let us learn the lessons of our tragic history.

Torah U Mada U Chesed

By NATI HELFGOT

Gemilut Chasadim is one of the fundamentals of authentic Jewish life. In fact, the Gemara tells us that the practice of *Chesed* is one of the hallmarks of the Jew:

רחמים, ביישנים, ונחמלי חסדים.
Chesed, in a word, is a religious imperative whether one views it as an extension of כבוד ואהבה לרבו: as does the Rambam in Ch. 14 of Hilchot Aveilut, or as being part of the person's striving to follow in the ways of God. "Imitation", as the Gemara explains—
"הכלת בדרכיו. מה הוא רחום אי אהיה חסד ורחם"

Moral demands such as this, when viewed alone, are often easy to fulfill. However, as we well know, life is not that simple. Often, conflicts arise between this demand on our time and other equally valid demands.

Specifically, for us as *bnai Yeshiva*, people who are involved in the study of Torah, many problems exist. We are especially sensitive to the primacy that *limud haTorah* should play in our lives. Adding to this dilemma is our commitment to the study of general knowledge, whether in its pure form or oriented towards a career, all of which takes up another chunk of our time. Thus we are left in a quandary between our commitment to our studies and our desire to be involved in *chesed*.

This tension is a real one and there is no simple solution that is applicable to all. However, I would like to present certain ideas that may add to the discussion and the way we approach this issue.

When we speak of *gemilut chasadim*, we must distinguish between two distinct areas of *chesed*. The first type is more oriented to helping the other in a physical or mental fashion. This would include helping the poor, visiting the sick or elderly, providing monies for poor brides. In this form of *chesed* one is primarily concerned with aiding others materially or by raising their spirits.

The second form involves helping others in the spiritual sense. This category includes work in outreach and inreach programs, or *chinuch*.

The crucial need to deal with both kinds of *chesed* only intensifies the problem that each of us faces in trying to accommodate the often conflicting demands of Yeshiva College and the community. Some students find a solution in devoting most of their energies to one of these areas. This small minority feels that *chesed* should be the primary field of endeavor. They spend a great amount of time involved either in the physical or spiritual realm of *chesed*. Consequently, they often sacrifice their own personal growth in learning and other areas for the good of the *khal*.

This road is a very dangerous one because of the possibility of missing out on using the formative years in yeshiva and college when one has the opportunity and time to develop his potential. Some authorities have suggested that the Jew at different stages of his life may be demanded to involve himself less in *chesed* and concentrate more on his own growth. After training and personal development one can deal more ably with the spectrum of problems in the community at large.

On the other extreme, a large group of people in the yeshiva world, and some in our own Yeshiva, take the opposite route entirely. They contend that a student should concentrate on his own growth in Torah and

not get involved in outside work until one has developed for a substantial number of years. Thus one hears of Roshei Yeshivot who frown upon their *talmidim* participating in such activities.

To my mind, this approach poses as many, if not more, problems than that of the other extreme. We *bnai Torah* are among the small percentage of Jews in the U.S. who receive a religious education; (many of us have even had the privilege to learn in Israel). This imposes on us a special responsibility to our brethren who were not so fortunate. The Ramban in Parshat KiTavoh comments on the verse:

(Devarim 27:26) "Curseth be he that confirmeth not the words of this law." The Ramban states: "R. Asi in the name of R. Tanchum the son of Chiya said, 'Even if a person learned and taught, observed and fulfilled, but had the means to enable others and did not do so—he is included in this curse.' Thus the Rabbis interpreted this as referring to the royal house...who has the power to uphold the Torah over those who annul it. And even if he is a righteous man in his own deeds, but he coalescing in Israel, taught Jewish Law at Touro Law School."

In many ways we are the individuals who are in the best position to help our fellow brethren especially in the spiritual realm. We can help high school and college students in ways that no adult can. For example, Y.U. Seminars can only be successful if we have committed college age students who are able to relate to the kids as advisors and friends. This is a role that cannot wait ten or fifteen years. It is a role only a nineteen or twenty year-old can properly and effectively play.

Secondly, there is a more basic issue at the root of this matter. A story is told of the Alter Rebbe, the first Lubavitcher Rebbe, who was learning in a room. In the next room his son-in-law, the famed Tzemach Tzedek, was also engrossed in a *sugya*. Outside, a baby was playing in its crib when it fell out and began to cry. The Tzerbach Tzeek was so involved in the topic that he was oblivious to the wailing. The Rebbe, seeing the situation, got up, picked up the baby, cradled it to sleep and put it in its bed. He then approached the Tzemach Tzedek and said, "If one can learn Torah and not hear the cries of a Jewish child, then there is a flaw in that type of learning." I first heard this story from my Rosh Yeshiva in Israel, Rav Amital, to demonstrate his belief in the ideology of the Hesder movement.

Similarly in our contexts, we must be wary of a Talmud Torah that is oblivious to the physical and spiritual cries of the Jewish people. Many of the *meforshim* see the difference between Noah and Abraham as focusing on this issue. Noah was concerned solely with his own material and spiritual welfare, in Chassidic lore "a tzadik in Peltz"—a tzadik who wrapped himself in furs so others could not benefit from his warmth. In contrast, Abraham was concerned with others and is the paradigm of the *gomer chesed* in Jewish tradition.

Thus, the course that I find one must follow in these matters must be the middle road. Fundamentally, our primary goal when we are at Yeshiva must be one of growing in Torah, developing our ethical and spiritual

The Dual Themes of the Aseret Yemei Teshuva:

By RABBI SHALOM CARMY

The following article, an abstract of a shiur by Rav Aharon Lichtenstein, is reprinted from the September 20, 1968, Hamevaser.

Rosh Hashanah takes its place as a holy day within two different frameworks, which combine to determine its character and its meaning for us. On the one hand, we find Rosh Hashanah as the day of creation. This creates a cosmic conception of Rosh Hashanah, which sets it off from the rest of the Penitential Season, stretching from the beginning of Elul up to Yom Kippur. On the other hand, we view Rosh Hashana as part and parcel of the Days of Awe, where the central concept is that of repentance.

The search for the historical roots of this period of *Teshuvah* takes us back to Moses. After interceding with God for forty days and forty nights, Moses spends his third forty-day period on Sinai. This period of time, from the beginning of Elul to Yom Kippur, is marked by the second giving of the Torah to Moses. Thus this season of the year becomes associated with the purification of man from his sins; and, in a sense, with a second giving of the Law, a second Shavuot. Here, Rosh-Hashanah lacks historical uniqueness, serving instead as a corridor leading into Yom Kippur, paying the way for that momentous day when God revealed the Thirteen Attributes of Mercy. Sometimes, we detect this relationship in *Halacha*: The liberation of slaves commences on Rosh Hashanah ("They eat and drink and rejoice," in the words of our Sages), but is consummated on Yom Kippur.

potentials, and finally our careers. However, we must also find time to devote ourselves to material and spiritual *chesed*.

In the realm of physical *chesed*, there are many options and opportunities available in the Jewish community. One might get involved with his synagogue's *bikur cholim* on Shabbat. Another possibility is becoming involved once or twice a month with organizations such as the National Association of Jewish Poor, which helps the Jewish poor in the blighted areas of the city. There are many things one can do and accomplish, even on a limited basis.

Similarly, in the area of spiritual *chesed*, there is much work to be done. In the areas of formal outreach, groups such as N.C.S.Y. and Y.U. Seminar always need committed and motivated people to participate. However, even within the "four walls" of the Yeshiva, there are many needs not yet met.

I would like to particularly emphasize learning with a high school or J.S.S. student at night, the J.S.S. Big-Brother program and inviting other students who have no place for Shabbat.

The issues raised here are ones of great significance to the type of *bnai Torah* that we choose to make of ourselves. As we balance our time, let us always be cognizant of the religious "desiratum" of *Chesed* as the verse in Yermiyahu states:

כי אם בנאת יתהלל השכל ודע אותי כי אני ר' עשה חסד משפט וצדקה בארץ כי באלה תפוצה
סוף

The dual nature of Rosh Hashanah, as a commemoration of creation, and as a time for repentance, is reflected in the Midrash. King David says: "The Lord is my light and my salvation" (Psalm XXVII); and the Midrash comments: "My light"—on Rosh Hashanah; "My salvation"—on Yom Kippur."

"My light" represents the cosmic aspect of Rosh Hashanah. Light is an objective phenomenon which I enjoy, and to which I can relate. To be sure, I can speak of "My light," inasmuch as I personally experience it, and reach out, as it were, to grasp it and acquire it, so to speak. Nevertheless, the reality of the light remains independent of my experiencing it. Not so with "salvation." Salvation can be defined only in relation to the person being saved. It depends on the particular, individual experience of spiritual regeneration associated with Yom Kippur.

From this angle, we can shed light on one of the central notions of the season—*Malchut*. God's Attribute of Kingship is independent of our existence. Yet at the same time—"there is no king without subjects." In *Adon Olam*, we proclaim Him "Lord of the universe, who reigned before any being was created," but "When all was made by His will, then was He acknowledged as King." Hence, we find a difference of opinion as to the place of *malchut* in our prayers: in the third benediction, (*kedusha*) stressing the universal, transcendent, aspect of God's Kingdom or in the fourth, in which God's Kingship relates to His subjects. Although we conduct ourselves according to the second possibility, the basic orientation of Rosh Hashanah tends to the first, the abstract, the awe-inspiring *malchut*. On Yom Kippur, however, the emphasis changes: We conceive of God primarily as the "King who forgives and pardons" us. This conception, however, can serve as a springboard towards a more universal one.

Similarly, we find this motif in the very first Yom Kippur, the second bestowing of the Torah upon Israel. The first time—on Shavuot—we read of an awesome spectacle: God reveals Himself in light, in thunder and in fulgurations, even in the mighty blast of the Shofar. This again corresponds to "light." But on Yom Kippur, we see Moses alone amidst the great silence. In intimacy and privacy is the Torah given now. And when Moses asks for a knowledge of God's ways and His Light, he receives the Attributes of Mercy—a saving knowledge to bring atonement.

We have adumbrated these two motifs of Rosh Hashanah and Yom Kippur: "light" and salvation, the cosmic and the individual. But though these are distinct, they are not disjunct. "Light" becomes "my light" as it passes from an impersonal spectacle of power to a living presence. And conversely, Yom Kippur focuses on a desperate sinner, yearning for salvation, the movement of the day universalizing his outlook. When the High Priest confessed before God on Yom Kippur, he began with himself and his family. Then he had to progressively universalize his confession, until it included the entire nation of Israel. Qualitatively as well, the sinner must rise from preoccupation with his own subjectivity if he is to develop a genuine fear of Heaven.

SYMPOSIUM

The Pursuit of Justice

Last spring, the shocking announcement that 27 orthodox Jews were arrested as alleged members of an anti-Arab terrorist underground led to a **Hamevaser** editorial condemning their acts. (Terrorism Abroad—Apathy at Home; May 28, 1984—26 Iyar 5744) Since then, additional information attesting to both the sincere religious idealism of the terrorists and the serious nature of their crimes has created widespread debate in the Jewish community.

Recognizing the gravity of the situation,

Hamevaser is departing from its usual practice of presenting primarily student thought, and has solicited articles from leading halachic authorities, Roshei ha'Yeshiva, and community leaders in an attempt to provide the insight only such respected individuals can offer. We hope that this symposium will help clarify the complex issues surrounding the *Machteret* so that we may respond intelligently as religious Zionists.

The Case Against Terrorism

By RABBI WALTER WURZBURGER

If any evidence were necessary to show that the resurgence of extremist fundamentalism has penetrated even into such bastions of moderation as Yeshiva University, we need only point to the fact that **Hamevaser** considers terrorism in the State of Israel a fitting subject for debate.

I fail to understand how anyone who acknowledges the legitimacy of the State of Israel could condone acts of violence in defiance of the established policies and laws of the State. It might make sense for followers of Neturei Karta, who deny the legitimacy of any pro-messianic Jewish State, to applaud such acts of terror, inasmuch as they contribute to the erosion of the authority of what they regard as an illegitimate state. But how can those who consider the State of Israel as the foremost instrumentality for the survival of the Jewish people in our era sanction misguided acts of vigilantes who blatantly take the law into their own hands and undermine the very foundations of that State?

The very notion of a sovereign state logically entails exclusive jurisdiction over the internal and external security of the inhabitants of its territory. To be sure, there are situations when moral imperatives dictate civil disobedience. But unless one is prepared to advocate revolution against the established authorities of a state, civil disobedience must stop short of acts of violence.

Apart from the concern for the inviolability of the sovereignty of the State of Israel, there are numerous other cogent, halachic and moral reasons for all-out opposition to terrorism, even if employed to ensure or consolidate Jewish control over Judea and Samaria. We are not dealing with the question of compassion or sympathy for the plight of the arrested prisoners. They may be inspired by religious idealism, patriotism and love for Eretz Yisrael. This is a matter to be taken into account by the Israeli courts which bear the responsibility for meting out punishment. It is, however, totally irrelevant to the issue of the merits of terrorist policies which must be categorically and unequivocally condemned.

Chauvinism buttressed by religious fanaticism presents us with grave perils—not only in Iran, but also in Israel and elsewhere. We shudder at the horrors which, but for the vigilance of the Israeli security forces, would have been unleashed by time bombs placed on Arab buses. The potential victims of such an indiscriminate attack would not necessarily have been PLO sympathizers

committed to the extermination of Jews and the destruction of Israel. The bombs might have maimed or killed moderate Arabs, favoring co-existence with the State of Israel, or for that matter, innocent children, and for all we know, even Jews. Intent to commit such a ghastly crime cannot by any stretch of the imagination be sanctioned on the ground of the right of self-defense against a *rodef* (aggressor). After all, the victims of the intended explosion might have had no aggressive intentions. Under certain conditions, it may be legitimate for a state to wage preventive war; but no individual is permitted, no matter how strong the provocation, to murder completely innocent human beings even with the aim of deterring future aggression.

**Such a ghastly crime
cannot be sanctioned...
Our policies must be
based on Halkhic norms,
not messianic
delusions**

The attempt to blow up the Omar Mosque provides another illustration of the dangers posed by extremists. Can we begin to imagine the disastrous consequences for both Israel and world Jewry had this insane scheme succeeded? How much blood would have flowed as a result of a Holy War waged by the Arab world bent upon revenge for the desecration of their shrine!

It may be painful for us to see the Omar Mosque standing on the site of the Bet Hamikdash on the Temple Mount. Yet we must muster the courage to denounce terrorist plots, even if they are inspired by Messianic pretensions. In the course of our history—from Bar Kochba to Shabbatai Tzvi—we have paid dearly for the blunders of pseudo-messiahs. We need no repetition of such catastrophes. Our policies must be based on Halachic norms, not messianic delusions.

As religious Jews, we are bound by a religious imperative to expect daily the imminent arrival of Mashiach. We certainly have no right to attempt to "bring Mashiach

By RABBI AVRAHAM WEISS

This article, which originally printed in the Jerusalem Post, is reprinted by permission of the author.

The advertisement placed in *The Jerusalem Post* on June 9 by the Committee for the Sanctity of Human Life, which I coordinated, has precipitated a strong reaction.

The ad stated in part: "Constraints imposed upon the government of Israel by a world community indifferent to the murder of Jews has, at times, made it impossible for Israel to respond to all acts of terrorism. We do not condone attacks upon innocent civilians. However, focused action against those directly or indirectly responsible for the maiming and death of Jews, in order to prevent them from inciting further violence, is understandable."

I strongly believe that violence is not the method by which to protest and have never condoned such action in my many years of activist work on behalf of Israel and oppressed Jewry. Those who are aware of my work with the unaffiliated, the disadvantaged, and as a teacher of Torah, know that violence runs contrary to my very being. The reader can imagine my trepidation in organizing an advertisement which suggested that, in unique cases (e.g., the Mayors' incident), violence in the form of "focused action" is understandable.

Every word in the ad was measured carefully. We were very clear when we stated that "we do not condone attacks upon innocent civilians." However, comments in editorials and letters to *The Jerusalem Post* erroneously and unfairly generalized our position to include approval of "random actions" (under which category the university and bus incidents allegedly fall).

This has caused me, and I am sure, many of my colleagues, much personal anguish. This article will clarify the intent of the ad by outlining some of the basic issues which prompted its writing.

In the late '70s and early '80s, PLO strength in Judea and Samaria grew immeasurably. Pressures on the government of Israel from within and without often made it impossible for Israel to secure and administer the area effectively.

By 1980, for example, the year-old National Guidance Committee (NGC), a front for official PLO representation, was in virtual control of the Arab community in Judea and Samaria. The NGC received its orders from the PLO, and was involved in

now" by conduct which contravenes Torah norms. Moreover, it is the height of arrogance to let one's particular version of Messianic faith serve as the basis of policies which run counter to the expressed will of the people as represented by its democratic government.

"When suffering strikes,"—so our Sages inform us—"we must re-examine our ways." Indeed, it is a tragic perversion of religious idealism, when it turns into dogmatism, followed by fanaticism which, ultimately, escalates into terrorism. It is high time that we re-assess our priorities and make sure that Torah leads to *Darkei Shalom*—not terrorism.

almost every enterprise and institution in Judea and Samaria. It preached terror and violence against Jews.

Mayors Preached Violence

Among its leaders were the key mayors of Judea and Samaria, including Ibrahim Tawil of El-Bireh, Karim Khalaf of Ramallah, Bassam Shaka'a of Shechem and Fahd Kawasme of Hebron. Despite its close ties with the PLO, the establishment of the NGC was encouraged and sanctioned by then-defence minister Ezer Weizman.

Rock-throwing also emerged as a serious security problem. To many, this issue is innocuous. But rocks can damage and kill. During the summer of 1983, the Statistics Bureau of the Military Administration reported an average of 92 stoned vehicles per month. And who can forget the tragic death of Esther Ohana who was killed by a thrown rock just outside of Halhul?

Government response has been lax. In virtually every situation, Israeli soldiers are not permitted to use firearms and they may never enter a school to apprehend a rock-thrower.

Elyakim Haetzni, a well-known attorney living in Kiryat Arba, said in a recent interview: "When schools were on the roads, Arabs would pelt soldiers from the windows with impunity and no one could enter the school building."

The former mayor of Shilo, Era Rappaport, who has been mentioned as being associated with the mayors' attack, told me last summer of some of the difficult living conditions in Judea and Samaria. He described how, in one incident, Arab teenagers paid by the PLO continuously cut the telephone lines in Shilo and left his community isolated and in danger.

He spoke to the police captains in Ramallah and Shechem, to the military commander, to senior government and opposition leaders, including Weizman, Burg, Peres, Shamir, Hammer and Rabin. All refused to help his community for political reasons, he related. The settlers in Shilo gradually recognized that they would not receive government protection on this issue.

"One night," Era Rappaport recounted, "we went to the nearby village of Turmos-Ayah from where the problem was coming, and shot down the electric lines. Suddenly, the police came. They entered Shilo and asked, 'Who did it?' I said proudly, 'I did.' I was arrested, given a fine and placed on two-year probation and was warned that if I did it again, I'd receive two months in jail. The judge however, concluded the case by saying, 'The Government who permitted you to be in Shilo must defend you. Jews in Judea and Samaria should be no different from anywhere else.' The telephone lines in Shilo were never cut again."

Elyakim Haetzni summarized Israel's non-policy in Judea and Samaria when he stated: "In Judea and Samaria in the early '80s, the PLO ruled the area. The mayor of El Bireh, Ibrahim Tawil, was correct when he said, 'The Israeli army is only patrolling the main roads. But for that the whole country is in the hands of the PLO.' There were attacks on

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Jews all the time, murder attacks. There were massive PLO demonstrations in Nablus and elsewhere, and the situation was almost reaching the stage of a PLO takeover of Judea and Samaria."

I am at least as great a lover of Israel as my critics, and questioning the policies of the government of Israel causes me great pain. However, the government should feel compelled to answer some very hard questions. Were Jews living in Judea and Samaria provided with less protection than those living within the green line? Were certain government officials lax on security in Judea and Samaria because of their opposition to Israel's retention of the area?

The reality is that Judea and Samaria have not been officially incorporated into Israel and are not under Israeli law. Judea and Samaria are considered by the government to be administered territory under military rule. As such, law and order is not as certain in Judea and Samaria as it is elsewhere, and events in that area, such as the attack on the mayors, should be judged in that context.

If the government of Israel was unable to adequately protect its citizens in Judea and Samaria, under what conditions would those living in the area have the right to defend themselves? The signatories to the ad stated that "focused action against those directly or indirectly responsible for the maiming and death of Jews, in order to prevent them from inciting further violence is understandable." This key sentence reflects the Jewish principle of *rodef* (pursuer), and the right of self-defence.

While an exhaustive analysis of the *rodef* principle is beyond the scope of this article, a working definition is in order.

Basing himself on classical talmudic and halachic sources, Dr. Dov Frimer, professor of Jewish law and criminal law at Touro College School of Law in New York, explained *rodef* as follows: "It would be permissible to kill a person in self-defense or defence of others if: 1) the person to be killed is engaged in wrongful conduct...for which the person is legally culpable; 2) killing the person will save (and is the only available way to save) the victim from serious and irreparable harm (e.g., death or grievous bodily harm) resulting from the wrongful conduct.

"At the heart of the right of self-defence is, of course, the rescue factor. By slaying the aggressor, we save the life of the victim. However, that element alone is insufficient...We must demand that the conduct of the pursuer be wrongful and illegal. It is the wrongful quality which tips the scale in favor of the pursued. In the balance of interests between the illegal aggressor and the innocent victim, Torah society unhesitatingly opts for protecting the life interests of the latter" (Or Hamizrach, April-July 1983, p. 330).

Whether the attacks on the mayors fall within the parameters of *rodef* is a subject for the courts to ultimately decide. [Available information, however, indicates that this may very well be the case.]

Mayors Incited Violence

As noted above, the mayors were the central leaders of the PLO's front group, the NGC, which preached, allegedly coordinated

and continued to plan terror, violence and murder of Jews while urging the dismantling of the Jewish state.

If this is so, then the mayors' conduct would constitute a wrongful act which would fall within the gamut of *rodef* in Jewish tradition and make the right of self-defence operative.

In public statements, the mayors continuously stirred up anti-Israel hatred. Mayor Bassam Shaka'a of Shechem, for example, made the following statements:

"Only the PLO can speak for us" (*Ma'ariv*, March 4, 1979). Commenting on the terrorist attack on an Israeli bus on the Haifa-Tel Aviv road, Shaka'a said: "I absolutely identify with the slaughter that took place on the coastal highway. Burning a child is perhaps too much, but the action was proper" (*Ma'ariv*, November 7, 1979). In an interview with a Beirut newspaper, he said: "Through armed struggle, our goal to liberate Palestine will be achieved" (quoted in *Ma'ariv*, November 15, 1979).

Hebron Mayor Fahd Kawasme proclaimed: "We must call for a civilian rebellion. Great imperialistic powers like the British and the Nazis rose and fell. This, too, will be the lot of the ugly conquering Zionists" (*Ma'ariv*, March 24, 1979). In a later statement, Kawasme added: "We, the Palestinians, have time and patience. We have nothing to lose as we have already soiled our feet in mud. We shall wait until we have the power..." (*Ma'ariv*, May 11, 1979).

The accused are guilty of no moral crime. They were defending their right to live in peace and security.

Mayor Karim Khalaf, of Ramallah, at a rally in Shechem on November 7, 1979, maintained this invective, reading a poem which urged Arabs to return to Jerusalem, Jaffa and Haifa. In his book, *Triangle on the Jordan* (p. 51), Pinchas Inbari describes this incident as "bordering on a call for revolt with rifle in hand."

The anti-Jewish sentiment instigated by the mayors reached its crescendo on May 2, 1980, when six Jewish students were gunned down as they entered Beit Hadassah in Hebron. Reacting to the student massacre, Sheikh Tamimi, the Kadi in Hebron, said: "We cannot lose hope. The day will come when the Palestinian flag will fly over Jaffa, Haifa and Acre. Zionists are fascists. The Palestinian people will one day be in control of all of Palestine."

Binyamin Ben-Eliezer, the Israeli army officer in command of Judea and Samaria at the time of the attack, said: "The terrorists came from Hebron, or were aided by people in the area...all this has convinced me that the public statements by the mayors created in

Hebron an atmosphere that made this horrible act possible."

After the hostile statements by the mayors, followed by the massacre of the Jewish students, the settlers, convinced that future attacks were imminent, pleaded for help from the Israeli government.

In an interview soon to be published in the 1984 July-August edition of *Counterpoint* (a nationalistic monthly newspaper published in the U.S.), one of the accused is reported as saying: "After the Hebron murders, we pleaded for help from Chief of Staff Rafu Eitan, who brought in Ezer Weizman. Weizman's attitude of, 'If you weren't here it wouldn't have happened,' left us feeling helpless."

To many of the settlers, it had become clear that they were not going to receive adequate protection from the government.

On June 2, 1980, on precisely the last day of the 30-day mourning period for the six students, the coordinated attacks on the mayors took place. Whether or not the attackers used the minimal force necessary to stop the mayors, as is required by the law of *rodef*, is yet to be determined. In the same July-August interview in *Counterpoint*, one of the accused states: "Our objective was to injure, not to kill; therefore, we used small quantities of explosives. If we killed them, they would have become super-martyrs. Alive they serve as an example to future instigators of anti-Jewish terror."

Alternatively, the attackers may have concluded that the mayors could be stopped without killing them. Subsequent to the attack, the NGC was declared illegal by the government and calm returned to the area.

While the attacks on the mayors were not sanctioned by the state and thus must be considered illegal, they may be morally justifiable. It is essential to determine the role of the mayors in the killing of the six students in Hebron and in the planning of subsequent violent actions.

If the mayors were the pursuers and the accused settlers were defending themselves from future harm—and if protection was not being provided by the government—then under the principle of *rodef* the accused are guilty of no moral crime. This is the precise position taken by the 25 rabbis who spoke out in their defence.

Our appeal to the government of Israel stands as we stated it in our ad: "We appeal to the government of Israel to recognize that, if those recently imprisoned were retaliating against individuals directly or indirectly responsible for maiming or murdering Jews and the continued instigation of further terror against Jews, then the accused are guilty of no moral crime. They were defending the right of their families to live in peace and security on their land."

Such settlers are not Jewish terrorists or traitors as they have been labelled in the media and in certain government circles. Their alleged actions were focused; the intention, to strengthen rather than weaken the State. They are idealists and great lovers of Zion whose lives are inextricably bound with the people, land, government and Torah of Israel. Believing they were pursued by violence, they could have been left with no choice but to pursue justice.

Decidedly Ambivalent

By GIDON ROTHSTEIN

When we are considering our reaction to an episode like that of the *macheteret*, we must deal with two issues: what our opinion is, and what action we take in accordance with this opinion. There are, *baruch hashem*, a plethora of opinions on the issue to choose from. Unfortunately, as is often the case with me, I cannot agree wholly with any of them.

In my first reaction to the *macheteret*, I am reminded of Isaac Asimov's statement: "Violence is the last resort of the incompetent." Much of my upbringing has also been dedicated to removing the concept of violence as a viable response to all situations except those of direct self-defence. As such, it is impossible for me to condone the actions of the *macheteret*, especially in view of the fact that they were violating the laws of the Jewish State, and possibly the view of halakha.

That is my detached, theoretical analysis of the situation. And yet...and yet...and yet. And yet, I find it impossible not to feel a certain sympathy for the "terrorists." I know from my own personal experience that dealing with someone who doesn't share my moral values, and can therefore take advantage of me, is extremely frustrating. The desire to lash out, to punish the people who are causing (or aiding those who cause) so much pain, is an understandable one. It becomes an even more pardonable stand when one remembers that these people live with guns twenty-four hours a day due to the constant threat of terrorist attacks. When added to the fact that no real headway has been made in curtailing the Arab violence, the urge to destroy those perceived as responsible for the Jewish deaths becomes almost reasonable.

That is all on the theoretical level. It is for me as a Jew to know, for me as one who hopes to be a future member of Israeli society to make note of, perhaps even for me to express in conversation with fellow Jews or in letters to Israeli officials.

When it comes to the world at large, though, I think we should not express these feelings quite so clearly. The world press, by its unanimous condemnation of the *macheteret*, by the inordinate amount of press given to a group which barely got off the ground (as opposed to the PLO, Baader-Meinhof, the Red Brigades, etc. which do not stir the press' outrage anywhere close to this level), has disqualified itself as a forum for

(Continued on page 11)

At a bare minimum, they should not be judged before trial: *Tzedek, tzedek, tirdof*—Justice, justice shalt thou pursue, the Torah commands. Their pursuit for a "just hearing" from the government, media and general public, goes on.

JOIN HAMEVASER!

Attacks Undermine Jewish State

By RABBI YOSEF BLAU

The trial of twenty members of the Jewish underground is being held under Israeli law and hopefully will clarify what was done or planned and by whom. It is not the purpose of this article to determine the responsibility of specific individuals for the attacks or to judge them. Since announcement of the arrests, rabbinic figures have arisen to defend the actions of the Jewish terrorist group, accepting the truth of the charges, on halachic grounds. The arguments against this position, some of which are eloquently expressed by Rabbi Bleich in his article appearing in this *Hamevaser*, appear to me to be totally convincing. Rather than repeat what Rabbis Wurzbarger and Bleich have written, I will focus on additional factors that require that we forcefully condemn these terrorist acts and recognize the serious danger to our moral underpinnings that inhere in the assumptions of the Jewish terrorists and their supporters.

The fundamental right of the Jewish people to organize a government in Israel also implies accepting the authority of this government. A government chosen by the people, according to the Ramban and Rav Kook, has the status of king with regard to the laws of war, which means that no private group has the right to undermine the ability of this duly-elected government to make war or peace. Relations with the Arabs living in

Yehuda and Shomron, including their mayors, affect the security of the entire people, and the actions of individuals against the government policy might well come under the halachic category of *mored b'malchus*.

If *rodef* can be applied to Arab mayors for supporting the P.L.O., it can be equally applied to Jewish terrorists whose acts of violence invite retaliatory violence that might endanger others. In general this loose application of *rodef*, no longer requiring any definite and specific attempt to harm, can be applied to anyone whose actions threaten someone else's perception of security needs. One group would see Meir Kahane as a *rodef* for going to Arab villages and agitating; while

another would see Menachem Begin as a *rodef* for signing a peace treaty with Egypt.

Placing a bomb at the mosque to create a war which will supposedly bring the Messiah certainly endangers thousands of lives. Even the justification of the original plans as a means of destroying the Camp David accords assumes that the collective judgment of the government and the overwhelming majority of the populace that a peace treaty with Egypt justifies certain risks, can be disregarded by a small group of individuals because they don't agree. Can there be a clearer case of *mored b'malchut*?

The pattern of escalation from the attack on the mayors 'nai was intended only to injure, to the random shootings at the Arab

college because "it is well-known that most of them are P.L.O. supporters," to placing bombs on Arab buses—apparently all Arabs must be suspected of being potential P.L.O. members and any Jew who takes an Arab bus isn't much of a Jew—reflects the lunacy that inevitably follows from any group of individuals bereft of any self-doubt deciding that their actions are the true path to save Israel, if not to bring the Messiah. If an Israeli Druse bomb-expert gets injured along the way while one of the accused watched, it is explained away as unfortunate but how else could the secrecy of the underground be preserved?

Besides *chilul Hashem* in the eyes of the rest of the world, we must examine the effect within the Jewish people. A bitter struggle is taking place in Israel for the soul of the Jewish people. A religious minority is attempting to preserve and even increase the religious character of the State. There are serious doubts if this battle is being won. Can anyone question the deleterious effect of the Jewish terrorists and their rabbinic supporters in this battle? Our greatest responsibility is to help keep Judaism alive. Our moral behavior must be such that the non-religious and even the anti-religious will be forced to acknowledge the higher moral and ethical sensitivity of the religious Jew. Hatred of Arabs does not equal love of Jews.

Letter from Prison

Letter to the Editor:

Your May 28 editorial ("Terrorism Abroad, Apathy At Home") strongly denounces the Israeli Jews—myself among them—for allegedly participating in counter-terror against Arabs. The editorial asserts that the killing of Arab civilians, "including women and children" is a "Chilul Hashem".

According to the principles of Western liberalism, it is indeed a terrible thing to kill civilians, no matter the circumstances. But is that the Torah view as well? If *Hamevaser's* editors had been around during the time of Saul, how would they reacted to God's order for the extermination of the Amalekites? After all, the Amalekites in question were not the same individuals who had attacked the Jews three hundred years earlier—by modern standards, these were Amalekites who certainly qualified as 'innocent civilians'. Yet God specifically commanded: "You shall not have pity on them; you shall slay both man and woman, infant and suckling, ox and sheep..." (I Samuel 15:3). And the *Metzudat David* (on 15:1) adds: "Although you may feel an aversion to slaying an entire nation with its women and children and animals, you must not question My word, you must obey the word of the Almighty." This is echoed by the *Pesikta Rabbati* (12:47) who warns that "it is forbidden to show mercy to those who are dedicated to the destruction of Israel."

From these verses and many others, it is clear that there is no principle in Judaism which bars the killing of civilians *per se*; for when there is a war, civilians are always killed—sometimes by accident, but often by necessity. During World War Two, for instance, the Allies deliberately annihilated the civilian centers of Dresden in Germany and Hiroshima and Nagasaki in Japan, in order to force the Axis to surrender. Would *Hamevaser* have denounced the Allies' tactics as a "Chilul Hashem"?

During the 1930s, when the Jewish community in the Land of Israel was the target of daily terrorist attacks by Arabs, there was likewise no choice but to strike back at the Arabs in precisely the same manner. That is why the Irgun Zvai Leumi—including one of its young activists by the name of Yitzhak Shamir—planted bombs in Arab markets and ambushed Arab buses. They killed many Arabs. It wasn't pretty. But it worked, and it spared Jewish suffering. Even the anti-Zionist *London Times* admitted, "Since the Jews began reprisals, the attacks on them have decreased." (September 28, 1937, p.15). Is it any wonder, then, that Jews in Israel have today chosen the same method of responding to Arab terror?

Yekutiel Guzofsky
Jerusalem Central Prison

occurred within the Jewish world with the birth of the state. Simply put, one of the ideas that seems to be prevalent among certain people in Gush Emunim is that the state is basically a tool to fulfill the mitzvah of Yishuv HaAretz. Thus, if it does not fill that role to the degree that one deems proper, one can take matters into one's hands.

In contrast, classical Religious Zionism understands that the state has intrinsic value unto itself. The great revolution in Jewish history that was caused by the rise of the state in 1948 was not only that more Jews could fulfill the mitzvah of Yishuv HaAretz. Rather, the message that came out to the world was that after 2,000 years, with G-d's help, the Jewish people were once again taking their fate and destiny into their own hands.

The Jewish nation was rising up from the ashes of the crematoria to become a living and breathing organism. We were reentering the

arena of history-making peoples. And as the Rav *shlita* writes in his essay, "Prayer, Redemption, and Talmud Torah" (*Tradition*, Winter 1978), "Redemption involves a movement by an individual or a community from the periphery of history to its center..." (pg. 55).

1948 ushered in an era of *Kiddush Hashem* to the whole world. The prophet Yehzekel tells in Ch. 36 that *Galut* is identified with *Chilul Hashem*. If God's people are exiled and downtrodden then God's name is profaned. *Geulah*, the return of *Am Yisrael* to its land is *Kiddush Hashem*: "And I will sanctify My great name, which was profaned among the nations...and the nations shall know that I am, the Lord, says, the Lord God, when I shall be sanctified in you before their eyes. For I will take you from among the nations and gather you out of all countries, and will bring you into your own land." (Ch.

36:23-24). The rise of the state refuted those who said after 1945 that the Jewish people would give up and despair. It refuted the Toynbee's of the world who culled us "fossilized." Finally, it refuted basic Christian dogma that the Jew would wander forever because he rejected their "Messiah." Is there any greater *Kiddush Hashem* than this?

Lastly, with the rise of the state, a message went out to the world: *היהודים אינם חסרי אונים*—Jewish blood is not cheap. The Jewish people will now take their fate into their hands, and with God's help, defend themselves to the best of their ability.

Once one downplays the intrinsic value of the state as being secondary to Yishuv HaAretz, the road lies dangerously open to events such as Jewish underground that undermine the authority of the state.

(Many of the points made here are based on Rav Soloveitchik's classic article on the significance of the State of Israel, "Kol Dodi Dofek").

Stating the Attack

By NATI HELFGOT

In this article Rabbi Blau raises one of the fundamental issues at stake in this controversy: the undermining of the authority of the state. I would just like to add some points to his cogent presentation.

1. Rabbi Blau made reference to the position of the Ramban and Rav Kook, that a government chosen by the people has the halachic status of King with regard to certain issues affecting the public, such as war. One of the references in the Ramban is to his "Hasagot" on the Rambam's *Sefer HaMitzvot* Mitzvah 4. One of the references in the works of Rav Kook ז"ל is to his Responsa—*Mishpat Kohen* 164/14—where he writes "...At a time when there is no king...the powers and laws of the King return to the nation as a whole..." and then basing himself on the Rambam's codification in *Hilchot Sanhedrin* Ch. 4/13, he concludes: "When a leader was appointed for the nation...with the approval of the people and judiciary, certainly he is in place of a king, with regard to *Mishpat HaMelucha* that relate to ruling the nation..."

2. The phenomenon of defying the authority of the state, was one that was manifest, albeit to a lesser degree, in the struggle at Yamit. This inclination which has been growing in certain religious circles seems to me to be rooted in a fundamental misunderstanding of the role of the State of Israel. Moreover, it involves a misunderstanding of the great change that



Judge By Torah Standards

By RABBI MOSHE D. TENDLER

Introduction:

The study of Torah has as its goal the development of a Torah personality not the mere mastery of medieval Jewish law. Torah study is to discipline, habituate, permeate the personality of the Jew so that his value system is in consonance with the truths taught us in the Torah.

מד"ר ויקרא (ל"ה:א) "אם בחקותי תלכו" — חשבתו וזכיתו ואשימה רגלי אל ערוחך (תהלים ק"ט:ט).

אמר דוד רבש"ע בכל יום ויום הייתי מחשב ואומר למקום פלוגי ולבתי דידה פלוגית אני הולך והיו רגלי מבאיאת אותי לבתי כנסיות ולבתי מדרשות.

David Hamelech summed up the goal of a life of Torah study and mitzvos. It is to respond instinctively in accord with the wishes of Hashem. ורגלי מבאיאת אותי — My feet carry me instinctively to the *bais medrash*.

This is the goal of our yeshiva—to train ד"ר who will freely choose the way of Torah to the exclusion of all other choices.

The strange incident of the מחתה in Yehuda v'Shomron, can serve to test the reactions of a *ben-Torah*. Are they the reactions of the secularist Jew, or of the *Bachur Enosh*, the Torah-disciplined, Torah-imprinted Jew? What are the clues; the markers, that must be evaluated lest we fail to apply our standards, our value system to a situation that has attracted the interest of the secular world?

I. The secular reaction:

The leftists in Israel have orchestrated the most vicious, vituperative attack against the *machteret* participants ever seen in the Israeli press. With the support of most of the largest and most influential newspapers (who have refused to accept even paid advertisements that purport to support those imprisoned settlers) an equation was made between these Jews all *shomrei Torah u'mitzvos* who have fought the wars of Israel and settled the land of Israel—and the PLO infra-humans. Indeed the vehemence spilled over to taint the integrity of the Torah community of Israel. The *kippa sruga* like a red flag, always enraged the rabid secularists of the Left. Here was a chance to strike out at the "frum" community with their superior airs!

II. The secular response of those who should know better:

Thoughtless, quick-triggered reactions drew members of the orthodox community who hurried to distance themselves from the tarred and feathered "Jewish terrorists" added to the solid wall of condemnation. Orthodox rabbis in Israel and America were quick to shout even louder than our traditional enemies—the Reform clergy—

ידנו לא שפכו את הדם הזה

III. What should be the reaction of a *ben-Torah*? First and last to apply the lessons that should have been learned during the years of Torah study.

Lesson #1:

[סנהדרין י"ז]

אמר רב כהנא סמריי שראו כלן לחובה פיסרין אותו. רמב"ם (סנהדרין י"ז:ט) סנהדרין שפתחו כלם בדין נפשו חתלה ואומר כלן חייב — הרי זה פסור עד שידין שם מקצת מוכין שפחכו בוכותו

The unanimity of the condemnation should have flagged the attention of every *ben-Torah* that here is a clue situation. Why was this clue missed? Is it a case of קנאה ושנאה מקלקל השורה?

IV. To condemn retrospectively?

Condemnation חייב justification if the question was posed: should we launch a counter-terrorist reign against the Arabs? This was not a *ben-Torah* issue when we were able to react. It was a *ben-Torah* issue. What was done was done. Is this the time to shout "terror must be condemned" or to be *ben-Torah*—to try to understand why did *Bnei Torah*, whose love for *Am Yisrael V'Eretz Yisrael* is not questioned by their most vehement critics, choose the methodology of *methodology*. Is it not strange that *Bnei Torah*, who carefully ask for halachic guidance in all laws of Shabbat, *Kashrut*, *Teffila*, *Shmita*, suddenly throw away their years of commitment to halachic practice and

בשעה אחת לאבד עולמן שקנו בשנים רבות? Must we not attempt to be *ben-Torah* before we pass judgement?

It is only two years ago that we all studied Tractate *Makot*. Is there no carry-over, no transference from Torah study to *ben-Torah* behavior?

מכות (דף ד'): — אמר רבא פרט לאומר מותר רש"י — סביר שמותר להרוג את ישראל

It is neither a *ben-Torah* nor a *ben-Torah* and therefore is not subject to either the death penalty or to exile to the cities of refuge [עיר מקלט]. The Jew is instructed to leave this case to the judgement of His judgement. It is not a case for mortal courts of justice.

Why did no one record the obvious truth that those who planted the bombs that maimed the evil mayors of Hebron and Shechem claimed that it was their duty in accord with Torah law. This was an *amur* situation, that must make one pause and reflect that Hashem ordered us to mind our own business, not His!

V. What were their purported crimes?

- The attack on the mayors
- The attack on the Islamic college
- Placing the bombs on the Arab buses
- Attempt to blow up Dome of the Rock and/or the El Aksa Mosque on the Har Habayis

The Temple Mount incident is shrouded in too many veils to permit for lucid analysis. Individual action within the group, rather than group action, planned this attack. Messianic dreams joined political realities to produce a yet to be understood blueprint for the coming of *Mashiach*. The other acts must be judged by the halachic yardstick for right and wrong. Was it the justification of the *Bnei Torah* for these three aggressive acts? What halachot apply?

VI. The halachic basis of aggression:

There are three bases for halachically approved acts of aggression:

- מלחמה
- רודף
- מחנה

מלחמה or Warfare: If as the Arabs claim that a state of war still exists against Israel; if a Jihad, a "holy war" has been declared anew against the State of Israel and against every Jew wherever he may reside, then every counter-action is fully justifiable. When the Israeli Air Force jets bomb terrorist bases and return safely to their home base all applaud the number of terrorists killed:

כן ואבדו כל אויביו ד'

The *machteret* did no less and no more! When the "shin bet" hunts down a terrorist in Paris or Ankara to avenge the death of an Israeli official or athlete we applaud. The attack on the mayors deserves a standing ovation as does the attack on the college or the placing of bombs on the Arab buses. War is war—

[דברים כ"ב:] ... ובנית מצור על העיר אשר היא עשה עמך מלחמה עד רדתה

Although we deny that a state of war exists, we regrettably must be aware that our enemies, time and time again, launch attacks on our civilian population. Surely the laws of the pursuer (רודף) and the laws of the intruder (אבן) apply.

Indeed every intruder who is prepared to kill if discovered has also the *ben-Torah* but they are not the same halacha.

In a [סנהדרין ע"ב: ע"ג] the intruder is discussed על שם סופו בן סורי ומורה "ידן

"גידן על שם סופו"

מח ע"א: בן ס"מ גידן על שם סופו מח ע"מ — הבא במחנה גידן על שם סופו

The intruder reveals a personality trait that denies him any claim to humanity. When discovered—unlike the pursuer—he may be killed even if wounding him would suffice for his capture. He gave up his claim to life when he intruded into the castle that is man's home. Not so the "pursuer" who in passion attempt to murder. If he can be deterred by means less drastic than the taking of his life, it is forbidden to kill him. The Rambam therefore placed the two laws in entirely different sections of his Mishne Torah:

רודף — הלכות רצח א"י
מחנה — הלכות גיבה ט"י

The law of the intruder requires certitude that he intends to kill if discovered—a certitude attested to by our Sages with reference to all intruders except a father who in stealth enters his child's home. Not so the law of the pursuer. For the rule of "Rodef" to apply there is no need to establish intent to kill, let alone certitude. [Regrettably many whose study of Torah is superficial and hence error-filled, confused רודף with מחנה and further confused the unique רודף of a fetus whose continued gestation threatens the life of the mother with the classic רודף of an attempted murder.]

* 1) In we declare as a רודף one who intended to place his loaded donkey on a ferry solely to cross the river. Because this act threatened to capsize the ferry with the possible loss of life, Rava declared him a *rodef* whose life and possessions may be forfeited. Stupidity is no defense!

Arab students throwing stones at Israeli cars along the road to Hebron or Nablus are

halachically *rodfim* whose lives may be taken if less violent deterrence is not possible. They may not intend to kill but their actions are homicidal nevertheless!

2) The Shulchan Aruch [חורם תהיה] declares as a *rodef* a forger or counterfeiter whose actions lead to social unrest that may endanger the life of a Jew. The counterfeiter has no intent to kill anyone, nor is there any certitude that loss of life will result from his actions. Yet he is declared a *rodef* whose life may be forfeited.

Relevant to this point is the *ben-Torah* acceptance of this definition by the

פוסק אור חיים קמ"ב:קמ"ג
שאילת ענין [ב"ט]

and the opinion of many current poskim that a drunken driver has the law of *rodef* applied to him [viz. מותר נחנק קמ"ה]. although there is neither intent nor certitude.

VII. The law of the land—דמו

But the *machteret*; these *Bnei Torah* who risked their lives to defend the State of Israel in its many wars of survival and to expand its boundaries through sacrificial efforts of the Gush Emunim organization, did violate the laws of the State. Why did they become anarchistic, rebellious? Are they now anti-state like the *ben-Torah* whose actions denigrate the authority of the State of Israel (and whose actions may indeed impose upon themselves the appellation of *rodfim* with all its halachic consequence).

Surely not! Careful interview with objective observers who are not supporters of the *machteret* or of *Gush Emunim* revealed the stresses that led to the disregard of law and order.

Ezer Weitzman, during his reign as Chief of Security in the Yehuda v'Shomron districts, had been apprised in specific detail of the role the mayors were playing in inciting to violence and planning the massacre in Hebron where six *bnei Torah* were brutally murdered including two alumni of our Yeshiva. The neglect of his obligations and duties led to a state of anarchy in which Arab stone-throwers made roads impassable and indeed caused fatalities among our patriotic settlers. Weitzman's behavior was known to all.

This past summer I heard his traitorous accusations against the then P.M. Shamir that the Likud government violated the Camp David agreements and his evil intonation that the *machteret* defenders of Israel be not given any more leniency than enjoyed by PLO murderers. Indeed it is most revealing that in the Israeli army where Weitzman served as Chief of Intelligence and was an Air Force

(Continued on page 11)

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Terror Must Be Condemned, Not Condoned

By RABBI J. D. BLEICH

Downtrodden, oppressed and persecuted for millennia, Jews practiced what others preached. When smitten, they turned the other cheek. Undoubtedly, this reaction was rooted in pragmatic considerations. Resistance would only evoke greater hostility; retribution would assuredly provoke unspeakable punishment. Eventually, reticence, timidity and fear became ingrained in the psyche of the *galut* Jew. Response in kind simply became unthinkable.

Not so in the modern-day State of Israel. Survival demanded preparedness in the form of strong defense forces and a prompt crushing response to armed aggression. Wars of attrition and endless acts of terrorism continue to sap the strength of the yet nascent state. On the governmental level the response has been a policy of swift retaliation and preventative strikes to eliminate danger.

As a result, a profound psychological metamorphosis has taken place. Fear that worse misfortune be provoked has been eradicated. Reticence is no more. The instinctive response to violence is violence. And, now, the ultimate has arrived: terrorism against terrorism.

In formulating national policy, the State of Israel is not necessarily guided by the teachings of Jewish tradition. It has not customarily sought the prior advice of its own Chief Rabbinate with regard to the grave moral and halachic issues confronted in the defense of the State. Observant Jews have nevertheless tended to be supportive of government policy in matters pertaining to national security. They have been supportive with regard to such matters for two reasons: 1) A vague, unarticulated feeling that justification for these policies can be found in Jewish tradition. 2) A clear perception that vocal opposition to those policies could only compromise the security of the State and endanger the lives of countless thousands of its citizens. In any event, the government has not pursued policies designed to snuff out the lives of blameless persons.

Terrorists Claim Religious Justification

But, now, individuals have taken matters into their own hands and the State itself threatens them with penal sanctions. Moreover, those persons are observant Jews who, incontrovertibly, have manifested sacrificial commitment to the Land of Israel. Most significantly, those individuals plead that their acts are born of an ideological commitment to Jewish teaching. Jewish law, they contend, sanctions and even mandates the acts of terrorism which they promulgate.

Provocation, however, cannot be equated with justification. One can readily understand the mentality of those who believe that further violence can be prevented only by instilling fear of retaliation. Even were history to demonstrate that violence only serves to breed further violence, human nature is such that the evidence would be disregarded. Desire for revenge is also understandable, but to understand is not to condone. Jews dare not allow themselves to respond as others would and do; Jews dare not give free reign to feelings of anger and vengeance. Response,

even to danger, must be conditioned by the teachings of the Torah.

"The Land of Their Enemies"

There is no question that the State of Israel is surrounded by enemies intent upon the annihilation of its inhabitants. The present situation is reflected in Ramban's poignant interpretation of a phrase found in the concluding section of Leviticus. "And they shall confess their iniquity, and the iniquity of their fathers, in their treachery which they committed against Me and also that they have walked contrary unto Me. I also will walk contrary unto them and bring them into the land of their enemies; if then—their uncircumcised heart be humbled then the

remember My covenant with Jacob and also My covenant with Isaac and also My covenant with Abraham will I remember." When repentance is complete, then will the iniquity be entirely forgiven and Israel restored to a position of favor in the eyes of God.

Whether or not merited by partial repentance, divine beneficence has permitted a partial return to our land. Encirclement by enemies, according to Ramban, is both a form of divine retribution as well as an impetus to repentance. To be sure, enemies must be recognized as such and one may respond to an enemy in an appropriate manner. Certainly, an overt act of aggression committed by an

found in *Michla*, Mishpatim 4:58. Indeed, there are many forms of homicide for which Jewish law does not prescribe capital punishment. The nature of the punishment administered and the absence of the severest form of punishment does not at all indicate that the act is to be condoned.

Condoning The Violence Is A Transgression

Indeed, condoning the act may well be an even worse infraction than the deed itself. II Samuel 21 reports that in the time of King David there was a famine which lasted for three consecutive years. David recognized that the famine must be a punishment for some transgression. Accordingly, he approached the *urim ve-tumim* and inquired of God what the infraction might be. There came the response, "And the Lord said: 'It is for Saul and for [his] house of blood because he put the Gibeonites to death'" (Shmuel Bet 21:1). The Gemara, *Yevamot* 78b, quite cogently poses the question: Where is it related that Saul killed the Gibeonites? In point of fact, Saul committed no untoward act against the Gibeonites. The Gemara replies that although Saul did not kill the Gibeonites, he did annihilate the priests who were the inhabitants of the city of Nob. The Gemara further indicates that the Gibeonites were servants of the priests and, in return for their labor, they received their sustenance from the priests. Subsequent to the destruction of Nob, the Gibeonites who were dependent upon the priests for food and drink, no longer had a source of sustenance and consequently a number of them perished. Since Saul was, at least indirectly, responsible for their death, Scripture regards him as culpable for the demise of the Gibeonites.

Death of Innocents Requires Atonement

King David was now appraised of the transgression for which his people were punished. He sought to make amends and called the Gibeonites and asked of them, "What shall I do for you and wherewith shall I make atonement, that you may bless the inheritance of the Lord?" (Shmuel Bet 21:2). The Gibeonites declined to accept gold or silver in expiation for Saul's transgression or as compensation for the harm and grief that they had suffered. But Saul was no longer alive and could not be punished. Instead they demanded, "...let seven men of his sons be delivered unto us and we will hang them up unto the Lord in Gibeah of Saul, the chosen of the Lord" (Shmuel Bet 21:6). David's response was immediate and forthright: "and the king said, 'I will deliver them'" (Shmuel Bet 21:6). Scripture then proceeds to describe how David caused the grandchildren of Saul to pass before the *urim ve-tumim* and how he delivered to the Gibeonites the seven individuals selected by the *urim ve-tumim*. Assuredly, King David would not have acceded to the demands of the Gibeonites had there not been a clear indication of divine approval. Nevertheless, the Gemara questions the inherent propriety of such a course of action. "Fathers shall not be put to death for children, neither shall children be put to death for fathers" (Dvarim 24:16). The Gemara

Condoning the act may be worse than the deed itself

punishment of their iniquity will be accepted" (Vayikra 26:40-41). The juxtaposition of these verses is puzzling. Scripture speaks of confession of iniquity. Confession of sin is indicative of repentance. If the people of Israel are indeed repentant, such repentance should signal the close of the period of punishment and affliction foretold in the earlier versions of the *tochecha*. And yet, the very next verse proceeds to state that, instead of responding to their confession of sin in a positive manner, God declares, "I also will walk contrary unto them and bring them into the land of their enemies." Yet a further punishment is predicted: the people of Israel are to be led into the land of their enemies. Even the nature of this further punishment is difficult to comprehend since among the earlier misfortunes which constitute the punishment for Israel's iniquity is recorded "And you will I scatter among the nations..." (Vayikra 26:33)

Adversity Is An Impetus To Repentance

It is obvious that it is these difficulties which prompted Ramban, in commenting upon this verse, to remark that the phrase "the land of their enemies" does not at all refer to the lands of Israel's dispersion. On the contrary, comments Ramban, the phrase refers, not to their Diaspora, but rather to the Land of Israel itself. The Land of Israel is referred to as "the land of their enemies" because the verse alludes to a period during which, although Jews will reside in the land, it will be encircled on all sides by enemies. According to Ramban, "and they shall confess to their iniquity" marks the beginning of the process of repentance, but does not connote that complete repentance has taken place. God responds in kind. He allows His people to return to the land of their forefathers, but, during that stage of their spiritual rehabilitation, they do not yet live in peace and tranquility. They return to the Land of Israel, but are surrounded by "enemies." There, under such conditions, Scripture tells us, their heart will be humbled and repentance will be complete. Then, and only then, does God promise, "I will

enemy need not be accepted and suffered in silence even though the resultant suffering may well be part of the divine plan. "He who comes to slay you, arise and slay him" is a normative principle of Jewish law. Self-defense is not merely permissible but also mandatory. The "law of the pursuer" demands that any would-be murderer be summarily executed, if necessary, in order to save the life of an innocent victim.

Role of A Limited Concept

Settlers in newly-founded communities on the West Bank and in the Golan are assuredly entitled to the fullest measure of protection. If, indeed, governmental authorities have not provided adequate protection no one can fault settlers who engage in legitimate forms of protection.

But the "law of the pursuer" justifies only the taking of human life when it is clear that the individual is intent upon an act of aggression. Although malevolent intent may be inferred from circumstances and conduct, mere unsubstantiated suspicion of homicidal intent is not sufficient to permit the taking of a human life. Moreover, there is no dispensation to take the life of a pursuer if the danger can be obviated by less drastic measures.

The "law of the pursuer" may be invoked only when the loss of innocent life is otherwise a virtual certainty.*

This is true whether the putative aggressor be a Jew or a non-Jew. While the taking of the life of a non-Jew does not occasion capital punishment at the hands of a human court, *Ravan, Baba Kamma* 111b, and *Kesef Mishneh, Hilkhot Rotzeah* 2:11, are quite clear in ruling that taking the life of a non-Jew is encompassed in the prohibition against homicide. Explicit authority for that ruling is

[In analyzing the "law of the pursuer," formulated in Exodus 22:2, the Gemara, *Sanhedrin* 72a, states, "...if the matter is clear to you as the sun that he is not at peace with you, slay him; but if not, do not slay him." (See R. Isaac Schorr, *Teshuvot Koah Shor*, no. 20; R. Chaim Ozer Grodzinski, *Teshuvot Ahiezer*, I, no. 23, sec. 2; and R. Moshe Feinstein, *Ha-Pardes*, Nisan 5728, reprinted in *Sefer ha-Zikaron le-Maran ha-Gri Abramsky*, Jerusalem, 5738.)]

(Continued on next page)

Above all, we must foster a moral climate in which acts of terrorism are anathema. The Psalmist calls out, “*Yilamnu hataim min ha-aretz*—Let evil deeds cease from the earth” (Tehillim 104:35). The Gemara, *Berachot* 10a, underscores the use of the word *hataim* in commenting, “*Mi ketiv hotim, hataim ketiv*,” i.e., we pray for the eradication of evil deeds, but not of evildoers. Even in administering punishment, the purpose is not retribution but prevention. Public condemnation and censure are essential lest silence be regarded as approval. And approval, Heaven forbid, can only lead to further violence.

[illegible]

Our response, if it is to be most productive, must center on a renewed commitment as religious-Zionist Jews to the democratic process which is at the heart of *Medinat Yisrael*. Both here and in Israel we must educate ourselves and others in the workings of democratic change and the value that state law has in the eyes of Jewish tradition.

Where were the protests for more security

Messianism and the State

The following article is a portion of a translation of a *sicha* given by Harav Yehuda Amital, Shlitia, Rosh Yeshiva of Yeshivat Har Eizion. The translation was prepared by Rabbi Jay Goldberg, an instructor in JSS.

What are the implications of an independent State within the process of redemption? The Rambam summarizes the Messianic coming with these words: "But the Messianic era is this world, and this world shall operate in its usual manner. The only difference is that sovereignty shall revert back to Israel." (Mishna: Torah: Laws of Repentance: Chapter 9, Hal. 2).

What is the meaning of Jewish sovereignty? (A) This is a return to the domain of world history. Judaism returns to the role of a world presence to which the nations of the world look. This is a matter that gives Israel a responsibility concerning what the world will learn from it. (B) Jewish sovereignty implies a national responsibility regarding the destiny of the nation. From this emanates a vast responsibility that rests upon the shoulders of our governmental leaders. Every step that they take must be based upon great deliberations. The Messiah sits "in the sanctuary of a bird's nest" as is explained in the Zohar. Rav Kook explains that there are new great opportunities and possibilities, but it is incumbent upon us to exploit them. This is the Messianic concept!

Messianism does not emancipate us from political, military or economic considerations which are applied with a deep accountability as to what is in the best interests of the Jewish people in future generations. This is the enormous responsibility of Jewish sovereignty.

One who explains Messianism as liberation from all practical considerations perverts the very concept. It is possible to understand one who says that we may do nothing, this is the perspective of "sit and do nothing." But to act, while freeing oneself from the need to weigh the resulting consequences of action vis-a-vis the Jewish people in Israel or in the Diaspora, to see how such an action affects the religious and non-religious—is to corrupt the Messianic concept.

There is, of course, the mystical perspective. One who endeavors to understand Jewish history without a mystical perspective, without a sense of the hidden, is a blind fool. But one who wishes to use the argument that we are dealing with total mysticism, and thus tries to free himself from any sense of pragmatism—perverts Jewish history.

The Messianic principle promises us the ultimate goal of a Jewish State. But if the road towards this goal will be long, God forbid, or short, straight or obstacle-filled, without bloodshed or with, God forbid, bloodshed, this is dependent upon us! There is great accountability until the day of "And redeemers shall rise upon Mt. Zion to judge the mountain of Esau" (Obad. 1:21). Yom Ha'Atzmaut must be a day of introspection to clarify the essence of that Divine gift which we have received—the independence of the State of Israel. Rav Kook has taught us that in the absence of a king, the laws of sovereignty

revert to public rule. This is not the time to explain this principle. But, the simple meaning is that all kingly authority passes over to the public.

In regard to governing the State of Israel, there is no unequivocal step. Every step is fraught with doubt. Thus it is given to understand the Rambam's deliberation that even a war that has mitzvah status must be sanctioned by the Urim and Thumim. My Rebbe, Rav Yaakov Moshe Charlop z"l, once sought the advice of the Chazon Ish concerning a difficult educational problem that had come up in the town in which he served as Rav. The Chazon Ish responded that it was solely up to him to decide since he alone had the "Heavenly aid" that is offered to a *Posek* in matters regarding his congregation. Problems involving the decisions of communal leadership are not adjudicated in the *Shulchan Aruch*. The "Heavenly aid" given to communal leaders alone is that which gives them the power to make decisions. How grave is the matter that single individuals who lack this Heavenly aid take upon themselves the responsibility for actions whose repercussions affect all of Israel.

A prerequisite for redemption and for the inheritance of the Land through peaceful means is humility: "That the Lord takes pleasure in His people again, He adorns the *humble* with salvation," and similarly, "But the *humble* shall inherit the earth and delight in the abundance of peace" (Tehillim 37:11). It is upon us to condemn the appearance of youngsters who proclaim unabashedly, "We lead the Jewish people." Who placed the mandate into their hands to say "these are traitors and these are fools! Concerning us it is said, 'God's secrets are to his righteous.'" Statements are publicized and *halachot* are decided in these matters by men who have no authority to decide matters of milk and meat, let alone the permissibility of *Agunot*. They decide *halachot* on the basis of Biblical chapters and pithy sayings, and even have their decisions stand in confrontation with the State. Where is their humility? Why don't they take council with giants of Torah like the Gaon Rabbi S.Z. Auerbach, Rabbi Soloveitchik and others? These youngsters are careful with Rabbinic tithes, but are not careful regarding the murdering of non-Jews, a crime for which clearcut opinions state that Heaven itself will exact punishment.

From the psychological perspective there has been a sense of frustration on the part of religious youth, who have felt for a long time that they have lagged behind their non-religious counterparts in the building of the Land. The feeling that they now have an opportunity to "lead" the Zionist movement has brought them to extremism.

One of the dangerous mistakes of secular Zionism was the anti-Galut arrogance of the Sabra: "We stand straight—whatever is done in Galut is weak." As a consequence of several wars and the Munich Massacre we no longer speak of sheep going to the slaughter. But specifically at a time like this and in our present population, we speak of Ghetto Judaism. The claim is raised: "We must speak

today in a new style of upraised heads, of redemption." How careful were the Torah Giants and communal leaders of all past generations not to bring to the scrutiny of the other nations things that are better kept unmentioned. Who gave such responsibility into the hands of those who are prepared to publicize via the media that we are obligated to kill non-Jews who do not observe the seven Noachide laws and other strange and perverted theories? There are still Jews who live among the non-Jews. The State of Israel belongs to all the Jewish people, not only to those who are entitled to vote for the Knesset. One must weigh carefully every step according to its effects upon Jews throughout the world.

Messianism does not emancipate us from political, military, or economic considerations

We are living in an era during which secular Zionism is in a state of crisis. On the other hand distortions are forming in the religious camp. There are those who pervert the teachings of Rav Kook z"l. Really, they don't pervert his teachings, rather they do not bother to truly learn or understand his words. We must raise the flag of *genuine religious Zionism*!

Anyone who has any doubts as to our rights over all the Land of Israel has no share in the Torah of Moses. On the other hand, we must know the great responsibility that goes with each step that we take and we must pray for Heavenly assistance. But we may not say, "Only we are right and all others are either mistaken, fools or traitors." If it seems to us that the State of Israel is in error, we have but one recourse: to influence it!

Because of our many sins, the name of Heaven has been removed from the lips of many of the Jews in the Diaspora. It is for us to give them the tools, a source of inspiration for Judaism. The State of Israel is the only tool for this until God will envelope us with a spirit from most High and we will all recognize the Kingdom of Heaven. The value system of the citizens of the State should redirect its vision and educational efforts towards the Jews of the Diaspora. For this one needs an intense initial effort. An election for anyone in the Knesset will not solve the problem. The question is whether our citizenry is seeking the proverbial "fleshpots"

or the general good. On the other hand, regarding the Jews of the Diaspora, to those who would develop an ideology insulated from the Land of Israel and its inhabitants, we say, "If this land suffers, it is a product of your sins too! The Land of Israel belongs to all Jews and the responsibility for it rests upon your shoulders as well." Those who do not understand this language can learn from the non-Jews. When non-Jews condemn Zionists, the critique is in regard to all Jews, whether they be in New York or Memphis. It is not polite today to speak of anti-Semitism so one speaks of anti-Zionism. To the non-Jew it is all one and the same.

If the State of Israel has not reached the heights of our expectations, the cause is as explained by the *Kuzari*: "Indeed you have found my shame, King of the Khazars. For indeed this is the sin for which the promise which God promised us during the Second Temple period did not come to fruition. Sing and rejoice, O daughter of Zion, for behold I come and will dwell in your midst, sayeth the Lord!" For the Divine matter would have returned to them as before if they had answered unanimously the call and had returned to Israel in an eager state. But only a small segment responded. Alas, the majority which included their most important remained in Babylonia. They consented to exile and enslavement, rather than be separated from their homes and businesses. Therefore God repaid them in kind, and the Divine prophecy was fulfilled only to a small degree, commensurate to their response. For the Divine matter only rests on a man according to that man's own readiness—if little, little, and if much, much (*Kuzari*: Book II).

It is incumbent upon us to strengthen people's confidence in the survival of the State of Israel. The State of Israel is not merely some transient episode. For "God's word is forever, and none of His words will come back empty." If this were merely the creation of Ben Gurion and his associates, the State could be but a passing chapter. But this is a Divine creation which fulfills prophetic vision and this fact must be expressed by us vociferously.

We pray every day "Cause the seed of your servant David to sprout forth speedily"—cause the Messiah to sprout forth. Sprout forth perhaps impoverished and sickly, thin and shrivelled; but yet he lives and breathes and he will succeed. And therefore, "Those redeemed by the Lord shall say, those whom He will have redeemed from the hand of the oppressor... Give thanks to the Lord, for He is good, for His loving-kindness endures forever" (Tehillim 107).



Mishpat Ivri

(Continued from page 12)

will not, thereby, be exposing himself to a real threat of death. "Thou shalt not stand idly by," the Torah tells us. It is a *mitzvah* to save the life of your fellow Jew.

A second case: As you most likely know, the movie *Kramer versus Kramer* caused a revolution in the American Family Courts. Until recently there existed in American courts what was known as the "maternal preference" whereby the law acknowledged the mother's almost natural legal right to custody over the children in case of divorce. This preference prevailed despite State legislation granting both parents—*theoretically*—equal footing in this matter. It was not until the "Kramerization of American jurisprudence" that the courts began viewing seriously paternal custody as a realistic option.

Jewish Law, on the other hand, never had such a problem, for in Jewish Law we do not deal with the *rights* of either parent in the child, but rather the *obligations* of parent *towards* the child. Furthermore, these obligations must be fulfilled exclusively in accordance with "the best interest of the child." Consequently, in Jewish Law it was "the best interest of the child" which was the sole determinative factor in custody assignments regardless of whether that principle worked in favor of the mother or that of the father in any particular case.

So as you can see, Jewish Law can provide an alternative to the Anglo-American legal system. The problem was not, therefore, in Torah itself. Rather the difficulty was in the Torah community's inability to communicate to the outside world this attractive alternative system in modern, conceptual, legal terms.

There was a language barrier. The Rabbi would persist in maintaining the literalness of the Talmudic cow's tooth, horn and foot of Bava Kamma—the "Shen, Keren V'Regel"—while the lawyer confronted the automobile, the airplane and the spaceship.

Furthermore, the case law of Jewish Law is embodied in the Rabbinic Responsa literature. It is estimated that to date there are some 300,000 decisions by Gaonim, Rishonim, and Aharonim in this form. But this treasure chest of human intellectual wealth was unorganized, with no major index and thus inaccessible to the average lawyer not steeped in Jewish Law.

But above all: during the past 200 years, the other major legal systems of the world went through broad sweeping restatements, transforming their case by case casuistic formulations into doctrines based on definitions, principles and concepts. However, it was precisely during this period that the Jewish communities around the world went through the so called "Age of Emancipation" losing their legal autonomy over their people. It was culturally a very expensive price to pay. Jews no longer resorted to the Rabbinical court for civil and criminal matters which lay outside the purely religious purview of Jewish Law and Life. Consequently, Jewish Law was never called upon to work through such a restatement. Jewish Law was still talking in terms of "Shen, Keren V'Regel" while the other legal systems of the world were analyzing "Tort Negligence Principles." As a result, Jewish Law sounded archaic and seemed outmoded to the modern jurist.

It took Israel about 25 years or so to raise a generation of scholars trained both in Torah

and in Law; jurists with the tools-and-know-how to do the vital work we have been outlining to reformulate, to index, to conceptualize the Halakha—in essence to till the soil and lay the groundwork for a modern Torah-based legal system. Their work was of such high quality that the Israeli legal system could no longer ignore it.

In 1981 an important breakthrough was achieved. After a tough uphill battle, the statutory link binding Israel to the British legal system was repealed—the umbilical cord had finally been cut. But even more significant is that in its stead was enacted a law recognizing Mishpat Ivri as a legally valid source of law-and-precedent for the Israeli courts.

Now the real work has just begun. The Knesset, the courts and the lawyers will be turning to the Torah community for legal assistance and guidance. We must be properly prepared for them. We must be able to help them reach the legal and cultural objectives we both share. I dare say, if we let this opportunity go by we may not get another.

It is a great challenge; it is a great responsibility. A chance to return Jewish values to the Jewish Heritage and the Jewish People. "Torat Yisroel, Am Yisroel, Eretz Yisroel Chad Hu." The Torah which God gave to Israel, the People whom God forged as a unique people and the Land of Israel which He promised to our forefathers, must again be linked into an integrated whole.

JOIN
HAMEVASER!

Judge By Torah

(Continued from page 7)

ace pilot, he received fewer votes during this last election than did Rabbi Meir Kahane! The army men knew of his treasonous behavior in failing to protect the settlers against Arab terror.

The decision to take the law into their own hands was indeed a step toward anarchy but the step had already been initiated by Weitzman. In a climate of fear and terror, vigilante justice takes on the coloration of law and order! (A revealing similarity can be found in the explanation of the *Malbim* of the controversy between Shimshon and the people of Yehuda concerning his unilateral acts of terror against the Philistines as recorded in (*Devorim* 15:11).

VIII. What is left to do?

Firstly, to do all we can to urge clemency for those *אסירי ציון* and to arrange for the support of their wives and children whose suffering becomes particularly poignant as the *שומות ורבים* descends upon us.

Secondly, to do *תשובה* for our failure to apply the lessons of our Torah study to all life situations and our failure to empathize with those whose suffering resulted from actions they undertook because of their deep love for Hashem, His Torah, His nation, and the land of Israel.

Ambivalent

(Continued from page 5)

discussion of this issue. Should I be asked about this issue by a particular non-Jew, I would respond as I have here. To the mass media, though, it is time for the Jewish community to band together and refuse to cooperate in any way with the world press.

Finally, and perhaps most importantly, there is the question of how the *machteret* should affect us. It seems to me that the *machteret* episode is a challenge to us: The situation in Judea and Samaria is not one which can remain the way it is, as shown by the *machteret*. Can we, those who deny the *machteret's* solution to Arab violence as immoral, produce a better solution, and thus prevent any more such episodes?

HAMEVASER
wishes all of
our readers
a scintillating
Succos and
a happy
5745!



The Feast of Tabernacles in the North London Synagogue—The reader taking the Palm Branch.

Mishpat Ivri — A Cultural Revolution

By DOV I. FRIMER

There is a new and exciting field of law which is presently being developed primarily in Israel and to a lesser degree here in the United States. It is known in Hebrew as "Mishpat Ivri," which has been inadequately translated into English as "Jewish Law."

Jewish Law in its equivalence to the term "Halakha" comprises all the normative rules of Judaism, both the laws applicable between man and his fellow man, as well as those precepts concerning man and his Maker. Mishpat Ivri, however, is generally used to indicate those areas of the Halakha whose counterpart is customarily dealt with in other present-day legal systems—areas such as: Criminal Law, Contracts Law, Torts, Agency, Jurisprudence, just to mention a few examples. While the Rabbinic emphasis today, especially here in the Diaspora, may perhaps be on religious practices such as Shabbat, *kashruth*, *ifillin* and *mezzuzah*, anyone with even a moderate knowledge of Jewish Law is well aware that Torah as a "*derech hashaim*"—a Way of Life—must, by its very nature, deal with the totality of societal existence—and this, of course, includes law. Torah, we believe is "*nitzchit*"; it is Eternal. If so, then it logically follows that our ancient tradition must contain within it, adequate solutions for even the most complex of modern legal problems. (Let me just add, that the overall experience of those of us in Mishpat Ivri has clearly demonstrated this fundamental assumption to be true.) Consequently, Mishpat Ivri scholars are attempting to reorganize and restate the Halakha in modern, legal, conceptual terms, thereby making it available to the contemporary legal community in Israel and the world over.

I would like you to appreciate, however, that Mishpat Ivri is more than just an academic endeavor; it is in fact a cultural revolution. There is a unique Torah challenge facing Jewry for our generation. Former generations fought and struggled so hard to preserve Torah observance in private Jewish life. The gains they made were won through sheer blood and guts. We today continuously reap the fruits of their historic efforts, although all too often we take these benefits for granted, forgetting the high price our parents and grandparents paid for them. Nonetheless, when it came to their public and professional lives, our parents, and in turn, their parents remained very American—or German or Russian as the case may be. The Jews of that time wanted from the world the recognition that they too were like all other peoples and had earned the right to enjoy the public opportunities available to them.

Then came the creation of the State of Israel. "*Hayinu keholim*"—We were like dreamers, delirious with joy. But as the dust kicked up by our dancing feet began to subside and sobriety set in, world Jewry in general and Torah Jewry in particular, soon realized that we stood opposite a new

challenge: how to apply our Jewishness not only in our private lives but in our public and professional lives as well. What cultural and moral heritage will guide us in ordering our society, in regulating our business and professional relations, in establishing our laws?

The Jews in Israel—even the Torah leadership—were not equipped to meet the challenge. Although physically in Israel, they still suffered from a "Gala Mentality." They had not as yet figured out how to make Shabbat without a "Shabbos Goy", let alone the complex tasks of Governance and Statesmanship. Needless to say, Jewry in the Diaspora were not capable of providing any assistance. All of their psychic energies were

the essential Jewish nature of the Jewish State float to the surface.

The initial reactions ran the gamut from total disillusionment on the one hand, to ecstatic "*ba'alei teshuva*" on the other. But today a deeper, more mature, introspection has begun to take shape. Jewish educators and thinkers both within Israel and without, are now analyzing the meaning of a Jewish State in terms of a creative Jewish experience rooted in traditional values; a total experience which permeates one's public life as well as private. The classical Zionist notion that we need Israel as a haven for persecuted and oppressed Jews—what Dr. Daniel Levine of Bar-Ilan University calls "the refugee syndrome"—is no longer sufficient to sustain

patients; engineers and physicists are pooling their talents to create devices that will allow entire industries to observe the Sabbath. While these are perhaps small strides, they are, nonetheless, a healthy and impressive—beginning.

However, probably most encouraging are those leaps made in the field of Mishpat Ivri, for Law more than shapes the values of society, it reflects them. Until 1980 the Israeli Legal System was statutorily bound to English Law. Israeli statutes are predominantly British in nature, stemming back to the post-World War I British Mandate period. Furthermore, in areas where Israeli Law was lacking or unclear, Israeli judges were duty bound to turn to the British judicial precedents for guidance. Only in matters of marriage and divorce were Israeli courts obliged to follow Jewish Law. There have been occasions where, for one reason or another, the Israeli courts did turn to Jewish Law for non-binding persuasive precedent in areas outside of marriage and divorce. Such cases, however, were few and far between.

A vast number of Jews—both religious and non-religious—considered this situation to be a national disgrace. While we may have freed ourselves from Egypt, from Babylon the yoke of Rome and physically from the British, jurisprudentially and culturally we were still enslaved. However, inasmuch as, to our great regret, a Jewish State meant for many nothing more than a State for Jews, a large number of Israelis simply felt no conflict. Unfortunately, I must admit that this situation was willy-nilly protracted by the sad fact that Torah Jewry, as we mentioned earlier, did not have an attractive alternative readily available.

Not that Torah does not provide a viable alternative. Indeed it does. It contains a highly sophisticated legal system based on hundreds of years of human experience and analytic scrutiny. It is time-tested, like a good wine. Let me give you just two brief examples where, in my mind—and I am confident that you will agree with me—Jewish Law far surpasses its Anglo-American counterpart.

First, according to the Common Law tradition, should I see a man being attacked, unless there is some special relationship between me and the victim, not only am I not obligated to intervene and save the victim but it is forbidden for me to do so. This is the law even should there be no real danger to me and the victim may be seriously harmed or even die. Should I, nonetheless, have the "*chutzpah*" to venture out and save the victim, utilizing against the attacker whatever reasonable force necessary to save the victim, be it hitting the aggressor, or, should the case call for it, even taking the attacker's life, I could be brought up on criminal charges of assault and battery—or perhaps even homicide. While this is no longer the law in England proper, it is, nonetheless, the law in many states here in the United States as well as the law in the Jewish State of Israel.

Jewish Law, on the other hand, requires a third party to intervene and save a victim from his attacker, so long as the third party



enlisted in the battle to sustain Torah in the private sphere—fighting off secularism and assimilation. The unfortunate result of all this was that rather than return to our Jewish cultural roots, The Jewish State of Israel was forced to retain the national cultural yoke of the British Pharos.

1973 was a traumatic year for our people. A new and almost devastating war raised doubts in many hearts of what price a Jewish State? The spiritual, as well as economic and social aftermath, with its resulting "*yeridah*," caused once deeply submerged questions as to

Israeli youth. "We want our Israeli youth," writes Dr. Levine, "to sense the positive values of being in Israel. They should appreciate that this is the greatest creative Jewish experience we have had in 2,000 years."

With this new spirit, professionals from all walks of life have embarked on projects which utilize their talents in a uniquely Jewish fashion. Computer scientists are computerizing Rabbinic Responsa; doctors are concerning themselves with Jewish medical ethics and the moral rights of their

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