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War and terrorism in Jewish law

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SELECTED RESPONSA

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QUESTION: What does Jewish tradition teach us concerning the ransom of captives? Specifically, both Maimonides (*Yam. Halkhot Mamot Ani'im* 8:10) and the *Shulchan Aruch* (*Yoreh Deah* 252:3) indicate that we must pay the ransom and negotiate with those who

The responsa on the following pages represent a selection taken from a century of American Reform responsa along with special war-time responsa. We are grateful to the Central Conference of American Rabbis Press and the Hebrew Union College Press for permission to republish these responsa. They have been presented as previously published with no effort to change the Hebrew transliteration or their style.

The Talmud refers to the redemption of captives (*yidyon shevuyim*) as a high obligation, greater even than that of *mitzvot*.¹ Maimonides, in the passage cited above, expresses the Talmudic law as follows: "The redemption of captives takes precedence over supporting the poor. One who ignores the responsibility to redeem the captive violates the following negative commandments: 'Do not harden your heart and do not shut your hand [from your brother in need]' (Deut. 15:7); 'do not stand idly by the blood of your neighbor' (Lev. 19:16); 'he (the master) shall not rule rigorously over him [the indentured servant]' (Lev. 25:33); his similarity annuls a number of positive commandments: 'You shall surely open your hand to him' (Deut. 15:8); 'your brother shall live with you' (Lev. 25:36); 'you shall love your neighbor as yourself' (Lev. 19:18). There is no *mitzvah* as great as the redemption of captives." The *Shulchan Aruch* notes: "Each instant that one fails to redeem captives when it is possible to do so, it is as though one has shed blood."²

Yet despite its exalted status, this obligation is not without limits. The Mishnah³ instructs that we are not to redeem captives "for more than their monetary value" (*yater al kedey domeyant*) on account of "the welfare of society" (*mipnei tilvot ha-olam*). What could "welfare" mean in this context? The Talmud⁴ offers two explanations: Payment of exorbitant ransoms might bankrupt the community; alternately, the knowledge that the Jews will pay dearly to redeem their captives might tempt would-be kidnapers to seize more Jewish hostages.

war and peace. They remain difficult to carry out in Israel, a state which has not known enough peace to be able to step away from the practical considerations of leadership. The ideal of peace remains a distant dream, but the reality of war is a constant presence. The responses on the following pages represent a selection of responses from a century of American Reform responses along with special war-time responses. We are grateful to the Central Conference of American Rabbis Press and the Hebrew Union College Press for permission to reproduce these responses. They have been presented as originally published with no effort to change the Hebrew translation or their style.

1. See the Introduction to this volume for a summary.

2. Wikipedia "Ethics - the IDF Spokesperson's" (<http://en.wikipedia.org/wiki/Wikipedia:Ethics>) Along with other sources have been used for the English translations.

3. Wikipedia, p. 11. No attempt has been made to list the numerous books, articles and other sources which have dealt with the legal discussions surrounding the occupation of the territories and the Palestinian.

REDEMPTION OF CAPTIVES

2003

QUESTION: What does Jewish tradition teach us concerning the ransom of captives? Specifically, both Maimonides (*Yad*, Hilkhot Matanot Aniyim 8:10) and the *Shulchan Arukh* (Yore Deah 252:3) indicate that we must pay the ransom and negotiate with those who take hostages. What can we learn from these teachings that might help us shape an appropriate response to those who would kidnap Jews for any purpose? (Rabbi Douglas E. Krantz, Armonk, NY).

ANSWER: Jewish tradition indeed speaks directly to this issue which is, regrettably, of more than theoretical interest to the Jewish community, whether in Israel or elsewhere.

The Talmud refers to the redemption of captives (*pidyon shevuyim*) as a high obligation, greater even than that of *tzedakah*.¹ Maimonides, in the passage cited above, expresses the Talmudic law as follows: "The redemption of captives takes precedence over supporting the poor...One who ignores the responsibility to redeem the captive violates the following negative commandments: 'Do not harden your heart and do not shut your hand [from your brother in need]' (Deut. 15:7); 'do not stand idly by the blood of your neighbor' (Lev. 19:16); 'he (the master) shall not rule rigorously over him [the indentured servant]' (Lev. 25:33). He similarly annuls a number of positive commandments: 'You shall surely open your hand to him' (Deut. 15:8); 'your brother shall live with you' (Lev. 25:36); 'you shall love your neighbor as yourself' (Lev. 19:18)... There is no *mitzvah* as great as the redemption of captives." The *Shulhan Arukh* notes: "Each instant that one fails to redeem captives when it is possible to do so, it is as though one has shed blood."²

Yet despite its exalted status, this obligation is not without limits. The Mishnah³ instructs that we are not to redeem captives "for more than their monetary value" (*yoter al kedey demeyhen*)⁴ on account of "the welfare of society" (*mipney tikun ha-olam*). What could "welfare" mean in this context? The Talmud⁵ offers two explanations: Payment of exorbitant ransoms might bankrupt the community; alternately, the knowledge that the Jews will pay dearly to redeem their captives might tempt would-be kidnappers to seize more Jewish hostages.

There is a significant halakhic difference between these two explanations. Should we conclude that ransoms are limited due to the crushing burden they impose upon community treasuries, then there would be no restriction imposed upon the amount that wealthy individuals may pay out of their own funds to redeem their relatives. On the other hand, should we adopt the second theory, concern that high ransom payments encourage further kidnappings, then even the wealthy would be prohibited from paying more than the limit set by the Mishnah.⁶

The Talmud does not resolve this issue, and the halakhic authorities are in dispute. The Rambam declares that ransoms are limited in order to discourage future kidnappings.⁷ R. Asher ben Yechiel,⁸ by contrast, rules that a private individual may exceed the ransom limit in order to redeem himself, his wife,⁹ or a Torah scholar.¹⁰ Others expand the permit, allowing an individual to redeem any family member at any price.¹¹ Such lenient rulings would imply that the limitation was instituted to safeguard the public treasury. The *Shulhan Arukh* strikes a balance between these alternatives: it simultaneously accepts Rambam's explanation for the ransom limitation and R. Asher's exceptions to the rule.¹²

While some, if not all, of these authorities permit individuals to exceed the Mishnah's limitation upon ransom payments, none of them allows the community to do so. This distinction between the private and the public realms is eminently reasonable. The primary ethical responsibility of individuals, when confronting the captivity of loved ones, is to the captives themselves; that duty may be said to take precedence over their responsibilities toward society at large.¹³ Governments, meanwhile, may not set such priorities; they are charged with the protection of the entire community. As such, they are forbidden to yield to the extortionate sums demanded by the kidnappers, for to do so would encourage future attempts at hostage-taking and thereby expose the rest of their citizens to danger.

The government of Israel, in its dealings with hostage-takers, wrestles with the very dynamic described in the rabbinic sources. Though the question may not involve the "monetary value" of captives, it does go to the issue of price: at what point do the demands of the kidnappers become "unreasonable," so that the government,

which is ultimately responsible for the security of the people as a whole, must refuse to give in to them? In return for prisoners of war or civilian hostages, captors will set an exorbitant price, often the release of hundreds of imprisoned terrorists or criminals for each liberated Israeli. To yield to this demand might well entice other potential kidnappers to seize captives in the future; the freed prisoners, in addition, would pose a serious security risk to the Israeli public. The government may regard this price as excessive and, faced with a choice between the lives and freedom of its captive citizens and the safety of its population as a whole, refuse to pay it. Difficult as this decision must be, it is well in keeping with the Jewish legal tradition which, in the name of *tikun ha-olam*, sets limits on what communities may pay to redeem their captives.

Still, a case can be made for the opposing view, that no demand is too excessive or unreasonable when the lives of the captives are at stake. Some authorities rule that the limits imposed upon ransom payments apply only when the captors are interested solely in money. When they threaten to kill their hostages, however, the commandment to save life (*pikuah nefesh*) takes precedence over all else. While others disagree,¹⁴ this theory has been adopted by a leading contemporary halakhist, R. Ovadiah Yosef,¹⁵ who argues that in such instances the clear and present danger (*vadai sakanah*) to the lives of the hostages outweighs the potential danger (*safek sakanah*) to the rest of the population should the ransom be paid. On this basis Yosef concludes that Israel ought to pay the price, whatever it may be, which terrorists demand for the release of its captive citizens.

His opinion, however, is subject to a number of criticisms. First, it is by no means clear under Jewish law that individuals or societies are required (or even permitted) to subject themselves to *safek sakanah* in order to rescue those in *vadai sakanah*.¹⁶

Second, it is arguable that the danger posed to society by the payment of exorbitant ransoms, while not as direct as that to the hostages, is no less "certain."¹⁷

Third, R. Yosef bases his argument in part upon his claim that by giving in to terrorist demands we do not thereby invite further intimidation, since the terrorists are committed to a campaign of

violence and murder against Israel and its people whether we give in to their demands or not. He may be right; still, much political and strategic thinking disputes him, holding that surrender to the demands of hostage-takers *does* encourage future acts of violence.

Fourth, R. Yosef does not consider the fact that Israel is a sovereign nation in a state of war with its neighbors. Since its enemies have shown themselves willing to pursue this war against its civilian population, it is not unreasonable for Israel to regard all its citizens as soldiers in the conflict. If soldiers are called upon to risk their lives in defense of the nation, Israel's civilian hostages may be said to share that duty. R. Yosef's ruling is, to be sure, a compassionate one; he would place the safe return of hostages in the first rank of Israeli security priorities. In so doing, however, he would tie the hands of Israel's civilian and military leaders who must somehow, in painful dilemmas such as these, strike an acceptable balance between the lives of the hostages and the welfare of an entire nation.

This balance, we think, can be established solely on a case-by-case basis. In any hostage situation, the government must determine whether and to what extent payment of the ransom demanded by the kidnappers would threaten the safety of the rest of the population. In some situations the government will decide that to pay the ransom is the lesser of two evils, that to obtain the freedom of its captives justifies whatever danger the public may face at some later date.¹⁸ In others, it will conclude that the price is too high. In each case, the decision must reflect, on the strength of careful consultation with military, diplomatic, and political experts, the best available judgement as to the likely results of either course of action.¹⁹

This is no guarantee that mistakes will not be made; experts, like the rest of us, can be wrong. It is, however, the surest means by which the government of Israel (and indeed, any government or communal authority) can hope to discharge its ethical responsibilities to its people against the backdrop of one of the harshest realities of our time.

Notes

1. Baba Batra 8a-b.
2. Yore De'ah 252:3. The source is *Responsa R. Yosef Kolon* (Maharik, 15th-century Italy), # 7.
3. Gittin 4:6.
4. How to determine the "monetary value" of captives is a subject of some dispute. Some (Chidushey ha-Ritba, Gittin 45a) set the amount according to the price the individual would fetch on the slave market (or the estimated price, should slavery no longer be in practice; *Responsa Maharam Lublin*, # 15). Others (*Responsa R. David ibn Zimra Ha-Chadashot*, # 40) measure the ransom price against that which is normally paid to kidnappers. Still others (*Responsa Menachem Ha-Meiri, Beit Ha-Bechirah*, Ketubot 52b) set the price according to the captive's social status.
5. Gittin 45a.
6. Rashi, Gittin 45a, s.v. *o'dilma*.
7. *Yad*, Hilkhoh Matanot Aniyim 8:12. Alfasi, Ketubot 52b (fol. 19a), rules that a husband may not redeem his captive wife "for more than her monetary value." This suggests that Alfasi, too, accepts the reasoning that the limits are set in order to discourage future kidnappings and that even a private individual may not exceed those restrictions; see Rabbeinu Nissim ad loc., as well as Chidushey Ha-Rashba, Gittin 45a. This position is adopted as well by the Gaon of Vilna (*Bi'ur Ha-Gra*, Yoreh Dea 252, # 6).
8. Gittin 4:44, following Tosafot, Gittin 45a, s.v. *dela*. See also R. Asher to M.
9. Ketubot 5:22, in the name of R. Meir Halevy Abulafia. See Ketubot 52a-b.
10. See Gittin 58a, where R. Yehoshua pays a high price to redeem a child from captivity, because he realizes that the child is learned and will one day become a great halakhic sage. "How much the more so," says R. Asher, "does this apply to one who is already a talmid chakham."
11. See R. Yoel Sirkes, *Bayit Chadash to Tur*, Yoreh Deah 252, who notes that such is common practice "to which no one objects", and R. Shabtai Cohen, *Siftey Kohen*, Yoreh Deah 252, # 4.
12. Yoreh Deah 252:4. In Even Haezer 78:2, we read: "the husband is not obligated to redeem his wife at a price greater than her monetary value...." This suggests that he may do so if he wishes.
13. A similar order of priorities is established with regard to the giving of *tzedakah*. See Baba Metzi'a 71a (on Ex. 22:24); *Yad*, Hilkhoh Matanot Aniyim 7:13; *Shulhan Arukh* Yoreh Deah 251:3.

14. See the responsa cited in *Pitchey Teshuvah*, Yoreh Deah 252, # 4.
15. In *Torah She-be'al Peh* 19 (1977), 9-39.
16. See, in general, *Journal of Reform Judaism* 36 (Winter, 1989), 53-65, and the sources cited there. R. Yosef may have the better argument on this point, yet given the long-standing dispute over the issue, it is a shaky halakhic foundation upon which to advocate that Israel cave in to extortionate ransom demands.
17. R. Ezekiel Katzenellenbogen, Resp. Keneset Yechezkel, # 38.
18. And, contrary to popular impression, Israel has never adhered to a "no negotiations--ever" policy with respect to hostages. Its recent willingness to deal for the release of Western captives in Beirut and (thus far unsuccessfully) for its pilot Ron Arad, held by the Hezbollah in Lebanon, are cases in point.
19. This is essentially the position taken by a number of contemporary authorities. See R. Shaul Yisraeli in *Torah She-be'al Peh* 17 (1975), pp. 69-76, R. Yehudah Gershuni in *Ha-Darom* (1971), pp. 27-37, and our colleague R. Moshe Zemer in *Ha'Aretz*, December 13, 1983.

Mark Washovsky
(not previously published)

RANSOMING A KIDNAPED EXECUTIVE

1993

QUESTION: A young Jewish man has been kidnaped and has been held for ransom in a South American country. The family and the corporation for which he works are seeking his release. The American government has discouraged payment of the large ransom as it would encourage further kidnappings. The family is concerned about his health as he was abducted several months ago. What path should the family take? Is there some traditional Jewish guidance?

ANSWER: Unfortunately this is not a modern problem, but has been faced endlessly through the centuries. One of the earliest tales connected with Abraham (Gen. 14) had him gathering a posse in order to force the release of his nephew Lot. He was successful. That may be an option for a government, but is clearly not the path in this instance. We should note that it was the road taken by the Israeli government in the daring and highly successful rescue at Entebe, Uganda in 1976, taken despite the disastrous effort by the German government at the Munich Olympics in 1972. Less dramatic rescue operations have also been mounted by Israeli military and by other nations in their native lands and in every area of the world.

Captives and their rescue has been a major concern of the Jewish tradition. It is considered so important that it over-rides any other concerns and is an obligation placed upon the entire community. The biblical statement of Exodus (21:16) considers kidnaping a capital offense and imposes the death penalty. The Mishnah understood this as a common danger and so in its discussion of obligations assumed by a husband on his marriage included ransoming his wife from possible captivity (Ket. 4:8), a sad commentary on insecurity of that period. This discussion was expanded in considerable detail in the Talmud (Ket 46b, 52 a and b). Other acts of ransoming were not discussed at all, but, obviously taken for granted. The main caveat in these discussions was the caution of paying an excessive ransom expressed by R. Gamliel, so that further acts of kidnaping would not be encouraged. The obligation expressed here rested upon the family or the individual himself, if he possessed the means.

We can sense how common such acts were in the ninth and tenth centuries through the documents of the Cairo Genizah. They

frequently mention, rather casually the captivity of merchants who were then rescued by their companions who were fortunate enough to escape. The issues discussed concerned the reimbursement of the sums expended by the rescuers. The obligation to come to the rescue was assumed. Furthermore when news of a Jewish captive was reported, the community assumed the obligation of rescuing him and possibly his family. This was understood as a natural obligation which was to be carried out as quickly as possible once the news became known.

The Codes of Jewish law emphasize the importance of this *mitzvah* as an obligation which over-rides virtually everything else. It has always been considered the most necessary act of *zedakah* (charity), so both Maimonides (1135–1204) and the later Joseph Karo (1488–1575) provide a long list of biblical citations (Lev. 19:16; 18; 25:33; 36; Deut 15:7 and 8) to demonstrate its importance; the citations are more extensive than for any other *mitzvah*. For both of them this had become a communal obligation. Any and all funds available for charitable purposes were to be used for this purpose and had a primary call upon these moneys. This included funds set aside from the construction of a synagogue; if timbers and other building material had already been purchased, they were to be sold in order to free captives. If it was necessary to collect additional funds, then this was authorized. The caveat expressed by these authorities and others later, was that it be done in a way not to encourage future acts of kidnaping (*Mishneh Torah*, Matnat Aniyim 8:10 ff; *Shulhan Arukh Yoreh Deah* 252). Karo devoted an entire section to this problem.

As many issues arose about the details of carrying out this obligation, the matter continued to be discussed frequently. It occurs in the responsa literature of virtually every century. The discussions treated everything including the involvement of intermediaries, what sums were considered exorbitant, repayment of ransom moneys, the obligation of individual communities, etc. Some of these discussions reflect concerns raised after the rescue had occurred and which could then be settled at leisure. When Meir of Rothenburg (1215–1293) was held for ransom in the 13th century, his captors demanded a very high ransom as they knew that he was greatly esteemed by the Jewish communities, he refused to be ransomed and did not permit the communities to raise the sum. He was held until his death; then the

wealthy admirer, Alexander Wimpfen, ransomed his body, for proper burial (Heinrich Graetz, *Geschichte der Juden* Vol. VII, pp. 173 f.; 423 f.).

All this material suggests that kidnaping for ransom was common and that Jews, as an oppressed minority, were often the target. As many were merchants and traveled, they faced greater danger than the general population. Kidnaping could frequently be undertaken without enraging the local ruler who often stood by and expressed no concern. The literature only rarely indicates any interest on the part of the government in the plight of such Jews. At times it participated in the kidnaping as with Meir of Rothenburg. The Jewish communities were left to their own devices. Rescue in a timely fashion was an absolute obligation placed upon the family and the Jewish community.

The importance of a timely rescue remains for us in our age. Fortunately the incidence of such kidnaping has become rare as the modern world is more secure. When it does occur it is a tragedy especially for the family.

The situation of our question is different as the government is friendly and seeks to protect all its citizens. In this case it has discouraged the family from acting alone. We should note that the kidnapers seem to be part of a revolutionary group which the United States government opposes which adds a political dimension. This, however, is different from an act of kidnaping by Fatah or some other group involved in the Israeli vs. Palestinian struggle. There the emphasis is on ideology and the ransom has usually be expressed in political terms (release of prisoners, etc.) and not as a matter of money.

The family in our case is concerned with the safety of their young man; it has moved slowly out of respect for the position of the government which it understands. The young man has not been visited by any government representative or by any neutral party such as the Red Cross. The photographs of him in captivity show him as alive though clearly suffering. The family was told that our government and that of the country involved would pursue this diligently and that the family as well as the corporation should not interfere as this would endanger any discussions with the captors.

The family has accepted this and followed that path so that there has been little contact with the captors. As several months have elapsed and despite constant contact with the American authorities, there is little sign of any resolution, the desperation of the family members can be understood.

As rescue of captives is such an important obligation and mandatory, the family must seek all possible paths which can further this aim. Initially it seemed best to follow the warnings of the governments and to allow them to pursue this matter quietly with the hope of success. During these months the family has avoided any publicity and has left it in the hands of the government. Since so much time has elapsed, it is appropriate to now follow the road of negotiating themselves. If they need additional help they should involve their community and the media as well. Negotiation and public pressure may assure a positive outcome.

The matter may have become so political that the local government is unwilling to move further and simply delays. Placing all of this into a much broader context may be their national interest, but we are concerned with a single individual who is not involved in the political struggle at all and is an innocent bystander

We would make a distinction between the role of the government and its broad concerns and that of the family which needs to look after the safety of a single individual. Should this person who is not involved in the revolutionary struggle and whose company is in a business which also had no impact on the revolution, suffer as an innocent cog in the wheel? Our answer would be negative, the family should proceed with all means at its disposal and rescue the individual. It should seek to do so quietly, if that is possible and so act within the boundaries set by the United States government, which have not been advisory, not mandatory.

Walter Jacob

(not previously published)

CONCEALING JEWISH IDENTITY

1985

QUESTION: Is it permissible to deny our identity as Jews if we find ourselves in a life threatening situation caused by terrorists? This question has been prompted by the events surrounding the highjacking of the *Achille Lauro* by terrorists. What should we do if we find ourselves in such a situation? Should we instruct our children to conceal their Jewish identity under such circumstances? (Rabbi S. Priesand, Tinton Falls, NJ)

ANSWER: It is a clear statement of Jewish tradition that one must give up one's life rather than violate three prohibitions. They are idolatry, incest and killing another person (San. 60 ff; A.Z. 43b, 54a; Ket. 33b; Shab. 149a; *Sefer Hazmitvot* Lo Ta-aseh #2 ff, 10 and 14; *Shulhan Arukh* Yoreh Deah 157.1). Unfortunately, this question has arisen many times, and there is considerable literature on the subject. Frequently in the Middle Ages Jews were threatened with death unless they accepted Christianity or Islam. (A good summary of the literature is provided by H.J. Zimmel's *Die Marranen in der Rabbinischen Literatur*). Many from the time of the Crusaders onward became martyrs under those circumstances.

Many from the time of the Crusaders onward became martyrs under those circumstances. Other simulated an acceptance of Christianity or Islam while they privately remained Jews and escaped when that possibility arose (W. Jacob, "Status of Children," *American Reform Responsa*, #145). Such individuals who publicly proclaimed another religion, but privately remained Jews, were to be considered Jews in most ways even though *lehat-hilah*, another course of action was mandated (*Shulhan Arukh* Yoreh Deah 119.12; Orah Hayim 128.37; Even Haezer 42.5). These were the decisions of the *Shulhan Arukh*. Earlier opinions varied according to: (a) the danger presented by such apostasy to the Jewish community; (b)

the conditions under which they returned to Judaism, as I have discussed in the responsum cited above.

Maimonides (1135–1204) prohibited a feigned acceptance of another religion in accordance with the *Talmud*; no Jew was to abandon his religion for another religion (*Sefer Hamitzvot*, Ta-aseh 9), as did Caro (1488–1575) (*Shulhan Arukh Yoreh Deah* 157.1). The *Shulhan Arukh* had also stipulated very clearly that even at the risk of death, one can not declare, “I am not a Jew” (*Yoreh Deah* 157.2). The question of permitting apostasy was faced by Ephraim Oshry (*Responsa Mema-amakim* 13) and others during the Holocaust. And he answered it negatively, and stated that a Jew may not save himself through the purchase of a forged baptismal certificate, and thereby, try to join the partisans in the forest. However, there is also another line of thought which states that if a Jew is able to provide an ambiguous answer, which does not require an outright declaration that he is a Christian, such a declaration is considered acceptable (Isserles to *Shulhan Arukh Yoreh Deah* 157.2, in accord with *Nimukei Yosef*).

There were also instances, particularly in the medieval period, in which Jews wore Christian garb to save themselves. The surrounding world considered them to be Christians, and asked no questions. This, too, won the approval of the *Shulhan Arukh* (*Yoreh Deah* 157.2), although Maimonides disagreed (*Sefer Mitzvot Lo Ta-aseh* #30).

For Oshry during the Holocaust there was a difference between following a path which had the appearance of permanently abandoning Judaism, like using a baptismal certificate which he prohibited, and on the other hand using a forged Christian passport, a temporary measure, which he permitted. Similarly, he allowed an individual with a non-Jewish name to enter the letters R.K. into a passport, which stood for Roman Catholic in German, to the Nazis, but could be interpreted differently by the Jewish bearer. A parallel decision was given by

Hayim Shor (*Torat Hayim* #17) and Samuel Ungar (*Mekadshei Hashem*, p. 214; R. Kirschner, *Anthology of Holocaust Responsa*, pp. 97 ff). It is clear from these statements that these rabbis took a hard line with a baptismal certificate which seemed like an outright denial of Judaism, but were willing to go along with anything less.

Other authorities during the Holocaust, however, decided differently even on the matter of baptismal certificates. They realized that (a) the Nazis were not interested in converting anyone to Christianity; (b) they made such conversions punishable by death; (c) they severely punished Christian clergy involved in such an act of mercy. For these reasons the number of *Batei Din* in Poland, Czechoslovakia and Hungary, as well as Lithuania, permitted such baptismal certificates to be held by Jews, and treated these Jews as any other member of the Jewish community despite protests within the community. Any other action seemed to play directly in the hands of the Nazis, and the rabbis certainly did not wish to do that (H.J. Zimmels, *The Echo of the Nazi Holocaust in Rabbinic Literature*, pp. 77 ff). Similarly, it was permitted for individuals to declare themselves Karaites as they were not considered Jews under various Nazi rulings (Ibid. 88 ff.).

The main line of thought among both Medieval and modern commentators prohibits an outright denial of Judaism, but permits an ambiguous statement which can be interpreted as a denial by the persecutor. It also permits a disguise which would not cause any questions to be asked.

The Medieval authorities also distinguished types of persecution. If the persecutor wished to force Jews to accept another religion, then it was the duty of the Jew to resist even if it meant death. If, however, it was the intent of the persecutor merely to persecute the Jew and threaten him with death without any interest in turning him into an idol worshipper, then he could

simulate idol worship in order to save his life (*Azei Levonah* Yoreh Deah 179; *Turei Zahav* Yoreh Deah 179; *Shulhan Arukh* Yoreh Deah 157.1).

In the period of the Holocaust and the Expulsion from Spain, the identification of Jews and their persecution was a matter of government policy. In 1492, the authorities demanded conversion to Christianity. During the Holocaust everyone of Jewish descent, even Christians, were to be slain. Those conditions were very different from a temporary act of terrorism.

Terrorists usually do not hold their hostages beyond a brief specified period. Furthermore, such terrorists are not interested in bringing about a change in religion, but want to use Jewish hostages for whatever leverage can be exercised through them upon Israel. It is the duty of the remainder of the Jewish community to obtain the freedom of captives whenever this does not endanger the community itself (B. 8b; *Yad Hil. Matnat Aniyim* 8.10; *Shulhan Arukh* Yoreh Deah 252). One great medieval hostage, Meir of Rothenburg, forbade payment of any ransom after he had been taken captive in the thirteenth century as he felt that this would hurt the community and set a bad precedent (Graetz, *Geschichte der Juden* Vol. VII, pp. 173 f; 423 f). In the case of modern hijacking by terrorists potential hostages can help Israel to avoid blackmail and guard themselves from additional danger by hiding their Jewish identity.

It would, therefore, be appropriate for children and adults, if taken hostage by terrorists, to conceal their Jewish identity first through passive acts and then through any other way which is possible.

Walter Jacob

(Walter Jacob, *Contemporary American Reform Responsa*, New York, 1987,

63).

JEWISH LAWYERS AND TERRORISTS

1989

QUESTION: According to Jewish tradition is a Jewish lawyer obliged to defend Arab terrorists who attempt to kill Jews in Israel if a Jewish lawyer is designated to defend them? Is a Jewish lawyer obliged to defend terrorists who attempt to kill people in general if a Jewish lawyer is designated to defend them? Is a Jewish lawyer obliged to defend a member of the American Nazi Party he knows that the goal of the American Nazi Party is detrimental to Jewish people? (Rabbi Jack Segal, Houston TX)

ANSWER: We should begin by making it clear that the current system of appointing a lawyer or the hiring of a lawyer to defend appears late in our tradition. Although a person might have engaged someone to speak for him, this was usually not an individual who made his livelihood as an attorney. A representative akin to the modern attorney was used if the individual could not appear personally to illness or distance or if one of the parties felt inadequate to the test of presenting a case. Most cases proceeded without an attorney. The traditional Jewish court procedure through the centuries saw judges engaged in interrogation and so they did much of what attorneys do in the American courts. Various responsa mentioned attorneys and dealt with problems associated with them but not with our problem (Jacob ben Judah Weil *Responsa*: Meier of Rothenburg *Responsa*; Isaac ben Sheshet *Responsa* #235; Moses Issserles *Responsa* and others).

Although there is nothing like a court appointed attorney in the traditional system of Jewish law, nevertheless, the tradition may provide some guidance for Jewish attorneys in the United States and in the State of Israel in which the courts function differently. In these systems an accused individual engages an attorney or has an attorney appointed. What is the duty of a Jewish attorney under those circumstances? In order to answer this question, we must ask ourselves about the purpose of a trial. Our *concern* is justice and that was expressed by the Bible which demanded close cross examination of the witnesses (Deut 13.15) as the accused was perceived innocent till proven guilty.

The accused must be present during the examination of each of the witnesses who are testifying against her/him (*Yad Hil Edut* 4.1).

Furthermore, the defendant must be personally warned by those who saw the crime or by someone else (San 30a; Git 33b; Kid 26b and Codes). The examination must concentrate on precise facts and not wander afield (San 32b; *Yad Hil Edut* 18.2; 22:1 ff; *Shulhan Arukh Hoshen Mishpat* 15.3; *Responsa Rivash* # 266). There are strict rules against self incrimination and no evidence of that kind is admissible (Ex 23.1; San 9b; Yeb 25; San 6.2: 18.6 and commentaries). The defendant may plead on her/his own behalf in front of the court before the court begins its deliberations (*M. San* 5:4), but he/she is not permitted to say anything which might prejudice the court against him (San 9:4). If the defendant is not capable of speaking for himself/herself, then a judge may do so for her/him (San 29a). If the matter involves a death sentence, then the court remains in session until the individual has been executed so that if any new evidence appears, the execution may be halted (*M. San* 6.1; San 43a and *Yad Hil. San.* 13.1 (ff.)). This is merely a sample of judicial safeguards against injustice; they demonstrate the great care given to the defense of the accused and the efforts made on his behalf by the ancient system of courts. Lawyers or other representatives have not been involved, but the spirit of the law demands that we seek justice. We, in many modern lands, do so through an adversarial procedure.

The spirit of traditional legislation would indicate that lawyers in our system must participate in this effort to seek justice. This would apply to war criminals, terrorists or others who may be tried in the United States or in the State of Israel. Jewish attorneys should consider themselves within the framework of tradition if they are appointed to such tasks or wish to volunteer for them. No one can, of course, be forced into such a position against their will. If willing, then they will help to assure that justice is done and that the accused has a reasonable opportunity to defend herself/himself within the framework of our judicial system. "Justice, Justice shall you pursue" (Deut 16.20) or "in righteousness shall you judge your neighbor" (Lev 19.15) will continue to be our guide.

Walter Jacob

(Walter Jacob, *Questions and Reform Jewish Answers – New American Reform Responsa*, New York, 1992 # 238.)

SOLDIER WEARING A SWORD AT A WEDDING

1970

QUESTION: At a recent marriage a military officer was to be married in full dress uniform, which includes the wearing of a sword. Should this be permitted? (From Vigdor W. Kavalier, Pittsburgh, Pennsylvania.)

ANSWER: There has been a wide variety of customs as to what was the proper garment for the groom to wear at his wedding. The Mishnah in *Sotah* IX:14 speaks of the fact that both bride and groom wear a crown, but that this custom in time of persecution was abolished. Maharil, in the fourteenth century in Mainz, describes a wedding in detail and speaks of the groom wearing ashes on his head as a mark of mourning for Jerusalem, and also wearing the *sargenes* (i.e., the *kittel*). In fact it was the custom in Eastern Europe (a custom still followed by many Orthodox people) to consider the wedding day, if not as actually a time of mourning, as at least a time of repentance. This is based upon the Talmudic idea (*j. Bikurim* 65d and Isserles, *Even Ha'ezer* 61:1) that for the bride and groom the wedding day is a day of repentance like the Day of Atonement. Therefore, the bride and groom fast until the wedding ceremony and, therefore, in Eastern Europe (according to some customs) the bride wore a shroud under her wedding gown and the groom wore a *kittel*, the white, shroud-like garment of Yom Kippur. A more general custom, widely observed, was for the groom to wear a *talit*, a custom generally based upon the juxtaposition of the verses in Scripture (Deut. 22:12,13) where the verse: "You shall put fringes upon your garments," comes right before the verse: "If a man takes a woman to wife." More romantically explained, the origin of the custom of the groom's wearing a *talit* derives from the fact that the bride makes him a gift of his first *talit* (since unmarried men do not wear the full *talit*), and that the four sets of eight threads in the fringes total thirty-two, which is the numerical equivalent of the Hebrew word *lev*, which means "heart." However, practically speaking, the groom's *talit* was an essential part of the wedding ceremony, since before the

development of the *hupah* (wedding canopy) in the late Middle Ages, the custom was (and is still the custom in parts of western Germany) that the groom, during the ceremony, spreads his *talit* over the head of the bride, thus symbolizing their seclusion and their unity. However, most of these customs of special items for the groom and the bride are no longer practiced among some Orthodox Jews, and certainly not among non-Orthodox Jews. Therefore we can say that there is no objection to whatever type of clothes or uniform the bridegroom wears.

Although this, in general, is the case, that in those marriages which are not strictly Orthodox a soldier may be married in his uniform, nevertheless there may be a specific objection to the wearing of a sword, since the sword does seem to symbolize a mood opposite to the mood of unity and love which should prevail at a wedding. Hence the question. Besides this feeling, the very fact that this question was asked is an indication that there is some recollection of some Jewish law that may be directly involved. It is this latter question which concerns us.

The Mishnah in *Berakhot* XI:5 says that it is forbidden to enter the Temple Mount in Jerusalem carrying one's money-belt and one's walking stick. But according to the *Shulhan Arukh* (Orach Chayim 151:6) it is permitted to enter our synagogue (i.e., not the ancient Temple) with staff and money belt. But Joseph Caro adds that "Some say that it is forbidden to enter a synagogue with a long knife." In his *Bet Joseph*, his commentary to the *Tur*, he gives the source of this individual opinion. It is taken from the *Orchot Chayim* (Aaron of Lunel) Vol. I, "Laws of the Synagogue," #7, where this prohibition is mentioned in the name of Meir of Rothenburg. The reason given by Meir of Rothenburg as quoted by the *Orchot Chayim* is that the synagogue prolongs life and the "long knife" shortens it.

But this is an individual sentiment, not a law. The *Tur* does not mention it at all. Since it is not a fixed law, we have no right to promulgate it. It is a principle in Jewish law that one may not prohibit that which is permitted.

Moreover, besides its not being a law, when it *is* mentioned it is only with regard to *entering* the synagogue sanctuary. In other words, if the marriage did not take place in the sanctuary itself (say, in the rabbi's study or in a hall) even this individual objection to a "long knife" would not apply.

To sum up: The custom of special garments of mourning to be worn by bride and groom has largely lapsed among most Jews. There is, therefore, no requirements as to the type of garments to be worn. As for the full military officer's uniform which includes a sword, there is only one chance opinion that one should not enter the synagogue with a long knife. But that is not the law and, besides, it applies only to the sanctuary itself.

An analogous question was dealt with recently by Eliezar Waldenberg of Jerusalem in Volume X (#18) of his response series *Tsits Eliezar*. The responsum, of course, reflects the tense situation which prevails at present in Israel. He was answering the question as to whether an Israeli soldier may enter the synagogue with a rifle or a revolver. He calls attention to the fact that the origin of the law prohibiting entering the synagogue with weapons is to be found in *Sanhedrin* 82a (bottom of the page) which cites the text from Numbers 25:7 that Phineas "went forth out of the congregation and took the spear in his hand." From which the Talmud concludes that one may not handle a spear except outside of the congregation or the synagogue.

Waldenberg suggests that it would be better if the bullets were taken out of the rifle or revolver so that while the soldier is in the synagogue these should cease to be lethal weapons. Or he suggests

that they may be covered and that, perhaps, the revolver being enclosed in the holster, is not too objectionable. He adds, however, that in time of danger when these men are actively protecting the community, none of the restrictions need apply.

Solomon B. Freehof

(Solomon B. Freehof, *Modern Reform Responsa*, Cincinnati, 1971, # 20).

Although this, in general, is the case, that in those instances where the restrictions do apply, the restrictions are not too objectionable. He adds, however, that in time of danger when these men are actively protecting the community, none of the restrictions need apply.

An analogous question was dealt with recently by Eliezer Waldenberg of Jerusalem (Yishuv 2: (18)) in his response series "The Revolver" (bottom of the page) which cites the text from the Talmud (Shabbat 120a) which states that the fact that the origin of the law prohibiting carrying the sword or knife is to be found in the fact that the sword or knife is a lethal weapon. He suggests that it would be better if the bullets were taken out of the rifle or revolver so that while the soldier is in the field these should cease to be lethal weapons. Or he suggests that the soldier should be required to carry the revolver in a holster which is not too objectionable. He adds, however, that in time of danger when these men are actively protecting the community, none of the restrictions need apply.

USE OF "THE LORD'S PRAYER" BY A SOLDIER

QUESTION: We have been asked whether a Jewish soldier may recite the well-known prayer from the Gospel of St. Matthew (Chapter 6) known as "The Lord's Prayer."

ANSWER: Judged merely by its content, this famous prayer has nothing objectionable in it to a Jew, in fact, almost every one of its phrases has been traced to Jewish sources or at least parallels have been found for them in Jewish sources. Nor is the fact that the prayer is of non-Jewish origin sufficient reason to prohibit its use by a Jew. A medieval legend found in a Midrash describes Simon Peter, the first of the Popes, as the author of various *piyyutim* used on the Day of Atonement (see Jellinek, *Bes Ha Midrash*, V, 60 ff; also Kovetz *Ma'asey Ha-gaonim*", pp. 107-8). The only question involved is whether it is a violation of the law, "Thou shalt not follow their statutes." This law has already been described in a previous responsum and the various limitations of it mentioned. It is only necessary to mention the fact that the law is careful to indicate that not necessarily everything which is customary among Gentiles should be avoided by Jews, but only such that either have no meaning (*Da'as Hevel U'shtus*) or those which are specifically part of their worship. See the explanation of Rabbi Isaac in the famous *Tosfos* to Avoda Zara IIa. Joseph Colon (Maharik, Italy, fifteenth century) says clearly, speaking of Christian garments, if a Jewish garment does not express Judaism or modesty any more than the Gentiles wear, then there is no prohibition for the Jews to adopt garments customary among the Gentiles (*Responsa Maharik* #88). This is cited by Joseph Caro in his *Kesev Mishnah* to Maimonides *Yad Hil. Akum* XI,1. and by Isserles to *Yore Deah* 178 #1. If, however, the custom is generally a part of Gentile worship, then it is prohibited.

A fairly recent, clear statement on this is by Z'vi Dov Eisner in *V'y'laket Joseph*, Vol. IV #88, which he says, the prohibition against following their statutes applies only if the Jew does something which the Gentile does during the time of worshipping his

God. Since "The Lord's Prayer", by its very title refers to the prayer uttered by Jesus, and since it is a definite part of Christian worship, it certainly falls under the prohibition of following the statutes of the Gentiles and should not appropriately be recited by a Jewish soldier.

Of course, a Chaplain when his duty requires of him to conduct non-Jewish worship, is under government command to do so, and that circumstance would fall under a different category.

Solomon B. Freehof, Chairman with Leo Jung, David Aronson
(*Responsa to Chaplains 1948-1953*, Commission on Jewish Chaplaincy, National Jewish Welfare Board, New York, 1953, # 7).

VOLUNTEERING WEARING A CROSS

1940s

QUESTION: A question was brought to use through a Chaplain with regard to the inquiry of a Jewish nurse as to her wearing a cross with her "dog-tag". The chaplain stated that the question was raised with reference to the possibility of becoming stranded somewhere in the South Pacific area where in many instances the natives had come to recognize the cross as the only sure symbol of friendship.

ANSWER: In the discussion of *Yore Deah* 178:1, where the question is raised about Jews wearing the garments on non-Jews as to when that is prohibited and when permitted, the commentator *Sifte Cohen* says that in times of persecution it is certainly permitted for a Jew to disguise himself by wearing non-Jewish clothes. Thus, if, for example, the question were whether Jewish soldiers fighting on the European continent might not be permitted to conceal their Jewish identity by wearing "dog-tags" without the letter "H" so that, if captured by the Nazis they would not be mistreated, the answer would be that this is certainly permitted.

However, such concealing of Jewish identity cannot be permitted in the South Seas where there is no question of persecution of Jews. The question specifically, however, is not one of concealing Jewish identity, but of wearing the cross in order to win the friendship of natives in the South Seas, who are accustomed to consider the cross as a symbol of friendship. The law on this matter is quite clear. *Shulhan Arukh, Yore Deah* 141:1, Joseph Karo discussing which statues are to be considered idols and which are not, says that the statues in villages are to be considered idols since they are meant to be bowed down to. Those in great cities are not to be considered idols since they are merely for decoration. To this Moses Isserles comments as follows: "A cross which is meant to be bowed down to is forbidden, but one that is worn around the neck is merely a memento and is not forbidden." Thus, the law is clear.

To use a cross as the nurse intended to is not forbidden by law, but since it is clearly against general Jewish sentiment, the Committee refrains from advising her on this matter. She herself must judge how grave the danger is and how much help the symbol would give her.

Solomon B. Freehof, Chairman with Leo Jung and Milton Steinberg
(*Responsa in War Time*, Division of Religious Activities, National Jewish Welfare Board, New York, 1947)

VOLUNTEERING FOR THE MILITARY CHAPLAINCY

1940s

QUESTION: The question has arisen whether it is in accordance with Jewish law to volunteer for the chaplaincy and thus take on the dangers of military life.

ANSWER: There is no question that, in Jewish law, military service, when it is *required* by the government, must be accepted wholeheartedly by subjects or citizens of Jewish faith. The duty to respect the commands of the government is clearly stated and emphasized in Jewish law. This attitude of respect and loyalty to the government is summarized, for example, in the introductory statement (on page 10) of Isaac Elchanon Spector's *Ein Yitzhak Hasheni* (who quotes Proverbs 24:21, Aboth 3:2, Jer. 29:7, Yoma 69a-Simon the Just to Alexander): The specific duty to serve in the army is described in detail by the Chofetz Chaim (Israel Meir Hacohein of Radun) in his Introduction to *Machanei Yisrael*: "It is a great sin", he says, "to evade service in the army."

This, of course, refers to *compulsory* service which, being the command of the government (*tzivui hammemshalo*), according to Jewish law must be obeyed. But our question does not directly concern itself with obeying the command to serve (about which there is no doubt) but volunteering on one's own initiative. Is such volunteering in accordance with Jewish law?

The basic question involves the laws of *sakkana*, danger to life, as to whether one may put himself in danger and also whether there is not to the contrary the duty to escape from such dangers. There is a definite command in the law to avoid all dangers. This law has a number of different aspects. One of them is based upon the verse (Deut. 4:9): "Be careful and preserve your soul." The Talmud (Berakhot 3a & 8b, et al) speaks of the obligation to guard against endangering oneself by entering a ruin, drinking unsafe water, etc. Maimonides codifies these various dangers (*Yad*, Hil. Rozeah u-Shemirat Nefesh XI, 4 & 5). So does the *Tur* and the *Shulhan Arukh* (Yoreh Deah 116). See especially the long note by Isserles. Maimonides says that whoever does not avoid such

dangers but insists that he takes them at his own risk and that, therefore, it is his own affair, should be flogged for endangering himself (makat mardut). (So too in *Shulhan Arukh*, Hoshen Mishpat, 427 #9).

In addition to these dangers with regard to which one should avoid exposing himself, there are also the dangers concerning which one should avoid exposing others. These are based upon the command (Deut. 22:8) to put a parapet around the roof of the house. This verse ends with: *lo sosim domim b'vesecho*," which becomes the key verse in all the later discussions. In the *Sifre* (ad loc.) this law is extended to similar neglect of safeguards, such as leaving a well uncovered, or leaving a stumbling block in the road. This duty to avoid causing danger to oneself and to others is codified in Maimonides (*Yad*, Hil. Rozeach XI, 4) and *Shulhan Arukh*, Hoshen Mishpat 427.

There is a third type of danger due not to carelessness or to neglect as are the above types, but to special circumstances involving the relative safety of a man and his fellowman. Thus, the famous case given in the Talmud (Baba Metziah 62a), of the two men in the desert drinking water enough for only one. Whose life is to be preserved? This is based upon the verse in Leviticus 25:36: "Thy brother shall live with thee," (and is first found in *Sifra* to this verse), and ends with Akiba's statement: "Your life must come first."

Finally, there is the danger involved in the duty of martyrdom. Under which circumstances should one prefer to die rather than commit a sin? This involves the three cardinal sins, the question of whether it is in public or in private, or whether the purpose of the persecutor is to destroy the faith. (Cf. Maimonides, *Yad*, Hil. Yesodei Torah V,1, and *Shulhan Arukh*, Yore Deah 157) Yet even in those cases where it is a duty to accept martyrdom, if he decides to commit the sin and thus avoid the martyrdom, he is considered an "anus" i.e., one who sins not of his own free will, and is to be forgiven. Thus it is clear that in all these four classes

of danger, carelessness as to one's food, etc., neglect of precautions such as covering a well, special experiences such as the desert journey, and martyrdom, in all of these it is a general duty to avoid danger.

All the cases mentioned deal with one's personal obligations and, except directly by way of analogy, do not concern the personal danger in fulfillment of one's duty to the government. There is, for example, no direct law which makes use of the verse in Psalm 110,3 which Rashi and Kimchi understand to mean that the people gladly volunteered for war no one was freed from the danger of war but all were obligated to go (M. Sota VIII,7; Maimonides, *Yad*, Hil. Melakhim V, 1-2). All this refers to the wars of Israel. Of course there is, as has been stated, no question as to the duty to obey the command to serve in the armies of the lands of our citizenship, but to what extent is it a moral or religious duty to take on voluntarily the dangers of such war?

As to that there can be no religious mandate, just as there is no secular mandate. Yet David Hoffman in *Melamed L'ho-il*, Orah Hayim 42, in discussing the duty to serve in the army makes clear the fact that it involves *sakana* and *sakana* can lead to violation of the Sabbath; nevertheless he indicates that such violation of the Sabbath involving danger is permitted if the journey or the enterprise is for the purpose of fulfilling a mitzvah, (based chiefly upon *Bet Joseph to Tur* Orah Hayim 248). Then he continues that not to serve in the Army involves more than the failure to observe a *mitzvah* but actually a sin of the profanation of the Name because of the effect that such evasion would have on the good name of the Jewish community. With regard to the chaplaincy, both elements are involved. There is certainly the mitzvah of making possible regular worship for the soldiers and also the avoidance of profanation of the Name if too few chaplains would be available. For these two reasons it is permitted to accept *Sakana* which would lead to violation of the Sabbath. Yet there is a religious duty to keep others from danger and to diminish their peril. He who does not do what he can to save others, violates the

command, "Stand not idly by the danger to thy brother" (Lev. 19:16). So Maimonides takes this verse in *Yad*, Hil. Rozeach 1:14. See also Naftali Berlin (Neziv) to *Sheeltot* Exodus 38, who says that one should strive with all his strength to save another up to the risk of his own life.

Does then the work of the chaplaincy tend to strengthen and preserve the life of the soldiers in their time of danger? There is some bearing on this question in the Chofetz Chaim's *Mahanei Yisrael*. In two rather touching chapters (38 and 39) he speaks of the Jewish soldier in the danger of actual battle and dwells upon the duty of prayer and confession and trust in God, assuring his readers that the sincere religious life strengthens the heart and will, in God's goodness, bring protection in time of danger. So, too, we would say that the soldier's spiritual confidence enhances his morale and increases his inner strength and his safety. The chaplain, as he performs his task, fulfills a religious duty. The Gaon Achai said in *Sheeltot* (Exodus #38). It is a high spiritual duty to preserve the body and the spirit.

There is a further question which is dependent upon the one which has been discussed above. The above discussion dealt with whether a man has the right to put *himself* into a place of danger, but there is also the question as to whether one has the right to put others in a place of danger. In other words, the question hitherto has dealt with the Chaplain and his right to volunteer. The second question now deals with the committees of the various organizations and their right to organize the draft or the volunteering.

It should be clear at the outset that it is irrelevant to cite in this discussion the Mishnah in Terumot VIII, 12 (Maimonides *Yad*, Yesodei Torah V, 6 and Isserles in *Shulhan Arukh* Yore Deah 157,1) namely, that if the Akum demand that a Jew be handed over to them for death (or dishonor) that we should not do so (except under special certain circumstances). Meir Eisenstadt (*Imre Eish* Yore Deah #52) shows quite clearly that entering military life is

not at all analogous to this demand of persecutors. It is of interest to note that Meir Eisenstadt in the responsum cited above discusses the question of whether it is right for an individual to hire another individual to do his army service for him which was a rather widespread custom in eastern Europe a century ago, and, indeed, was an American custom during the Civil War. In this discussion he deals with all the relevant principles such as handing over a child of Israel to non-Jews, etc., and he decides that such an action (i.e. providing a substitute for oneself) is in no way forbidden by Jewish law.

In general, military life does not involve the question in the Mishnah of being put to death but only the problem of Sakanah. If we would decide that it is wrong for a man to accept this Sakanah, then it would follow that it would be wrong for us to arrange for him to accept it, for then we would be aiding in the committing of a sin. If to volunteer for military service (danger) were a sin, then also the arguments concerning the benefit which such volunteering might bring to the good name of the community would be an insufficient argument. It is a principle in the law that we do not say to a person: Sin thou that we may acquire merit. (Shabbat 42, etc.)

But since, as we have indicated in the discussion above, to accept the danger of military chaplaincy is not a sin, but is to a considerable extent a mitzvah, then our question virtually solves itself. To help in the performance of such a *mitzvah* constitutes a duty on the part of the community and its organizations.

Solomon B. Freehof, Chairman with Leo Jung, David Aronson

(*Responsa to Chaplains 1948-1953*, Commission on Jewish Chaplaincy,

National Jewish Welfare Board, New York, 1953, # 6).

JEWISH TRADITION AND THE CONSCIENTIOUS OBJECTOR

2003

QUESTION: A young Jew who is in the Army Reserve objects to the war on Iraq and wishes to exercise his conscience as a conscientious objector. What is the Jewish attitude toward conscientious objectors; how does the Jewish tradition view this ?

ANSWER: Let us view the broader picture regarding the conscientious objector within the Jewish tradition historically. We should note two factors which are relevant to this question. First, the Jewish tradition has little to say on war and military service. As Jews lived in a semi-autonomous condition, virtually a "state within a state," from the fall of the ancient Judean Kingdom in 586 B.C.E. with only a century and a half interruption under the Maccabees and their successors, questions of warfare did not arise. No Jewish philosopher till modern times has dealt with it, nor did the halakhah.

We must ask whether Judaism is opposed to war; is Judaism a pacifist religion or does it contain strains of pacifism ? This is a question which deserves a long thorough treatment, however, a brief answer would be negative. Warfare was part of Biblical Israel and was taken for granted. When the prophets spoke about an era of eternal peace and saw it as an ultimate goal, they were speaking of the Messianic Era and expected it to come about through Divine intervention, not human efforts.

Peace was an ultimate hope, but it did not keep the prophets from seeing a divine hand in defeats of Israel and Judah through foreign armies. God used war as punishment for national wrong doing according to their thinking. Nor was warlike imagery foreign to them as they sought to guide the religious and political life of their times.

Now let us turn to an individual claim that his/her conscience is opposed to a particular war. Biblical Judaism with its very few provisions about conscription contains a statement which may appear relevant. When the Israelites formed an army in the Promised Land, they were to be addressed by the officials: "Is there anyone who has built a new house but not dedicated it? Let him go back to the home, let he dies in battle and another dedicate it. Is there anyone who has

planted a vineyard but has never harvested it? Let him go back to his home, let he dies in battle and another harvest it. Is there anyone who has paid the bride-price for a wife, but who has not yet married her? Let him go back to his home, let he dies in battle and other marry her." The Official shall go on addressing the troops and say 'Is there anyone afraid and disheartened? Let him go back to his home, lest the courage of his comrades flag like his'(Deut 20:5-8). The later Mishnaic and Talmudic tradition elaborate slightly on these statements, but with no essential changes.

One of its statements deals with the disheartened may provide some guidance - that individual is not afraid, but has some other unknown reasons for not being willing to fight. He is not questioned further, but simply dismissed. To the best of my knowledge no interpretation in the past or the present has included conscientious objectors in this statement. Therefore individuals could be excused from military service for various reasons including fear (Deut 20:5 ff.), but nothing was said about a conscientious objection to a specific war.

Let us, however, also look at the possibility of pacifism within rabbinic Judaism and its view of the jurisdiction of a potential Jewish state. The rabbinic scholars made no statements against warfare and never condemned it outrightly. However, they made the decision to go to war, certainly for *milkhamot reshut* (discretionary war) so difficult that by their standards it would have been impossible. One cannot give this the name of pacifism, but the practical result would have been the same. *Milkhamot reshut* needed the assent of the king, a Sanhedrin (high court consisting of twenty-three), and consultation with the *urim* and *tumim*, i.e. divine permission. As none of these three conditions were possible after the destruction of the Temple and the fall of the last Jewish kingdom, such wars could not be declared.

According to rabbinic Judaism, matters were absolutely different with *milkhamot mitzvah* (mandated war) which meant the conquest and defense of the Land of Israel. There was no halakhic way of being a pacifist when it came to this divinely commanded conquest and defense of the Land of Israel. Those statements are precise and clear.

Now let us view the entire matter in the framework of our lives in a modern secular state to which we have pledged our support. Here the simple statement of *dina demalkhuta dina* (the law of the state is law) guides us. When the question of military service by Jews in the armies of secular states arose in early nineteenth century Europe, this principle was invoked. Jews served in numerous armies including those of lands which oppressed us as Russia. In the lands of western Europe, young Jews volunteered enthusiastically with the hopes of demonstrating their absolute commitment to the modern nation state and receiving complete civil rights. In order to be part of the modern state we have accepted its obligations and laws.

It would be possible to question the entire theory of *dinah demalkhuta dina* and conclude that it does not include endangering one's life for the demands of the state. However, such a selective reading is filled with peril. We know that the state enforces many laws which may endanger human life; it does so in its effort to seek equity and justice for all citizens.

Among modern nation states, only a few have made any provisions for conscientious objectors. The personal conscience was considered irrelevant when national security was at stake. Individuals who refused to do military service were simply punished for evading the law of general conscription. The question was therefore not asked till modern America and some other nations which make provisions for conscientious objectors.

We have looked at this question from a broader point of view. However, the individual involved here is not opposed to war generally as otherwise he would not be part of a military reserve unit. He may in fact have taken part in another war, so the question is whether an individual can object to a particular war. The Jewish tradition would deny that right as well as the general right to object to any and all wars under the rubric *dina demalkhuta dina* (the law of the land is the law). The individual may find other grounds for this objection, but there is no basis for them in the Jewish tradition. The laws of the United States permit possible exemption to those who totally object to war and does so on various grounds, but not to selective conscientious objectors.

The stance of this individual has no foundation in Judaism. In a democracy it is possible for him to take a speak out and vote in an attempt to change the path of the nation, but otherwise he is duty-bound to obey the law and serve, even with his mental reservations.

Walter Jacob

(Unpublished responsum)

PACIFISM AND JUDAISM

1989

QUESTION: Is pacifism part of Judaism? Has it been a major factor in Jewish life and thought in the past? Is there a pacifist halakhic tradition within Judaism which we may follow? (Rabbi R. Lehman, New York)

ANSWER: The ideal of peace has been so important in Judaism that we have used it as a common daily greeting –*shalom* with biblical roots for this custom (Gen. 43:23; Ex. 4:18). The biblical prophets emphasized the goal of peace with such statements as: “Peace, peace to him that is far off and to him that is near” (Is. 57:19); “I will make a covenant of peace with them; it shall be an everlasting covenant with them (Ezek. 37:26); “My covenant was with him of life and peace,” (Mal. 2:5); “The Lord will bless his people with peace,” (Ps 29:11); “seek peace and pursue it (Ps. 34:15); “they shall beat their swords into plowshare and their spears into pruning hooks; nation shall not lift sword against nation, neither shall they learn war anymore,” (Micah 4:3; Is 2:4); “the wolf shall dwell with the lamb, the leopard shall lie down with the kid, the calf and the young lion, and the fatling together and a little child shall lead them (Is. 11:6).

These statements magnificently proclaimed the Jewish ideal of peace. This was our Messianic dream. The vast rabbinic literature continued to foster it with hundreds of statements; poetry through the ages yearned for it. The halakhah supported it as a noble ideal, but without providing a practical path which would bring it about in the broader world of national strife. The biblical quotations, mentioned above and many others, were mentioned in numerous discussions in an effort to bring about peaceful resolutions in conflict situations through the *bet din*. The goal of justice both in personal conflict and communal strife was attained. Physical violence was curbed and the *bet din* rarely invoked physical punishments in its decisions. A peaceful environment was created within the Jewish communities and so the biblical and rabbinic ideal of peace became a reality.

Taking this ideal into the broader world was neither possible nor considered in a theoretical way. No statement forbade war. The halakhic codes make peace on a broader scale their goal and hold it up as a grand ideal, but do not mandate it.

The *siddur* with its daily public and private prayers constantly pleads with God to bring peace to the entire world. Modern Jews, Reform, Orthodox, or Conservative continue the path of countless generations as we pray to God for world-wide peace and often conclude our services with the biblical blessing "the Lord give you peace" (Nu 6:26).

Modern Jewish thinkers such as Lazarus, Hirsch, Cohen, Baeck, Buber, and Cronbach have stressed the need to work for peace. They sustain this Messianic hope through their writings. A small group of Reform rabbis early in the twentieth century led by Judah Magnes were active pacifists, but their influence soon waned. The goal of permanent peace continued to be fostered by poets and writers in the Jewish communities of Europe, Israel and the North America.

None of this, however led to an ideology of pacifism. Biblical as well as Maccabean and Roman times demonstrate a willingness to fight. As long as a Jewish nation existed, warfare persisted.

When the Jewish leadership understood that further struggles against Rome would not succeed, they channeled national hopes into a Messianic dream, God would eventually bring about a national rebirth. This would occur along with world wide peace.

This was a kind of practical pacifism; it did not prohibit warfare, but left all of this in the hands of God. In the practical personal realm the right of personal self-defense was never questioned, but surrounded by halakhic restrictions. Personal and communal conflicts were settled through the *bet din*. Justice on this practical level brought peace.

Military service was not questioned in the Bible or the post-biblical literature as the Books of Maccabees clearly demonstrated. The defeat by the Romans in 70 C.E. and again after the revolt of Bar Kochba in 134 C.E. brought the realization that further combat had to be avoided. The dream of a self-governing state was changed to be Messianic. The midrashic and talmudic literature minimized tales of conflict and heroism. The festival of Hannukah and centered around a minor miracle rather than military achievement. At the same time,

the biblical military heroes were changed into literary or poetic figures. For the next two thousand years Jews occasionally fought on the walls of medieval cities along with their neighbors, but only in extreme emergencies. The soldier was not glorified.

The question of regular military service never arose. Jews formed a separate community wherever we lived till the Emancipation at the beginning of the nineteenth century. Only Emancipation, the slow movement toward citizenship, and the modern state's hunger for manpower to feed its national armies conscripted Jews into military service. At first we entered unwillingly, but then, caught up in the fervor of nationalism, volunteered in large numbers.

This eagerness to serve, first shown throughout nineteenth century western Europe, was the clearest demonstration that whatever impulse toward pacifism, beyond the personal and communal, may have existed, had never taken root. We abandoned warfare after endless Roman defeats. Had we fought, we would have been wiped out. We were pacifists for almost two millennia, but never claimed this as a willing heritage. A longing for peace always remained, but hoping for the goal of peace and even praying for it are very different from pacifism which demands a thorough going ideology..

It is bizarre that Jews, who were what we might well call unwilling pacifists – forced into that situation by the surrounding world – never developed an ideology of pacifism. Pacifism has not become central to any major Jewish thinker. We took the ideal and furthered it personally and within the community. However, we left it as a an ideal, possibly a Messianic dream.

Perhaps it is the realism of Judaism which recognized that such a stance on a broader level would only lead to annihilation. The rest of the world might even admire it, but would not emulate it. We long for world-wide peace, further it in every way possible, but recognize that conditions in the world are still far from it.

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(unpublished responsum)