YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**Halakha and Israeli History**

**Rav Aviad Tabory**

**Shiur #24:**

**13 August 2005,**

**Disengagement from Gaza**

**Historical Background**

In the summer of 2005, eight and a half thousand Jewish settlers from Gush Katif were forced to leave their homes and towns. Gush Katif is the Israeli name for a cluster of seventeen Jewish settlements in the southern Gaza Strip, but it is often used colloquially to refer to all twenty-one of the Jewish settlements in Gaza. During the same summer, four Jewish settlements in the northern Shomeron (Samaria) were also dismantled, with about seven hundred residents.

This move was part of the Disengagement plan, which meant evacuating all Israeli military and civilians from the Gaza Strip. The decision of the government of Israel, under Prime Minister Ariel Sharon, to disengage from Gaza was extremely controversial, and it created a great rift in Israeli society.

On 16 February 2005, the Knesset passed the plan by a vote of 59-40, with five members abstaining. An amendment proposing a referendum was defeated 72-29.

Thousands of Israelis had joined the struggle against the decision, arguing that there were many faults in the decision-making process. Ultimately, Sharon refused to hold a national referendum and decided to go ahead with the plan although many of his own party disagreed with him (the Likud split 19-17 in favor of the plan).

Although the residents of Gush Katif were notified in advance of the evacuation, many of them did not voluntarily leave their homes; some did not even pack up their belongings. They would have to be removed by Israeli military and police.

On 15 August, the forcible evacuation of the Gush Katif towns began. The evacuation lasted a week, and by 22 August, the last residents were evicted.

All public buildings, as well as industrial buildings, factories and greenhouses which could not be taken apart, were left intact. The greenhouses at their prime were producing 320 tons of vegetables and exporting produce worth half a billion shekels. The original plan was to “sell” these greenhouses to the Palestinians.

On 28 August, the IDF began dismantling and transferring Gush Katif's 48-grave cemetery. The dead were given second funerals, with the families observing a one-day mourning period. The transfer was completed on 1 September.

Originally, the Israeli cabinet had planned to destroy all the synagogues of Gush Katif, but the government caved in to pressure from rabbis who opposed the decision and eventually reversed its decision.

Most of the synagogues were destroyed by Palestinian mobs immediately after the evacuation.[[1]](#footnote-1)

Abu Abir, a member of the Popular Resistance Committees terrorist organization, commented: "The looting and burning of the synagogues was a great joy... It was in an unplanned expression of happiness that these synagogues were destroyed.”[[2]](#footnote-2)

In 2007, it was reported:

The ruins of two large synagogues in Gush Katif, the evacuated Jewish communities of the Gaza Strip, have been transformed into a military base used by Palestinian groups to fire rockets at Israeli cities and train for attacks against the Jewish state, according to a senior terror leader in Gaza.[[3]](#footnote-3)

On 12 September 2005, the IDF withdrew completely from the Gaza Strip.

**Halakhic Considerations**

Many halakhic questions regarding the Disengagement were discussed by rabbis at the time. These discussions were collected and published by Rav Yehuda Zuldan, himself a resident of Gush Katif, in a book titled *Shevut Yehuda Ve-Yisrael.* Yeshivat Har Etzion published a collection of articles, *Bi-se'arat* Ha-akira, on the theological and ethical issues regarding the terrible events which took place in the summer of 2005.

In today’s *shiur*, we will discuss the rabbinical debate concerning whether the army should have dismantled and demolished the synagogues, or left them to be destroyed by the Palestinians. Although many rabbis voiced their opinions against the operation as a whole and were ignored, in the case of the synagogues, the government actually took the rabbinical rulings into account.

Former Ashkenazic Chief Rabbi Avraham Shapira published his *pesak* halakha regarding the government’s plan. In his ruling, he reiterates his well-known opinion that it is forbidden by Jewish law to hand over any part of the Land of Israel to other nations. However, this time he addresses our dilemma as well.

As mentioned, the government originally planned to destroy the synagogues. Rav Avraham disagrees with his idea. He thus declares that:

C) A soldier or police officer that harms the holy items of Israel and, God forbid, destroys heavenly articles and holy accoutrements such as Torah scrolls, phylacteries, *mezuzot* — whether it is done within the context of the evacuation transgression or not — he is desecrating the holy articles of Israel and violates the command *lo ta’asun ken la-Hashem Elokeikhem* (*Devarim* 12:4).

D) One who destroys an object in a synagogue is like someone who destroys a stone in the Sanctuary [of the Holy Temple] (Mordekhai, *perek Benei ha-Ir; Magen Avraham* 152:6). There is an absolute prohibition for every soldier and every policeman to take part in the destruction of a synagogue and a study hall. And within that prohibition is the prohibition of destroying vessels belonging to the synagogue, for they are like the synagogue itself (*Be’ur Halakha* 152). Woe to him and woe to the soul of a soldier or policeman who takes part in this sin.[[4]](#footnote-4)

This *pesak* is based on the understanding that there is a biblical prohibition to destroy houses of prayer. We therefore must study this halakha.

***Kedushat Beit Ha-knesset***

The Torah (*Devarim* 12:1-4) states:

These are the decrees and laws you must be careful to follow in the land that the Lord, the God of your ancestors, has given you to possess — as long as you live in the land. You shall surely destroy all the places on the high mountains, on the hills and under every spreading tree, where the nations you are dispossessing worship their gods. Break down their altars, smash their sacred stones and burn their Asheira poles in the fire; cut down the idols of their gods and wipe out their names from those places.

Do not do this to the Lord your God.

The final verse is understood as a prohibition to destroy that which is associated with God’s name. However, the Gemara differentiates between two different types of religious articles. In the group named *tashmishei kedusha* (articles of sanctity) the Gemara includes items like *mezuzot*, *tefillin* and *sifrei* *Torah*. In another group, named *tashmishei mitzva* (articles used in the performance of a mitzva), the Gemara lists examples like *lulav*, *tzitzit* and shofar.

The *nafka mina* (halakhic practical difference) between the two groups is the question of what is to be done with the articles when they become redundant and one wishes to get rid of them. While articles of *kedusha* need to be buried in the ground, articles of *mitzva* may be thrown out:

The Sages taught in a *baraita*: Articles used in the performance of a mitzva may be thrown out after use. Although these items were used in the performance of a mitzva, they are not thereby sanctified.

However, articles associated with the sanctity of God, even after they are no longer used, must be interred in a respectful manner.

And these items are considered articles of a mitzva: a *sukka*, a *lulav,* a shofar and *tzitzit*.

And these items are considered articles of sanctity: sacks of [Torah] scrolls, *tefillin* and *mezuzot*; a mantle for a *sefer Torah*; and a cover for *tefillin* and their straps.[[5]](#footnote-5)

Based on the teachings of Rav Soloveitchik, Rav Hershel Schachter explains the principle behind this halakha.[[6]](#footnote-6)

The halakhic concept of *kedusha* has to do with the Torah itself. It is through the connection to Torah that certain people, places and articles receive a status of sanctity.

All articles like *mezuzot* and *tefillin* mentioned before have *kedusha* because they carry the words of the Torah on their parchment.

What is the halakhic status of a *beit knesset*? The Ramban understands that a synagogue’s status is similar to an article of a mitzva, like a *lulav* or shofar. Rabbeinu Nissim of Girona disagrees and holds that the Sages compare the *kedusha* of a *beit knesset* to articles like *tefillin* or *mezuzot.*[[7]](#footnote-7)

However, there is a third possibility: that the *kedusha* of a *beit knesset* is on a biblical level. Rav Eliezer ben Shemuel of Metz understands that certain biblical laws regarding the *Beit Ha-mikdash* apply as well to synagogues:

“And you shall revere God” — this includes the command that when a person enters the Temple, a *beit knesset* or a *beit midrash*, one must treat the place with awe and respect, as it is written: “You shall observe My Sabbaths and revere My Temple” (*Vayikra* 19:30).

We have learned that the *beit knesset* and the *beit midrash* are called *mikdash,* as it is mentioned in the *baraita*: “‘I will desolate your temples’ — ‘your temples’ includes synagogues and study halls.” We therefore derive from here that when the Torah commands us to respect the Temple, it means respecting the synagogues as well.[[8]](#footnote-8)

This seems to be the opinion of the Rambam as well. Referring to the prohibition to destroy the *Beit Ha-mikdash,* the Rambam understands that this biblical ruling applies to synagogues as well:

[This prohibition is] not to destroy the Temple, **synagogues** or study halls; and similarly, not to erase any of [God’s] sacred names, nor to destroy any sacred texts, as ([*Devarim* 12:](https://www.chabad.org/9976#v3)2-4) states: "You shall surely destroy… Do not do this to the Lord your God."[[9]](#footnote-9)

It is clear from both sources that there are certain similarities between the *Beit Ha-mikdash* and a *beit knesset*. Rav Soloveitchik explains that according to the above understanding that *kedusha* has to do with Torah, the *Beit Ha-mikdash* and a *beit knesset* have the same source of *kedusha*, as they both serve as a home for the Torah.[[10]](#footnote-10)

Accordingly, the question regarding destroying a house of prayer is a *machloket* *Rishonim*; while the Ramban and Rabbeinu Nissim hold it is of a rabbinical nature, the Rambam understands that it is a biblical prohibition.

Rav Aharon Lichtenstein questions the above *pesak* of Rav Shapira. He challenges the ruling by mentioning that, as we established, there are those who hold that the nature of the prohibition is only rabbinical, thus allowing us to take other factors into consideration:

You determine as obvious that whoever demolishes part of a synagogue building or its accessories violates a biblical prohibition. This appears to be the position of Rambam, as noted in his enumeration of the mitsvot (though this point is omitted both in *Sefer ha-Mitsvot* and in the *Mishneh Torah*, as has been discussed at length by the *Aharonim*). But many *Aharonim* have suggested that according to some *Rishonim* this is no more than a rabbinic prohibition, especially according to those who maintain that the very sanctity of a synagogue is a rabbinic decree, but perhaps even according to those who deem the synagogue’s sanctity to be Torah law, insofar as the Gemara only mentions demolition of the stones of the Sanctuary or of the Temple courtyard, or burning consecrated wood; and minor sanctuaries, i.e., synagogues, were not explicitly added. Do you ignore these opinions because you accept as obvious the view of the *Sefer Yere’im* that the sanctity of a synagogue is by Torah law? Or that even if the sanctity of the synagogue building itself is only by rabbinic decree, demolishing a synagogue is forbidden by Torah law, because it is intended for Divine service, and its destruction is thus an insult, as it were, against God — this being precisely what is forbidden according to a close reading of the verse, “You shall not do this to the Lord, your God” [Deut 12:4 and *Sifri*]?

Rav Lichtenstein explains why halakhically there is good reason to argue that the demolition should be done by Israel’s own security forces: the fear of the *chillul ha-shem* which would happen as a result of the Palestinians’ desecration of our holy houses of prayer. It is well-known that, in the past and in the present, the Arabs living in Israel and the world have not shown respect towards Jewish holy sites.

From a purely halakhic perspective, if there is no third alternative (for example, agreement regarding the fate of the synagogues after they are transferred, similar to what is stated in *Megilla* 27b regarding the sale of a synagogue), and there exists a reasonable danger that if they remain standing they will turn into mosques, in which will be sounded words of incitement and blasphemy against God and His anointed one — is it preferable to destroy them — and especially so that “they tell it not in Gath” and “the daughters of the uncircumcised rejoice”? Or perhaps, out of fear of violating the prohibition of demolishing a synagogue, mentioned by His Honor, it is preferable to abstain and do nothing (*shev ve-al ta’ase*), despite the emotional difficulty of witnessing desecration, which, especially in this area, encourages a scorched earth policy?

Rav Ya’akov Ariel, who was the founder of the *yeshivat hesder* in the city of Yamit (which later was relocated to Gush Katif), wrote a *teshuva* about our question and ruled like Rav Shapira that, under these circumstances, it is forbidden to destroy the *batei knesset*.[[11]](#footnote-11)

In his responsum, he explains that the issue in question is whether it is permitted to commit a sin to prevent a more severe sin from being committed.

Rav Ariel quotes a *teshuva* of Rav Ya’akov ben Yosef Reischer regarding a similar dilemma. The question before him was about old Jewish manuscripts buried in a cemetery which non-Jews were digging up and using up as toilet paper. Rav Reischer argued that in this case it is permissible to burn the articles of sanctity (which is normally prohibited), as this would prevent a greater desecration from happening.

The question before us is whether these issues are comparable. In other words, what is the greater desecration? Jews destroying their synagogues or non-Jews doing it?

The Gemara discusses ways to annul the *kedusha* of a synagogue. If the seven councilmen of the town gather before the public and decide to sell a synagogue, they are permitted to do so, and the *kedusha* is annulled.[[12]](#footnote-12)

In his *teshuva*, Rav Ariel discusses the status of the towns of Gush Katif and whether their council has authority and ownership over their synagogues.

In his conclusion he explains that even if it would be possible to technically remove the *kedusha* of the synagogues, if the world were to see Jews who are destroying *batei knesset*, this would create a major *chillul ha-shem*. He therefore concludes that the *batei knesset* should be left intact, even if we know that the Palestinians will destroy and even desecrate them.

We will end with the prophecy of Amos (9:15):

And I will plant them on their land, and they shall no longer be uprooted from upon their land, that I have given them, says the Lord your God.

1. https://www.ynet.co.il/articles/0,7340,L-3140761,00.html [↑](#footnote-ref-1)
2. https://www.ynetnews.com/articles/0,7340,L-3370395,00.html [↑](#footnote-ref-2)
3. Ad loc. [↑](#footnote-ref-3)
4. “A Rabbinic Exchange on the Gaza Disengagement,” Tradition 40:1. All quotes of Rav Shapira, as well as Rav Lichtenstein’s response to him, are taken from the translations of these letters which appear in this article. [↑](#footnote-ref-4)
5. BT *Megilla* 26b. [↑](#footnote-ref-5)
6. *Eretz Ha-tzevi*, pp. 88-94. [↑](#footnote-ref-6)
7. Ran on Rif, *Megilla* 8a. [↑](#footnote-ref-7)
8. *Sefer Yere’im* 409. [↑](#footnote-ref-8)
9. Rambam, Introduction to *Mishneh Torah*, Negative #65. [↑](#footnote-ref-9)
10. See *Shiurim Le-zekher Abba Mori,* Vol 1 p.171. [↑](#footnote-ref-10)
11. *Techumin* 26, pp. 23-36. [↑](#footnote-ref-11)
12. BT *Megilla* 25b. [↑](#footnote-ref-12)