

State of Halakha

Israel's History in Jewish Law



Aviad Tabory

**STATE
OF
HALAKHA**

ISRAEL'S HISTORY IN JEWISH LAW

Yeshivat Har Etzion
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State of Halakha
Israel's History in Jewish Law
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March 10, 1949 (photograph by Micha Perry, IDF Spokesperson's Unit).

A handmade ink-drawn Israeli flag is raised at
Umm Rashrash on the shores of the Red Sea (now Eilat).

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Dedicated by Tabby and John Corr 
in loving memory of their parents

Sally and Maurice Silas

and

Rose and Eric Corr 



Dedicated to my 8th grade Rebbe
at Yavneh Hebrew Academy (1969)
and Rebbe to our sons Zev (2000–2002) and
Joshua (2010–2012) who attended Har Etzion

Rav Binyamin Tabory z"l

עשה לך רב וקנה לך חבר

May his wife, Rabbanit Naomi Tabory,
have a long life with much naches from
her children and grandchildren.

With much gratitude for over fifty years
of friendship and study of Torah

Ronnie and Cheryl Nagel
Los Angeles, California

מוקדש באהבה לזכר

הרב בנימין תבורי זצ"ל

ר"מ בישיבת הר עציון,
אשר חניך את בנינו בדרכי אהבת התורה,
לימוד התורה ומסירות לעם ישראל בארץ ובעולם.

משפחת שור



In memory of our dear friend and esteemed teacher

Rabbi Binyamin Tabory ז"ל

And in honor of our dear and honored friend

Mrs. Naomi Tabory תלח"א

*Who graced our community and our lives
as living exemplars of Torah values.*

Phil and Faygie Schwartz

Dedicated by

*Deena and Gilad Ottensoser (YHE '88)
and family*

in appreciation for Yeshivat Har Etzion

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Introduction

Throughout Jewish history, the religious community has constantly been confronted by new developments and circumstances. From historic and revolutionary events to medical and technological innovations, rabbis have always been able to respond to new halakhic situations. By finding precedents in Jewish sources and applying them to their times, the religious leadership succeeded in answering new challenges. For example, when electricity was harnessed, the rabbis had to decide how to react; they argued about which already known models of *melakha* (forbidden work) on Shabbat mentioned in the Talmud would apply in the specific case.

However, the establishment of the State of Israel in 1948 created a very different challenge. Laws dealing with government and sovereignty, questions regarding economic models for a country, and wartime moral and ethical dilemmas had not been discussed in a practical sense for over two thousand years. The halakhic models of the past hundreds of years responded to individuals and to communities. This new model of a Jewish state had been unknown to our rabbis for centuries. Does the well-known concept of *pikuaḥ nefesh* (preserving life) change when applied on a national level? Should the modern state coerce its citizens to keep the Torah? What is the halakhic status of a secular government? Who is obligated to join the Jewish army? Should the laws of conversion remain

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the same or should the waves of immigration to Israel influence them? These are just a few of the questions that were raised.

The great rabbis of the twentieth century, who believed that the events that followed the establishment of the Jewish state were miraculous and recognized the biblical prophecies that were coming true, had to add new sections, as it were, to the *Shulhan Arukh* in order to deal with the new reality. This book pays tribute to the great rabbis who redefined and created new halakhic concepts with their broad knowledge and deep insight. Their names appear throughout; they are true heroes, and we are indebted to them.

Beginning with Israel's establishment in 1948, this book follows over seventy years of the state's history. The same flag that was made from a rag and ink and raised on the shores of the Gulf of Eilat in 1949, symbolizing the end of the War of Independence (chapter 2), returns at the end of the book, when we examine the questions that relate to the state sending an Israeli flag to the moon (chapter 33). These two very different flags symbolize the astonishing achievements of the Jewish people that occurred in such a short time. During decades of war and terrorism, our people have worked relentlessly to create a modern Jewish country which serves as a model to the entire world. In the current book, we journey through the young state's history and examine the halakhic questions that it faced.

There are many family members, friends, colleagues, and mentors whom I must thank. I have had the privilege over the past twenty-five years to teach Torah in several *batei midrash*. The topics presented in this book have always been favorites of mine, and I must thank all the wonderful institutions that have given me the opportunity to develop each and every lesson. However, there are two main *batei midrash* in which the bulk of these themes were developed. Over the past two decades I have taught in two leading educational institutions, Yeshivat Eretz Hatzvi in Jerusalem and Camp Stone in Sugar Grove, Pennsylvania, both dedicated to the principles and beliefs of Modern Orthodoxy and Religious Zionism. I am grateful to the wonderful rabbis and educators who lead these educational centers for their friendship and support and particularly for giving me the opportunity to develop and teach these ideas. From Camp Stone, I am indebted to Adina and Yehuda Rothner

as well as Estee and Yaakov Fleischmann; from Yeshiva Eretz Hatzvi, Rabbis David Ebner, Yehudah Susman, and Benni Pflanzner.

A discussion with my good friend Rabbi Alex Israel was crucial in turning these lessons into a series that followed the history of the State of Israel. My friends and neighbors, Rabbi Yitzchak Blau and Jeremy Brody, have read the manuscript, and each has offered critical insights.

The Israel Koschitzky Virtual Beit Midrash of Yeshivat Har Etzion published the *shiurim* which ultimately led to this book. My thanks go to Rabbi Reuven Ziegler and Debra Berkowitz. I would also like to thank Matthew Miller of Koren Publishers/Maggid Books, as well as Aryeh Grossman, Deena Glickman, Ita Olesker, Nechama Unterman, and Tomi Mager for the skill and professionalism they brought to the editing and production of this book.

The realization of this book was made possible through the generosity of my dear friends Tabby and John Corré, as well as my parents' close friends Phil and Faygie Schwartz and Ronnie and Cheryl Nagel. I am also most appreciative of the support given by Julie and Jacob Schorr.

My parents-in-law, Syma and Henry Weinberg, have always been helpful with their advice and support. Many of my preliminary drafts were read by them and I am grateful for their insightful comments. My dear mother, Naomi, reviewed many of the articles in this book and I found her suggestions to be most valuable.

My wife Debra, together with our children Shira and Yoni, Yair, Talya, and Yishai are the center of my life and have supported my journey of teaching Torah, for which I shall be eternally grateful.

This book is dedicated to my beloved father and teacher, Rabbi Binyamin Tabory of blessed memory, who bravely fought ALS, a grave illness, for many years. His wisdom and vast Torah knowledge, together with his loving personality, charm, and wonderful sense of humor, influenced me throughout the years and continue to do so even after his death in September 2019. My Abba, a devoted student of Rabbi Soloveitchik, was a master teacher. He passionately believed in the importance of imparting Torah and ensuring that knowledge would be passed on to the next generation. A great advocate of Zionism, he, together with my mother and sister Adina, made aliya in 1971. I was raised in a home that believed in and practiced *Torah va'avoda* and thus the main theme

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of this book – the integration of Torah with the State of Israel – derives from the inspirational education I received from him. Finally, I want to express my thanks to *HaKadosh Barukh Hu*, who has granted me the opportunity to learn and teach Torah in *Medinat Yisrael*. I pray and hope that this book will spread the love of *Torat Eretz Yisrael*, and may we see the rest of our prophets' prophecies come true *bimheira beyamenu*.

Aviad Tabory
Alon Shevut
Av 5782/August 2022

1

The Declaration of Independence, 1948

Can Yom HaAtzma'ut Be Celebrated Earlier Than the Original Date?

On Friday, May 14, 1948, David Ben-Gurion declared Israel's independence. The Hebrew date was 5 Iyar 5708. The declaration, which took place in Tel Aviv, was scheduled about eight hours before the end of the British mandate at midnight on Shabbat. The leaders of the Jewish community in Palestine at the time were aware that the result of such a move would be an immediate invasion by the surrounding Arab nations.

The decision was not an easy one. The opposition, both external and internal, was strong and fierce. Many of Ben-Gurion's advisers urged him to postpone the declaration. For many years, it was rumored that the final vote for the declaration had passed by a slight majority – six to four.¹

1. Historian Mordechai Naor published a letter of Ben-Gurion, who argues that no vote took place. See "Yom Revi'i HaGadol," *Haaretz*, May 1, 2006, <https://www.haaretz.co.il/misc/1.1102622>.

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Even though the White House supported the move, the State Department was vehemently opposed. The following description of events by Clark Clifford, a close adviser of President Truman, contains valuable insight into the opposition faced by Israel:

The President regarded his Secretary of State, General of the Army George C. Marshall, as “the greatest living American.” Yet the two men were on a collision course over Mideast policy, which, if not resolved, threatened to split and wreck the Administration. British control of Palestine would run out in two days, and when it did, the Jewish Agency intended to announce the creation of a new state, still unnamed, in part of Palestine.

Marshall firmly opposed American recognition of the new Jewish state.... Marshall’s opposition was shared by almost every member of the brilliant and now-legendary group of men, later referred to as “the Wise Men,” who were then in the process of creating a postwar foreign policy that would endure for more than forty years...

Some months earlier, during one of our weekly breakfasts at his elegant Georgetown home, Forrestal [James Vincent Forrestal, the secretary of defense] had spoken emotionally and frankly to me concerning his opposition to helping the Zionists, as advocates of the creation of a Jewish state were called. “You fellows over at the White House are just not facing up to the realities in the Middle East. There are thirty million Arabs on one side and about six hundred thousand Jews on the other. It is clear that in any contest, the Arabs are going to overwhelm the Jews. Why don’t you face up to the realities? Just look at the numbers!”²

As noted, within Ben-Gurion’s own cabinet there was fierce opposition to declaring the state. On the day the cabinet had to vote on the proposal, discouraging news arrived both from the king of Jordan, who

2. Clark M. Clifford and Richard C. Holbrooke, *Counsel to the President: A Memoir* (New York: Random House, 1991); excerpt taken from <http://jcpa.org/article/president-truman%E2%80%99s-decision-to-recognize-israel/>.

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replied negatively to Israel's request for a truce, and from Moshe Sharett (appointed foreign minister that very week), who informed Ben-Gurion that not only would America not recognize the new Jewish state, but in the inevitable war which would follow any kind of declaration, the United States would not come to Israel's aid.

Nobel Prize laureate S. Y. Agnon describes the courage it took for Ben-Gurion to make the decision:

We all wanted a Jewish state. Of course we did. But we were afraid of saying so out loud. And when the test came, we thought perhaps we should not risk it, perhaps we should postpone it for a generation, but Ben-Gurion had the courage to proclaim the end of Jewish statelessness in our time.³

YOM HAATZMA'UT AND ITS HALAKHIC IMPLICATIONS

Rabbi Tzvi Yehuda Kook (Jerusalem, 1891–1982) explored the unique *kedushat hayom* (sanctity of the day) of Yom HaAtzma'ut in a passionate address.⁴ He explains that the greatest miracle of the establishment of the State of Israel was not the military victory of a fledgling state over the armies of enemy countries, but the remarkable courage to make that fateful decision and announce the establishment of an independent state. He defends this idea by quoting the Gemara (Bava Metzia 106a), which states that a shepherd's rescue of his flock from a lion or a bear may be considered a miracle. Where exactly is the miracle in this act? The Tosafists explain that the miracle is to be found in the shepherd's "spirit of courage and willingness to fight."⁵ This spirit of valor is a miracle from above, an inspired inner greatness spurring one to rise to the needs of the hour.

Similarly, Sephardi Chief Rabbi Ben-Zion Uziel writes about the ramifications of the declaration itself:

3. S. Y. Agnon, *MeAtzmi El Atzmi* (Tel Aviv: Schocken, 2000), 330.

4. The article appears in the introduction to Nachum Rakover's *Hilkhot Yom HaAtzma'ut VeYom Yerushalayim* (Jerusalem: unknown publisher, 1985), 5–6.

5. Bava Metzia 106a, s.v. *Mativ*.

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“This day you have become the people of the Lord your God” (Deut. 27:9), because on this day we were released from the enslavement of a foreign kingdom in the Land of Israel, which wanted to choke us to death.

This daring declaration has made the Jewish people into an independent nation. It has given courage to the soldiers of Israel and it has opened up the gates of the Land of Israel to all Jews scattered around the world. This declaration has enabled the Jewish people to take their rightful place as a nation among the nations of the world. “This is the day the Lord has made; let us rejoice and be glad in it” (Ps. 118:24).⁶

Both rabbis emphasize, each in his own way, the significance that the declaration itself plays within the miraculous events of 1948. Do these opinions have halakhic ramifications?

Since 1949, the observant world has celebrated Yom HaAtzma’ut both as a religious day and as a national holiday. Questions have been asked about reciting Hallel, the *Sheheḥeyanu* blessing (“Who has kept us alive”; the blessing for special occasions), and the *SheAsa Nissim* blessing (“Who has performed miracles”). Many articles and books deal with these subjects.

The *Sheheḥeyanu* Blessing on Yom HaAtzma’ut

In one of the many discussions about reciting *Sheheḥeyanu*, Rabbi Yehoshua Menachem Ehrenberg (Hungary/Israel, 1904–1976) argues against reciting the blessing.⁷ He explains the difference between Yom HaAtzma’ut and Ḥanukka in the following way: While the miraculous events of Ḥanukka actually took place beginning on 25 Kislev, the miracles which we celebrate on our Independence Day occurred either on the last day of the 1948 war, when the ceasefire was signed, or on November

6. Quoted in Rabbi Shimon Federbush, *Torah UMelukha* (Jerusalem: Mosad HaRav Kook, 1961), 169.

7. Rakover, *Hilkhot Yom HaAtzma’ut*, 240. Rabbi Ehrenberg was a hasidic scholar who served as the rabbi of the British detention camps in Cyprus and later as an *av beit din* (chief of the religious court) in Tel Aviv.

29, 1947, the day the UN voted for the Partition Plan. Thus, no miracle actually occurred on the fifth of Iyar. Therefore, he concludes, the blessing should not be recited. Obviously, based on the views of Rabbis Kook and Uziel, one could argue the opposite.

Hallel on the Fifth of Iyar

The fifth of Iyar was designated by the Israeli government as the official day to celebrate Israel's independence, and a law was passed to that effect. Israel's Remembrance Day for fallen soldiers, Yom HaZikaron, was set on the previous day, the fourth of Iyar. However, concerns about the desecration of Shabbat over the years have necessitated moving these days. Thus, if the fifth of Iyar falls on Friday or Shabbat, Yom HaAtzma'ut is moved to Thursday and Yom HaZikaron to Wednesday; if the fourth of Iyar falls on Sunday, Yom HaZikaron is pushed off until Monday and Yom HaAtzma'ut to Tuesday. (This was codified by the Knesset in 1950 as an amendment to the Yom HaAtzma'ut law.) The result is that in most cases Yom HaAtzma'ut is not celebrated on its original date of the fifth of Iyar. The rabbis discuss the proper halakhic response to this situation.

Chief Rabbi Shlomo Goren (Poland/Israel, 1917–1994) argues that even if the national day has been changed to a different date, Hallel must be recited on the original date, the fifth of Iyar.⁸ His reasoning is that the sources that require us to recite Hallel on miraculous days seem to indicate that the prayer can only be recited on the actual day of the historical miraculous event. He quotes Rabbi Menachem Meiri (on Pesahim 117a), who argues that any person who has been saved miraculously from danger may celebrate that date every year with the recital of Hallel. He then cites the *Hatam Sofer* (Rabbi Moshe Sofer; Pressburg, 1762–1839; *Yoreh De'ah* 133), who believes that celebrating a holiday and reciting Hallel for miracles may be based on a biblical source. Both sources, argues Rabbi Goren, limit the celebrations to the actual date itself. Rabbi Goren maintains, as a matter of fact, that all salvation and victories in the 1948 war are connected to the fifth of Iyar, the day the nation of Israel declared its independence.

8. *Torat HaShabbat VeHaMoed* (Jerusalem: World Zionist Organization, 1982), 432.

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A further reason for his ruling has to do with the original decision to celebrate Yom HaAtzma'ut on the fifth of Iyar each year. Rabbi Goren argues that the original decision did not take into account the possibilities of changing the date; the changes, therefore, cannot be made today.

Today's custom, however, is to celebrate Yom HaAtzma'ut with the recital of Hallel on the day chosen by the state. Rabbi Yaakov Ariel, in an article on this topic, explains that there is a precedent for this in Jewish law.⁹ When Purim falls on Shabbat (in our calendar, this would be when Shushan Purim is observed on Shabbat in Jerusalem and other walled cities), the reading of the Megilla is pushed back to Friday while the other commandments of the day are celebrated either on Sunday or on Shabbat. The reading of the Megilla, claims R. Naḥman in the Gemara (Megilla 14a), is parallel to Hallel, proving that Hallel can be recited on an alternative date.

Nevertheless, some might argue that we divide the days' commandments differently. On the alternative date, we should celebrate the national side of Yom HaAtzma'ut together as an entire state, but we should maintain the religious side of Yom HaAtzma'ut on Shabbat (as Rabbi Goren suggests). Rabbi Ariel strongly disagrees. In this case, he argues, we would be committing the terrible "sin" of creating a separation between religion and state. The message would be that the national side of Yom HaAtzma'ut is separate from the religious dimension.

Rabbi Yaakov Medan addresses this question and concurs with Rabbi Ariel.¹⁰ He brings to our attention that, as noted earlier, Ben-Gurion himself declared independence on Friday, May 14, even though the official date for the expiration of the mandate was May 15. This was due to his consideration of not desecrating the Shabbat. Even from the very beginning, the date of Yom HaAtzma'ut was based upon the consideration of not violating Shabbat.

9. "Yom HaAtzmaut SheHal BeShabbat O BeErev Shabbat," *Tehumin* 8 (1986/1987): 59.

10. In the *Be'er Miriam* series, *Yom HaAtzma'ut VeYom Shiḥrur Yerushalayim* (Alon Shevut: Har Etzion, 2017), 268.

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The Jewish nation's declaration of sovereignty in its land posed halakhic questions that the religious leadership had to answer. Ultimately, after the rabbis debated this matter, their ruling became the custom practiced by Israelis and Jews worldwide.