YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**War in Halakha**

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**Shiur #08: The Drafting of Torah scholars**

Having dealt with the general obligation of military service, we shall now address an issue that has faced the Jewish people since the beginning of its rebirth in its land, from the very beginning of the state to the present day – the question of drafting Torah scholars into the army. My intention here is not to consider the conceptual-moral aspects of the issue, but to examine it from a purely halakhic-legalistic point of view and discuss the question of whether there is any halakhic dispensation, or alternatively, an obligation, with regard to enlistment for Torah scholars. Is there a difference between the obligation that falls upon them and the obligation that falls upon the rest of the people?

**The Sins of Avraham and Asa**

Those who advocate the exemption of Torah scholars from military service cite several sources, but at the foundation of their argument stand two explicit Talmudic passages that indicate a prohibition to draft Torah scholars. First, Rabbi Abahu tells us Avraham made a grave error when he went out to fight the four kings who had conquered Sodom and to rescue his nephew Lot:

Rabbi Abahu said in the name of Rabbi Elazar: Why was our father Avraham punished and his children enslaved to Egypt for two hundred and ten years? Because he pressed scholars into his service (*asa angarya*), as it is stated: "He led forth his trained men (*chanikhav*),born in his house" (*Bereishit* 14:14). (*Nedarim* 32a)

The Ran (ad loc.) explains "*chanikhav*" to mean "people he had trained in Torah." We find in this Gemara that drafting Torah scholars for war entails severe penalties. A similar issue is raised elsewhere regarding Asa, king of Yehuda, who was a righteous king but was punished at the end of his days:

Rava expounded: Why was Asa punished? Because he pressed scholars into his service (*asa angarya*) [for labor], as it is stated: "Then King Asa made a proclamation to *all* Yehuda; none was exempted" (I *Melakhim* 15:22). (*Sota* 10a)

We will discuss these two passages, but first I wish to present the underlying religious principle, which is not in dispute. *Eikha* *Rabba* provides us with an explanation for the severe punishment meted out to Avraham and Asa:

Rabbi Abba bar Kahana opened with: "Who is the wise man who will understand this…" (*Yirmeyahu* 9:11). Rabbi Shimon ben Yochai taught: If you have seen towns uprooted from their place in the Land of Israel, know that they did not provide the salaries of the Bible teachers and the Mishna teachers, as it is stated: "For what reason did the land perish… The Lord said: Because they have forsaken My Torah" (*Yirmeyahu* 9:11–12). Rabbi [Yehuda Ha-Nasi] would dispatch Rabbi Asi and Rabbi Ami to go out and establish [educational programs] in the cities of Israel. They would enter the city and say to [the residents]: Bring us the guardians of the city. They would bring them the head of the city watch and the police. They would say to them: Are these the guardians of the city? These are the destroyers of the city! [The residents] would say to them: And who are the guardians of the city? They would say to [the residents]: They are the Bible teachers and the Mishna teachers, who contemplate, review, and observe the Torah day and night, as it is stated: "And you shall contemplate it day and night" (*Yehoshua* 1:8), and it is also stated: "If the Lord does not build a house… [if the Lord does not guard a city, in vain does the watchman keep vigil]" (*Tehillim* 127:1). (*Eikha* *Rabba Petichta* 2)

Following the verses in *Yehoshua* and *Tehillim*, the *midrash* sees the Torah scholars as the guardians of the city. This idea is also stated explicitly in the Gemara, in a passage which is often cited in this context:

Rabbi Yehoshua ben Levi said: What is [the meaning of] that which is written: "Our feet stood within your gates, O Jerusalem?" (*Tehillim* 122:2). Who caused our feet to stand [firmly] in war? The gates of Jerusalem – because students engaged [there] in the study of Torah. (*Makkot* 10a)

This view, that victory in battle depends on Torah study and Torah scholars, complements what we saw in the *midrash*. Of course, this requires explanation, for we see that it is the soldiers who do the fighting! Like other matters of faith, these words have many layers. On a certain level, there is indeed unique significance to Torah study, and when God sees that the people of Israel engage in it, He provides them with additional strength and victory on the battlefield. But beyond this simplistic explanation, it seems that we can add another dimension that may be more satisfying.

**The Problem with Pressing Torah Scholars into Service**

Every war has a purpose. The wars of Israel, as we have seen many times over the course of this series, should be a part of the service of God of the entire people of Israel. Their goal is to settle the Jewish people in their land so they may serve God and sanctify His name in the best possible way – and Torah scholars have obvious importance in the fulfillment of this purpose. Mobilizing Torah scholars to war may signify that the people of Israel have forgotten the purpose for which they are fighting, forgetting the crucial role of those who stand behind them in the war but alongside them in that same general goal of sanctifying God’s name in the world. If Israel were to go out to war without appropriate recognition of that ultimate goal, there would be a profound flaw in the war.

This point is reinforced by the Gemara’s formulation when it describes the problematic action – *angarya,* "pressing Torah scholars into service." The term "*angarya*" does not refer specifically to a military draft, but to any mass mobilization and conscription of people to serve as cheap labor. That is to say, what is problematic is not so much the draft itself, but rather the disrespectful attitude that it demonstrates toward Torah scholars and their Torah, and the disregard for their crucial role in the general goal of sanctifying God's name via the Jewish people.

However we understand this, it is difficult to draw a clear halakhic conclusion from it; the sources we have cited are aggadic rather than halakhic, and there is also room to question whether they are truly parallel to our question. Are the actions in question (Avraham going out to war against the four kings, and Asa going out to dismantle the fortifications that Baasha had built against him) identical to a *milchemet mitzva*, such that we can learn from them whether a Torah scholar is obligated to go out to fight in such a war?

**The Tribe of Levi as a Model**

A second relevant discussion is rooted in the following words of the Rambam:

Why did the Levites not receive a portion in the inheritance of the Land of Israeland in the spoils of war like their brothers? Because they were set aside to serve God and minister to Him and to instruct people at large in His just paths and righteous judgments, as it is stated: "They will teach Your judgments to Yaakov and Your Torah to Israel" (*Devarim* 33:10). Therefore they were set apart from the ways of the world: they do not wage war (*orkhin milchama*) like the rest of the Jewish people, nor do they receive an inheritance, nor do they acquire [property] for themselves through their physical abilities. Instead, they are God's legion, as it is stated: "God has blessed His legion" (*Devarim* 33:11), and He provides for them, as it is stated: "I am your portion and your inheritance" (*Bamidbar* 18:20). (*Hilkhot Shemita ve-Yovel* 13:12)

It is clear from the Rambam's words here that the tribe of Levi does not go out to war with the rest of Israel.

Some find a source for the Rambam's position in the *Sifrei*:

"Of every tribe a thousand, throughout all the tribes of Israel, shall you send to the war" (*Bamidbar* 31:4)… Rabbi Akiva said:… What is taught by "throughout all the tribes of Israel, shall you send to the war"? To include the tribe of Levi. (*Sifrei*, *Matot* 157)

The Vilna Gaon explains that since a special source was needed to teach that a delegation from the tribe of Levi was sent out in the war against Midyan, it can be inferred that in the ordinary course of events, they do not go out to war.

On the other hand, some have understood the *Sifrei* in the opposite manner, as a proof against the position of the Rambam, for it states explicitly that even the tribe of Levi went out to war; according to these understandings, this was the normal law, rather a special law limited to the war against Midyan.

In any event, the Rambam was clear about his view that the tribe of Levi does not go out to war. He then adds that the same applies to any person who devotes himself entirely to the service of God:

Not only the tribe of Levi, but any one of the inhabitants of the world whose spirit generously motivates him and he understands with his wisdom to set himself aside and stand before God to serve Him and minister to Him and to know God, proceeding justly as God made him, removing from his neck the yoke of the many reckonings which people seek – behold, he is sanctified as holy of holies. God will be his portion and heritage forever and will provide what is sufficient for him in this world like He provides for the priests and the Levites. (*Hilkhot Shemita ve-Yovel* ibid. 13

Many people have seen these words of the Rambam as a foundation for the view that a Torah scholar, whose vocation is Torah study, does not go out to war, like the tribe of Levi. In my opinion, however, these words are extremely difficult and problematic; we shall see how each may be rejected, them one by one.

1. **Levites Going to War**

First, an objection can be raised against the Rambam’s opinion that the tribe of Levi does not go out to war, based on an explicit *mishna*:

The following do not return home [i.e., are not exempted from conscription]… If one remarried his divorced wife, if a High Priest married a widow, or an ordinary priest married a divorcée or a *halutza*. (Mishna *Sota* 8:3)

Among those who are not exempted from conscription, the *mishna* lists both an ordinary priest who married a divorcée and a High Priest who married a widow – which implies that priests do go out to war. If that were not the case, why would the Mishna need to explain that they are not included in the law of "one who has betrothed a wife, but has not married her"? Surely priests do not go out to war![[1]](#footnote-1)

The Griz (*Sota* 43a) raised this difficulty and suggested a resolution:

And it seems we can say about this that what the Rambam writes, that they do not wage war like the rest of the Jewish people – this does not mean they are completely exempt from going out to war, for it seems that when they were needed in a time of war they too would go out. What the Rambam means is that they are not taken out to war initially, to enter battle like all of Israel, because they are the army of God and were set aside to serve God and minister to Him and to teach the ways of God and His laws, but certainly, if the priests are needed in the waging of the war, they too go out. Therefore, there is no difficulty with what the Rambam writes, that a High Priest who married a widow or an ordinary priest who married a divorcée are not sent home from war, because in truth they are not exempt at all from going out to war.

According to the Griz, what is special about the tribe of Levi is that we do not rush to send them out to battle with the initial troops. But when they are needed for the war effort, it is clear and simple that they too go out to fight, both in the case of a *milchemet mitzva* and in the case of a *milchemet reshut.*

1. **The Scale of the War: One Tribe or the Nation**

Rav Avraham Yitzchak Kook proposes a different distinction: based on a precise reading of the Rambam's wording,[[2]](#footnote-2) he differentiates between a war waged by a particular tribe and a war fought by the entire people of Israel:

The expression *orkhin milchama*, "waging war," refers to a "private" war, as it is possible that one tribe will wage war for its territory. But when all of Israel go out to war, they too are obligated to go out, and this war of all of Israel is truly also the service of God, for whoever is more singled out for the service of God is more connected to it than the rest of the people. (Rav Kook’s commentary to the Rambam, ad loc., in *Shabbat ha-Aretz*, vol. 3)

These words are worthy of the man who uttered them, and although Rav Kook did not say so explicitly, they can also resolve the difficulty from the fact that priests are found in the ranks of the fighting force: when all of Israel go out to war, even a *milchemet reshut*, such a war is part of the service of God, and therefore, those who are singled out for the service of God have an even greater place in it. Thus we find that the sons of Eli went out to war together with the Ark of the Covenant, and that it was the High Priest anointed for war who stood at the head of those who went out to battle. This has a source in the continuation of the *Sifrei* cited above:

"So a thousand per tribe were delivered [*vayimasru*] out of the thousands of Israel[, twelve thousand armed for the army] " (*Bamidbar* 31:5). The verse teaches that they were righteous and suitable men who gave themselves up [*masru nafsham*] to the cause. Rabbi Natan said: Others delivered them [*masrum*]: “So-and-so is a suitable man; he shall go out to war. So-and-so is a righteous man; he shall go out to war. (*Sifrei*, *Matot* 157)

This seem to imply that it is precisely one who stands out in his dedication to the service of God who should go out to war, for he has many merits and knows how to fight for the sake of God. This is also the implication of Rabbi Yose ha-Gelili’s view that when the Torah allows “one who is fearful and faint-hearted” to leave the army conscription (*Devarim* 20:8), it is referring to "one who is afraid because of the transgressions in his hand" (*Sota* 43b). Below, when we discuss the relationship between *milchemet mitzva* and *milchemet reshut*, I will suggest another reason it is specifically the Torah scholars who should lead the army in certain wars.

1. **Allowed But Not Obligated**

Another resolution of the difficulty can be suggested based on the words of Rabbi Chaim Kanievsky in his commentary on the aforementioned *halakha*:

It seems that what the Rambam writes that [the Levites] do not wage war, the meaning is that they are not *obligated* to go to war – but if they wish on their own to go to war, they are *permitted*. This is not like those who return from war [i.e., who are sent home because of particular exemptions], for they are *forbidden* to go, as is stated in the *Sifrei*. Regarding the priests and the Levites, there is no prohibition for them to go; it is only that they cannot be compelled to do so, but if they wish, they can go.

According to Rabbi Kanievsky, there is no prohibition preventing priests and Levites from going out to war; there is only a prohibition against compelling them to go, as in the cases of Avraham and Asa. The *mishna* dealing with the status of a priest who married a divorcée can be understood as referring to a priest who volunteered to fight, in which case there is room to discuss whether he is subject to the general rule governing those returning from conscription. Rabbi Kanievsky learns this from the order of the *halakhot* in the *Mishneh Torah*:

For this reason the Rambam did not bring this law in *Hilkhot Melakhim*, for it is not a law of war, but [he brought it] here in [the context of a discussion about showing] honor to the priests and Levites, and with this, all of these [difficulties] are resolved.

We can add to Rabbi Kanievsky’s argument the words of the Rashbatz regarding the *mishna* in *Avot* that cautions against making the words of the Torah “a crown with which to magnify oneself” or “a spade with which to dig” (*Avot* 4:5). The Rashbatz asks: If that is the case, how do Torah scholars handle the taxes that finance watchmen? He answers:

And what is permitted to a Torah scholar is that he sell his wares before all men, and be exempt from taxes and assessments and the building of the city, and anyone who imposes this obligation upon them transgresses [what is stated in] the Torah, the Prophets, and the Writings… And a Sage may exempt himself, and there is no violation in that of "Let another man praise you, and not your own mouth" (*Mishlei* 27:2), as they said in *Nedarim*, chapter *Konam Yayin*, that a Torah scholar is permitted to say: “I am a Torah scholar” and not pay the poll tax"… And none of this is included in the category of deriving pleasure from Torah study, but is rather the honor of the Torah. (*Magen Avot*, *Avot* 4:5)

Thus, the purpose of exempting Torah scholars from military service, taxes, and the like, is not to make things easier on them but to honor the Torah and instill love of Torah and fear of Heaven in the people. We are not dealing here with a matter of the laws of war – i.e., that Torah scholars as individuals are exempt from war – and therefore it is appropriate to discuss it in the context of the laws of the gifts given to the priests, rather than in the laws of war.

1. **Expanding the Law of the Tribe of Levi**

Even after all the above explanations, some of which imply that the tribe of Levi is indeed less obligated to join the war effort than the rest of the community, it must be emphasized that it is still difficult to say the same law applies "not only [to] the tribe of Levi, but [to] any one of the inhabitants of the world." It is clear that there is a gap in these categories; Torah scholars who are not priests or Levites are not entitled to settle in their cities, or to receive *terumot* and *ma'aserot*. It seems the intended meaning is that a blessing is promised to anyone who frees himself from the yoke of the world and trusts that God will provide his sustenance, but that does not mean the various halakhic details that apply to the tribe of Levi would be extended to apply to him.

***Milchemet Reshut* vs. *Milchemet Mitzva***

Following our discussion of the fundamental obligation to go out to war, there is another distinction that is important to mention. The Mishna states that in the case of a *milchemet mitzva*, "all go out [to war]; even a bridegroom from his chamber and a bride from her canopy" (Mishna *Sota* 8:7). The *Keren Ora* comments:

It indicates here that in a *milchemet mitzva* all go out, and even Torah scholars must interrupt their studies.[[3]](#footnote-3) (*Keren Ora,* *Sota* 44b)

Thisdistinction is very reasonable: when a war is a matter of choice, it is indeed inappropriate for Torah scholars to engage in it, for they are supposed to occupy themselves exclusively in holy matters; but when a war is defined as a mitzva, it quite proper that those who lead the way in its performance are the Torah scholars. Therefore, even if we accept the Rambam's words about the tribe of Levi, they can be understood as applying only in a *milchemet reshut*, while in a *milchemet mitzva*, even Torah scholars must join in the battle.

**The Rabbis Do Not Require Protection**

 A third issue that must be considered is the Talmudic statement that "the Rabbis do not require protection" and therefore Torah scholars are exempt from taxes to pay for protection:

Rabbi Yehuda Nesi'a levied the [tax to pay for the protective] wall on the Rabbis. Reish Lakish said: The Rabbis do not require the protection [of a wall], as it is written (*Tehillim* 139:18): "If I should count them, they are more in number than the sand." “If I should count them” – whom?… It is saying: [If] I would count the deeds of the righteous, they would be more in number than the sand. And *a fortiori*:if the sand, which is the lesser quantity, protects [the land] against the sea, then how much more must the deeds of the righteous, which are of a larger quantity, protect them? When Reish Lakish came before Rabbi Yochanan, [the latter] said to him: Why did you not say it [i.e., derive the lesson] from this verse: "l am a wall and my breasts are like towers" (*Shir ha-Shirim* 8:10); "I am a wall" refers to the Torah, and "my breasts are like towers" refers to Torah scholars? Reish Lakish, however, understands [this verse] as expounded by Rava: "I am a wall" refers to the community of Israel, and "my breasts are like towers" refers to synagogues and houses of study.

Rav Nachman bar Rav Chisda levied a poll tax on the Rabbis. Rav Nachman bar Yitzchak said to him: You have transgressed against the [words of the] Torah, the Prophets, and the Writings[[4]](#footnote-4)… (*Bava Batra* 7b)

We seem to have here an explicit statement that Torah scholars are not obligated to share in the cost of guard duty, because they do not need protection: their Torah protects them, and their merits even help protect the entire community.

Nevertheless, the *Chatam Sofer* restricts this statement to a specific type of warfare:

And it is difficult, for at this point, they have only exempted the Rabbis from taxes and the wall levy, which are because of the exile of Israel, as it appears from the verse: "His holy ones are all in Your hand" (*Devarim* 33:3). But protection in the manner that kings guard themselves against other kingdoms, even a Torah scholar is obligated, as is evident from the Mordekhai… And it is difficult: behold, Torah scholars contribute the half-shekel. Rather, you must say that regarding the walls of the city [that serve as protection] from the wars of the kingdoms, even Torah scholars are obligated. (*Chiddushei Chatam Sofer*, *Bava Batra* 8a)

According to the *Chatam Sofer*, the entire ruling that Torah scholars are exempt from paying security fees only applies to fees resulting from Israel's exile; regarding these, it can be argued that the troubles were not caused by the scholars, who have not sinned. But in matters of war and security that are part of the natural order, when one nation fights another, even Torah scholars are obligated. If that is the case, the responsibility of national security in the State of Israel – when our wars are not due to exile but are of the nature of kingdoms – would fall upon Torah scholars equally.

A unique responsum of the Radbaz proposes another fundamental guiding principle in this matter:

You asked me to inform you of my opinion on a dispute which has arisen in Jerusalem between the laymen and the sages concerning the matter of the payment of the neighborhood guards… In the case at hand, the laymen say we do not need protection because we are poor, and the sages cry out saying: “Appoint guards!” and they themselves admit that they need protection. Is there any law or is there any reason that they should compel the laymen to appoint guards and not help them [pay them]? To compel them about such a thing has never been said, and if it were said, we would not listen to it because the law has been violated. (*Teshuvot ha-Radbaz* part 2, no. 752)

While it is true that “rabbis do not need protection” because the Torah protects and shields, when Torah scholars deem themselves in need of protection, they cannot exempt themselves from participation in providing it. This reasoning was also brought by Rabbi Zevin in the debate surrounding the drafting of Torah scholars during the War of Independence.

Consider the matter: An order was issued by the "People's Guard" to cover the panes of all the windows with cloth or paper because of the danger of bombing. Is it conceivable that Torah scholars would not do so, on the grounds that "rabbis do not need protection"? Would any of those who engage with Torah evade this order? And why did the Torah scholars, together with the rest of our brothers, the people of Israel, abandon the border neighborhoods that were subject to sniper fire and not avail themselves of this talisman of "rabbis do not need protection"? Was it only for this reason, that in these cases one cannot rely on others? Is this the Torah's perspective? Why, then, should we use, not in its [proper] time and not in its [proper] place, this statement that "[rabbis do not need] protection,” which, on its own, at the right time and in the appropriate place, is a lovely pearl? (Rabbi Shlomo Yosef Zevin, “On the Question of the Drafting of Yeshiva Students,” 1948)

**The Definition of Torah Scholars**

We also must define who is included in the category of "Torah scholars" who are exempt from paying guard fees. We saw above that the Rambam speaks of one who has "removed from his neck the yoke of the many reckonings which people seek," implying that we are talking about a person who greatly restricts his livelihood and devotes all his time and possessions to Torah study. The *Yad Rama* expands on this definition:

But this applies to Torah scholars who engage in constant Torah study, each one according to his ability, and fulfill the mitzva, "and you shall meditate on it day and night" in accordance with their abilities, as is stated explicitly in our passage: "These are the students of the Torah who cut their feet [in going] from town to town” to “discuss the word of God” (*Bava Batra* 8a). …

But Torah scholars who do not regularly engage in Torah study to the extent of their ability, and for whom it does not suffice to engage in their crafts to provide for themselves and their households, but rather they strive to become wealthy and neglect the Torah in order to accumulate a great deal of money – they are liable for all the obligations of the community. (*Yad Rama*, *Bava Batra*, ad loc.)

This implies that we are dealing only with one who truly devotes all his time to Torah and does not engage in anything beyond the bare minimum of providing for his household.

The Rama also adds his own definition:

And likewise, scholars who belittle the *mitzvot* and have no fear of God on their faces are as the lightest members of the community.

That is to say, Torah study is not the sole consideration regarding this matter; weight is also given to the person's character and fear of Heaven. It is clear that such an exemption could easily give rise to confusion and complaints, and therefore anyone who is granted the exemption must be worthy of it beyond any doubt, so as not to create even an appearance of evasion or disrespect for the Jewish people, but only an added measure of respect and awe for the Torah and its students.

The Radbaz, in his responsum to the rabbis of Jerusalem who sought to be excused from contributing to the upkeep of the city's defense, also writes:

And although there is another reason, because I have my doubts as to whether there is anyone now who does not need protection, I will not enter into this inquiry now, for my words would sadden some of the sages, and therefore silence is better than speech. (*Teshuvot ha-Radbaz* part 2, no. 752)

In contrast, the Rema is more lenient about the definition of a "Torah scholar" for the purpose of exemption from taxation:

And it makes no difference whether or not he heads a yeshiva, only that he be recognized as a Torah scholar in his generation, who knows how to engage in a discussion about Torah and understands on his own in most places of the Talmud and its commentaries and the rulings of the *Geonim*, and his Torah is his livelihood, as explained. And even though there is no one in our generation who is a scholar to the extent that he would be given a pound of gold if he were insulted, nevertheless, for the purpose of exempting him from taxes, we are lenient regarding this matter, provided that he is recognized as a Torah scholar, as explained. (Rema, *Yoreh De'a* 243:2)

On the other hand, he says the matter depends on local custom:

And nevertheless, there are places where the custom is to exempt Torah scholars from taxation, and there are places where the custom is not to exempt them.

His source is the *Terumat ha-Deshen*, who said this about all matters of taxation and the various exemptions from taxation. If that is the case, this is not a purely halakhic topic; the discussion shows what considerations should be taken into account when granting an exemption from taxation, but does establish ironclad rulings in this regard, as the *Terumat ha-Deshen* writes:

It would seem that these matters are more dependent on custom than on the law of the Torah. (*Terumat ha-Deshen* no. 342)

***Pikuach Nefesh* and Torah Study**

Another consideration that might obligate Torah scholars to go out to war, even if we accept all the above arguments to exempt them, is *pikuach nefesh*, for danger to life sets aside all the *mitzvot*. We saw in previous *shiurim* that a war to assist Israel against enemies is not based solely on *pikuach nefesh*, but certainly its goal and purpose is the saving of lives. We must therefore discuss a fundamental question: What is given priority – saving lives or Torah study? Some have discussed this question based on the Gemara in *Megilla*:

Rav Yosef said: The study of the Torah is superior to the saving of life. For at first Mordekhai was reckoned next after four, but afterwards, next after five.[[5]](#footnote-5) (*Megilla* 16b)

The plain sense of the Gemara implies that one who engages in Torah study is greater and more esteemed than one who saves lives, and therefore Mordekhai, whose original focus was the study and dissemination of Torah, was demoted from his rank in the Sanhedrin after he shifted his attention to communal affairs. But there are also those who have interpreted the Gemara differently.

The *Tur* cites a responsum of the Rosh:

Reply to a question posed to my father… That which you wrote, that some say charity funds can be diverted even from Torah study to the annual payment of 30 *peshitim* to the non-Jewish authority, because it involves the saving of lives – for if they do not make peace with him, there are many poor people who have no money to give, and they will beat them and strip them naked – the law is with them; since it involves the saving of lives, it takes precedence. (*Tur*, *Yoreh De'a* 251)

According to this responsum, funds that had been donated for the purpose of Torah study can be diverted to a purpose that involves *pikuach nefesh*. This seems to be self-evident, but the Maharshal raises an objection from the aforementioned Gemara in *Megilla* and explains a fundamental point:

There is no difficulty at all, because there it only says that one who is engaged in Torah study is greater, to consider him more important and give him precedence over one who is engaged in the saving of lives… But to expend money to save lives obviously takes precedence over Torah study, for there is nothing that stands before *pikuach nefesh*, for "‘he shall live by them’ – and not die by them” (*Yoma* 85b). This is obvious. (Maharshal, commentary to the *Tur*; cited by the *Bach*, ad loc.)

There is no connection between the Gemara in *Megilla*, which deals with the question of different levels of honor, and the question of what to prioritize in the event of need. *Pikuach nefesh* is more urgent and therefore should be given priority even if the one actually engaged in it is of lesser importance.

The *Perisha* offers a different explanation, which distinguishes between a case where lives are in danger but others can save them, as in the days of Mordekhai, and a case where the charity funds are all that is left in the community chest:

And it seems to me that there, it is dealing with a case where there are others who can save the lives, and therefore, even though it is a great mitzva to be the one who saves the lives, nevertheless, Torah study takes precedence, since there are others who can save the lives. (*Perisha*, ad loc.)

According to these two answers, Torah study is indeed set aside in a case of *pikuach nefesh*. But the *Derisha* has a different position. He offers a third answer, which distinguishes between a case where Torah study can be carried out even without this money and a case where it cannot.

It seems that there, we are dealing with a case where one cannot fulfill both matters, and therefore Torah study takes precedence. But here, we are dealing with a case where even if they give some of the money to the non-Jewish authority, there will still be enough left for Torah study, though not as much, and in such a case, he said that since the matter involves the saving of lives, it takes precedence.

According to this answer, the priority given to Torah study is absolute; if Torah study cannot be carried out without those funds, it overrides even a case that might turn into a matter of *pikuach nefesh.*

It should be noted and emphasized that this is only when there is no certainty of *pikuach nefesh*: the case under discussion in the Rosh's responsum is of saving Jews from entanglement with the non-Jewish authorities, and it seems that this is the situation in most of the wars in which we find ourselves, that we do not know how they will develop or where they will lead. In a situation of certain *pikuach nefesh*, where there is "a sick person before us," it is obvious that even according to the *Derisha*, *pikuach nefesh* will set aside Torah study, for the law of "‘you shall live by them’ – and not die by them" applies to this great mitzvaas well.

**Summation**

We have seen several passages dealing with the exemption of Torah scholars and have spelled out how each of them should be understood, in my humble opinion. As noted above regarding several cases, most of the sources relating to this issue are dealing with aggadic and moral matters, not with cut and dried halakhic rulings. Even the sources that deal with *halakha* per se (the payment of taxes and the exemption granted to the Levites) are not at all explicit, and it would seem that indeed, our Rabbis have left us room for maneuvering.

As we are left with an overall sense that there is no clear-cut halakhic ruling on the matter, this issue, like many others, is largely dependent on custom and the decision of the community. *Chazal* illustrate the priority that should be given to Torah study over other things, but we have seen that Torah study’s greater importance does not necessarily result in a direct exemption from military service. We are given a framework of values to consider, and we must deduce the practical applications in each situation. It is clear from the entirety of the sources that Torah study contributes to the war effort and that those who engage in Torah study should be accorded special status in return for their contributions, but on the other hand, we have not found a blanket exemption, and certainly not a prohibition, for Torah scholars to go to war. With the various distinctions that have been raised here, each situation should be considered in its time and on its own merits and a fitting, collective decision should be reached.

(Translated by David Strauss; edited by Sarah Rudolph)

1. There would have been room to explain simply that the *mishna* did not necessarily mean to imply that a priest goes out to war, but was giving examples of various prohibited relationships, including a priest marrying a divorcée. This is supported by the fact that the *mishna* also speaks of the High Priest, about whom it may reasonably be assumed regardless that he would not go out to war. On the other hand, this explanation is difficult, for why would the *mishna* bring a case that has no practical halakhic application but is simply an irrelevant example? [↑](#footnote-ref-1)
2. "They do not wage war (*orkhin milchama*) like the rest of the Jewish people, nor do they receive an inheritance, nor do they acquire [property] for themselves through their physical abilities." [↑](#footnote-ref-2)
3. See *Mesoret ha-Shas* in *Sota* 10a, on the words (in a similar context): "a bridegroom from his chamber and a bride from her canopy"; he brings in the name of the *Arukh* that "all the more so, Torah scholars," which is also the wording of the *mishna* on *Sota* 44b, and it seems that the words are correct there as well. [↑](#footnote-ref-3)
4. See the passage there at length. [↑](#footnote-ref-4)
5. Editor’s note: The Gemara goes on to explain that this stems from comparing Mordekhai’s placement in the lists of leaders in *Ezra* 2:2 and in *Nechemya* 7:7. [↑](#footnote-ref-5)