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Our Hands Did Not Shed This Blood?

Alex S. Ozar

When blood is spilled upon the land, the Torah stresses, nothing provides atonement, at least not fully, save the blood of they whose hands spilled that blood: "Do not pollute the land in which you live; for blood pollutes the land, and the land can have no atonement for blood that is shed on it, except by the blood of him who shed it" (Numbers 35:33). Closure is achieved, balance restored in the spiritual-moral economy, when and only when the blood of the slain is "redeemed" with the blood of the slayer (35:21). Of course taking the murderer's life does not bring the murdered back; those bereaved remain bereaved, those absented remain no less barred from bearing the fruit they still had to bear (cf. Rashi to Deuteronomy 21:4). But the aim of the remedy – the *eglah arufah*, or "decapitated-calf" ritual – was never just for the sake of the individuals involved, but for the land – and the nation, and God, who dwell upon it: "You shall not defile the land in which you live, in which I Myself abide, for I the LORD abide among the people Israel" (35:34).

Sometimes, however, it happens that one of us is slain and we lack a perpetrator to convict, or lack the means to convict the perpetrator; sometimes the victim's blood may well remain without the pollution-cleansing company of their murderer's. But here the Torah stresses that though the ideal is out of reach, we are not without redress, and therefore not without responsibility (Deuteronomy 21):

> (1) If, in the land that the LORD your God is assigning you to possess, someone slain is found lying in the open, the identity of the slayer not being known,
> (2) Your elders and magistrates shall go out and measure the distances from the corpse to the nearby towns.
> (3) The elders of the town nearest to the corpse shall then take a heifer which has never been worked, which has never pulled in a yoke;
> (4) And the elders of that town shall bring the heifer down to an everflowing wadi, which is not tilled or sown. There, in the wadi, they shall break the heifer's neck.
> (5) The priests, sons of Levi, shall come forward; for the LORD your God has chosen them to minister to Him and to pronounce blessing in the name of the LORD, and every lawsuit and case of assault is subject to their ruling.
> (6) Then all the elders of the town nearest to the corpse shall wash their hands over the heifer whose neck was broken in the wadi.
> (7) And they shall make this declaration: "Our hands did not shed this blood, nor did our eyes see it done.
> (8) Absolve, O LORD, Your people Israel whom You redeemed, and do not let guilt for the blood of the innocent remain among Your people Israel." And they will be absolved of bloodguilt.
> (9) Thus you will remove from your midst guilt for the blood of the innocent, for you will be doing what is right in the sight of the LORD.

It is a strange, composite, and coarsely violent ritual, and, as with the death to which it responds, our understanding may never succeed in tying its every loose end. But I want to see

if we can't find meaning its folds, find instruction for a society in which the pollution born of blood of the slain does not infrequently outstrip justice's reach. After a streak of five years with figures falling below 15,000, in 2015 the total number of murders per year in the United states was 15,883, and then in 2016 rose back above the twenty-year average to 17,250. Overall, 59% of those cases were "cleared" (meaning an *arrest* was made, however the prosecution fared), though in large cities the number is only 52.9%, and in places like Chicago clearance rates have tumbled to 30.1%, 26.3%, even 11% in recent years. This is not normal: in 1965, the national clearance rate was 91%. America is becoming a land in which murder is rampant and without consequence.

With respect to the on-average 1,000 killings of American citizens by government officials per year, it is certain that the overwhelming majority are in justified defense of self or vulnerable others. In roughly 10% of cases the victim is unarmed; in 2015, of the 104 of such cases, 13 resulted in charges filed against the officer, with resulting convictions in a total of 4. Given these numbers, anecdotal and video evidence accumulating in volume and renown, and clearly inadequate data provided by police departments, we the public simply cannot be confident that all the blood spilled in our name is well accounted for. That is to say, reckoning is required.

I first sat down to assemble these reflections days after 26 people were cut down in a church in Sutherland Spring, Texas, only weeks after 58 were cut down at a Las Vegas concert. In the time between those events, 36 people were killed in mass shootings across the United States; since then, including the well-known 17 of Parkland, Florida, the number is 440. In a staggering majority of these and similar cases the perpetrator remains unknown. But even where the perpetrator is brought to justice, can it be that we have exhausted our responsibilities, that no more need be accounted for, that the blood of the slain is on the deranged assailant's hands, and that's that? The burden of the *eglah arufah* commandment, I argue, is that it cannot: When blood is spilled upon our land, we are, and must make clear that we are, *responsible*.

These issues make their home amidst a hornet's nest of deeply contentious political livewires, and our present-day political moment is such that the jealous vortex of zero-sum partisanship suffers no dialogical space unconsumed. But if the Torah has what to say about our responsibilities to and with each other, then we must be able to learn and debate it together, even and especially when division and acrimony enjoy the upper hand – for the Torah is not in vain. In any case, what is explored here is not a set of policies but a family of responsibilities, responsibilities which may well be well-realized by various parties in various ways, but which no party can faithfully leave unaddressed.

The Crime Scene

The body is discovered "in the land" and "in the field" (verse 1) – apparently, since measurement is required to determine the closest city (verse 2), in an open space between municipalities. Perhaps reflecting the relative size and intimacy of settlements in ancient Israel, it does not seem to have been a salient possibility to either the Bible or the rabbis that a fallen body would be found *within* the city limits without someone's having noticed earlier and without someone's being able to identify the assailant. Anonymity is reserved for the spaces between; the inner-city, in contrast, is where everyone knows your name, where

someone will miss you if you're missing from your usual spots. This, to be sure, is not our reality, where it is often precisely the urban concrete which boasts those cracks in which people fall for good. "The field" has become *the street*.

It is important, the rabbis say, that the body not be found in proximity to the border or near a majority non-Israelite city (*Mishnah Sotah* 9:2), which would suggest the possibility that the assailant was not one of our own, and hence requiring a response appropriate thereto. While obviously of high urgency in its own right, our responsibility to secure the citizenry against foreign threat is separate and distinct in form from our responsibility to cultivate a society of our own that does not cultivate murder. An atmosphere with national-security concerns at play is not an atmosphere conducive to efforts at getting our own house in order.

Calling in the Feds

Once the body is found, step one is to determine the closest city by measuring the respective distances from the body to the municipalities within the general vicinity. This step is essential: Even where it is "clear to the eye" which is the closest, it is nonetheless a "duty to engage in measuring" (*Sotah* 45a) – the due diligence of the investigatory process, conducted in public view, is itself as important as its result. And importantly, it is not enough in such cases to simply measure to the obviously-closest city; rather, the full procedure of measuring to *each* city in the vicinity must be conducted to completion (see *Be'er Sheva*, ad loc.). Though as a practical matter it will be only the one closest town that performs the culminating ritual, it is necessary to give public expression to the more fundamental responsibility shared by all. "Be it that only the one of them is called to take action in this instance, *all are responsible* for an occurrence such as this" (Samson Raphael Hirsch on Deuteronomy 21, emphasis added).

It is necessary that the city selected feature a duly constituted criminal court – what's known as a "small Sanhedrin" featuring 23 justices – qualified to try capital cases. That is, the "closest city" is understood to be "the closest city with a court," even if there is a court-less city in greater proximity to the corpse. That a murder could occur in our midst represents an apparent failure of the criminal justice system to impress the law upon the populace and keep perpetrators off the streets, and so we require that the highest court with local jurisdiction participate in taking responsibility. On the other side of the coin, it is precisely the criminal justice system in which our aspirations and concrete commitments to ensuring justice *throughout the land* coalesce, and so our expression of renewed commitment to justice in face of tragedy could not bear the same meaning without the national leadership present on site.

Local authorities' involvement is not enough, however: "Your elders and your judges" is taken to refer to the "unique among your judges" – a delegation of justices from the Sanhedrin (high court) in Jerusalem, and perhaps the king and high-priest as well, who are to oversee the ceremony (*Sotah* 44b-45a). An unaccounted-for murder is not, cannot be, simply the business of the local government alone, something to be taken care of in house, comfortably free from the distractions of the national-media circus and ham-handed interference from the big-wigs in Jerusalem. No, if we cannot find justice for slain blood that is precisely everybody's business – it is the *nation's* business – and so this dirty laundry must be aired in broad daylight, before the nation's eyes.

But it's not only about holding local authorities accountable. Precisely the opposite is true as well: Local problems are ipso facto the nation's problems, and when someone turns up dead

on an out-of-the-way path somewhere in the Galilee, it is the Jerusalem leadership's responsibility to show up and do its part. Importantly, it is *they* who must show up, the rabbis stress – "they, and not their emissaries" (*Sotah* 45a). Taking responsibility can't be phoned in. Remember, is not only about the slayer and the slain, not only about those affected, those bereaved, the neighbors who will serve in the surviving children's schools, oversee the community's well-being tomorrow as yesterday. It is also about a nation cultivating a holy and just society on its land, a land they will not see defiled without a fight – without seeking, as a nation, to take responsibility to make things right.

For all that, there's a vital limit to what the Jerusalem dignitaries can do: Once they've overseen the preliminaries and ensured that the right people on the ground - the community's leaders, teachers, and custodians- are ready to take over, "They take leave and go on their way" (*Mishnah Sotah* 9:5). When all is said and done, it is the local community which must take responsibility for its own and for itself, and it is those who were here yesterday and will be here tomorrow who can, with God's aid, help a broken community heal.

The Arraignment

In the end the elders and the city they lead will be declared innocent (verse 8), but to any acquittal corresponds some more or less implicit charge. "Our hands did not spill this blood," they insist – why would it be thought they had? Ibn Ezra appeals to a general consideration, a kind of providential just desert for the people of the most proximate city: "For had they not committed some comparable transgression," he reasons, "surely it would not have happened that one close among the would be killed" (Ibn Ezra on Deuteronomy 21:7).

Others, though, make the responsibility more concrete. Ibn Ezra himself, explaining the entreaty in the following verse for God to "Atone for your people Israel," says the reason they require atonement is that they apparently "were negligent in not securing the dangerous roadways" (21:8). Greater, more effective police presence, better lighting, fewer places for assailants to lie in wait.

And of course, putting murderers behind bars: For the Palestinian Talmud, "Our hands did not spill this blood and our eyes did not see" is focused on their conduct with respect to the *murderer* (*Yerushalmi Sotah* 43a) – the elders affirm that they had not failed either to convict or execute whoever it is that did this. Seforno too reads the elders' as asserting they had not allowed any "known murderer" to roam free about the land (to 21:7). As Jill Leovy has shown in remarkable and arresting depth, the single most important thing we can do to prevent killings in our cities is to ensure they don't go unsolved, that justice is swiftly served. Beyond the obvious utility of diminishing the pool of eligible murderers, as Abravanel puts it, "Were justice in the city as strong and precise as it ought to be, no one would dare commit a murder in its environs" (Abravanel on Deuteronomy 21). Those who would kill must know they will be held to account, that no one, no matter who they are, who their friends are, or where they live, is above the law or beyond the law's reach.

The Bavli, however, understands the elders' statement as focused on their treatment of the *victim*: What they affirm is that they "did not give him leave without food or without escort" (*Sotah* 45b). Now it is clear how failure to accompany the victim along the way could have precipitated their death. But how exactly would neglecting to provide sustenance make the

elders responsible for a *murder*? Rashi spells out the statement as follows: "He was not killed at our hands, meaning we did not send him away without food such that he was forced into armed robbery against others and so getting him killed on that account" (Rashi, ad loc.). In other words, had they in fact failed to provide this person with the necessities of life, the person would have been *forced* ("*hutzrakh*") into a life of violent crime simply in order to make ends meet, and if he were then killed, in self-defense, by one of his targets or someone coming to their aid, there would be a sense in which it is not he, nor the killer, but the elders who shed this blood.

Hirsch elaborates on the point:

> The "Decapitated Calf" commandment deals with a case in which the slain has remained where they fell – and thus to the authorities is imputed scorn and derision. There is only one case in which this scorn is truly justified: a case where the victim was immersed in difficult straights due to the fault of the city's government, and was thus coerced into armed robbery and killed by his own victim acting in self-defense. In such a case the killer is free from all fault, and there is even what to say in justification of the slain: The true bearers of sin are the city leaders who averted their eyes from the hardships of the slain, and thus did not fulfill the obligation incumbent upon the Jewish collective.

The city's elders, representing the city's people in turn representing the nation as a whole, are responsible for the prevention of murder within their midst, which is to say they have a responsibility to prosecute and punish violent offenders; to ensure safe passage on the city's roads through regular maintenance and upkeep; to see to it that no one need ever face danger alone; and to support a regime of public assistance robust enough to ensure that no one ever goes hungry, ever turns to crime in desperate hope for tomorrow's bread.

Don't Forget the Devil

According to Rambam's widely cited view, the overall purpose of the ritual is functional: assembling a host of dignitaries to perform a dramatic spectacle and declaration regarding the murder before an assembled crowd increases the likelihood that anyone with information as to the assailant will come forward (*Guide to the Perplexed* III:40). This is in part, he reasons, because the elders' solemn declaration of their own innocence before God would impress feelings of "great shame and brazenness" on those, even of low social station, who would withhold information of even the slightest value to the investigation. Looking to the more positive end of the motivational spectrum, we might also suggest that this sort of public expression of responsibility and commitment could serve to reassure those who would fear the repercussions of providing testimony – "snitching," as it's known on the street – that the very same responsibility and commitment of the public extends to them and their families' protection as well. Of course we would have to mean it.

Shadal emphasizes the underlying values the ritual reinforces among the people: Since we cannot bring the murderer to justice, we instead act to "strengthen the people of Israel's famed belief that all are responsible for all," and to impress upon the public the grave pollution bloodshed represents (on Deuteronomy 21:1). This is especially important since in the heat of the moment some in the community may be tempted – and some may be tempted to tempt them – to identify, with or without the constraints of due process, an object on

which to exercise vengeance in the name of justice (ibid.). The *eglah arufah* serves to remind the people that blood being spilled does not make blood spilled in response any cheaper, and to provide, in lieu of true justice, a form of catharsis in not leaving the community's pain unexpressed and unaddressed.

Ramban accepts Rambam's functional interpretation in principle, but along with Abravanel, senses that more is needed to account for the ritual's specific and rather colorful texture: On Rambam's view, notes Ramban, "the performance is not made satisfying in itself" (on Deuteronomy 21:4). His own account, he says, mirrors his famed interpretation (on Leviticus 16:8) of the "scapegoat" ritual prescribed as part of the Yom Kippur service. For Ramban, the goat designated "to Azazel" is not, as many would have it, simply sent to die in a place called Azazel, but rather, in parallel to its companion goat designated as "to God," it is sent *as an offering to the demon-god Azazel.* "The reason here," Ramban cryptically suggests, "is the same as there," which would seem to mean that the *eglah arufah* is likewise a form of Godly-mandated sacrifice to a demon-god – the god that the burden of bloodguilt requires we acknowledge, engage, pay tribute to.

Were it only that our fealty to the one God were so whole that murder would be a true anomaly, incidents of violence would be simply freak exceptions to a fundamentally just and caring order. But until that day comes when "the wolf lies with the lamb" (cf. Isaiah 11:6) and "the nations no longer know war" (cf. Isaiah 2:4), we are not free to ignore the grip the god of violence holds on our hearts. We must recognize it, and rightly disturbing as it sounds, we may, from time to time and under God's lovingly solemn direction, need to feed it. Bottom line, we will never conquer our demons if we do not look them in the eye.

Conclusion: The Blood Next Time

The elders may wash their hands of responsibility for the spilled blood, but only if they affirm to God and to the public they serve that they've indeed met all their responsibilities and met them in full. And part of the ritual's meaning, I would venture, is that even as they profess, however sincerely, that they recall no failures with respect to the slain in particular, surely their responsibilities writ large have been less than exhausted – immediately following their declared vindication, notably, is a plea for atonement (Deuteronomy 21:8). At the least, there is no doubt more they can and should do going forward. As Ibn Ezra concludes, "Surely blood would not be spilled in the land, were you practicing what is just in the eyes of God."

It is a reckoning which must be performed in public, its venue to remain undisturbed so long as our responsibility for bloodshed remains unexhausted – for eternity (*Mishnah Sotah* 9:5). For whether or not anyone in particular can be charged with any circumscribed wrong, our fundamental responsibility for bloodshed on our watch cannot be left without public expression: we must make unequivocally clear the "massive engagement and exactingness with which God burdens us over one life" (*Bechor Shor* to Deuteronomy 21:8). And responsibility cannot be meaningfully taken without a readiness to look in the eye all those who the responsibility is to.

The Mishnah says that "once the murderers multiplied in number, the ritual was no longer observed" (*Sotah* 9:9), perhaps, as Rashi writes, for the technical reason that given the murderers' utter shamelessness, murder cases never went unsolved, and perhaps because after a while the handwringing and solemn professions simply lost all meaning. May we

never see such a time. To see to it that we do not, we might see to it that when unaccounted-for blood is spilled, it becomes an occasion, as the Netziv puts it, for "investigations into the past and resolutions for the future" (*Ha-Emek Davar* on Deuteronomy 21:9). In the end, the land can have no atonement for blood that is shed on it – save with responsibility alone.

Rabbi Alex S. Ozar is the co-director of the OU-JLIC program at Yale University, where he is also pursuing a dual PhD in Philosophy and Religious Studies. He holds a BA in philosophy, MA in Jewish philosophy, and rabbinic ordination from Yeshiva University. His writing has appeared in Tradition, Torah U-Madda Journal, Harvard Theological Review, Journal of Religious Ethics, First Things, *and* Torah Musings.

Is Religious Tolerance a Jewish Idea?

Jonathan Ziring

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

– The Universal Declaration of Human Rights, Article 18

Introduction

A central belief to most modern people, including observant Jews, is that of religious freedom and toleration. Yet a perusal of Tanakh, Mishnah, Talmud, or Midrash (not to mention Maccabees or Josephus) will uncover laws and narratives that make it clear that the Torah did not encourage "tolerating" idolatrous religions, especially in the Land of Israel . As the Jews entered the Land, they were enjoined to destroy the temples and religious artifacts of the indigenous peoples, and were warned against establishing treaties with them, lest they be influenced by that culture. To at least some extent, the Jews did follow these instructions when they entered the land.[1]

For most of the last two thousand years, Jews were rarely in a position to prosecute practitioners of other religions – they had their own problems to worry about. Even now, in the Diaspora, Jews are not in control, so they can happily live in *malkhuyot shel hesed* (kind nations) that allow them to enjoy religious freedom, without worrying about who else enjoys those rights. However, the establishment of the State of Israel forced halakhic authorities to at least ask the question – should an ideal Jewish state have religious freedom?

These laws are relevant today, because while Islam is generally not understood to be idolatry, Catholicism, at least for non-Jews, is a subject to a dispute and quite possibly is idolatry.[2] Other Christian denominations are harder to define. Some religions, such as Hinduism, are

[1] The failure of many tribes to properly fulfill these obligations sets the groundwork for the corruption in the Book of Judges.

[2] The view that Islam is not idolatry is the majority position. However, there are rabbinic opinions that ruled that Islam does qualify as *avodah zarah.* Many of those positions, however, are based on a misunderstanding of Islam. For a summary of the issues, see Marc Shapiro, "Islam and the Halakhah," *Judaism* 42:3 (Summer 1993).

Rambam (*Hilkhot Avodah Zarah* 9:4) assumes that Catholicism is idolatry; Rama (*Darkei Moshe Orah Hayim* 156:2) assumes, based on a particular understanding of Tosafot, that it is not (for Jews), though he is famously challenged by the Noda Be-Yehuda (*Shut Noda Be-Yehuda* 2, *Yoreh Deah* 148). Often discussed is the potentially novel position of Me'iri, as understood by Professor Moshe Halbertal in "'Ones Possessed of Religion': Religious Tolerance in The Teachings of The Me'iri" in *Edah* 1:1 (2000). See, however, my teacher, Rabbi Aryeh Klapper's critique of his position in brief here: http://text.rcarabbis.org/what-is-the-halakhic-status-of-the-doctrine-of-the-trinity/, a full version of which was presented at AJS 2007.

usually understood to be considered idolatry, despite some recent attempts to argue otherwise.[3]

Posekim take three general approaches to the question of whether the modern State of Israel should have religious freedom, each of which typifies a mode in which contemporary Jews engage with modern values. Some reject modern values in favor of (a particular interpretation of) Torah values; others seek to reconcile the two pragmatically as a concession to reality; and others interpret the Torah, often in creative ways, to bring modernity and Torah closer together on the level of values.[4]

The Halakhic Background: Destruction of Idolatry in Israel and the Diaspora

The exact parameters of the obligation to destroy idolatry are quite complex. The Torah describes the people's responsibilities regarding idolatry as they enter the Land of Israel:

> These are the laws and rules that you must carefully observe in the land that the Lord, God of your fathers, is giving you to possess, as long as you live on earth. You must destroy all the sites at which the nations you are to dispossess worshiped their gods, whether on lofty mountains and on hills or under any luxuriant tree. Tear down their altars, smash their pillars, put their sacred posts to the fire, and cut down the images of their gods, obliterating their name from that site. (Deuteronomy 12:1-3)

This commandment to destroy idolatry is referred to by the Talmud as the "positive commandment [associated with] idolatry" (*Sanhedrin* 90a). A simple reading of these verses indicates that this obligation applies only in the Land of Israel. Indeed, when the Talmud in *Avodah Zarah* (45b) discusses the law, the focus is exclusively on how it is to be fulfilled during the conquest of Israel.

Elsewhere, however, the law seems to be viewed differently. In the context of distinguishing between "land-dependent laws" that only apply in Israel, and "land-independent laws," *Kiddushin* 37a seems to take destruction of idolatry as the paradigmatic law that applies everywhere: "Just as [the destruction of] idolatry is singled out as personal duty, and is obligatory both within and without the land, so everything which is a personal duty is incumbent both within and without the land."

The commentaries are divided on how to reconcile the implications of these divergent sources. *Tur* (*Yoreh Deah* 146) takes the formulation in *Kiddushin* as capturing the whole story, and thus rules that "it is a commandment for all who find an idol to destroy it," without noting any difference between Israel and the Diaspora. Ramban (*Kiddushin* 37a) goes to the

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[3] This is the conclusion of a yet unpublished paper by Rabbi Daniel Sperber entitled "The Halachic Status of Hinduism: Is Hinduism Idolatrous? A Jewish Legal Inquiry." His position is discussed in Annette Wilke's article, "The Hindu Jewish Leadership Summits: New 'Ground-breaking' Strides of Global Interfaith Cooperation", published in *Between Mumbai and Manila: Judaism in Asia since the Founding of the State of Israel* (Proceedings of the International Conference, held at the Department of Comparative Religion of the University of Bonn. May 30, to June 1, 2012), ed. Manfred Hutter (Bonn University Press, 2013)

[4] This analysis will in many ways parallel those of Rabbi Yosef Bronstein's *Lehrhaus* article concerning gender roles within marriage.

other extreme, arguing that the commandment only applies in Israel. He argues that the passage in *Kiddushin* refers to a related law – the prohibition of building altars outside of the Temple – which applies within Israel and without, but the laws regarding destroying idolatry are indeed Israel-dependent. Maharsha (*Hiddushei Aggadot Berakhot* 57b) seems to follow this approach, arguing that only in Israel does one make a blessing –"to uproot idolatry from our land," implying that the law itself applies everywhere.

The *Sifrei* (Re'eh 61), followed by several authorities, such as Rambam (*Hilkhot Avodah Zarah* 7:1), *Semag* (*Mitzvat Aseh* 14), and *Hinnukh* (436), takes a middle approach, ruling that the obligation to destroy idolatry exists both in Israel and the Diaspora, but to different extents. Whereas in Israel one is obligated to actively seek out and eradicate idolatry, in the Diaspora one must only destroy idols that end up in his domain, but need not seek them out. The position of *Shulhan Arukh* (*Yoreh Deah* 146:14) is unclear, though many of the commentaries seem to assume he follows Rambam (*Biur Ha-Gra* ibid., *Taz* ibid. 12, *Shakh* ibid. 15).

Various approaches are suggested to explain the distinction between Israel and the Diaspora, some of which have practical implications for modern times. One school of thought believes that the nature of the obligation is to destroy all idolatry in spaces that one owns. While in the Diaspora that only applies to property one owns on a financial basis, Israel is considered "Jewish-owned land" at all times, even prior to its conquest, thus generating a constant obligation to destroy idolatry there.[5] *Hinnukh* (436) implies that the difference is not about ownership but power. Fundamentally, the obligation to destroy idolatry exists wherever one has power. The assumption that underlies the different rules in the Diaspora and in Israel is that in the Diaspora, unlike in Israel, Jews do not have the authority to uproot idolatry (outside of their own homes). The implication, however, is that even in Israel, since in the contemporary situation Jews do not have authority to destroy idolatry at will, there is no obligation. Another approach is offered by Rabbi Joseph Soloveitchik,[6] who argues that the added obligation in Israel stems from the commandment to conquer the land – including "purifying it," i.e. conquering it spiritually. Rabbi Baruch Weintraub gives yet another approach when he suggests that in Israel Jews are obligated to establish a certain culture – which requires being active in rooting out idolatrous worship.[7] This explains why some argue that even the obligation to denigrate idols only applies in Israel[8]: only in Israel can Jews establish the culture, including the objects of scorn.[9]

The Modern Challenge

[5] See *Tzafnat Paneah, Hilkhot Avodah Zarah* 7:1. *Avi Ezri* ibid formulates a similar idea, arguing the critical category is what is considered one's "home." There are resonances of this idea in *Tosafot, Avodah Zarah* 21b s.v. "af" (starts on 21a).

[6] See Rabbi Yair Kahn, *"Le-Ha'avir Gilulim min Ha-Aretz", Alon Shevut* 145.

[7] In private communication to this author.

[8] See *Shakh* 15 citing *Maharshal.*

[9] See, however, *Taz* 12 who argues. For a similar phenomenon, see *Makkot* 7a regarding the obligation to establish courts.

If ever there was a law that was the antithesis of the value of religious tolerance, the law to destroy idolatry is it.[10] A modern halakhic authority then, has three possible paths to take, as noted above: reject the modern value, find ways of reconciling Torah and the modern value practically, or provide an understanding that allow the two value systems to jive.

A. Reject the Modern Value

Rabbi Menachem Kasher (ch. 13, *Ha-Tekufah Ha-Gedolah*) was challenged following the Six Day War as to how religious soldiers had been so derelict in their halakhic obligations during the battle in Jerusalem in not destroying idolatry (presumably referring to churches). His interlocutors assume that while modern sensibilities may encourage religious tolerance, halakhah does not. Thus, if the soldiers were truly religious, they should have taken the opportunity, during their "conquest" of Jerusalem, to destroy any vestige of idolatry. This approach represents the first possibility – to follow halakhah straightforwardly, regardless of modern values. However, for many reasons, most authorities did not take this view.

B. Pragmatic Solutions

The most mainstream perspective is that suggested by Rabbi Kasher in his response. As noted above, one possibility for distinguishing between Israel and the Diaspora is assuming that the critical issue for fulfilling this commandment is political power. Although Israel is a sovereign Jewish State, it does not actually have the full ability to do what it wants. Israel is bound by international law and norms, and were it to issue an order to destroy all churches and Hindu temples in Israel, the international community would intervene. Rabbi Kasher's position echoes that of Rabbi Yitzhak Herzog, written in the formative years of the state. Rabbi Herzog notes that, as Israel was created by the United Nations, it implicitly accepted international values, such as the freedom of religion, enshrined in Article 18 of the Universal Declaration of Human Rights.[11] As he writes, Israel would not have been established otherwise:

> What should we do? Tell the nations 'we can't accept this condition because our holy Torah forbids a Jewish government from permitting Christians to dwell in our lands, and even more so idol worshippers'? More than that, [the Torah] forbids us from permitting their worship in our lands and forbids us from permitting them to acquire land. It seems to me that a rabbi cannot be found in Israel with a brain and common sense, that thinks we must respond this way, meaning that this is our obligation by the law of the holy Torah…. Even if we assume that when we accepted the state with this condition the Jewish government would violate a prohibition when we fulfill this condition, even so I would say "the prohibition is overridden to save the lives of the Jewish nation," when we pay attention to the situation of the nation in the world. And even though [the right/obligation] of protecting lives does not stand up to idolatry, or even its ancillary parts, that is only with regards to Jews themselves, but the prohibition of tolerating gentile worship, and certainly the prohibition against them dwelling in the Land and the like, is not included, and it does not override

[10] Another strong contender is the obligation to execute idolators, but as there are no halakhic courts with the ability to impose criminal punishments, this is not addressed by modern authorities.

[11] "Rights of Minorities According to *Halakha*" [Hebrew] *Techumin* 2, pages 169-179, republished in *Tehuka Le-Yisrael al Pi Torah* Chapter 2.

> saving the lives of the collective Israel. Even more so, there are cases where we can violate Torah law [to prevent] enmity.

Rabbi Herzog goes on to emphasize how important it was, following the Holocaust, to establish a state, even if it would come with certain halakhic costs.

Thus, Rabbis Herzog and Kasher justify religious tolerance in practice as a concession to reality.

Falling Short

This approach, while in practice allowing those who care about Torah to endorse religious tolerance, does not sit well with many modern Jews who consider religious tolerance to be an intrinsic value based on values they see as inherent in the Torah itself. As Gerald Blidstein notes in his discussion of democracy, finding practical ways of allowing democracy in a Jewish state does not do justice to the way many modern halakhic Jews feel about the value of democracy ("Halakha and Democracy," *Tradition* 32:1 (1997)). Those who both think democracy is an inherent good and are committed to Torah values need to find the roots of such values in Torah itself to truly be comfortable with a Jewish democratic state. Is there any way to do the same for religious tolerance?

An additional problem, which is beyond the scope of this article, is whether this argument is fully accurate nowadays. After all, many of Israel's positions are opposed by the international community, and it is often accused, correctly or not, of violating international law. Often it ignores those criticisms, and it has continued to survive and even thrive. Additionally, many other countries have no trouble violating international law without censure or significant repercussion. I know of no authorities who have reexamined the pragmatic assertions of Rabbis Herzog and Kasher in light of the above, although it is not impossible that they have or will.[12]

C. Embrace

Rabbi Yehuda H. Henkin, in a lengthy responsum regarding donating towards the building of churches (*Shu"t Benei Banim* 3:36), offers an approach that almost embraces the value of religious tolerance. After justifying why there is no obligation to destroy churches in Israel in a similar vein to Rabbi Herzog, he continues:

> The following should not be difficult in your eyes: "How can Christians, who are defined as idol worshippers and are liable to the death penalty by Torah law, but who are cultured and actors of kindness who do good to Israel…" [How can it be the Torah would require destroying their idols?] **It must be that the Torah foresaw that this would be the reality, despite the prohibition**… [Rabbi Henkin then cites Rambam, *Hilkhot Melakhim* 11:9, to prove that the Messiah will bring about global repentance:] "However, in the times of the Messiah, the nations will return to the truth… and they will know that their parents inherited falsehood, and that their prophets and parents led them astray," and thus we won't have to judge them.

[12] Thanks to Rabbi Shlomo Zuckier for making this point.

Rabbi Henkin is arguing, in a striking formulation, that we should relate to these laws as we do the laws of the rebellious son – *derosh ve-kabbel sakhar,* they are not meant to be implemented, but rather exist solely so we can learn the laws and be rewarded!

In other words, Rabbi Henkin argues that while at some point in history God wanted the Jews to root out idolatry, He ordained that modern times would be times of religious tolerance. In other words, God fundamentally values religious tolerance! Admittedly, He would rather that the whole world served Him, and there were times in history God thought it best for the world that monotheism (or at least the opposition to idolatry) be imposed. However, that is no longer what He wants for the world. Instead, He wants us to understand how egregious idolatry is, but not do anything practical about it until such a time that we can, in the spirit of Beruriah, rid the world of sinners by making them no longer sin (*Berakhot* 10a).

It emerges that a modern Jew could believe that God orchestrated history to allow for a period of religious tolerance – making that a value, rather than a concession.

Conclusion

While I am not sure that I personally am convinced by Rabbi Henkin's analysis, what is clear to me is the following: Many Religious Zionist Jews take pride in Israel being the only democratic society in the Middle East and the only Middle Eastern country with religious freedom, and also believe that ultimately their Zionist values are a reflection of Torah. Yet, they have never asked themselves whether they would actually be comfortable standing behind a modern State of Israel that reflected purely halakhic values. For those who are okay with accepting that an ideal halakhic state would not have religious freedom, this exercise is not necessary. However, for those who want to believe that the religious freedom of the modern State of Israel is an ideal and not a concession, while still claiming that their values are rooted in Torah, an attempt must be made to offer an explanation that reconciles the two at the level of values. Highlighting the gap that exists may be uncomfortable, but it is necessary to develop a mature view of Religious Zionism that does not hide from the difficult questions. If one is not convinced by Rabbi Henkin's attempt, but does not identify with the other perspectives outlined above, it is incumbent on him or her to delve into the halakhic material and propound a suggestion that, with integrity, can bridge the divergent values he or she holds dear.

Rabbi Jonathan Ziring is the outgoing Sgan Rosh Kollel of the Yeshiva University Torah MiTzion Beit Midrash Zichron Dov of Toronto and the Rabbinic Assistant of BAYT. This coming year he will be a Ram at Yeshivat Migdal HaTorah in Modiin. He has smikhah from Rabbi Isaac Elchanan Theological Seminary, an MA in Jewish Philosophy from Bernard Revel Graduate School and a BA from the Honors Program at Yeshiva College. He has previously been a member of the Kollel Gavoah at Yeshivat Har Etzion and a fellow at the Tikvah Fund, the Center for Modern Torah Leadership's Summer Beit Midrash, and various other organizations. He has taught in many contexts in the US, Canada, and Israel, focusing particularly on the Halakhic Process.

A Night of Watching in the House of the Rav

Bezalel Naor

(EDITORS' NOTE: This article was originally published to The Lehrhaus *on March 2, 2017. It has shared here in honor of Rav Kook's Yahrtzeit, earlier this week.)*

Pinchas Peli (aka *Hacohen*) (1930-1989), a fourth-generation Jerusalemite, was born in Batei Mahseh in the Old City. He received a traditional yeshiva education and was ordained as a rabbi. Later, in the United States, Peli received a doctorate and went on to become a professor of Jewish thought in various universities in Israel and abroad. In the United States, he befriended two spiritual luminaries, Abraham Joshua Heschel and Joseph B. Soloveitchik. A talented writer and journalist (editor of the now defunct religious magazine *Panim el Panim*), Peli was instrumental in popularizing the thought of Soloveitchik and Heschel.

Hacohen adopted the pen name "Peli" based on the verse in Judges 13:18: "Why do you ask for my name? It is wondrous (*peli*)."
***
"A Night of Watching in the House of the Rav" appeared in a collection of Peli's poetry entitled *"Mi-Shirei ha-ben ha-shav li-Yerushalayim"* ("Songs of the Son Returning to Jerusalem"). The collection was published in *Emunim* (Jerusalem: Mosad Harav Kook, 1954), an anthology of religious poetry edited by Peli. Besides that of the fledgling poet (Peli was twenty-four in 1954), the anthology included poetry by the celebrated Yosef Tzvi Rimon (1889-1958) and other more established figures.

The poem recreates the atmosphere of one night in *Beit Harav* (the House of the Rav), a stately structure built in 1923 by New York philanthropist Harry Fischel to serve as the residence of Chief Rabbi Abraham Isaac Hakohen Kook and his yeshiva, *Merkaz HaRav*.[1]

In the world of *yeshivot*, a *"leil shimurim"* ("a night of watching") would be an entire night spent immersed in Torah study. One gathers that during one such all-night vigil, the poet was seized with an intense longing for the prophetic voice of the Rav that once sounded between these very walls and is now muted. The young student of Torah was also struck by a biting irony: The vision of national rebirth that Rav Kook captured in poetry has come to fruition, but alas, the generation who enjoy "God's consolation" are unable to rise to the occasion. They lack Rav Kook's vision, his voice. Finally, the poet expresses the prayer that we, the generation of the rebirth of Israel, may yet drink from those wellsprings of prophecy.

[1] The late Chief Rabbi Avraham Shapira revealed to this writer that as a *kohen*, Rav Kook felt it would be inappropriate for him to own real estate in Eretz Yisrael. This is certainly not *halakhah* but a personal practice of Rav Kook and later his son Rabbi Zvi Yehudah Hakohen Kook. Because Rav Kook was never willing to assume ownership of the building, to this day a "cloud" hangs over the real estate at 9 Harav Kook Street, Jerusalem.

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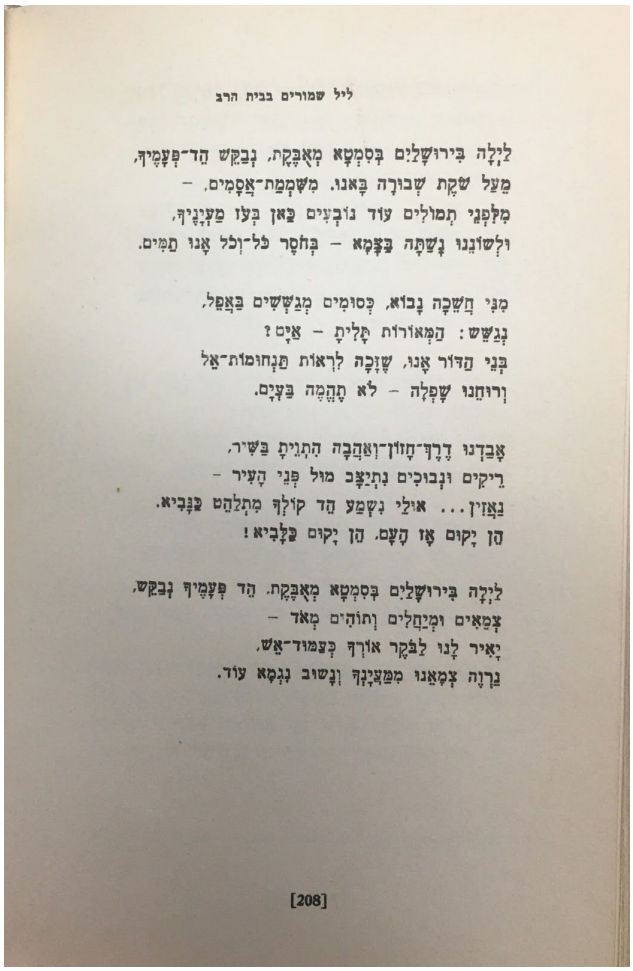
ליל שמורים בבית הרב

A Night of Watching in the House of the *Rav*

By Pinhas Peli

Translated from the Hebrew by Bezalel Naor



ליל שמורים בבית הרב

לַיְלָה בִּירוּשָׁלַיִם בְּסִמְטָא מְאֻבָּקֶת, נְבַקֵּשׁ הַד־פְּעָמֶיךָ,
מֵעַל שֶׁקֶת שְׁבוּרָה בָּאנוּ. מִשְׁמַמַּת־אֲסָמִים. –
מִלְּפָנֶיךָ תְּמוֹלִים עוֹד נוֹבְעִים פֹּה בְּעֹז מַעְיָנֶיךָ,
וּלְשׁוֹנֵנוּ נָשַׁתָּה בַּצָּמָא – בְּחֹסֶר כָּל־וְכָל אָנוּ תְּמִים.

מִגַּי חֲשֵׁכָה נָבוֹא, כְּסוּמִים מְבַשְּׁשִׁים בַּאֲפֵל,
נָגַשׁ: הַמְאוֹרוֹת תָּלִיתָ – אֵיָם ?
בְּנֵי הַדּוֹר אָנוּ, שָׁוְכָה לִרְאוֹת תַּנָּחוּמוֹת־אֵל
וְרוּחֵנוּ שָׁפְלָה – לֹא תֶהֱמֶה בְּעָיָם.

אָבַדְנוּ דֶּרֶךְ־חָזוֹן־וְאַהֲבָה הִתְנֵיתָ בְּשִׁיר,
רֵיקִים וּנְבוּכִים נִתְיַצֵּב מוּל פְּנֵי הָעִיר –
נַאֲזִין... אֵילַי נִשְׁמַע הַד קוֹלְךָ מִתְּלַהֵט בַּנָּבִיא.
הַן יָקוּם אָז הָעָם. הַן יָקוּם בַּלָּבִיא !

לַיְלָה בִּירוּשָׁלַיִם בְּסִמְטָא מְאֻבָּקֶת. הַד פְּעָמֶיךָ נְבַקֵּשׁ,
צְמֵאִים וּמְיֻחָלִים וְחוֹהִים מְאֹד –
יָאִיר לָנוּ לַבֹּקֶר אוֹרְךָ כְּעַמּוּד־אֵשׁ.
נַרְוֶה צְמָאֵנוּ מִמַּעְיָנְךָ וְנָשׁוּב נִגְמָא עוֹד.

[208]

Night in Jerusalem.

In a dusty alley

we seek the sound of your steps.

We have come from a broken trough.

Yesterday

there yet flowed here

your mighty wellsprings.

Our tongues languish from thirst.
Lacking all,
we are finished.

From darkness we come
like blind men groping in the gloom.
The luminaries that you fixed in the heavens—
Where are they?
We are the generation
that merited to see God's consolation
and our spirit is lowly.
It does not roar with might.

We have lost the way
of vision-and-love
that you set to song.
We stand opposite the city
empty and confused.
We listen…
Perhaps we shall hear
the echo of your voice
thundering as a prophet's.
Then the people shall rise up,
rise up like a lion!

Night in Jerusalem.
In a dusty alley
we seek the sound of your steps.
We are thirsty
and hoping

and searching.

By morning

let your light

shine for us

as a pillar of fire.

From your spring

we shall slake our thirst

and gulp yet again.

Bezalel Naor is the author of several works of Jewish thought with concentration upon Kabbalah, Sabbateanism, and Hasidism. Recently, his annotated English translation of Rav Kook's seminal work Orot was published by Koren/Maggid (2015). Naor is presently at work on a kabbalistic novel and collection of poems.