

Battle Over Draft Protection: Should Yeshiva Students Be Conscripted?

Adapted from the writings of Dayan Yitzhak Grossman

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JNS reports:

More than 2,000 ultra-Orthodox Israelis have asked to be enlisted in the IDF, in an unprecedented mobilization in the *haredi* sector.

The volunteer recruitment follows Hamas's murder of more than 1,400 Israelis and wounding of thousands of others on Oct. 7, the bloodiest one-day attack on the Jewish people since the Holocaust.

About 150 *haredim* arrived at the IDF recruitment office at Tel Hashomer in Ramat Gan on Monday as the military begins to draft them as volunteers. Most of the volunteers, who ranged in age from their mid-20s to late 30s, are members of the Lithuanian (Litvak) stream of ultra-Orthodoxy.

Ultra-Orthodox male yeshiva students are generally exempt from military service as part of a widely criticized decades-old arrangement...

The ultra-Orthodox believe that studying Torah is the best protection for the state, a view that has drawn resentment from the rest of the public as the numbers who avoided military service swelled.[1]

The question of whether yeshiva students should or should not serve in the Israeli military has been highly controversial for decades; in this article and the following one, we discuss some (but certainly not all!) of the halachic (as opposed to *hashkafic* and public-policy) issues raised in this debate.

In a discussion in Bava Basra, the Gemara asserts what seem to be three distinct principles exempting *talmidei* chachamim[2] from certain categories of communal obligations:

- "The Rabbis do not require protection."
- Rabbis have a general privilege of freedom from the yoke of nations and governments.
- The Rabbis are not expected to go out with the people en masse.

In this article, we begin a discussion of the first of these three principles and its applicability to yeshiva students and military service, and we shall *iy"H* continue the discussion, and briefly consider the other two principles as well, in the following article.

The Gemara states:

R' Yehudah Nesia once placed the cost of a protective wall upon the Rabbis (along with the other residents). Reish Lakish said to him: The Rabbis do not require protection (because Hashem protects them, so they should be exempt from contributing to the wall), as it is written, "Were I (Hashem) to count them, they would outnumber the grains of sand." To whom does this refer?...This is what it's saying: Were I to count the good deeds of the *tzadikim*, they would outnumber the grains of sand. And if the grains of sand, which are fewer than the deeds of the *tzadikim*, protect the shore from the sea, then a fortiori, the good deeds of the *tzadikim*, which are numerous, certainly protect

them from harm.

When Reish Lakish came before R' Yochanan, R' Yochanan said to him: Why did you not tell him that we derive that the Rabbis need no human protection from this *pasuk*: "I am a wall, and my breasts are like towers"? "I am a wall"—this is the Torah, which protects those who study it as a wall protects the residents of a city. "And my breasts are like towers"—These are the *talmidei* chachamim, who learn Torah from one another as eagerly as a child suckles from its mother's breast...But Reish Lakish thought to expound the *pasuk* as Rava expounded it: "I am a wall"—this is Knessess (the Assembly of) Yisrael. "And my breasts are like towers"—these are batei *kneisios* and batei midrashos.[3]

While some have argued that the Gemara is merely asserting that the deeds of *tzadikim* and the Torah of *talmidei* chachamim provide protection for the *tzadikim* and/or *talmidei* chachamim[4] themselves, but not that this protection extends to others, the Chasam Sofer explains that this is precisely why R' Yochanan objected to Reish Lakish's derivation:

An individual who secures himself and his family with a lofty wall[5]—may he, because of this, separate himself from the community, not to build a wall along with them?...We must say that a *talmid* chacham is different, because he is like a tower with a sentinel upon it, and he warns the nation that they should be careful to behave properly, as it is written in Yechezkel (3:17), "I have appointed you a sentinel," and the ignoramuses that are not careful and are punished are therefore responsible for themselves. That is why it was necessary according to R' Yochanan to cite the *pasuk* "and my breasts are like towers," in which a *talmid* chacham is simlized to a tower, because if he were only simlized to sand and a wall, he would not be exempt.[6]

Numerous *gedolei* Torah, including R' Moshe Feinstein[7] and R' Yechiel Michel Tucazinsky,[8] have invoked the principle that the Rabbis do not require protection as an argument against yeshiva students serving in the Israeli military,[9] but others have cited a number of reasons that the principle may not be applicable.

Where danger is common

The Gemara in Psachim says that the principle that "those on the way to perform a mitzvah are not susceptible to harm (*shluchoi mitzvah einan nizokin*)" does not apply where danger is common (*shechiach hezeika*), and it may be argued that a similar qualification applies to the principle that "the Rabbis do not require protection." A version of this argument appears in a famous essay published in 5708 (1948), during the Israeli War of Independence. The essay was published anonymously, but it was likely authored by R' Shlomo Yosef Zevin (the founder, along with the Netziv's son R' Meir Bar-Ilan, of the Encyclopedia Talmudis project):[10]

"Rabbis do not need guarding"? G-d Almighty! When actual lives are at stake, may we rely on miracles? In 1929 at Chevron (may such a calamity not occur again!), didn't young *talmidim* of the yeshiva,

whose holiness shone like stars in the sky, fall before the malicious enemy? Please, did these martyrs need guarding or not? And those same murderous Arabs are still the enemy today! If you understand that the *talmidei* chachamim need no guarding in relatively peaceful times and are exempt from building protective walls, what consequence has this in a life-and-death struggle, a mitzvah war in which all are obligated? The defense authorities ordered everyone to cover all windows as protection against shattering glass in case of an air raid. Would anyone think that some rabbis will not do so, claiming that rabbis do not require protection? Did anyone absorbed in Torah exempt himself from this? Why did rabbis leave areas under enemy fire along with the rest of the population? Why did they not rely on this maxim? Is this *da'as* Torah?[11] They took this concept out of context and used it improperly, while if it were used in its proper context, it would be a valuable pearl.[12]

Some have countered that in Chazal's era as well there were certainly incidents like the Chevron Massacre, in which *talmidei* chachamim were murdered, yet this did not stop Chazal from asserting the principle that the Rabbis do not require protection.[13] But in defense of the author of the essay, it seems clear that he meant to argue that Chazal were referring to typical, low-risk situations, where the measures in question are intended merely to reduce an already low level of danger even further, but not where the contemplated measures are essential to counter a substantial risk, in line with the Gemara's aforementioned distinction between typical situations and those in which danger is common.

On the other hand, R' Yitzchak Arieli (a distinguished *rav* and *posek* in Yerushalayim, grandfather of R' Asher Arieli of the Mir) argues that the implication of the Gemara's discussion and that of later halachic authorities is that the rule that the Rabbis do not require protection applies even where danger is common," and he attempts to explain why this should be so.[14]^[15]

[1] 2,000 ultra-Orthodox Jews volunteer for IDF. JNS.

<https://www.jns.org/2000-ultra-orthodox-jews-volunteer-for-idf/>.

[2] Regarding the definition of "*talmid* chacham" and "Rabanan" in this context, and applicability of these terms to yeshiva *talmidim*, see: Shu"t Yechaveh Da'as *cheilek* 5 Y.D. *siman* 63; Ezra Oshri, *Rabanan Lo Ba'i Netirusa*, Alon Shvus #79.

[3] Bava Basra 7b-8a. See Chidushei Chasam Sofer *ibid.* s.v. *Mai ta'ama*. The Chasam Sofer (*ibid.* s.v. *Mindah velo vahalach*) limits the exemption of Torah scholars to expenses that derive from the *galus* of Klal Yisrael, as opposed to the normal measures that kingdoms take to protect themselves from other kingdoms, toward which Torah scholars are obligated to contribute. Cf. Einayim Lamishpat *ibid.* *os* 9 s.v. *Vehinei* haChasam Sofer *kasav bifshitus* p. 24; Shu"t Sheivet Halevi *cheilek* 9 *siman* 304 *os* 15 p. 284; Be'er Yehudah Bava Basra, Shiur 12: *Benias Chomah*, *Rabanan Lo Tzrichi Netirusa, umilchamos* Yisrael, pp. 193-95.

[4] Regarding the question of whether the principle that the Rabbis do not

require protection is contingent upon Torah scholarship or righteous deeds, see Rashash *ibid.* s.v. *Mai ta'ama*; Einayim Lamishpat *ibid.* s.v. *Veyeish ladun*.

[5]Yeshayah 30:13.

[6]Chidushei Chasam Sofer *ibid.*

[7]Shu"t Igros Moshe Y.D. *cheilek* 4 (Yerushalayim 5756) *siman* 33 p. 219.

[8]Cited in Be'er Yehudah *ibid.* p. 196.

[9]R' Alfred Cohen's statement (in his article On Yeshiva Men Serving In The Army, Journal of Halacha and Contemporary Society No. XXIII, Spring 1992, Pesach 5752) that this principle "is not cited by the proponents of exemption as proof for their position" is thus not entirely correct, although it is likely true that this is not the primary argument of the proponents of exemption.

[10]Some of Rav Zevin's descendants emphatically reject this attribution (see here), and others are noncommittal, but see the information presented here and here.

[11]There are seemingly conflicting anecdotes regarding whether the Brisker Rav accepted the need for prudence in wartime. One famous anecdote suggests that he did not:

"During the 1948 Israeli War of Independence, the Brisker Rav was living in Yerushalayim. In spite of the heavy artillery fire raining down on the city, the Rav remained in his top-floor apartment. His family tried to persuade him to go down to the bomb shelter, but he refused to leave his home. After much pleading on the part of his family and *talmidim*, he reluctantly agreed to go down to the basement.

Later on, when the bombing slackened off, the family returned to the apartment. They were shocked to see that an artillery shell had penetrated the Rav's bedroom wall. Shrapnel from the shell was on his bed, and his pillow had been singed. R' Yosef Dov, the Rav's son, who had begged him to go downstairs, turned to his father and said in a triumphant tone, 'Now it's clear that we had to go down to the shelter.'

The Brisker Rav regarded his son for a moment, and then replied, 'You're responsible for this! If you hadn't forced me to go down to the shelter, the shell wouldn't have come into the house and ruined the wall! And which one of you is going to pay for the burnt pillow?!' (See also R' Shimon Yosef Meller, *Uvdos Vehanhagos Levais Brisk*, Vol. 1 p. 12.)" (R' Eliezer Parkoff, *Weekly Chizuk*, Matos: How Do You Feel When the Bombs Start Falling?, and cf. *Live and Learn*, Mikeitz 5764)

On the other hand, R' Hershel Schachter relates an anecdote that implies that the Brisker Rav actually espoused a more conventional view on the need for prudence in wartime:

"I heard that with the outbreak of the (Israeli) War of Independence, R' Yitzchak Zev Halevi Soloveitchik *z"l* intended to abandon Yerushalayim and move to Switzerland due to the danger, and R' Yitzchak Isaac Halevi Herzog approached him and argued with him against abandoning Eretz Yisrael, for we need not be afraid of the war, and he asserted that "We have a mesorah that there will not be a third *churban* in Eretz Yisrael," but the

aforementioned gaon responded to him that "I, too, have a tradition from my father, that when they shoot, one must flee (*az m'shust, antloift min*)."
(Be'ikvei Hatzon *siman* 32 p. 215)

[12]*Lisheilas Hagiyus shel Bnei Hayeshivos*, reproduced here, translated by David Wachsman in *Tradition*, 21.4, Fall 1985, p. 54. (A similar counterargument was made by R' Tzvi Yehudah Kook, cited by R' Neriah Gutel, *Chufshah Livnei Yeshivoseinu O Mitzvas Giyusam*.)

It is crucial to note, however, that in light of a later article by Rav Zevin (published under his own name in 5733/1973 a few months after the Yom Kippur War) titled *Al Tig'u Bimshichai!* (Hapardes, *shanah* 47 *choveress* 8, Iyar 5733, pp. 7-9, reproduced here) in which he vehemently opposed the drafting of yeshiva *talmidim* to the Israeli military, we must assume that if he was indeed the author of the 5708 essay, either he subsequently changed his mind dramatically, or his actual position had always been much more nuanced than some readers of the 5708 essay have understood.

[13]Rav Tza'ir, Rabanan *Lo Tzrichi Netirusa*.

[14]Einyaim Lamishpat *ibid.* os 9 s.v. *Veyeish Ladun*.

[15]Cf. Be'er Yehudah *ibid.* pp. 195-99; Ezra Oshri *ibid.*