

Part II—Battle Over Draft Protection: Should Yeshiva Students Be Conscripted?

Adapted from the writings of Dayan Yitzhak Grossman

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In our previous article, we noted that the Gemara asserts what seem to be three distinct principles exempting *talmidei* chachamim from certain categories of communal obligations. We began to discuss the first of these, the principle that “the Rabbis do not require protection,” and its possible application as a basis for exempting yeshiva students from service in the Israeli military. In this article, we begin by continuing to discuss this principle and its relevance to the question of *giyus bnei* yeshivos (the drafting of yeshiva students), and we subsequently consider the other two principles and their relevance to that question.

Talmidei chachamim who feel the need for temporal protection

Another argument against the applicability of the principle that the Rabbis do not require protection to the question of *giyus bnei* yeshivos emerges from a *teshuvah* of R’ Dovid ibn Zimra (the Radvaz), who rules emphatically that *talmidei* chachamim who demand protection, and thus concede that they require it, cannot then invoke the rule that the Rabbis do not require protection to exempt themselves from contributing toward such protection:

When the king or the city governor orders the placement of hired watchmen in each neighborhood—or orders that the residents themselves go out and keep watch, each one on his night—in such circumstances the *talmidei* chachamim are exempt, for they do not need protection...But in our case, the householders say “We do not need watchmen, because we are poor,” and the scholars are crying out, saying “Place watchmen,” and they themselves concede that they need protection, is it fair or logical for them to compel the householders to place watchmen and not to help them and to compel them?! Such a thing was never said by anyone, and if someone did say so, we do not listen to him, because this would be grossly unfair (*laksah midas hadin*)...

But do not misunderstand my words, for I am only speaking about the case where the householders claim “We do not require protection unless everyone participates,” and the scholars are saying “Appoint watchmen regardless.” In such circumstances I say that they may compel one another.

And even though there is another consideration, for I am uncertain whether there is now anyone who does not require protection,[1] I do not enter into this question now, for my words would upset some scholars, so silence is preferable to speech. Nevertheless, what I have written appears clear to me, without disagreement.

Still, if the matter is clear that the householders, too, require protection, and they only claim that they do not in order that the

scholars should help them, in this case it is clear that if the scholars claim that they do not require protection, or if they are silent, they are not obligated to help. But if they concede that they require protection, and they cry out “Appoint watchmen,” it is clear to me that they are obligated to help, because the admission of a litigant is similar to one hundred witnesses,[2] and they say that they require protection...[3]

The Chazon Ish, however, in his discussion of the rule that the Rabbis do not require protection, suggests that perhaps rabbis may even compel the other inhabitants of the city to exclusively fund their mutual security:

We must consider: Are not even *talmidei* chachamim required to conduct themselves in accordance with the way of the world and not rely upon miracles...? Perhaps in a city that consists entirely of rabbis, they may compel each other to build a wall. But in a city inhabited by ordinary people, and among them are rabbis, we place the responsibility for the wall on the multitudes and we exempt the scholars...The chachamim of the Gemara decided that we should not take from them money for protection, and since, in truth, their Torah protects them, and they are not subject to natural events like other people—because Hashem’s providence is proportional to one’s *midas bitachon*, where a person casts his burden on his Creator, may He be blessed—it is therefore appropriate to exempt a *talmid* chacham from responsibility for protection, and to place the responsibility for the wall on the other inhabitants of the city. According to this, perhaps rabbis may even compel the other inhabitants of the city to build a wall.[4]

The Chazon Ish seems to at least entertain precisely the position that the Radvaz cannot imagine anyone espousing.[5]

R’ Yaakov Rosenthal (a disciple of the Chazon Ish, as well as of the Brisker Rav, R’ Isser Zalman Meltzer, and R’ Yaakov Moshe Charlap) attempts to reconcile their positions by suggesting that the Chazon Ish’s discussion is limited to the case where the ordinary residents of the city desire protection, while in the case of the Radvaz, they did not (due to their poverty), and only the *talmidei* chachamim desired protection.[6]

So according to the simple reading of the Radvaz, if the yeshiva students acknowledge themselves to be in need of the military’s protection, they would be barred from invoking the principle that the Rabbis do not require protection to exempt themselves from serving in it, while the Chazon Ish appears uncertain about this (although he may, of course, have had other grounds of opposition to the drafting of yeshiva students). According to Rav Rosenthal, however, even the Radvaz might allow yeshiva students to invoke the principle that they do not require protection if the general public certainly does desire military protection.[7]

Freedom from the yoke of nations and governments

As mentioned, the Gemara articulates two other bases for exempting *talmidei* chachamim from certain communal obligations. The first of these is

a general privilege of freedom from the yoke of nations and governments:

Rav Nachman bar Rav Chisda once imposed a head tax (*karga*) on the Rabbis as part of a general levy. Rav Nachman bar Yitzchak said to him: You have violated a precept of the Torah, the Nevi'im, and the Ksuvim.

You have violated a precept of the Torah, for it is written: "Even as He loves the peoples, all His holy ones—they are in Your hand." Moshe said before Hakadosh Baruch Hu, "Master of the universe, even at a time when You cherish the peoples, all the holy men of Yisrael will be in Your hand." (Even when you shine Your countenance upon the nations and enable them to subjugate Your children, the holy ones, i.e., the *talmidei* chachamim, will remain under Your protection. Therefore, they do not require human protection and need not contribute toward it.)...[8]

The Rabbis are not people who go out...

The final section of the Gemara's discussion of the exemption of *talmidei* chachamim from various communal obligations sets forth a third basis for such an exemption, that "the Rabbis are not people who go out...":

Rav Yehudah said: We collect from everyone to install doors to enclose the city gates (*le'aglei gapa*), even from orphans, for they also need protection. But the Rabbis do not need human protection, so they are exempt. We collect from everyone for the digging of a well (*lecharya pasya*), even from the Rabbis, for they also require drinking water. But this is stated only when the townspeople do not go out themselves in turns when called to dig the well, but they hire workers to do it; it is then that the Rabbis must contribute. But if they go out in turns when called to dig the well themselves, the Rabbis are not people who go out and perform manual labor when called.

The Rambam explains:

Talmidei chachamim do not go out to engage personally with the entire community in building, digging...and the like, in order that they not be shamed before the ignoramuses.[9]

The Chasam Sofer invokes this rule as providing for the exemption of yeshiva students from the military draft (of nineteenth-century European powers).[10] While he initially applies this to "*bachurim* who study Torah," he subsequently mentions "those who are studying and succeed at leading communities," and so it is not entirely clear whether he would actually assert a blanket exemption for all yeshiva students today. R' Shmuel Wosner (the Sheivet Halevi), however, argues that the exemption does indeed extend to all yeshiva students.[11] Beyond Rav Wosner's brief discussion, I am not aware of much discussion of this rule in the context of the topic of *giyus bnei* yeshivos.

[1]I am unsure of the Radvaz's intent here; see R' Yerucham Erlanger, *Giyus Bnei Yeshivos Bir'i* Hahalacha; Rav Tza'ir, *Rabanan Lo Tzrichi Netirusa*.

[2]Bava Metzia 3b.

[3]Shu"t Radvaz *cheilek 2 siman 752*. Cf. Shu"t Tzitz Eliezer *cheilek 2 siman 25 os 3*.

[4]Chazon Ish Bava Basra *siman 5 os 18*.

Cf. Chashukei Chemed Bava Metzia 108b pp. 493-94; Dr. Yaakov Altman, *Shitas Chazon Ish Bedin 'Talmidei Chachamim Lo Tzrichi Netirusa'*, Hama'ayan, Teiveis 5774 (54:2, #208).

[5]See R' Yoel Manovich, *Rabanan Lo Tzrichi Netirusa*, Kol Beramah 31, pp. 34-35.

[6]Mishnas Yaakov *ibid. os 8*.

[7]For further discussion of the principle that the Rabbis do not require protection and its applicability to the question of *giyus bnei yeshivos*, see: Yeshiva O Tzava *cheilek 3*; R' Moshe Bar-Tzion, *Giyus Lomdei Torah Latzava*;

R' Yair Hoffman: Torah Study and the IDF-A Halachic Overview (another version, and see here); A Response to Rabbi Slifkin.

[8]Bava Basra 8a, and cf. Nedarim 62b.

We have assumed that this rule is distinct from and unrelated to the previous principle that the Rabbis do not require protection. But the language of the Tur and Shulchan Aruch Y.D. 243:2 and the Levush Ateres Zahav *ibid. se'if 2*, suggests that they are actually related; for discussion of this point, see Bach *ibid.*; Mishnas Yaakov, *Hilchos Talmud Torah 6:10 os 5*.

[9]Hilchos Talmud Torah 6:10.

[10]Shu"t Chasam Sofer *cheilek 6 siman 29 s.v. V'al dvar am Bnei Yisrael*.

[11]Sheivet Halevi *ibid. os 16*.