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RANK ORDER: TO HEED OR NOT TO HEED?

A doubt about a flout

Adapted from the writings of Dayan Yitzhak Grossman

Before Thanksgiving, a number of county sheriffs in New York State declared that they would not enforce Governor Andrew Cuomo's rule limiting gatherings in private homes to no more than ten people, arguing that it might even be unconstitutional for them to do so.

In this article, we explore the question of the duty to obey, or to disobey, an order that one considers wrong.

THE WORDS OF THE MASTER AND THE WORDS OF THE STUDENT

Chazal teach that the obligation to obey a king does not extend to orders that conflict with the Torah,¹ such as orders to improperly interrupt Torah study,² carry out an unjust execution,³ or worship idols.⁴

¹ Bemidbar Rabbah 14:6.

² Sanhedrin 49a.

³ Ibid.

⁴ Bemidbar Rabbah 15:14.

The Rambam declares that there is an obligation to obey a royal order "that does not conflict with a commandment of the Torah."⁵ However:

A person who negates a king's command because he was occupied with a mitzvah, even a minor one, is not liable. Whose words should have precedence in case of conflict, the words of the Master or the words of the subject? Needless to say, if a king decrees that a mitzvah should be negated, his words should not be heeded.⁶

R' Chaim Palagi maintains that this applies even with regard to Rabbinic mitzvos.⁷

THE GAZA DISENGAGEMENT

During the controversy over the Israeli Disengagement from Gaza, R' Avraham Shapira, based on this Rambam, ruled that soldiers were

⁵ Sefer Hamitzvos, Asei #173.

⁶ Hilchos Mamrim 3:9.

⁷ Shu"t Lev Chaim cheilek 1 siman, 91 s.v. V'od ani omer

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PARSHAS VAYEISHEV-SHABBOS CHANUKAH

FIRE AWAY

Excerpted and adapted from a shiur by Rav Yosef Jacobovits

The Shulchan Aruch (O.C. 677:1) writes that if a person eats in one house and sleeps in another, he should light Chanukah candles where he sleeps. According to the Rama, he should light in the house in which he eats.

The Mishnah Brurah writes that if one visits a friend for dinner one night but is not sleeping there, he still lights at home, because the Rama is referring to where one has a fixed location for eating and sleeping. In contrast, the Biur Halacha (citing the Pri Chadash) writes that if one goes away for all eight days of Chanukah, he lights where he is staying, even if he occasionally returns home to eat.

Contemporary *poskim* disagree concerning where to light if one goes away for one day (either a weekday or Shabbos). Rav Elyashiv and *Ihbc'l'c* R' Shmuel Kamenetsky hold that he must light where he is staying for the majority of Chanukah (and send a proxy to light there if he is elsewhere). The Chovas Hadar writes that he may light where he is staying that night, which is the commonly accepted custom. (Rav Elyashiv and *Ihbc'l'c* Rav Kamenetsky may agree as well if he is not in the city in which he lives).

Poskim also disagree concerning where to light on *motza'ei Shabbos* if one was

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In the Light of Day

Q I am in a facility where I will be unable to light Chanukah lights and unlikely to see any. May I make the *bracha* of *shehecheyanu* on the holiday?

A The Gemara (Shabbos 23a) states that one who sees Chanukah lights burning on the first night of Chanukah but is not lighting his own (e.g., he is traveling and unable to light) still recites the *brachos* of *she'asah nisim* and *shehecheyanu* (but not the first *bracha*, *I'hadlik ner shel Chanukah*).

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absolutely obligated to disobey orders that (in his view) violated halacha, such as giving land in *Eretz Yisrael* to non-Jews (*lo sechaneim*); destroying holy articles such as sifrei Torah, tefillin, and mezuzos or shuls or *batei midrash* (*lo sa'asun kein Lashem Elokeichem*); or damaging property (*dina d'malchusa* does not apply, because this is *chamsanusa d'malka* (governmental theft)).⁸

R' Aharon Lichtenstein rejects the application of the Rambam's principle to the Gaza Disengagement: "Selective refusal of orders is impossible," and allowing soldiers to refuse orders that they consider wrong will result in "a divided and disjointed army," with clear damage to "the unity and cohesion of the army and to the readiness for mutual dedication and sacrifice." From a "long-range perspective," this qualifies as *pikuach nefesh*—"a concern about the loss of human lives and the weakening of the state and its army." On the other hand, some experts maintain

that there is a reasonable chance that [the Disengagement] will save human lives—again, in the long run, and/or that it will preserve the Jewish demographic character of the state. There is no certainty about this, but in the opinion of many competent judges, there is also no certainty of the opposite either.⁹

Rav Lichtenstein elaborates that even insofar as both courses of action may involve danger, it is imperative to recognize "the government's authority to decide matters, to choose among alternatives, and to assess the state of the country, its opportunities and risks." The principle that "it is better to do nothing (*sheiv v'al ta'aseh adif*)" should not be blindly applied regardless of the inequality of the probabilities of the various outcomes, and deference should be given to the decisions of state institutions on the matter.¹⁰

R' Avraham Yisrael Sylvetsky defended and explained the position of Rav Shapira (his wife's grandfather). One of his key arguments is that "there is no question that speculative fears and uncertainties based upon . . . assessments

that are subject to dispute, do not constitute grounds to permit definite and immediate Torah prohibitions."¹¹ He points out that even Rav Lichtenstein would surely not instruct a soldier to obey an order "to violate a clear-cut Torah prohibition for no [legitimate, immediate] need, e.g., to desecrate the Sabbath or eat nonkosher food . . . out of concern for the strength of the army."¹² Rav Lichtenstein, however, dismisses out of hand the analogy

regarding the harm to the robustness of the army and the state, between refusing a totally arbitrary, unnecessary, and perhaps even patently immoral order and refusing an order that is presented by its proponents, and also understood by a large portion of the public, as motivated by security considerations, which, if their view corresponds to reality, will save many lives.¹³

PUBLIC-HEALTH REGULATIONS

While the case of regulations intended to safeguard public health during a pandemic but that may violate individual rights is very different from the Disengagement controversy, there is nevertheless a strong parallel: Following Rav Shapira, one could argue that a law enforcement official should not commit a clear violation of a Constitutional right even when ordered to do so, and he has no duty to submit to the government's judgment that the public health benefits are significant enough to justify such a violation insofar as the concerns are (in his view) speculative, controversial, and politicized. Following Rav Lichtenstein, however, who insisted that

When the root of the argument is more factual than normative, it is inconceivable for every soldier or every officer, as long as he is in uniform and serving the country, to make decisions for himself and usurp—he or his rabbi—the chief of staff, foreign minister, defense minister and prime minister.¹⁴

one could possibly argue that law enforcement officials must defer to the governor's executive order in our situation as well.

⁸ A Rabbinic Exchange on the Gaza Disengagement, Tradition, Spring 2007 Issue 40.1 pp. 18-20.

⁹ Ibid. pp. 20-23. Rav Lichtenstein also raised a couple of specific challenges to Rav Shapira's claims regarding the prohibitions of *lo sechaneim* and *lo sa'asun* (with respect to shuls).

¹⁰ Ibid. p. 42.

¹¹ A Rabbinic Exchange p. 28.

¹² A Rabbinic Exchange on the Gaza Disengagement, Part Two, Tradition, Summer 2007, Issue 40.2 p. 53.

¹³ Ibid. p. 67.

¹⁴ Haaretz

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away for Shabbos (and is returning home afterward). According to R' Shmuel

Kamenetsky, he may light before he leaves, since this is an extension of Shabbos. According to R' Shlomo Zalman Auerbach, he may light there if he stays for at least half an hour after Shabbos, while the Chovas Hadar says he

must stay a few hours. R' Yaakov Forchheimer suggests leaving a large sign on one's door reminding himself to light, and lighting when he returns home (which also would permit eating beforehand).



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It seems from the Gemara that the *bracha* of *shehecheyanu* (and that of *she'asah nisim*) is recited on Chanukah only upon seeing Chanukah lights, but not if one did not see any or light any of his own. But this is puzzling, because it is evident in the Gemara in Eiruvin (40a) that *shehecheyanu* on Yom Tov can be recited with no concomitant mitzvah.



DAYAN YOSEF GREENWALD

Indeed, the Me'iri (Shabbos 23a) says that someone in your position on Chanukah would make the *shehecheyanu*. Strangely, though, he says elsewhere (Megillah 4a) that if one is unable to read the megillah on Purim he does *not* recite *shehecheyanu*.

The Sheivet HaLevi (3:90) resolves this contradiction by distinguishing between Biblical and Rabbinic holidays: The *kedushah* of the latter is not sufficient to warrant *shehecheyanu* without a mitzvah, so on Purim, the *bracha* must accompany one of the day's mitzvos. But on Chanukah, because *Chazal* say that passive participation in the mitzvah of *ner Chanukah* by viewing the *neiros* suffices for *shehecheyanu*, the Me'iri maintains that one can mentally participate even with no lights at all.

With regard to practical halacha, the Mishnah Brurah (692:1, and see Biur Halacha ibid.) cites the Mor Uketziah that logically, there is no difference between *d'Rabanan* and *d'Oraisa* holidays, so *shehecheyanu* requires no mitzvah on either Chanukah or Purim. But R' Moshe Feinstein (O.C. 5:20) says that the *kedushah* of a Yom Tov *d'Oraisa* is stronger than that of a Yom Tov *d'Rabanan* with respect to *shehecheyanu*, such that on Chanukah and Purim a mitzvah is required, and someone in your situation would not make *shehecheyanu*.

May your situation soon change so as to render the question moot.

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