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CODE OF ARMS: WEAPONS IN HALACHA

Adapted from the writings of Dayan Yitzhak Grossman

Shmuel Silverberg, a nineteen-year-old yeshiva student, was fatally shot last week in front of Yeshiva Toras Chaim in Denver, in the culmination of a crime spree that included two carjackings and another shooting that left a victim critically injured.¹ There have been a number of high-profile murders of Jews in the United States in recent years, including Pittsburgh, Poway, and Jersey City, as well as numerous acts of non-lethal assault and vandalism.² This author has heard that some Orthodox Jews have begun carrying firearms for protection. In this article, we explore various Torah perspectives on the bearing of arms for self-defense.

WEAPONS: REPREHENSIBLE OR ORNAMENTAL?

The *Mishnah* records a dispute about whether one who bears arms in a public domain on Shabbos is liable to bring a sin offering. R' Eliezer maintains that the weapons are ornaments for him, so the bearer is not liable,³ while the other sages maintain that he is liable, because:

[Weapons] are nothing other than reprehensible, as it is written: "And they shall beat their swords into plowshares and their spears into pruning hooks; nation will not raise sword against nation, neither will they learn war anymore."⁴

In a *braisa* cited by the Gemara, R' Eliezer defends his position by explaining that although weapons are currently ornamental, they will nevertheless be eliminated in the Messianic era

(continued on page 2)

³ Me'iri implies that R' Eliezer nevertheless prohibits bearing them *lechatchilah*, and this is the explicit position of Magein Avraham *siman* 301 s.k. 27. Melech Shlomo is uncertain about this. R' Prachiah ben Nissim interprets R' Eliezer to permit bearing arms even *lechatchilah*, but he understands that the *Mishnah* actually records two different dissenting views: one that merely forbids the practice, and one that maintains that it engenders sin-offering liability. Cf. *Machatzis Hashekel* *ibid.*; R' David Lau, *Tilul Kli Neshek* BeShabbos.

⁴ Shabbos 6:4.

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PARSHAS KI SAVO

MONEY ORDER

Excerpted and adapted from a shiur by
Rav Yaakov Meir Levi

When you have finished giving all the tithes of your produce in the third year, the year of the tithe, you shall give [them] to the levi, the stranger, the orphan, and the widow, so that they may eat in your cities and be satisfied.

Devarim 26:12

Chazal derive from this mitzvah of *ma'aser ani* and other *psukim* that everyone is obligated in the mitzvah of *tzedakah*. Although the absolute minimum one must give is a third of a shekel per year, he must give a sum commensurate with his earnings. If he does not have sufficient money for his own household, it takes precedence over others.

There is a halachic hierarchy among *tzedakah* recipients. For example, relatives take precedence over others. If similar-degree relatives are in need of financial assistance, such as a brother and sister, women are usually given precedence, because it is more embarrassing for a woman to collect door-to-door than for a man.

(continued on page 2)

Service Elevator

Q Our daughter is engaged, and her *chassan* is coming this Shabbos for the meals. May she serve him his food?

A Until they marry, the *chassan* and *kallah* are *arayos* to one another just like strangers, so the halachos of *arayos* apply. The Bais Shmuel (E.H. 21:9) explains the Rama to hold that a woman that is an *ervah* to a man may not place his food directly in front of him, and vice versa. The Eretz Tzvi, cited by Otzar

(continued on page 2)

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(continued from page 1)

because they will become unnecessary, and they will thus no longer have even an ornamental function, just as “a candle in the afternoon” does not.

The Gemara proceeds with an alternative explanation of R' Eliezer's view: He maintains that even in the Messianic era, weapons will not be eliminated, in line with the opinion of Shmuel that “the only difference between this world and the Messianic era is subjugation of the governments,” i.e., society will not change, and wars will continue to be waged.

The Gemara concludes its discussion by adducing a source for R' Eliezer's position that weapons are considered ornaments from a *pasuk* in Tehillim: “Gird your sword upon your thigh, mighty one, your glory and your splendor.”⁵⁶

We have, then, a fundamental dispute regarding the Torah's attitude toward weapons: R' Eliezer considers them ornaments, at least in the non-Messianic world, but the other sages consider them reprehensible, a necessary evil, and thus presumably something to avoid unless absolutely necessary.

According to R' Avraham Yitzchak Hakohen Kook, R' Eliezer's position is that even in our non-Messianic world, the purpose of weapons is not to spill blood, but on the contrary, to maintain peace via deterrence and a balance of power, which are necessary in our era, in which international “opposition” (*nigud*) is essential and productive for social development. This positive function of weapons is what makes them considered ornaments.⁷

MUKTZEH

Although the halacha does not follow the view of R' Eliezer,⁸ Rav Kook's perspective that a weapon's primary function is deterrence rather than shooting arises in a different context: the *muktzeh* status of firearms. Some *poskim* maintain that a firearm is

muktzeh as a *kli shemelachto le'issur* (a utensil whose function is prohibited on Shabbos), because its primary function is to be fired,⁹ but the Shmiras Shabbos Kehilchasah quotes R' Shlomo Zalman Auerbach as stating that:

It seems that [carrying] a rifle or pistol in order to cause fear is actually considered *tzorech gufo* (handling an item for the purpose of making use of it, which is permitted for a *kli shemelachto le'issur*) (and it seems that not during wartime, most of their utilization is merely to intimidate).¹⁰

Rav Auerbach seems to be saying that a firearm is actually a *kli shemelachto le'heteir*, because outside of wartime, its primary function is deterrence rather than shooting.

Similarly, the Klausenberger Rebbe initially assumes that a firearm is a *kli shemelachto le'issur*¹¹ and cites various *Acharonim* who so categorize weapons like swords,¹² but he ultimately concludes that “in our times, when most of those who bear arms do so only to impose fear, and on the contrary are prohibited from using them,” a weapon may be characterized as a *kli shemelachto le'issur uleheteir*, which has the same status as a *kli shemelachto le'heteir*.¹³

HOTZA'AH

Returning to the Gemara's question of carrying weapons on Shabbos, the Or Zarua rules that when there is fear and rumor of impending enemy attack, it is permitted to carry weapons “to guard and to make a commotion in the city” in order to forestall the attack, because “we are not meticulous regarding *pikuach nefesh*.”¹⁴ It is difficult to establish, however, how substantial the danger must be in order to qualify as *pikuach nefesh*.

Over the past century, many *poskim* have considered the permissibility of carrying weapons on Shabbos, in various circumstances of ne-

9 See R' Gil Student, *Guns on Shabbos*, Hirkurim-Musings.

10 Shmiras Shabbos Kehilchasah (new edition) Ch. 20 n. 29 p. 298.

11 Shu"t Divrei Yatziv O.C. *cheilek* 1 *siman* 148 os 1.

12 Shu"t Zera Emes *cheilek* 3 *siman* 24 sv. Tshuvah; Mishneh Lechem (Emden, second edition of Lechem Mishneh) Shabbos ibid.

13 Divrei Yatziv ibid. end of os 4.

14 Or Zarua ibid. This ruling is codified by the Rama in O.C. 329:6.

5 Tehillim 45:4.
6 Shabbos 63a. See Shu"t Igros Moshe O.C. *cheilek* 4 *siman* 81.
7 Ein Ayah ibid.
8 Rambam *Hilchos Shabbos* 19:1; Or Zarua *Hilchos Shabbos siman* 94 os 13; Tur O.C. *siman* 301.

(continued from page 1)



Precedence also depends upon the need. If two similar relatives require tzedakah, but one needs food and the other clothing, food takes precedence. But relatives take precedence over

others even if the non-relative needs food and the relative only clothing.

Aniyei ircha, the poor of one's own city, come before outsiders. (One who has lived in a city for at least twelve months is considered a local for this purpose.) The poor of Eretz Yisrael take precedence over other outsiders, but not over *aniyei ircha*. And the

(continued from page 1)

Haposkim (ibid.), understands the Rama differently and permits it. The *poskim* appear to side with the Bais Shmuel.



DAYAN YEHOASHUA GRUNWALD

How then, you may wonder, may a housewife serve any guest? Numerous answers are offered. One, cited by the Eizer Mikodesh, is that this prohibition, like *yichud*, is inapplicable when others are present. Others say that the primary basis to permit this practice is the argument of the Aruch Hashulchan that since the housewife is obligated to serve her guests, the activity is like *avdus* and will not lead to *aveirah*. (Notably, the Aruch Hashulchan also permits it in the case of *ishto nidah* for the same reason, but common custom doesn't follow that ruling.) Another view cited by the Eizer Mikodesh is that it is in fact permitted only when the guest's wife is with him, just as the *issur yichud* doesn't apply under those circumstances.

In your case, the *kallah* would not be serving her *chassan* simply because he is a guest in the home, and the *chassan* doesn't yet have a wife, so only the first view would permit her to serve him. Additionally, the Eizer Mikodesh writes that even when a *heteir* is applicable, it is probably still a *midas chassidus* to serve the food with a *shinui*, such as not placing it directly in front of him or using one's left hand. (See also Chut Shani Shabbos Vol. 3 pg. 276 and Om Ani Chomah Vol. 1 p. 109.)

cessity and danger;¹⁵ analysis of their rulings and the numerous halachic questions involved is beyond the scope of this article.

15 Shu"t Zeicher Simcha (Bamberger) *siman* 35; Shu"t Chelkas Yaakov O.C. *siman* 96; Divrei Yatziv ibid.; R' Avraham Avidan, Tiltul Dvarim Chiyuni'im Lelo Eiruv, *Techumin* Vol. 4 from p. 227; R' Re'em Hakohen, Tiltul Batzava, ibid. from p. 234 (the latter two sources are cited by Rav Lau in n. 20 of his article); Rav Lau ibid.; R' Chaim Eisenstein, *Halacha from the Daily Daf*; Shabbos 63—Can a soldier carry his gun on Shabbos even when there is no danger?

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