

# The Unfounded Fears of General Harkabi: *Halacha* and the State of Israel

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The impression has unfortunately been created in America that the main force behind the movement in Israel not to negotiate with the Palestinians, or to return even an inch of territory for peace has been Orthodox Judaism and the religious parties. In fact, in the leadership of Israel's political "right", one finds many men such as Yitzhak Shamir and Ariel Sharon, who are unmistakably secularist and the strongest advocates of the "no compromise" positions.

Yet it has become the sport of leftists everywhere to blame the faith — Judaism itself — for the rise to prominence of the views and programs of the Israeli "right" wing. That many rabbis are "dovish", and that almost all rabbis, both on the left and right, are political moderates committed to the current system, appears to be inconsequential. The religious tradition of Judaism is demeaned only because of the few religious extremists who are militant and often benighted, and by those secularists who misrepresent them as typical of Orthodoxy as a whole.

One striking example of this genre of attacking Jewish Law, *halacha*, rather than Jews, is found in General Yehoshafat Harkabi's recent book, *Israel's Fateful Hour*. (Harper and Row). He wrote, "I adore Judaism and worry that it may suffer a grave setback. It is a nightmare to contemplate that the Jewish religion that has hitherto bolstered Jewish existence may become detrimental to it."

He argues that one of the most significant factors in the rise of the "political right" in Israel has been the bias of *halacha* toward dictatorship, theocracy, and xenophobia. Furthermore, he states that by focusing on messianic deliverance as a solution to Israel's political problems, the religious parties are forcing Israel to adopt political strategies that are not in its own best interest based on the belief that the soon to be expected arrival of the Messiah will solve all problems.

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Harkabi admits that he is no scholar of Judaism and "would not presume to offer a new interpretation of Jewish attitudes on various topics." Despite this admission, Harkabi maintains that *halacha* is unable to deal adequately with the realities of a modern Jewish State. However, Harkabi's fears as to the future of Israel are based on a mistaken conception of the present state of Jewish Law. In addition, He is unaware of the enormous literature produced by Jewish scholars, Chief Rabbis, religious judges, professors of law and political science, and even heads of very influential yeshivot on the exceedingly complicated issues relating to the modern State of Israel.

The issues addressed by these scholars encompass an enormous range of practical problems, from running a modern army to operating Sabbath-observing manufacturing plants. Included as well in the literature are decisions on ethics and political morality — an area Harkabi thinks *halacha* is unaware of. These issues have been dealt with extensively in the various *halachic* journals with many diverse practical solutions to the problems confronting the government of Israel.<sup>1</sup> Far from being unable to cope with modernity, *halacha* has proven that this ancient venerated legal system can, without any intellectual compromise, deal with both modern technology and political reality.

Specifically, the General delineates five areas which he views as critically important to the future of Israel, and with regard to which he feels *halacha* is deficient. These areas encompass the relationships between Jews and Muslims, both in and outside of Israel; the status of idolaters in *halacha*; the religious obligation not to withdraw from any part of the territories west of the

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1. For a survey of the scope of the literature produced on these topics one need only consult the current issues of *Techumin*, a journal dedicated to these topics, or the back issues of *Hatorah veHaMedinah*, a rabbinic journal from the 1940's and 50's on these topics. Rabbi Eliezer Waldenberg, among the most eminent of living decisors, has a three volume treatise devoted solely to these issues also entitled *Hatorah veHaMedinah*.

Jordan; the impact of Messianism on Jewish life; and Zionism and Judaism. The General concludes that the *halachic* position in these five areas is unacceptable to the State of Israel and urges either the radical revision or abandonment.<sup>2</sup> of *halacha* as a source of guidance.

In fact, upon closer analysis, these five issues fall into two categories, both classic libels against Jewish Law and the Jewish people. The first is that *halacha* so strongly discriminates against non-Jews that it cannot be used as a basis for a national or, for that matter, moral political philosophy. The second allegation is that *halacha* is so abstract and theocentric that serious political planning cannot be done by its adherents since these adherents are convinced that divine salvation shall soon arrive and solve all problems. Neither allegation is new, or has ever been, true — although both are oft-repeated misrepresentations. Since the General has addressed these specific issues, we shall briefly survey *halacha* on the same issues if only to illustrate *halacha's* applicability to the modern world.

First and foremost among those decisors who grappled with the problems of non-Jews residing in Israel was Chief Rabbi Isaac HaLevi Herzog, one of the most brilliant *halachic* scholars and decisors of this century. He stated that none of the biblical commands given millennia ago in connection with the conquest of Canaan applies to the modern State of Israel. Rabbi Herzog, after analyzing the various possibilities according to the opinions of the ancient and medieval codifiers of Jewish Law, and unencumbered by any practical considerations, concludes that there is no prohibition with regard to Muslims residing in the land of Israel, and that only the status of Christians as residents in Israel was ever the subject of debate.

The dispute as to the status of Christianity is undoubtedly due to the presence of the belief in trinitarianism in Christian dogma, in contrast to the strict monotheism found in Judaism and Islam. Herzog also concludes that Jewish Law does not require the Israeli government to exclude Christians from residing in Israel. He then adds a final warning to those who may disagree with his *halachic* analysis, which he admits can be validly disagreed with. Herzog states:

We were given power by the nations of the world [United Nations] to establish the State of Israel as a Jewish State, but only on condition that we tolerate members of other faiths, even if they are idol worshipers; and that they be allowed to reside in our land and build their houses of worship. . . . What are we to do? Should we tell the world "We cannot accept this condition, as our holy law prohibits a Jewish government from granting residency to Christians and even more so idol worshipers?" Should we add on to this that it is prohibited for idol worshipers to build houses of worship and alienate

2. Unlike either our Conservative or Reform brethren, we deny, as do all Orthodox adherents, that *halacha* can be revised in the manner advocated by Harkabi. Change in *halacha*, if possible at all, cannot be done through either "revision" or the threat of abandonment.

land? *It appears to me that one will not find a Rabbi in Israel with a brain in his head, and any common sense who thinks we should answer that way, that such is our obligation under the halacha. Even if arguendo the State [of Israel] could only be established on the condition that it sin in order to exist, I would say that the sin is permitted because of the danger to the people of Israel.*

Herzog's position on the suspension of *halacha* in circumstances involving danger is certainly the normative one in Jewish Law.<sup>3</sup> If, for the survival of the state, certain aspects of Jewish Law must not be enforced, that is permissible. Like American Law, which recognizes the partial suspension of law in times of emergency, *halacha* accepts that the loss of human life, or the security of the State of Israel, can lead to the temporary suspension of normative *halacha*.

With respect to the sale of real estate in Israel to Muslims, permission was granted centuries ago on the basis of the ruling that Muslims were not pagans. Chief Rabbi Herzog has specifically stated that the accepted position in *halacha* is that Muslims are unquestionably permitted to reside in Israel with no discrimination against them. Indeed, he permits them to reside in Jerusalem, as well. The status of Christians, he rules, was in doubt and, hence, the government need not prohibit the sale because there is a reasonable doubt. He also permits, but does not encourage, the permanent alienation of land owned by Jews to Muslims even when the land is to be used for a non-Jewish house of worship.

There are in fact many authorities who disagree with Herzog and prohibit the permanent sale of land to Christians (but permit such sales to Muslims), and yet other decisors who prohibit the permanent sale of land to any non-Jew, Muslims or Christians.<sup>4</sup> Whatever the precise formulation of the prohibition in Jewish Law, at least to the extent these rules endanger the lives of Israeli citizens, the prohibitions are suspended, since, as Herzog notes, the danger to the State can obviate the obligation to enforce *halacha*.

As to the exchange of land for peace with Israel's neighbors, the debate among rabbis generally is identical with that which is found among Israelis generally, to wit: will the exchange secure or endanger peace? The overwhelming majority of *halachic* scholars, including those in Israel and in the diaspora, agree that the sanctity of life is a higher value than the inviolability of land ownership. Nobody opposes the transfer of land for peace as a matter of principle; some rabbis, like some politicians, fear that land will be traded for war instead.

Thus, for example Rabbi J. David Bleich, *Rosh Yeshiva*

3. See for example, Rav Ovadiah Yosef, *Oz LeShalom* 3:1980; Harkabi himself acknowledges these statements, see p. 156-160 of his book.

4. For a complete discussion of this topic, see Rabbi J. David Bleich, *Contemporary Halakhic Problems* 2:212-221 (Katav; New York; 1977). As will be shown further in the article, the weight of rabbinic authority is that Jews are under no religious obligation to retain all, or any part, of the land of Israel if such retention will involve a loss of life.

and Professor of Law at Yeshiva University, states without any hesitation:

The central thesis of my article is that it is halachically legitimate to barter "land for peace" if doing so will preserve the lives of the inhabitants of Israel. . . . I believe this view is shared by the majority of authoritative halachic decisors.

No other position is tenable. Land may be returned if peace is arranged and insured in return. The precise balance between how much land for what level of security remains a political decision which all Israelis — those who have to face the military consequences of the wrong decision — must decide. It is not a purely *halachic* decision.

**C**ertainly there are *halachic* authorities in Israel today who argue that the balance of interests commands that Israel not give back even an inch of sacred soil. This group argues on obvious *halachic* ground: they state that the land belongs to the Jewish people, was given to us by God and God ordered us to occupy it and to hold it — even at risk of our lives. The Jews were commanded to engage in war for that purpose, and war naturally entails the loss of some life. Using this line of argument, the current Chief Rabbi, Yitzhak Nissim, and Rabbi Tzvi Yehuda Kook, the son of the late Chief Rabbi, unequivocally oppose the return of any part of the land for political purposes.

Even these authorities, however, would concede that a balance between ownership of soil and sanctity of life must exist: they argue only where the balance should exist and how many casualties are "acceptable" in order to fulfill the *halachic* obligation to occupy Israel. As stated by Rabbi Joseph B. Soloveitchik, the issue is whether the sanctity of life is so great that the Jewish people residing in Israel can buy peace or even just non-war by relinquishing soil. Such a balance must be permissible according to Jewish Law.<sup>5</sup>

With respect to the relationship between Israeli and diaspora Jews with non-Jews generally, it is clear that the scope of the prohibitions found in Jewish Law is designed to prevent assimilation and intermarriage, but not to mistreat non-Jews. Thus, for example, Jewish Law does limit the foods and wines prepared by non-Jews that Jews may consume, and excludes them from most ritual events. On the other hand, in areas of general morals, Jewish Law prohibits stealing from non-Jews, injuring non-Jews, bribing non-Jews, and all other conduct designed to undermine good relations with our neighbors.

Jewish Law also compels general observance of secular financial law, to the point of even compelling, in

5. See Emanuel Rackman, "Violence and the Value of Life: The Halachic View" in *Violence and Defense in the Jewish Experience*, ed. Salo W. Baron & George S. Wise, (Philadelphia; J.P.S.: 1977) p. 138.

many circumstances, the return of lost property to its non-Jewish owner — even if a non-Jew would not do the same to a Jew's lost property. It seems to us that Harkabi has it backwards: Jewish Law mandates an ethically higher level of treatment of our non-Jewish neighbors than secular law historically granted to Jews. Unfair treatment of non-Jews was a desecration of God's name, among the most serious offenses in the eyes of *halacha*, Jewish Law has nothing to be ashamed of in its treatment of non-Jews.

Harkabi states that Rabbi Yisrael Hess, the chaplain at Bar-Ilan University, has identified the Arabs as the successors to the Amalekites in antiquity<sup>6</sup> and that this is yet another example of religious extremism to the detriment of Israel. Rabbi Hess' opinion contradicts virtually every opinion ever voiced on this topic as well as explicit statements in the Talmud that the descendants of the Amalekites are presently beyond recognition and, therefore, the command to destroy them is inoperable.

This type of overemphasis of single opinions by Harkabi is what makes his book so unreliable — the lunatic fringe in all areas of Israeli life is overemphasized and no distinction is made between it and mainstream Jewish thought. Any values Harkabi does not favor, be they rational or not, are all placed in the same category as the eccentric fringe. In Harkabi's universe of ideas there are only two groupings — the correct one (the ones he advocates) and the fanatical immoral one (those he disagrees with). He has no room for plausible ideas that he merely disagrees with.

*Halacha* is inevitably placed in the latter department; in order to do this Harkabi is forced to frequently quote from such "authorities" on Jewish Law as Rabbi Meir Kahane (quoted more than 20 times), Rabbi Shlomo Aviner (6 times), Rabbi Yisrael Hess (4 times), Rabbi S.D. Wolpe (5 times) and other extremist fringe actors on the rabbinic horizon. His use of the classical sources is weak — Maimonides, the classic authority on many of these topics, is quoted less than half as many times as Rabbi Kahane — and of current accepted rabbinic decisors virtually non-existent.<sup>7</sup>

In regard to all of these issues Harkabi quotes opinions which he probably does not realize are not representative of the views of the accepted authorities in Israel and abroad. He need not, therefore, be concerned

6. Harkabi, pp. 140-150

7. The few times Harkabi does quote modern rabbinic decisors, the authenticity of the quote are questionable as they always come from the popular press, a notoriously unreliable source in Israel, rather than these decisors' rabbinic works. For example on page 149 of his work, Harkabi quotes a statement attributed to Rav Eliezer Waldenberg that it is forbidden for non-Jews to reside in Jerusalem. The source he gives is not a work by Rav Waldenberg, but a newspaper article. A survey of the works of Waldenberg would lead one to doubt the reliability of the quote, as in his responsa Waldenberg states a contrary position; see Rav Eliezer Waldenberg, *Tzitz Eliezer*, 16:49.

that Jewish religion is presently a threat to Israel's security or moral fiber.

What is more problematic, however, than Harkabi's ignorance of the present status of *halacha* on vital concerns to the Jewish State, is his mistreatment of the relationship between Judaism, Zionism, and Messianism. There are many Jews in Israel and abroad who daily await the arrival of the Messiah — including both of the authors of this article. There are yet many more who pray at least daily for that to happen. Indeed, modern-day Israel would not now exist were it not for such people who kept the faith for almost 2000 years. Today, many see in the re-establishment of the State the beginning of the ultimate redemption and there are even some *Kohanim* (priests) who are preparing to resume their duties in a reconstructed Temple.

Notwithstanding all this, Harkabi is naive when he suggests that these beliefs and hopes are influencing even a tiny percentage of Orthodox Jews in Israel with regard to their political programs or behavior. Even a casual survey of the popular press indicates no one is criticizing the "religious" parties in Israel for their political naïveté and lack of planning for the exigencies of the modern world — if anything the criticisms have been in the opposite direction. It is quite clear that the religious parties have not taken a position on the key foreign policy questions which Harkabi attacks them for.

Not one religious party has made Israel's retention of Judea and Samaria a part of its political platform, nor are there any religious parties currently in parliament who advocate the expulsion or oppression of the Arabs in the Israel. This is not a religious issue, and it has not been the historical goal of the religious parties to make it one.

In addition, a dual standard is applied to the religious parties. When they are overtly political and behave like all other elected parties in Israel, people claim they are too worldly and that such conduct is not in the spirit of the religion or appropriate for a rabbi. On the other hand, when the religious parties attempt to stake out the moral high ground, others, like Harkabi, shrug them off as messianic, and naive. To many people, the religious parties simply cannot behave properly.

The reliance on divine intervention, or the arrival of the Messiah, that Harkabi thinks is the bases of planning by religious Jews is not permitted in Jewish Law. A basic principle of Jewish Law is that Jews are masters of their own fate, and that reliance on divine intervention is inappropriate and *halachically* prohibited. *halachic* decisors resist the invocation of any divine interference even in disputes relating to Jewish Law and certainly not

in factual disputes subject to empirical or historical resolution.<sup>8</sup>

Nachmanides, though the Kabbalist par excellence, states that reliance on the arrival of the Messiah to avoid problem-solving is a clear violation of the Talmudic dictum that one may not rely on a miracle to solve one's problems.<sup>9</sup> Rather, Judaism encourages and even mandates self-help in the face of adverse conditions. Those who resort to divine intervention as a substitute for pragmatic thinking are undoubtedly erring to Israel's detriment. Such an attitude is uncommon among the various parties, religious or otherwise, in the Knesset.

On the other hand, Harkabi appears to dismiss all political solutions not in harmony with his own as religious fanaticism, and seeks to scapegoat the religious for Israel's current political problems. In truth, a broad spectrum of solutions are tenable without the faith in God's deliverance of the Jewish people. Just as Harkabi's solution can be supported on the merits, so too can many of the other proposed solutions to Israel's vexing political problems. It is Harkabi, in his zealous advocacy of one position, that is excluding as fanatical all conclusions which differ from his own.

**I**n summary, Harkabi is blaming religious extremism for Israel's problems whereas in reality it is but a peripheral feature of the more complex world of Israeli government — a world where all political parties are democratically elected in proportion to the vote they received, and where diverse solutions to many problems are constantly proposed. Religious law, like secular law, has unquestionably been abused on rare occasions by some of its less sincere or rationale adherents. Harkabi greatly magnifies the strength of these positions so as to diminish the value of the religious tradition which is, and must be, part of Israel's future. By quoting obscure rabbis, and not quoting venerated ones, he misstates the position of rabbinic Judaism on both the return of Judea and Samaria and Israel's political future generally.

We, on the other hand, feel that it is precisely the Orthodox religious tradition — criticized as it is by Harkabi — that has been the key to the survival of the Jewish people throughout history. Whatever failures there are in the use of Jewish law, and we think they are far less numerous than presented by Harkabi, they remain only a failure in use and not an intrinsic failure in religious law itself. Like all systems of law, Jewish Law, even in the hands of well intentioned people, can sometimes lead to errors of judgment. The system itself cannot, and should not, be faulted — and it certainly should not be destroyed as Harkabi aims to do. ■

8. See generally *Encyclopedia Talmudit*, 5:1 (*Ba'at kol* for the scope of the prohibition of relying on divine intervention).

9. See "VeKuach HaRamban", republished in *Collected Writings of Nachmanides*, Chavel, ed., 1:310; *Sefer HaGeula*, Id. 2:279-280.