

HALACHIC AND HASHKAFIC ISSUES IN CONTEMPORARY SOCIETY

SERIES 2: 85 - ARMY EXEMPTIONS FOR YESHIVA STUDENTS: PART 2 OU ISRAEL CENTER - WINTER 2024

- In Part 1 we began to look at some of the halachic and hashkafic issues surrounding the draft of Torah scholars into the Israeli army¹.
- We examined the halachic definition of a Milchemet Mitzva and whether the broad conscription for such a war, which includes event chatan and kalla being taken from their chupa, also includes Torah scholars.
- We also quoted extensively from Rav Aharon Lichtenstein concerning the mitzva and opportunity in combining Torah learning and military service².
- In this shiur we will look at a central halachic/hashkafic issue which is quoted as justification for the army exemption of Torah scholars. We will also examine a number of Aggadic sources which are also frequently cited by those who support the exemption.

A] THE MODEL OF THE TRIBE OF LEVI

- Of the tribes of Israel, Levi received special treatment due to their refusal to participate in the Sin of the Golden Calf. They were chosen to be a tribe³ dedicated to spiritual matters, without the responsibilities of working the land and earning a living.
- Instead, they were supported financial by the rest of the people through the gift of Ma'aser Rishon - 10% of all produce.
- Although this arrangement was effectively ended at the first exile to Bavel and the entitlement to Ma'aser Rishon annulled by Ezra on the return to Zion, the model of a 'spiritual' tribe supported by the rest of the nation remains.

1. ויהיו כל-הפקדים שש-מאות אלף ושלשת אלפים וחמש מאות וחמשים: והלויים למטה אבתם לא התפקדו בתוכם: וידבר ה' אל-משה לאמר: אך את-מטה לוי לא תפקד ואת-ראשם לא תשא בתוך בני ישראל.

במדבר א-מו-ט

The Torah stresses that the Levi'im were not counted⁴ together with the rest of the Jewish people.

2. והלויים למטה אבותם לא התפקדו בתוכם - כמו שמפרש וכולך אך את מטה לוי לא תפקד וגוי. ומפרש טעם - כי לא ילכו בצבא המלחמה חלא כפקד את הלויים על משכן בעדות וגוי.

רשב"ם במדבר א-מו

The Rashbam explains that the exclusion of the Levi'im from the main count indicates that they will NOT go to war with the rest of the people but must work in the Mishkan.

3. יב ולמה לא זכה לוי בנחלת ארץ ישראל ובבגדתה עם אחיו? מפני שהבדל לעבד את ה' לשרתו ולהורות דרכיו הנשרים ומשפטי הצדיקים לרבים שנאמר (דברים לג:י) יורו משפטיך ליעקב ותורתך לישראל. לפיכך הבדלו מדרכי העולם לא עורכין מלחמה כשאר ישראל ולא נוהלין ולא זוכין לעצמן בכח גופן. אלא הם חיל השם שנאמר (דברים לג:יא) ברך ה' חילו. והוא ברך הוא זכה להם שנאמר (במדבר יח:כ) אני חלקך ונחלתך.

יג ולא שבט לוי בלבד. אלא כל איש ואיש מכל באי העולם אשר נדבה רוחו אותו, והבינו מדעו להבדל לעמד לפני ה' לשרתו ולעבדו לדעה את ה', והלך: אשר כמו שעשהו האלהים, ופרק מעל צנארו על החשבונות הרבים אשר בקשו בני האדם - הרי זה נתקדש קדש קדשים ויהיה ה' חלקו ונחלתו לעולם ולעולמי עולמים. וזכה לו בעולם הזה דבר המספיק לו כמו שזכה לכהנים וללויים. הרי דוד עליו השלום אומר (תהילים טו:ה) מנת חלקי וכוסי אתה תומיק גורלי.

רמב"ם הלכות שמיטה ויבל פרק יג הלכה יג

1. Since last week's shiur, Rav Tamir Geranot, Rosh Yeshiva of Orot Shmuel in Tel Aviv, has posted a very powerful response to Rav Yitzchak Yosef's recent controversial comments opposing the draft of Torah scholars. Rav Granot's son, Amitai Hy'd, was recently killed on the Lebanese front. The short video (in Hebrew) is highly recommended - see <https://youtu.be/-4boCkKw-r30?feature=shared>
2. There was one remaining section at the end of the Part 1 which we did not have the opportunity to address in the pervious shiur. We will be'H include this in the third and final part.
3. Levi effectively became the '13th tribe' once the tribe of Yosef was split into a double portion of Ephraim and Menashe,
4. The Torah first says that Moshe did not count them and then God commands him not to count them! The Ramban (Bamidbar 1:47) explains that Moshe originally left them out of the count since God had not named a specific Nasi for the tribe of Levi at the beginning of the parasha. But Moshe was still unsure what to do with them, so God confirmed that they should not be counted.

The Rambam describes the holy role of the Levi'im and Cohanim who were set apart from the rest of the people for a spiritual life. This meant that they did not own land with all the responsibilities this entails and they also did not go out to fight in the wars of the Jewish nation. Furthermore, Rambam maintains that this levitical role can be undertaken by others from outside that tribe. If they choose to dedicate their life to Torah, they can throw off the obligation of making a living and normal civic life and opt to be maintained by others. Such a life is called 'kodesh kedoshim'.

• Many in the Charedi community quote this Rambam as a source which validates their community choosing to live a life dedicated to Torah study only and be supported in this by the wider community. Also, like the holy tribe of Levi, they assert that this would exempt them from fighting in the Jewish army.

4. כָּל הַמְּשִׁים עַל לְבוֹ שְׂעֵסֶק בְּתוֹרָה וְלֹא יַעֲשֶׂה מְלָאכָה וְיִתְפָּרֵס מִן הַצְּדָקָה - הָרִי זֶה חֲלַל אֶת הַשֵּׁם וּבָזָה אֶת הַתּוֹרָה וְכַבָּה מְאוֹר הַדָּת וְגָרַם רָעָה לְעַצְמוֹ וְנִטְל חַיּוֹ מִן הָעוֹלָם הַבָּא. לְפִי שְׂאֲסוֹר לְהַנּוֹת מִדְּבָרֵי תוֹרָה בְּעוֹלָם הַזֶּה. אָמְרוּ חֲכָמִים (מִשְׁנֵה אֲבוֹת ד' ה') 'כָּל הַנִּהְיֶה מִדְּבָרֵי תוֹרָה נִטְל חַיּוֹ מִן הָעוֹלָם'. וְעוֹד צִוּוּ וְאָמְרוּ (מִשְׁנֵה אֲבוֹת ד'ה') 'אֵל תַּעֲשֶׂם עֲטָרָה לְהַתְגַּדֵּל בָּהֶן וְלֹא קָרְדִים לְחַפֵּר בָּהֶן'. וְעוֹד צִוּוּ וְאָמְרוּ (מִשְׁנֵה אֲבוֹת א'י) 'אֶהָב אֶת הַמְּלָאכָה וְשָׂנֵא אֶת הַרְבֵּנוּת', (מִשְׁנֵה אֲבוֹת ב'ב) 'וְכָל תּוֹרָה שְׂאִין עִמָּה מְלָאכָה סוֹפָה בְּטֵלָה וְגוֹרָרָת עוֹן'. וְסוּף אָדָם זֶה שְׂיָהָא מְלַסְטִים אֶת הַבְּרִיּוֹת.

רמב"ם הלכות תלמוד תורה פרק ג הלכה י

However, elsewhere⁵ the Rambam explicitly rules that a person who chooses to learn Torah rather than work, and is supported by tzedaka, is a chilul Hashem and a disgrace to Torah⁶. The Rambam quotes from the many statements of Chazal in Pirkei Avot which indicate that one may not receive money in exchange for learning or teaching Torah. Ultimately, a person who learns Torah without meaningful employment will end up cheating and stealing from others.

• How does one reconcile these two apparently opposing positions of the Rambam?
 • Most poskim agree that the halacha does NOT follow the the Rambam on the issue of taking money for learning/teaching Torah. But is it clear that the halacha IS like the Rambam concerning the 'voluntary Levi'?

5. לא עורכין מלחמה כשאר ישראל - ... ויש מסתפקים דגם כל הכהנים ולוים הלכו למלחמה. ואפשר דגם דעת רבנו כן שאין חייבים לילך אבל אם רוצים יכולים לילך.
 כל איש... אשר נדבה רוחו לעמוד לפני ה' לשרתו - משמע דגם ת"ח אין יוצאין למלחמה כמו שבט לוי. וכן אמרו בגמ' (נדרים לב) 'מפני מה נענש אברהם אבינו ונשתעבדו בניו למצרים ר"י שנים? מפני שעשה אנגריא בתלמידי חכמים' - פי' הר"ן שהולכין למלחמה. עוד אמרו 'מפני מה נענש אסא ברגליו? (סוטה י) מפני שעשה אנגריא בתלמידי חכמים שנא' והמלך אסא השמיע את כל יהודה אין נקי':
 נתקדש קודש קדשים ויהיה ה' חלקו ויוכה לו בעוה"ז דבר המספיק לו - אין כוונת רבנו שיקח מהבריות, שהרי בפ"ג מת"ת ה"י התרעם ע"ז הרבה. אלא כוונתו שיעשה השתדלות מועטת והקב"ה ישלח ברכה במעשה ידיו ויוכל להתפרנס בכל מה שצריך לו.

דרך אמונה, הלכות שמיטה ויובל פרק ג

Rav Chaim Kanievsky suggests a number of chiddushim based on the Rambam's halachot above: (i) that the Cohanim and Levi'im were exempt from the army but they could enlist if they wished; (ii) that Torah scholars have the same halacha as the Levi'im (and presumably could therefore also enlist if they wished?⁷); (iii) that the Rambam's critique of scholars who received funds from the community only relates to those who refuse to put in any 'hishtadlut'.

A1] THE MANY VERSUS THE FEW

• Another possible resolution of the Rambam's positions is that his category of the 'voluntary Levi' who becomes *kodesh kedoshim* is only intended for the very select few who can live on that level. Those who are not on that level, but seek to act as if they were, fall within the Rambam's second din of *chilul Hashem*
 • The Rambam also makes it clear that the role of the Levi is to teach Torah to the wider Jewish community. Presumably, this is also a condition to become a 'volunteer Levi'. If so, how should this be fulfilled today? Writing sefarim? Teaching shiurim? Doing kiruv?
 • The Levi'im are also not allowed to own land. How would this apply to the 'volunteer Levi'? Could a person own an apartment (or more than one) worth millions of shekels and still claim to be in this group?
 • How many people constitute the few? The tribe of Levi numbered in Bamidbar were 22,000 out of 603,550 or 3.65%. Of the estimated 15.7 million Jews in the world today, this would come to 549,500. Of the estimated 2 million Orthodox Jews in the world today, this would come to 73,000. There are around 150,000 Charedi men studying in yeshivot and kollelim in Israel today⁸.

5. See also Rambam's commentary to Avot 4:5. For a fuller discussion see Sefer Hatashbetz 1:142-148 (https://www.sefaria.org.il/Sefer_HaTashbetz%2C_Part_I.142.1?lang=en).

6. On specific question of the Rambam's insistence that one may not receive money for teaching or learning Torah, the approach of later poskim was less strict, See Kesef Mishna (Talmud Torah 3:10), Shu"t Tashbetz 1:142 and Rema YD 246:21. Later poskim were even insistent that one should accept money for learning and teaching if it would otherwise lead to *bitul torah*. See Yam Shel Shlomo Chullin 3:9, Taz YD 246:7, Igrot Moshe YD 2:116, Yabia Omer YD 7:17 and Ma'aseh Rav (Sheilta 50).

7. Rav Kanievsky cites the statements of Chazal which criticize forced constrictions of Torah scholars, again suggesting that enlisting voluntarily could be acceptable.

8. Based on <https://en.idi.org.il/charedi/2022/?chapter=48264>. The number in 2021 was 138,367.

6. *ואספת דגנך* (דברים יא:ד) - מה תלמוד לומר? - לפי שנאמר: (יהושע א:ח) *לא ימוש ספר התורה הזה מפיד*, יכול דברים ככתבן? תלמוד לומר: *ואספת דגנך* - הנהג בהן מנהג דרך ארץ, דברי רבי ישמעאל. רבי שמעון בן יוחי אומר: אפשר אדם חורש בשעת חרישה, וזורע בשעת זריעה, וקוצר בשעת קצירה, ודש בשעת דישה, וזורע בשעת הרוח, תורה מה תהא עליה? אלא: בזמן שישאל עושין רצונו של מקום - מלאכתן נעשית על ידי אחרים, שנאמר: (ישעיהו סא:ה) *ועמדו זרים ורעו צאנכם וגו'.* ובזמן שאין ישראל עושין רצונו של מקום - מלאכתן נעשית על ידי עצמן, שנאמר: *ואספת דגנך*; ולא עוד, אלא שמלאכת אחרים נעשית על ידן, שנאמר: (דברים כח:מח) *ועבדת את אויבך וגו'.* אמר אביי: הרבה עשו כרבי ישמעאל - ועלתה בידן, כרבי שמעון בן יוחי - ולא עלתה בידן.

ברכות לה:

Every Jew is required to know the whole Torah. Yet without money how can a person live? Chazal discuss the most appropriate mix of Torah and other activities which are needed to make a living. We see two divergent views here. Rabbi Yishmael says that the Torah mandates a combination of Torah and 'Derech Eretz' - here meaning the activities that go into making a living. He does not however seek to define here the balance of Torah and other activities. Rabbi Shimon bar Yochai (Rashbi) rejects this and sees the model for a Jewish life as one entirely of Torah. To have to work for a living is a punishment which comes about due to our sins. The Gemara does not rule between the two views but cryptically states that, for the majority of people, Rashbi's model will not work practically.

7. אח"כ ילך לעסקיו, דכל תורה שאין עמה מלאכה סופה בטלה וגוררת עון.

שולחן ערוך אורח חיים סימן קנו"א

The Shulchan Aruch clearly follows the position of Rabbi Yishmael and rules that a person should go out to work since Torah cannot be maintained without work, and a lack of employment will bring a person to sin.

8. *סופה בטלה וגוררת עון* - כתבו הספרים שזכו נאמר לכלל העולם. שאין כולם יכולים לזכות לעלות למדרגה רמה זו להיות עסקם רק בתורה לזכה. אבל אנשים יחידים יוכלו להמלא בכל עת באופן זה. וזכו שאמרו בצרכות לה: 'הרבה עשו כרש"י ולא עלתה בידן' - ר"ל דוקא הרבה. וזפרט אס כבר נמלאו אנשים שרואים להספיק לו לרכיבו כדי שיעסקו בתורה זודאי לא שייך זה. ויששכר וזבלון יוכיח

ביאור הלכה סימן קנו

The Mishna Berura qualifies the general rule of 'Torah and Derech Eretz' proposed by R. Yishmael and views this as applicable only to the masses. But individuals may be able (and therefore obliged?) to act in accordance with Rashbi and to dedicate their lives to Torah and to avoid involvement in anything else.

9. אבל יחיד לעצמו שאפשר לו להיות אך עסוק כל ימיו בתורתו ובעבודתו ... ודאי שחובה מוטלת עליו שלא יפרוש אף זמן מועט מתורה ועבודה לעסוק פרנסה חז' וכדעת רשב"י.

נפש החיים חלק א פרק ח ד"ה ואמרו

The Nefesh Hachayim (talmid of the Vilna Gaon) writes that a person who can dedicate his life to Torah only must do so, but must be careful never to take any unnecessary time off from such holy pursuits.

- How does this relate to the realities of those in full time kollel/yeshiva learning who take time off during bein hazemanim etc. Of course, no one would or should be critical if people want to take a break or vacation, but how does it fit with this special category of the 'voluntary Levi' who is *kodesh kedoshim*?

10. ... the Rambam sets a very high standard, indeed. He presents an idealized portrait of a selfless, atemporal, almost ethereal person - one whose spirit and intelligence have led him to divest himself of all worldly concerns
To how large a segment of the Torah community - or, *a fortiori*, of any community - does this lofty typology apply? Two percent? Five percent? Can anyone who has negotiated the terms of a salary confront a mirror and tell himself that he ought not to go the army because he is *kodesh kodashim, sanctum sanctorum*, in the Rambam's terms? Can anyone with even a touch of vanity or a concern for *kavod* contend this? Lest I be misunderstood, let me state clearly that I have no quarrel with economic aspirations or with normal human foibles *per se*. Again, least of all do I wish to single out *b'nei yeshivot* for undeserved moral censure. I do feel, however, that those who would single themselves out for exemption from normal duties on the grounds of saintliness should examine their credentials by the proper standard.

The Ideology of Hesder, Rav Aharon Lichtenstein, Tradition, 19(3), Fall 1981 p. 212

A2] HOW AUTHORITATIVE IS THE RAMBAM'S MODEL OF THE 'VOLUNTARY LEVI'?

- Many mefarshim have questioned the source for the Rambam's rulings at the end of Hilchot Shemita⁹.

11. אֶלֶף לַמִּטָּה אֶלֶף לַמִּטָּה לְכָל מִטּוֹת יִשְׂרָאֵל תִּשְׁלַחוּ לְצָבָא:

במדבר פרק לא פסוק ד (פרשת מטות)

In the war against Midyan Moshe explicitly commands the people to take 1000 soldiers from 'each tribe'.

12. (ד) לְכָל מִטּוֹת יִשְׂרָאֵל - לְרִבּוֹת שָׁבַט לֵוִי.

רש"י שם

Rashi understands¹⁰ that this comes to INCLUDE the tribe of Levi¹¹.

13. אלה שמות האנשים - משבט לוי לא נשתלח מרגל לפי שלא היה לו חלק בצבא

חזקוני במדבר יג:טו

Chizkuni notes that the tribe of Levi were not sent out to spy the land since they were not going to take a portion of the land¹². As such, it also makes sense that they would NOT have to fight in the conquest for Eretz Yisrael, but would have to fight in the war against Midyan, which was not directly related to the conquest of the land.

14. (ד) לְכָל מִטּוֹת יִשְׂרָאֵל - אֲפִילוּ מִשְׁבַּט שֶׁל לֵוִי שְׂכוּנָתָם לְרַעַב הִתָּה תְלוּיָה לְכָל יִשְׂרָאֵל.

חזקוני במדבר לא:ד

This is explicitly stated by the Chizkuni.

- Note the Mishna in Sota (44a) concerning a Cohen who returns from the war due to the sin of marrying a divorcee or a Cohen Gadol for marrying a widow. This assumes that even the holiest Jew in the nation would go out to fight.
- Note also Kiddushin 21b which discusses the case of a Cohen marrying an *eshet yefat toar*. Again, this assumes that the Cohanim DID fight¹³ in the Jewish army¹⁴.
- Even if the Levi'im did not fight in the army, how clear is the extension of this category to the 'voluntary Levi'. Rambam brings the paradigm of the 'voluntary Levi' as David. Yet David DID fight in the army? OR did he?

15. דאמר רבי אבא בר כהנא: אילמלא דוד לא עשה יואב מלחמה, ואילמלא יואב לא עסק דוד בתורה. דכתיב (שמואל ב' ח:טו-טז)

וַיְהִי דָוִד עֹשֶׂה מִשְׁפָּט וְצִדְקָה לְכָל-עַמּוֹ. וַיּוֹאֵב בֶן-צְרוּיָה עַל-הַצָּבָא. מִה טַעַם דָּוִד עָשָׂה מִשְׁפָּט וְצִדְקָה לְכָל עַמּוֹ? מִשּׁוּם דְּיוֹאֵב עַל הַצָּבָא. וּמִה טַעַם יוֹאֵב עַל הַצָּבָא? מִשּׁוּם דָּוִד עָשָׂה מִשְׁפָּט וְצִדְקָה לְכָל עַמּוֹ.

סנהדרין מט.

Chazal understand that David was actually able to continue learning Torah since Yoav was general of the army fighting the war. David's learning¹⁵ was supported by Yoav's fighting and vice versa.

- Although these halachot are not introduced by the words '*yirah li*' which the Rambam usually uses when suggesting a halachic position without a source in Chazal, some mefarshim nevertheless understand that the Rambam said these from his own sevara (see Radvaz ibid). The Ohr Sameyach (Shu't 1:67) suggests that the source could be chapter 1 of Bamidbar where the tribes are counted for going out to war 'kol yotzei tzava' but the Levi'im are counted separately in chapter 3 without the use of this phrase. The Ibn Ezra Bamidbar 1:50 and Rashbam Bamidbar 1:47 explicitly state that the Levi'im did not go to war with the other tribes.
- Rashi's source is the Sifrei (Matot, 157) and follows the nusach in the standard version - להביא את שבטו של לוי. However in the Vilna Gaon's version of the Sifrei the wording is לוי - להוציא את שבטו של לוי - to exclude the tribe of Levi. This would support the Rambam's position. On that basis, the exemption of Levi would even apply in a *milchemet mitzva*, since the war against Midyan was such.
- See R. Eliezer Mizrahi who explains that the tribe of Yosef was only split into Ephraim and Menashe for the division of the land. For the army, Yosef was considered one tribe.
- Rav Yuval Sherlow also notes that the support by the nation for Levi was based on their understanding that the Levi'im performed an essential service to the nation. As such, there was a kind of 'social contract' between the people and the Levi'im. Today, in Israel, the broader populous does not recognize the contribution of the Torah scholars and is being required to support an endeavor that they oppose. This goes to the deeper question of democracy and the electoral system in Israel and whether the views of the people are being properly represented.
- The Mordechai (Gittin chap 7) proves from this that the Cohanim did go out to battle. See Birkei Yosef EH 6:6 who discusses whether the Rambam could reconcile his position with these sources on the basis that Levi'im were exempt from the army but permitted to volunteer. See also Minchat Chinuch 526.
- A separate question arose during WWI when, in 1916, R. Joseph H. Hertz, Chief Rabbi of the British Empire, was asked by the British government whether Cohanim should be given religious exemptions from the military draft. He replied no, which began a major debate on this issue. The Leeds Beth Din publicly objected to the Chief Rabbi's ruling for two reasons - (i) a Cohen is forbidden to become impure from dead bodies and this would be impossible to avoid in the war; (ii) a Cohen who kills is no longer permitted to give bircat Cohanim and duchen. Rabbi Hertz disputed the arguments of the Leeds Beth Din, although the latter were supported by a young Rav Yitzchak Herzog, who had grown up in Leeds and was then serving as a Rav in Belfast. Rav Herzog added an argument from Rambam - that the tribe of Levi, including Cohanim, do not serve in the army. Rabbi Hertz responded with four counter-arguments: (i) a Cohen can become impure in war in order to save lives; (ii) the Hasmonians were Cohanim and fought in battle; (iii) the Talmud Yerushalmi (Nazir 7:1) states that R. Chiya was a Cohen but would become impure to honor the king. Serving in the king's army is similar; and (iv) the Cohen mashu'ach milchama, who spoke to the troops before war, sent home a number of groups but there is no mention of sending back all the Cohanim. I am grateful to Harry Brukner for pointing out this issue to me. See <https://www.torahmusings.com/2024/02/the-kohen-soldier/> for more details.
- In fact, David was not simply learning Torah, but 'dispensing kindness and justice'. As such, he was also actively involved in directly serving the people and not only providing an indirect merit to the nation through his Torah learning.

16. Admittedly, in this Gemara the case for spiritual exemption and the division of functions appears more clearly articulated. ... however ... the engagement in Torah of which it speaks does not refer to purely contemplative study alone but to implementation as well through the molding of a just and fair society. Above all, however, this source is of little use to our critics on the right because of its very protagonist. If indeed they wish to posit David, the heroic and sensitive soldier-scholar-poet-Notary whom Hazal have so graphically portrayed in numerous contexts, as the prototype of the contemporary Israeli *ben torah*, I shall have little quarrel with them.

The Ideology of Hesder, Rav Aharon Lichtenstein, Tradition, 19(3), Fall 1981 p. 213

17. *Prima facie*, these lines seem to sanction, in principle, a *ben Torah's* total divorce from military service. In truth, however, they are of little, if any, relevance to our subject. On one level, there arises the obvious difficulty of squaring this statement both with the Rambam's personal history and with his repeated vehement critiques of those who exploit the study of Torah to worldly advantage by abstaining from all gainful activity in the expectation that they will be supported by the public treasury. Even if we confine ourselves to this text, however, we shall find that its presumed sanction is weak, at best.

First, the initial postulate - that every Levite enjoys a dispensation from army duty, has no source in Hazal. On the contrary, it contravenes the evident purport of the mishnah in Sotah - "But in [case of] wars of mitzvah, all go out, even a groom from his [wedding] room and a bride from her wedding chamber." - and, as many have noted, if understood as a total bar from army service, appears to be clearly contradicted by a Gemara in Kiddushin. Would or should *b'nei torah* readily lean upon such a thin reed in order to exempt themselves from, say, *lulavor shofa*?

Secondly, it seems most unlikely that this statement is indeed all it's presumed to be. If the Rambam had truly intended to postulate a categorical dispensation for *b'nei levi* or *b'nei torah*, would he have gone about presenting and formulating it in this manner and context? Given his sharply honed discipline and sense of order, would he not have cited it in *Hilkhot Melakhim u'Milhamoteihem* (to cite the full rubric) together with all the laws of warfare rather than as a peroration to Sefer Zeraim? The implication is clear. What we have here is a hortatory coda, analogous to the conclusions of many of the books of the Mishneh Torah - which, of course, is to be given full weight as such (it is, after all, the Rambam's) - but is not to be confused with a clear halakhic mandate¹⁶. It provides a vivid evaluation of an inspiring personality but does not dictate how it or others should act.

Even if this contention is rejected, however, the Rambam's statement remains largely irrelevant to the contemporary problem of hesder. For it should be noted, thirdly, that the spirituality of the Levi does not preclude military service entirely. It only absolves him from waging war "like the rest of Israel." At most, he can be exempt from the gamut of wars included within the mitzvah of *milhamah per se*. This exemption has no bearing, however, upon his duty to help fight or prevent a defensive war that threatens the survival of his community and his peers. Is a spiritual order excused from saving human lives? ... Of course, no one would suggest that all *bnei yeshiva* stop learning and turn to cardiology. There is, however, a clear difference between abstaining from specializing in humanitarian endeavors and forgoing a universal effort. And above all, the issue is not one of suspending *talmud Torah*, God forbid, but of balancing and complementing it.

The Ideology of Hesder, Rav Aharon Lichtenstein, Tradition, 19(3), Fall 1981 p. 211

18. ונראה שאע"פ שאין שבת לוי עורכין מלחמה, היינו לעשות מלחמה פרטית כמו שאפשר שיודמן ששבת אחד עושה מלחמה בשביל ההתנחלות שלו שימצא לו בזה. אבל כשכל ישראל יוצאין למלחמה מחוייבים גם הם לצאת. ומלחמה של כלל ישראל זאת היא גם כן עבודת ד' שכל מי שהוא מיוחד יותר לעבודת ד' הוא שייך לה יותר משאר כל העם.

הראי"ה קוק סוף שבת הארץ

Rav Kook writes that the army exemption for the tribe of Levi related only to small scale wars fought by tribes to secure their own inheritance in the Land. Nevertheless, the Levi'im DID fight in a war involving all of Klal Yisrael. In fact, in such a war it was specifically the responsibility of the Levi'im to fight since the war itself was an extension of their Avodat Hashem!

16. See Headlines Vol 1, R. David Lichtenstein p 310 for a number of suggestions as to where the Rambam may have seen a source in Chazal for the concept of the 'voluntary Levi'. The word 'Cohanim' is used in Tanach for leaders who are not genealogically from the tribe of Levi eg Shemot 19:6 - *mamlechet Cohanim*, and Shmuel 2 8:18 - *u'bnei David Cohanim hayu*. Torah scholars are also compared to Cohanim - eg Moed Katan 17a and Chagiga 15b which applies the verse in Malachi 2:7 *לְשִׁמְרֵי תוֹרָה* to all Torah scholars. See also Nedarim 62a and Chullin 134 where laws applying to Cohanim are extended to Torah scholars. See also Ketuvot 105b which compares bringing gifts to a Torah scholar to bringing bikurim to a Cohen. However, none of these sources clearly or explicitly reference the issue of whether Torah scholars are required to fight in a Milchemet Mitzva. By contrast, the Keren Ora (Sota 44b) explicitly learns that Torah scholars ARE required to fight in a Milchemet Mitzva - see Part 1.

B] AGGADIC STATEMENTS CONCERNING TORAH SCHOLARS AND THE ARMY**B1] AVOIDING THE EGYPTIAN DRAFT**

19. ומקצה אחיו לקח חמשה אנשים ויצגם לפני פרעה:

בראשית מז:ב

Yosef was careful not to introduce all of his brothers to Paro.

20. (ב) ומקצה אחיו - מן הפחותים שבהם לגבורה שאין נראים גבורים. שאם יראה אותם גבורים יעשה אותם אנשי מלחמה. ואלה הם - ראובן שמעון לוי יששכר וזנימיון, אותם שלא כפל משה שמותם כשצרכם. אבל שמות הגבורים כפל: (דברים לג:י) וזאת ליהודה שמע חי קול יהודה, (דברים לג:כ) ולגד אמר צרוך מרחיב גד, (שם כג) ולגפתלי אמר גפתלי, (שם כג) ולגדן אמר דן, (שם יח) וכן לזבולן, (שם כז) וכן לאשר. זהו לשון בראשית רבה (פ:ד) שהיא אגדת ארץ ישראל. אבל בתלמוד בבלי שלנו מלינו שאותם שכפל משה שמותם הם החלשים ואותן הביא לפני פרעה. ויהודה שהוכפל שמו לא הוכפל משום חלשות אלא טעם יש בדבר

רש"י בראשית מז:ב

Rashi explains that he only introduced the weaker brothers to avoid Paro drafting them into his army. Rashi also points out an aggadic dispute between Bereishit Rabba (which he flags as the midrash of Eretz Yisrael) and the Talmud Bavli. According to Bereishit Rabba, the stronger brothers are the ones whose names were repeated in Ya'akov's beracha¹⁷. According to the Bavli, the weaker brothers are the ones whose names were repeated in Ya'akov's beracha.

B2] THE IMPORTANCE OF TORAH LEARNING IN THE WAR EFFORT

21. אמר יהושע בן לוי, מאי דכתיב: (תהלים קכב:ב) עמדות הני רגלינו בְּשַׁעֲרֵי יְרוּשָׁלַם? מי גרם לרגלינו שיעמדו במלחמה? שערי ירושלים שהיו עוסקים בתורה.

מכות י.

R. Yehoshua ben Levi learns from Tehillim that the strength of the Jewish army to stand against its enemies is significantly dependant on the Torah being learnt in Yerushalayim!¹⁸

B3] THE IMPORTANCE OF NOT COERCING TORAH SCHOLARS TO FIGHT

22. אמר רבי אבהו אמר רבי אלעזר: מפני מה נענש אברהם אבינו ונשתעבדו בניו למצרים מאתיים ועשר שנים? מפני שעשה אנגרייא בת"ח שנאמר: (בראשית יד:ד) וַיִּקַּח אֶת-חַנְיָאִין וְלֵידָן בְּיָמָיו (ר"ן: **שעשה אנגרייא בתלמידי חכמים** - שהוליון למלחמה כדכתיב וירק את מניכיו דכיינו בני אדם שחקן לתורה). ושמואל אמר: מפני שהפריז על מדותיו של הקדוש ברוך הוא, שנא': (בראשית טו:ח) בַּמָּה אֲדַע כִּי אֵיךְ שָׁנָה. ורבי יוחנן אמר: שהפריש בני אדם מלהכנס תחת כנפי השכינה, שנאמר: (בראשית יד:כא) תָּן לִי הַקֶּפֶשׁ וְהִרְכָּשׁ קַח-לְךָ.

נדרים לב.

One of the reasons suggested for the punishment of Avraham's descendents in slavery in Egypt is because he drafted Torah scholars into his army to fight the 4 Kings.¹⁹

23. אנגריא. 'אין אגרא' - שכתריחם זלא שכר. שיטה.

שיטה מקובצת שם

However, the Shita Mekubetzet brings a view that 'angarya' does not mean that Avraham took his talmidim to war, but that he forced them to do labor without pay.

24. (בראשית טו:יג) וַיֹּאמֶר לְאַבְרָם יְדַע תְּדַע כִּי-גַר יִהְיֶה זְרַעְךָ בְּאֶרֶץ לֹא לָהֶם [וְעַבְדוּם] - מפני שעשה אנגריא ועבודה בת"ח.

קרן אורה שם

The Keren Ora explains the 'midda keneged midda' for Avraham's actions. Since he forced scholars into hard labor, his descendants were also forced into hard labor.

17. According to Bereishit Rabba (in Eretz Yisrael), the weaker brothers included Reuven and Shimon - individuals who had proved their great military strength in Shechem! Rabbi Shalom Gold pointed out that their strength was only when fighting in the Jewish army in Eretz Yisrael. But once they went into galut in Egypt they became weak!

18. This Chazal is quoted by R. Eliezer Waldenburg in his Hilchot Medinah as a primary source that Yeshiva students do not have to serve in the IDF.

19. Rabbi Jachter quotes R. Yosef Blau who asks why Chazal did not criticize Avraham himself for fighting the war, but only his draft of others. He suggests that Avraham was justified in breaking from his spiritual pursuits to fight since HIS family was in trouble and Lot had to be rescued. The other fighters were unconnected with the tragedy. If so, the question for Yeshiva students and potential draft into the IDF would be - 'is this your fight for your country'? Rabbi Blau suggests that this also explains Yosef's attempts to keep his brothers out of Paro's army; it was not their battle.

25. אמרו עליו על רבי אלעזר בן חרסום שהניח לו אביו אלף עיירות ביבשה, וכנגדן אלף ספינות בים. ובכל יום ויום נוטל נאד של קמח על כתיפו ומהלך מעיר לעיר וממדינה למדינה ללמוד תורה. פעם אחת מצאווהו עבדיו ועשו בו אנגריא. אמר להן: בבקשה מכם, הניחוני ואלך ללמוד תורה! אמרו לו: חיי רבי אלעזר בן חרסום שאין מניחין אותך! ומימיו לא הלך וראה אותן, אלא יושב ועוסק בתורה כל היום וכל הלילה.

יומא לה:

Chazal themselves explain what it means for a talmid chacham to be drafted by an 'angarya' in the story of R. Elazar ben Charsum who was immensely rich but would only live a very frugal life and learn Torah. One day his own servants did not recognize him 'and pressed him into service [angarya]'. This has nothing to do with enlisting in an army.

26. מפני מה נענש אסא? מפני שעשה אנגריא (רש"י: אנגריא - עבודת המלך) בתלמידי חכמים, שנאמר (מלכים א' טו:כב) וְהִמְלִיךָ אֶסָא הַשְּׂמִיעַ אֶת-כָּל-יְהוּדָה [אֵין נִקְיָן].

סוטה י.

Similarly, Chazal criticize King Asa for 'drafting' Talmidei Chachamim.

27. ומלחמה היתה בין אסא ובין בעשא מלך ישראל כל ימיהם: ויעל בעשא מלך ישראל על יהודה ויבן את הרמה לבבלתי תת יצא ונבא לאסא מלך יהודה: וישח אסא את כל הכסף והזהב הנותרים באוצרות בית ה' ואת אוצרות בית המלך ויתנם ביד עבדיו וישלחם... אל בן הדד... מלך ארם השב בדמשק לאמר: ברית ביני ובינך בין אבי ובין אביך הנה שלחתי לך שחד כסף וזהב לך הפרה את בריתך את בעשא מלך ישראל ויעלה מעלי: וישמע בן הדד אל המלך אסא וישלח את שרי החלים אשר לו על ערי ישראל ויך את עיון ואת דן ואת אבל בית מעכה... והי כשמע בעשא ויחדל מבנות את הרמה... והמלך אסא השמיע את כל יהודה אין נקי וישאו את אבני הרמה ואת עציה אשר בנה בעשא ויבן גם המלך אסא את גבע בנימן ואת המצפה:

מלכים א' טו:ז-כב

In fact, the forced draft of King Asa was NOT to fight the war against Basha King of Israel but, once the war had been won, to demolish the tower Basha had built and use the stones to build other towns. As such, the forced draft of Torah scholars which Chazal criticize here was using them as slaves for menial work, not drafting them into his army.

28. מפני מה נענש אסא מפני שעשה אנגריא בת"ח. ומייתי לה מדכתיב השמיע את כל יהודה - לרבות ת"ח. ודקאמר אין נקי כו' הוא מלחא זלופי נפשיה - לדרוש מיניה אפילו חתן כו'. ואפשר דקאמר דגם מפני זה נענש אסא שעזר על דברי הכתוב נקי יהיה לצימו גוי'. אף על גב דזמלחמת מלחא אמרינן צס"פ משוח מלחמת 'הכל יולחין אפילו חתן מחדרו' כו' - הכא לאו מלחמת מלחא היה דו"ק.

מהרש"א חדושי אגדות סוטה י.

The Maharsha also points out that, even if Asa was conscripting to fight a war, this was a Milchemet Reshut - an optional war of the king. But in a Milchemet Mitzva everyone would be required to fight - even the scholars.

• Rav Aharon Lichtenstein points out that the above sources relate only to coercion and may not prevent Yeshiva students from voluntarily joining the army.

29. (יד) מפני מכיר ירדו מחוקקים ומזבולן ומשכבים בשבט ספר:

שופטים ה:יד

In Shirat Devorah, she praises the different groups and tribes that joined the war effort to fight against Sisera. These include the 'legislators' [mechokekim] of Machir and the 'scribes' [sofer] of Zevulun.

30. ירדו מחוקקים - ... ומזבולן ירדו כולם ואף הסופרים - עם שאינם מלומדי מלחמה.

מצודת דוד שם

31. ומושכים בשבט סופר - פי' החכמים והסופרים.

רד"ק שם

Both the Redak and Metzudat David understands that this refers to the Torah scholars, who joined the war to fight, even though they had not been fully trained for war.

B4] THE PRIORITY OF TORAH SCHOLARS OVER THE REST OF THE NATION

32. וכן שני גמלים שהיו עולים במעלות בית חורון ופגעו זה בזה. אם עלו שניהן - שניהן נופלין, בזה אחר זה - שניהן עולין. הא כיצד? טעונה ושאינה טעונה - תידחה שאינה טעונה מפני טעונה ...

סנהדרין לב:

The Chazon Ish famously quoted the following Gemara to Ben Gurion when agreeing the original exemption for Charedim from the IDF. If two camels heading in different directions meet on a narrow road, the loaded camel has right of way. The Chazon Ish seems to have indicated that the Torah-observant community bears the responsibility of maintaining the Torah tradition and should be given precedence before the non-observant community.

33. This morning I went to Bnei Brak for a meeting with the Chazon Ish. The press thought it to be a sensational visit, and I encountered crowds along the way and around his house. A group of his followers waited outside and in the nearby rooms. Yitzhak Navon was the only one who came in with me. I asked him the question to which I have yet to receive a sufficient answer from my observant friends. We are divided in different ways; in the matter at hand we are divided by our views of religious tradition. There are Jews like you and like me, how do we live together? How will we become a unit?



From the diaries of David Ben-Gurion, October 20th, 1952²⁰

• When the Chazon Ish gave the mashal of the two camels and explained that the Charedi community bore the burden of Torah and mitzvot and should be given preference, Ben-Gurion reportedly replied, "And what of the absorption of immigrants? What of security? What of establishing the State? Are these not burdens?"

34. PM D. Ben-Gurion met privately with Rabbi A. Y. Karelitz ("The Chazon Ish") in Bnei Brak yesterday. The purpose of the visit was to exchange general views regarding the following issue: How can observant and non-observant (Jews) live together harmoniously in the State of Israel? The question of recruiting women (to the army) was not discussed and the visit had no relation to current political matters.

Prime Minister's Office press statement, Oct 20 1952

B5] CAN WE LEARN HALACHA FROM AGGADATA?

35. ר' זעירה בשם שמואל אין מורין לא מן ההלכות ולא מן האגדות ולא מן התוספות אלא מן התלמוד.

תלמוד ירושלמי (וילנא) מסכת חגיגה פרק א

*The Yerushalmi appears to rule that one may only learn halacha from the Talmud but not from Midrashim.*²¹

36. כשם שאבדתי מבית אבא כך אבדתי ממך - וא"ת אמאי לא היה מגרשה ותהא מותרת להחזירנה? י"ל לפי שכל מעשה בגט הוא ע"פ עדים וכי ירא פן יתפרסם הדבר למלכות.

תוספות מגילה טו.

Tosafot asks why Mordechai could not have divorced Esther to avoid the entire halachic problem of her approaching the king! He answers that the divorce (requiring witnesses) would have made the matter far too public and ruined the plan.

20. See <https://www.nli.org.il/he/newspapers/mar/1952/10/20/01/article/1/?e=-----he-20--1-img-txIN%7ctxTI-----1> for the full text of the newspaper.
 21. For a broader discussion of the use of Midrashic sources in halacha see Rabbi Immanuel Bernstein, *Learning Halacha from Aggadah*, The Journal of Halacha and Contemporary Society Number LXX (Fall 2015) p47. Much of the material in this source sheet was taken from that article.
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37. מה שכתוב בהגדה ואני כאשר אצדתי אצדתי – כשם שאצדתי מצית אצא כך אצדתי ממך. הקשו בתוס' יגרשנה ויחזירנה אחר כך שאינה חכורה לו מחמת זנות ותירלו שהיה ירא לגרשה לפי שכל מעשה הגט צעדים וירא שמה יתפרסם ויודע הדבר למלך. ואינו נכון צעייני! ויכתוב לה בכתב ידו שהוא כשר דאורייתא וטוב היה לו לעשות כן דהא אסתר היכי עזבה הכי דהשתא צרלונה נצטלת ותהרג ואל תעצור? ואלו היה מגרשה בכתב ידו לא היתה עוצרת על אסור עריות החמור ולא היתה נאסרת למדכאי! אלא אצדתי אגדה בן ואין משיצין עליהן.

חידושי הרשב"א מגילה טו.

The Rashba rejects this answer of Tosafot since, on a Torah level the witnesses were not necessary²²! His conclusion is that one cannot ask halachic questions on aggadic material.

38. ובשציל כך אמרו גם כן (ירושלמי חגיגה פ"א ה"ח) אין למדין הלכה מתוך האגדה, כי לא נתברר על ידי קושיות ותשובות, שאז היה ראוי ללמוד הלכה מתוך האגדה, אבל כיון שלא נתברר צבירור, אין למדין הלכה מתוך אגדה. אמנם מה שאמרו אין למדין הלכה מתוך דברי אגדה, ואין משיצין באגדה, הוא עוד דבר חכמה, כי ההלכה הוא הלכה למעשה, ודבר שהוא הלכה למעשה אינו נוטה מן האמת בגמור. אבל דבר שאינו הלכה למעשה, כמו דברי אגדה, דבר זה אף שאינו לגמרי כך, רק צלד מה צלד. והנה התורה יש לה כמה פנים, מכל מקום דבר שהוא הלכה למעשה אינו רק פנים אחד. לכך אמר שאין מקשין ושואלין בדברי אגדה, ואין למדין הלכה מדברי אגדה. וזהו פירוש האמיתי, אין ספק בו. אבל שלא יהיו האגדות דברי תורה כמו שאר תורה שנאמרה מסיני, האומר כך אין לו חלק בעולם הבא. וזה מוכח מכל אשר הביא הוא לראיה, שעל ידי האגדות מכיר צורא, שהם דברי חכמה אלקית למי שמצין את דבריהם, לא למי שאין לו חכמה ודעת כלל, ואינו משיג רק דברים הגשמיים אשר הם לפניו, אבל דברי חכמים הם השגה עמוקה מאוד מאוד.

ספר באר הגולה באר השישי פרק טו

The Maharal clarifies that, whilst Midrashim are certainly a part of Torah MiSinai²³, they are not to be used as a source for halacha since they speak with multiple voices²⁴ and in terms which do not have the clear-cut clarity of halachic discourse. The critical analysis of halachic psak - with penetrating questions and answers - is not the method or language of aggadata.

39. אך עתה שצתי וראיתי שאין למדין הלכה ממדרש רבות

תוספות יום טוב מסכת ברכות פרק ה משנה ד'

40. המדרשים והאגדות עיקר כוונתם על המוסר ועל הרמיזים ועל המשלים שבהם והכל עיקר הדת, אבל אין עיקר כוונתם על פסקי הלכות לכן אין למדים מהם לפסק הלכה כלל. ויפה כתב תוי"ט שם ...

שו"ת נודע ביהודה מהדורא תניינא - יורה דעה סימן קסא

The position that one should not learn halacha from midrash is quoted by many later commentators. However, there are notable exceptions where halacha is indeed learnt out from aggadic sources²⁵.

- In the final shiur (Part 3) we will b'eH address two further halachic issues which are often raised to justify Torah scholars not being drafted to the army - (i) because they do not require protection and are therefore exempted from contribution; and (ii) that they are involved in the mitzva of Torah learning and therefore exempted from a separate mitzva of fighting in the army - 'osek bamitzva patur min hamitzva'.

22. Tosafot may disagree with this position - see Iyun Ya'akov ibid.

23. With all the complexity that this concept implies, in terms of the origins and development of different aspects of Torah - see <https://rabbimanning.com/index.php/audio-shiurim/halacha/mekorot-hatorah/>

24. The Maharal implies that, when it comes to halacha, there are not multiple truths but one truth. This is itself the subject of a major debate. For more on this see <https://rabbimanning.com/index.php/audio-shiurim/halacha/mekorot-hatorah/-shiurim-22-and-23>.

25. See <https://outorah.org/p/46735/> for a fuller presentation of these ideas.