

# HALACHIC AND HASHKAFIC ISSUES IN CONTEMPORARY SOCIETY

## SERIES 2: 86 - ARMY EXEMPTIONS FOR YESHIVA STUDENTS: PART 3 OU ISRAEL CENTER - WINTER 2024

- In Parts 1 and 2 we looked at some of the halachic and hashkafic issues surrounding the draft of Torah scholars into the IDF.
- In Part 1 we examined the halachic definition of a Milchemet Mitzva and whether the broad conscription for such a war, which includes even a chatan and kalla, also includes Torah scholars. We also quoted extensively from Rav Aharon Lichtenstein who expounds on the mitzva and opportunity in combining Torah learning and military service.
- In Part 2 we examined the argument that a Torah scholar can effectively become a 'volunteer Levi' and be supported by the nation in return for spiritual service to the people and the claim that this would include army exemption. We also looked at a number of Aggadic sources which are also frequently brought by those who support the exemption.
- In this final shiur we will examine two central sources which are brought in support of the draft exemption: (i) That Torah scholars are protected by their learning and therefore exempted from certain communal obligations; and (ii) '*Osek Bamitzva Patur Min HaMitzva*' - that someone who is actively engaged in a mitzva (eg learning Torah) should not be required to stop that in order to engage in a second mitzva. We will end with a brief analysis of the obligation to serve, as rooted in the mitzva of Ahavat Re'im.

### A] THE TORAH OF SCHOLARS PROTECTS - BUT DOES IT EXEMPT THEM?

1. .... כופין אותו לבנות לעיר חומה ודלתים ובריה ....

משנה מסכת בבא בתרא פרק א משנה ה

*The Mishna rules that where a person lives in a town they can be forced to contribute to the costs of building fortifications for the town, including a wall, gates and locks.*

2. בעא מיניה רבי אלעזר מרבי יוחנן: כשהן גובין, לפי נפשות גובין או דילמא לפי שבח ממון גובין? .... איכא דאמר, בעא מיניה רבי אלעזר מרבי יוחנן: כשהן גובין, לפי קירוב בתים הן גובין או דילמא לפי ממון גובין? .... רבי יהודה נשיאה רמא דשורא אדרבנן. אמר ריש לקיש: רבנן לא צריכי נטירותא. דכתבי: (תהלים קל"ט:ח) אֶסְפְּרָם מַחֲוֹל יִרְבּוּן ... הכי קאמר - אספרם למעשיהם של צדיקים - מחול ירבו. וק"ו: ומה חול שמועט - מגין על הים, מעשיהם של צדיקים שהם מרובים - לא כל שכן שמגינים עליהם! כי אתא לקמיה דרבי יוחנן, אמר ליה - מאי טעמא לא תימא ליה מהא: (שיר השירים ח:י) אֲנִי חוֹמָה וְשַׁדִּי כַּמְגַדְלוֹת. אני חומה - זו תורה, ושדי כמגדלות - אלו ת"ח.

בבא בתרא ז

*The Gemara seeks the most equitable way in which to collect taxes from the people to fund the building of the town wall. Is it a fixed poll tax according to the number of people in the family? Or according to wealth<sup>1</sup>? Or according to the proximity of the house to the wall? The Gemara then quotes an incident in which R. Yehuda Nessia also levied taxes on the local Torah scholars. Reish Lakish objected on the basis that Torah scholars who are tzadikim<sup>2</sup> do not require protection - rabbanan lo tzerichei netiruta - since their Torah is protective.*

3. דאמר רבי: אין פורענות בא לעולם אלא בשביל עמי הארץ. כההוא דמי כלילא (רש"י - עטרה למלך קיסר) דשדו אטבריא. אתו לקמיה דרבי ואמרו ליה: ליתבו רבנן בהדן! אמר להו: לא. אמרו ליה: ערוקינן! א"ל: ערוקו. ערקו פלגיהון, דליוה פלגא (רש"י - מחל המלך דמי החזי וסילקה מעליהן). אתו הנהו פלגא קמי דרבי, א"ל: ליתבו רבנן בהדן! אמר להו: לא. ערוקינן, ערוקו. ערקו כולהו פש ההוא כובס. שדיוה אכובס. ערק כובס. פקע כלילא. א"ר: ראיתם, שאין פורענות בא לעולם אלא בשביל עמי הארץ. .... וא"ר אסי אמר ר' יוחנן: הכל לפסי העיר ואפי' מיתמי, אבל רבנן לא - דרבנן לא צריכי נטירותא. אמר רב פפא: לשורא (רש"י - לחיקון החומה), ולפרשאה (רש"י - פרש שכולך סביבות העיר לשומרה ולידע מה היא לריכה), ולטרוזינא (רש"י - שומר כלי זיין של בני העיר ויושבי צבית אלל השער) - אפילו מיתמי, אבל רבנן לא צריכי נטירותא.

בבא בתרא ח

*Chazal rule that Torah scholars in a town are exempted from certain communal taxes which are needed to pay for the security of the town since they personally have protection<sup>3</sup>.*

1. The issue of wealth applies both in terms of ability to contribute and also the amount that the family has to lose from potential theft and looting.  
2. Piety may not be an absolute requirement and R. Yochanan's alternative source refers to '*talmidei chachamim*' and not only tzadikim.  
3. Rav Yechiel Michel Tukachinsky (HaTorah Vehamedinah 3:212-213) quotes this source to support the exemption of Yeshiva students from the IDF.

4. רב (נחמן) [חנן] בר רב חסדא רמא כרגא ארבנן. א"ל רב נחמן בר יצחק: עברת אדאורייתא ואדנביאי ואדכתובי;

בבא בתרא ח.

*The Gemara states that imposing a poll tax on Torah scholars is in breach of the Torah, Nevi'im and Ketuvim!*

5. תלמידי חכמים אינם יוצאין בעצמן לעשות עם כל הקהל בבנין וחפירה של מדינה וכיוצא בזה כדי שלא יתבזו בפני עמי הארץ. ואין גובין מהן לבנין החומה ותקון השערים ושכר השומרים וכיוצא בזה ולא לתשורת המלך. ואין מחייבים אותן לתן המס בין מס שהוא קצוב על בני העיר בין מס שהוא קצוב על כל איש ואיש ....

רמב"ם הלכות תלמוד תורה פרק ו הלכה י

*The Rambam rules that Torah scholars are exempted from certain taxes and community obligations. However, the Rambam does not include in this halacha any exemption from army service. He also never refers to such an exemption in his laws on who is required to fight in a war.<sup>4</sup>*

6. .... דעד כאן לא קפטרו רבנן אלא מנאם וחומה שבה מלך גלות ישראל .... אבל שמירה כדרך שמלכות נשמרים ממלכות אחרים גם ת"ח חייב .... וקשה הרי ת"ח נותנים מחלת השקל?! אע"כ חומות העיר ממלחמת מלכות גם ת"ח חייבם.

חתם סופר בבא בתרא ח.

*The Chatam Sofer rules that the exemption of talmidei chachamim is limited to local taxes to fund local protection. But talmidei chacham are obligated in any tax required for the protection of the country against outside enemies.*

## A1] WHO IS A 'TORAH SCHOLAR' ?

7. וכן כל מיני מסין שהצבור מטילין לבנין החומות ולהגפת הדלתות ושאר שמירת העיר אין תלמידי חכמים חייבין בהן כל עיקר. אלא מיהו הני מילי בתלמידי חכמים העוסקים בתורה תדיר כפי יכולת כל אחד ואחד ומקימין מצות והגית בו יומם ולילה כפי כחן. .... אבל תלמידי חכמים שאין עוסקין בתורה תדיר כפי כחן ולא דיין לעסוק במלאכתן כדי למצוא פרנסתן ופרנסת אנשי ביתן אלא שהם יגיעים להעשיר ומבטלין את התורה כדי לקבץ ממון הרבה, הרי אלו חייבין בכל חיובי הצבור.

יד רמ"ה מסכת בבא בתרא ח.

*R. Meir Abulafia (13C Spain) rules that this exemption applies in principle to a Torah scholar who is fully involved in his learning day and night and does not break unnecessarily to become involved in making money, other a basic living.*

8. אפילו יש צהם יראת שמים ומעשים טובים דוקא **נשתורתם אומנותם** .... אבל אותם שאין תורתם אומנותם ויש להם עסקים ומתעסקים צסחורה אינם פטורים צשום דצר.

חדושי הריטב"א בבא בתרא ח.

*The Ritva uses the expression - Toratam Umnotam<sup>5</sup> - their Torah is their trade. Such scholars qualify for the exemption from taxes, but not those who are engaged in financial trading.*

9. א תלמידי חכמים לא היו יוצאין בעצמם עם שאר העם לעשות בבנין ובחפירות העיר וכיוצא בזה שלא יתבזו בפני עמי הארץ ....  
ב .... במה דברים אמורים? כשכל אדם יוצא בעצמו. אבל אם אין יוצאין בעצמם, אלא שוכרים אחרים במקומם או גובים ממון מבני העיר לעשותו, אם דבר שצריך לחיי האדם כגון בארות מים וכיוצא בהם, חייבים לתת חלקם. .... אבל דבר שהוא צריך לשמירת העיר, כגון חומות העיר ומגדלותיה. (א) ושכר השומרים, (ה') לא היו חייבין לתת להם כלום, שאין צריך שמירה, שתורתן שמירתם .... ודוקא תלמידי חכמים שתורתם אומנותם. אבל אין תורתם אומנותם, חייבים. ומיהו אם יש לו מעט אומנות או מעט משא ומתן להתפרנס בו כדי חייו ולא להתעשר, ובכל שעה שהוא פנוי מעסקיו חוזר על ד"ת ולומד תדיר, נקרא תורתו אומנותו. הגה: ואין חילוק בין שהוא תופס ישיבה או לא, רק שהוא מוחזק לת"ח צדורו שידוע לישא וליתן צחורה ומצין מדעתו צרוצ מקומות התלמוד ופירושו וצפסקי הגאונים ותורתו אומנותו כדרך שנתבאר. (ת"ח סימן שמ"ב).

שולחן ערוך יורה דעה הלכות כבוד רבו ותלמיד חכם סימן רמג סעיף ב

*The Rema<sup>6</sup> sets a very high bar to qualify as a Torah scholar - one who is renowned as a scholars in his generation and is capable of discourse on his own across the whole Talmud, commentaries and poskim!*

• Nevertheless, many later poskim disagreed with this position of the Rema<sup>7</sup>.

4. See also Hilchot Shecheinim 6:6. We looked in the previous shiur at the possible proof from the Rambam's ruling at the end of Hilchot Shemita as to the 'voluntary Levi'.

5. See Shabbat 11a where this expression is used of R. Shimon bar Yochai and his colleagues.

6. The Rema is based on the Terumat Hadeshen (342) who records differing customs in Germany regarding exempting Torah scholars from taxes.

7. These include the Mabit (2:25), the Maharit (59), and the Maharashdam (CM 361) who extend the tax exemption in principle to all Torah scholars, even those who are not

- Furthermore, the cumulative zechut of all the talmidim learning in yeshiva may be very high.
- One could ask if those people who are learning would be prepared for the IDF and all security forces to be dismantled and confident that the country would be protected through their learning? But this may be an unfair question since it is obviously that normal hishtadlut is needed and we would not rely on a miracle. We clearly need security forces and the zechut of the learning may be needed to grant success to those armed forces.

## A2] DOES THIS TAX EXEMPTION EXTEND TO AN ARMY EXEMPTION?

10. וע"ד עם בני ישראל הנלקחים לצבא המלחמה למלכות, השתיקה יפה מדבורינו צזה. וגדולי ישראל ע"כ יעלימו עין והניחו להם להממונים מקבל לנשות כראות עיניהם לפי הזמן ועת לחשוב. ומ"מ אומר כי גוף ענין דינא דמלכותא להטיל מס על כל עמו להעמיד מהם אנשים לצבא מלחמתו. וזה הוא מחק מלכותו ודינו דין וממילא מוטל אקרקהפתא דכל מי שראוי ללאת ושאיין לו אשה וזנים, כפי נימוס ומק מלכותו. אך לא אצחורים למודי תורה שאפילו לא פטרום המלכות בפירוש מ"מ מדין תורה פטורים. דאמריין צפ"ק דצ"צ

שו"ת חתם סופר חלק ו - ליקוטים סימן כט

*The Chatam Sofer ruled that bachurim learning in the yeshiva should be exempted from the Austro-Hungarian army.*

11. אם ללמוד תורה בישיבה או להתגייס לצבא? בע"ה עש"ק י"ז סיון תשמ"א. מע"כ התלמידים החשובים משיבת נתיב מאיר בירושלים מר דניאל קראוס נ"י ומר עפר טויבר נ"י.  
הנה אף שעניין צבא ההגנה הוא ענין גדול, אבל עניין לימוד התורה ללומדי תורה עוד יותר גדול גם מלהגין על המדינה, כמפורש פ"א דבבא בתרא (ח) ... אבל רבנן לא צריכי נטירותא. וכנראה שהממשלה הכירה ג"כ את זה. ומי שלומד בישיבה גדולה ועוסק בתורה פטור מענייני חיובי הצבא. ולכן ודאי מי שיש לו תשוקה ללימוד התורה ולהעשות גדול בתורה ובהוראה וביראת שמים, יש לו לילך לישיבות הגדולות, ויהיה ברכה לכלל ישראל והגנה גדולה לכל ישראל. והנני המברך אתכם להתגדל בתורה וביראה לתפארת בישראל. משה פיינשטיין.

שו"ת אגרות משה יורה דעה חלק ד סימן לג

*Rav Moshe Feinstein ruled in 1981 in response to two boys in a Religious Zionist high school that, although having a defence forced for Israel was very important, it was more important that young men should be learning Torah in Yeshiva Gedola and this merit would protect the Jewish people.*

12. While most are aggadic, one *locus classicus* is purely halakhic .... The Gemara in *Baba Batra* states that *talmidei hakhamim* are exempt from sharing the cost of municipal fortifications inasmuch as they "do not require protection." Analogously, it is contended, they should be exempt from military service. It must be stated, in reply, that such a claim raises a very serious moral issue. Can anyone whose life is not otherwise patterned after this degree of trust and bittahon argue for exemption on *this* ground? Is it possible to worry about one's economic future - in evident disregard of Rabbi Eliezer's statement that "whoever has bread in his basket and says 'What shall I eat tomorrow?' is but of little faith," - and still not enter the army because one is presumably safe without it? I recall, some years back, admiring the candor of a *maggid shiur* who confided to me that he had moved from a neighborhood in which most young men served in Zahal to one in which they did not because, while he might be convinced intellectually that he ought not to serve in the army, he knew full well that he did not possess the depth of faith upon which such an exemption could only be granted. Hence, he felt too ashamed, especially as his sons were coming of military age, to remain in his old bailiwick. Perhaps not many would share his response but the basic situation is probably not uncommon; and for many, at least, any argument based on this Gemara is consequently problematic.

The Ideology of Hesder, Rav Aharon Lichtenstein, Tradition, 19(3), Fall 1981 p. 209

13. There is, however, no need to pursue this train of thought, for the basic analogy is quite tenuous on purely halakhic grounds. The payment in question is not inherently normative. It relates to no *mitsvah* whatsoever. Rather, it derives solely from the obligation to help defray the cost of communal facilities from which one reaps benefit. This is obvious from the context - the impost is discussed in the same Mishnah that deals with that forced on tenants of a courtyard to pay for a gate or watchman's booth or both in order to keep out trespassers and onlookers, and both are cited by the Rambam in *Hilkhos Shekhenim* - and is reflected in the fact that the sum is prorated according to the degree of benefit involved, with those subject to the greatest risk paying the most. Hence, those who derive no direct benefit whatsoever pay nothing. Tenants without cars do not generally pay for the upkeep of a building's garage while those who have no television sets may be exempt from sharing in the cost of a central antenna.

The Ideology of Hesder, Rav Aharon Lichtenstein, Tradition, 19(3), Fall 1981 p. 209

14. The situation is radically different, however, with respect to an obligation which is precisely rooted in the responsibility to help others *qua* others. Does anyone suppose that one's duty to engage in a defensive *milhemet mitsvah* "to help save [the people of] Israel from a foe who has descended upon them" is based solely upon the fact that one is presently or potentially in danger? Within the context of the egocentric ethic of a Mandeville or an Adam Smith, possibly. From a Torah perspective, however, this would be strange doctrine, indeed - the more so to the extent that we correctly perceive that such action is mandated by the general norm of *gemilut hasadim* and not just the specific commandment of defensive war. Consequently, the Gemara in *Baba Batra* provides no rationale whatsoever for totally exempting *talmidei hakhamim* from military service. *They* may not require protection but others do; and their duty to defend those who have no built-in armor remains.

The Ideology of Hesder, Rav Aharon Lichtenstein, Tradition, 19(3), Fall 1981 p. 210

15. "Rabbis do not need protection"? God Almighty! When actual lives are at stake may we rely on miracles? In 1929 at Hebron (such a calamity should never occur twice!) didn't young students of the yeshiva, whose holiness shone like stars in the sky, fall before the malicious enemy? Please, did these martyrs need protection or not? And those same murderous Arabs are still the enemy today! If you understand that the scholars need no guarding in relatively peaceful times and are exempt from building the protective walls, what consequence has this when compared to a life-and-death struggle, a war which is a mitzvah and in which all are obligated? The defense authorities ordered everyone to cover all windows as protection against shattering glass in case of an air raid. Would anyone think that some rabbis will not do so, claiming, "Rabbis do not need protection?" Did anyone involved in Torah study exempt himself from this? Why did rabbis leave areas under enemy fire along with the rest of the general population? Why did they not rely on this maxim? Is this da'at Torah? They took this Torah concept out of context and used it improperly, while if it were used in its proper context it would be a valuable pearl.

Rav Shlomo Zevin - On the Drafting of Yeshiva Students (1948) - trans. Tradition Journal, Fall 1985, p. 54

## B] CHILUL HASHEM

16. Possibly the greatest sin in Judaism is Chilul Hashem - desecration of the Name, which includes anything which lessens the respect and devotion of people for G-d and His Torah. Every sin can be forgiven, other than this one. .... the greatest Kiddush Hashem [is] when people seeing our deeds are overcome with awe and respect for the justice and goodness of our behavior, which is predicated on the Torah's teachings. Kiddush Hashem remains the highest priority of the Jew.

Even today, Rabbi Shear Yashuv Cohen warns, before engaging in a war or military foray, we should stop to consider whether the nations of the world might judge our deeds negatively, thus causing a Chilul Hashem. So, too, Rabbi David Tzvi Hoffman relies heavily on the prohibition of Chilul Hashem when considering whether a Jew living in a gentile country may evade the draft. His ruling is that even if the Jew knows that service in the army will inevitably entail desecration of Shabbat and other laws, he is still not permitted to avoid his civic duty.

Is it valid to apply this line of reasoning to the question of yeshiva students serving in the Israeli army? Some say yes, while others disagree. After all, one can only cause a Chilul Hashem if he is doing something wrong. But if a person acts in accordance with what is right and yet others react negatively, it can be argued that that is not his responsibility. However, this disagrees with what the Gemara expressly says - that a person has to be careful about the impression he is making, even when he is doing the right thing. ....

It is difficult to pin down an answer to the question whether the Orthodox Yeshiva community has to be concerned that the policy which exempts their sons from army duty is well-received by the secular Israeli public. For those who see the policy as arousing much animosity, resentment, and contempt for those who study Torah, it is indeed a terrible Chilul Hashem. For those with a different vantage point, the fact that their policy is subject to misinterpretation should not deter people dedicated to learning Torah from following this pursuit. Just because people do not appreciate their dedication, should that stop the inspired individuals from dedicating their lives to a high ideal?

It is easy to see that both intellectual and emotional arguments can be raised for either point of view, as well as halachic ones. But one truth is indisputable - when the nations of the world see Jews fighting among themselves, that is surely a Chilul Hashem.

On Yeshiva Men Serving In The Army, Rabbi Alfred S. Cohen, Journal of Halacha and Contemporary Society - No. XXIII, Spring 1992

**C] 'OSEK BAMITZVA' - ARE THOSE LEARNING TORAH EXEMPT FROM OTHER MITZVOT?**

17. **משנה.** שלוחי מצוה פטורין מן הסוכה ... **גמרא.** מנא הני מילי? דתנו רבנן: **בשבתך בביתך** - פרט לעוסק במצוה, **ובלכתך דרך** - פרט לחתן. .... מאי משמע? - אמר רב הונא: כדרך, מה דרך רשות - אף כל רשות, לאפוקי האי דבמצוה עסוק.

סוכה כה.

*Chazal learn out from the Torah the principle of 'osek bamitzva patur min hamitzva' - if a person is involved in one mitzva they are, in principle, exempted from engaging in another mitzva.*

18. ... דהא קמ"ל דאפילו צעי להניח מלצה זו לעשות מלצה אחרת גדולה הימנה אין הרשות צידו. סד"א חיפוטרי הוא דמיפטר מינה אצל אי צעי למשצק הא ולמיטעד אידך הרשות צידו, קמ"ל דכיון דפטור מן האחרת הרי היא אללו עכשיו כדבר של רשות ואסור להניח מלצתו מפני דבר שהוא של רשות.

חדושי הריטב"א שם

*The Ritva (and other commentators) understand that not only is one exempted from the second mitzva, but it is prohibited to break away from one mitzva to engage in another.*

19. .... ותימה אם יכולין לקיים שניהם אמאי פטורין?! דאטו אדם שיש לו ליצית בצגדו ותפילין צראשו מי מיפטר בכך משאר מלצות? ... אלא ודאי לא מפטר אלא בשעה שהוא עוסק בה כגון טלית של אצידה ושועחה ללורכה או צממה .... ולריך לומר דכא נמי איירי צכי האי גוונא דאי מיטרדי צקיום מלצת סוכה הוה מצטלי ממלצות.

תוספות שם ד"ה שלוחי מצוה

*Tosafot understand that one is only exempted from the second mitzva if one is actively engaged in the first. On this basis, in order to claim an exemption due to Yeshiva learning one would need to be actively engaged in that learning. Where does one draw the line of sufficiently active engagement?*

20. כתיב (משלי ג:טו) **יְקַרְהָהּ הִיא מִפְּנֵינֶיךָ וְכָל־חֲפָצֶיךָ לֹא יִשְׁוּבָהּ**, הא חפצי שמים - ישוּו בה. וכתוב (משלי ח:יא) **כִּי־טוֹבָה חֲכָמָה מִפְּנֵינֶיךָ וְכָל־חֲפָצִים לֹא יִשְׁוּבָהּ** - דאפילו חפצי שמים לא ישוּו בה! כאן במצוה שאפשר לעשותה על ידי אחרים, כאן - במצוה שאי אפשר לעשותה על ידי אחרים.

מועד ט:

*The Gemara indicates that one DOES break off learning Torah<sup>8</sup> to do another mitzva but ONLY if there is no one else to take care of it. If there is someone else who could do the other mitzva, one should continue learning.*

21. היה לפניו עשיית מצוה ותלמוד תורה - אם אפשר למצוה להעשות ע"י אחרים לא יפסיק תלמודו, ואם לאו יעשה המצוה ויחזור לתלמודו.

רמב"ם הלכות תלמוד תורה פרק ג הלכה ד

*The Rambam codifies this halacha. If a person is learning Torah they must break to do another mitzva which cannot be done by others and then come back to their learning<sup>9</sup>.*

22. האיש מצווה על פריה ורביה אבל לא האשה. ומאימתי האיש נתחייב במצוה זו? מבן שבע עשרה. וכיון שעברו עשרים שנה ולא נשא אשה הרי זה עובר ומבטל מצוות עשה. ואם היה עוסק בתורה וטרוד בה והיה מתירא מלישא אשה כדי שלא יטרח במזונות ויבטל מן התורה הרי זה מותר להתאחר. שהעוסק במצוה פטור מן המצוה וכל שכן בתלמוד תורה.

רמב"ם הלכות אישות פרק טו הלכה ב

*Yet, elsewhere, the Rambam seems to imply that learning Torah is MORE important than other mitzvot and one would certainly not break off from learning, even to do the mitzva of peru u'revu!<sup>10</sup>*

23. אמר רב יוסף: גדול תלמוד תורה יותר מהצללת נפשות.

מגילה ט:

*On the other hand, Chazal appear to state that learning Torah is, in principle, greater ever than saving lives!*

8. The Meiri (Mo'ed Katan 9b, s.v. *af al pi*) explains that the primary purpose of learning Torah is in order to fulfill other mitzvot. One who continues to learn in the face of another mitzva undermines the very purpose of their study. Therefore, one must set aside talmud Torah for other mitzvot.

9. Some have suggested, based on the final words of this halacha that a person is only required to break from their Torah learning if they will be able to return to it later. If performing the other mitzva will effectively prevent him resuming his learning, then he is not permitted to break! This factor may be very relevant in the discussion of whether yeshiva bachurim would be able (or willing) to resume their Torah learning after having taken off time for army or other service.

10. This is a famous apparent contradiction in the Mishne Torah and later mefarshim have worked hard to harmonize these sources. For some examples see <https://etzion.org.il/en/halakha/studies-halakha/philosophy-halakha/does-osek-bemitzvah-apply-talmud-torah>

24. וגדולה מזו אמרו: גדולה תלמוד תורה יותר מהצלת נפשות, ורצונם לומר, שיותר יש זכות למי שזכה לעסוק בתורה, ולא בא לידו הצלת נפשות, ממי שבא לידו הצלת נפשות והוצרך לבטל תורתו ולעסוק בפיקוח נפש.

ילקוט יוסף קצוש"ע יורה דעה סימן רמה רמו - הלכות תלמוד תורה סעיף לט

Rav Ovadia Yosef explains that, of course, saving life DOES take priority over learning Torah. But Chazal are stressing the extra merit of someone who is able to learn Torah without being distracted by the need to break off to save lives. Nevertheless, would this also apply in the same way to serving in the IDF, which is not simply saving a specific life but giving an enormous service to Klal Yisrael?

- Some have suggested this as a basis for the exemption of Yeshiva students from the IDF since others can fight in the army but only they can engage in this level of learning.
- However, there could be a number of counter-arguments to this:
  - Is it indeed the case that the IDF have sufficient soldiers to meet military needs or do they in fact need more?
  - Maybe this applies only when the others are happy to do the mitzva and leave the Torah scholars to learn. What if they are not happy to do so?
  - Are the other (ie non-observant Israelis) really able to do the mitzva properly, or does the IDF actually need the engagement of religiously observant soldiers who bring with them a different type of idealism, leadership and values. Chazal stress<sup>11</sup> that, where we can, we send home from the battle those people who do NOT keep mitzvot!

25. In determining whether and when the study of Torah should be set aside in favor of a mitzvah, *efshar la'asota al yedei aheirim*, the extent to which it can be realized by others, is a crucial factor. However, that possibility should evidently be real and not merely theoretical; and in assessing it, their readiness to take up the slack should presumably be considered. It is by no means certain that I may compel others, directly or indirectly, to assume my share of a common task so that I may learn more. Further, the problem acquires a wholly different dimension when what is at issue is not just the distribution of time and effort but the possibility of danger; and this element is unfortunately present even in time of presumed peace. .... It should be clear, however, that the concept of *efshar la'asota* provides no mandate for categorical dispensation.

The Ideology of Hesder, Rav Aharon Lichtenstein, Tradition, 19(3), Fall 1981 p.203

## D] THE IMPORTANCE OF ARMY SERVICE AS A FUNDAMENTAL DUTY OF CHESED

26. וַיֹּאמֶר מֹשֶׁה לְבְנֵי-גָד וְלְבְנֵי רְאוּבֵן הָאֲחֵיכֶם יָבֹאוּ לְמִלְחָמָה וְאַתֶּם תָּשֻׁבוּ פֹה:

במדבר לב:

The tribes of Gad and Reuven asked to remain in Transjordan and not enter Eretz Yisrael with the rest of the people. Moshe's first astonished reaction was to ask, 'Can you really let your brothers go to fight for the Jewish people, when you choose to stay home?'

27. (ו) האחיכם יבאו למלחמה ואתם תשובו פה. זה עולה נגד ישראל - שיבא לכם ארץ שכבר נכבשת על ידי כולם, והמה יסכנו עתם למלחמה.

העמק דבר שם

The Netziv understands that Moshe was asking Gad and Reuven how they could offend the rest of the nation by choosing to live on land that others had fought and died for, and then asking them alone to face the dangers of fighting to conquer the rest of the country?

28. The halakhic rationale for hesder does not, as some mistakenly assume, rest solely upon the mitzvah of waging defensive war. If that were the case, one might conceivably argue that, halakhically, sixteen months of army service was too high a price to pay for the performance of this single commandment. The rationale rather rests upon a) the simple need for physical survival and b) the fact that military service is often the fullest manifestation of a far broader value: *g'milut hasadim*, the empathetic concern for others and action on their behalf. This element defined by Hazal as one of the three cardinal foundations of the world, is the basis of Jewish social ethics, and its realization, even at some cost to single-minded development of torah scholarship, virtually imperative.

The Ideology of Hesder, Rav Aharon Lichtenstein, Tradition, 19(3), Fall 1981 p. 207

11. Sota 44b.

29. ת"ר: כשנתפסו רבי אלעזר בן פרטא ורבי חנינא בן תרדיון, א"ל ר' אלעזר בן פרטא לרבי חנינא בן תרדיון: אשריך שנתפסת על דבר אחד, אוי לי שנתפסתי על חמשה דברים. א"ל רבי חנינא: אשריך שנתפסת על חמשה דברים ואתה ניצול, אוי לי שנתפסתי על דבר אחד ואיני ניצול, שאת עסקת בתורה ובגמילות חסדים, ואני לא עסקתי אלא בתורה בלבד. וכדרב הונא, דאמר רב הונא: כל העוסק בתורה בלבד - דומה כמי שאין לו אלוה, שנאמר: (דברי הימים ב' טו:ג) וַיִּמְיֹם רַבִּים לַיִּשְׂרָאֵל לֵאמֹר אֱלֹהֵי אֲמֶת [וְלֹא כְהֵן מוֹרָה וְלֹא תוֹרָה]. מאי ללא אלהי אמת? שכל העוסק בתורה בלבד - דומה כמי שאין לו אלוה.

עבודה זרה י:

*Chazal stress the importance of living a life focused on active gemilut chasadim and see a life of 'Torah only' as tantamount to blasphemy! Presumably, Rabbi Chanina, who critiqued his own life as one of 'Torah only', also performed many acts of chesed. But he felt that a significant opportunity to performed chesed had presented itself and he had ignored it.*

- B'H all Jewish communities, and especially the Charedi community, are actively involved in enormous amounts of chesed and we have seen so much evidence of this during the last few months.
- Nevertheless, this does not eclipse the issue of army service and the opportunity to see this as not just an enormous chesed to the Jewish people, but one which many others perceive to be much needed and sorely lacking.

30. What is equally obvious is the fact that not everyone draws [these implications] - and this for one of several reasons. Some (not many, I hope) simply have little if any concern for the state of Israel, even entertain the naive notion that, as one rosh yeshiva put it, their business could continue as usual with Palestinian flags fluttering from the rooftops. Others feel that the spiritual price, personal and communal, is simply too high and that first-rate Torah leadership in particular can only be developed within the monochromatic contexts of "pure" yeshivot. Still others contend that, from the perspective of genuine faith and trust in God, it is the yeshivot which are the true guardians of the polity so that any compromise of their integrity is a blow at national security. .... These are matters on which honest men of Torah can differ seriously out of mutual respect and I certainly have no desire to denigrate those who do not subscribe to my own positions. What I do wish to stress minimally, however, is the point that, for the aspiring talmid hacham, hesder is at least as legitimate a path as any other. It is, to my mind, a good deal more; but surely not less.

The Ideology of Hesder, Rav Aharon Lichtenstein, Tradition, 19(3), Fall 1981 p.208

## E] PRACTICAL SOLUTIONS - A FIELD KOLLEL?<sup>12</sup>

31. יִשְׂשַׁכָּר חֲמֹר גֵּרָם רַבָּץ בֵּין הַמְּשֻׁפְּתִים: וַיֵּרָא מִנְחָה כִּי טוֹב וְאֶת־הָאָרֶץ כִּי נְעֻמָּה וַיֵּט שִׁכְמוֹ לְסִבְלָ וַיְהִי לְמַס־עֲבָד:

בראשית מט:יד-טו

Issachar is a strong-boned donkey, lying between the boundaries. He saw a resting place, that it was good, and the land, that it was pleasant, and he bent his shoulder to bear [burdens], and he became an indentured laborer.

32. (יד) יִשְׂשַׁכָּר חֲמֹר גֵּרָם. צִימֵי שְׁפוֹט הַשּׁוֹפְטִים צְעוּד לֹא הָיָה מְלוּכָה צִיִּירָאֵל, הָיָה הַיָּמוֹם אֲשֶׁר כָּל שְׂצַט מִפְּרִישׁ אֵיזָה סָךְ חֵיל וְהוֹלְאוּתִיהֶם לְשִׁמּוֹר הַמְּדִינָה, וְשְׂצַט יִשְׂשַׁכָּר לֹא הָיָה מִפְּרִישׁ אֲנָשֵׁי חֵיל. כְּדַמוּכָה מֵהָא דְצַעַת הַמְּלִיכּוֹת אֵת דּוּד וְצָאוּ מִכָּל שְׂצַטֵי יִשְׂרָאֵל לְאַלְפִים וּרְצֻצוֹת, וְרַק מִשְׂצַט יִשְׂשַׁכָּר לֹא צָאוּ כִּי אִם מֵאֲחֵים אִישׁ יוֹדְעֵי צִינָה וְכָל אַחִיהֶם עַל פִּיהֶם. וְהֵייוּ מִשּׁוֹם שְׁלֹא הָיוּ אֲנָשֵׁי מִלְחָמָה .... אֲבָל שְׂצַט יִשְׂשַׁכָּר לֹא נִמְנוּ לְהִיּוֹת גְּבוּרֵי חֵיל עַד שֶׁמֶלֶךְ דּוּד וְגַזַּר עֲלֵיהֶם לְהִמָּנּוֹת לְמִלְחָמָה. .... (טו) וַיֵּרָא מִנְחָה כִּי טוֹב. טַעַם עַל שֶׁסִּירַז מְלַחֵמֵי־אֲנָשֵׁי חֵיל מִשּׁוֹם שֶׁרָאָה מִנְחָה כִּי טוֹב - וְהָיָה עִסָּק הַתּוֹרָה .... וְאֶת הָאָרֶץ כִּי נְעֻמָּה. וְיָמֵי שִׁוְלָא צְחִיל אִי אֲפִשֶׁר לְעִסָּק צְתוּרָה וּמוֹכְרָה לְאַת מֵאֲרָזוֹ. וַיֵּט שִׁכְמוֹ לְסִבּוֹל. וְתַחַת זֶה הָטָה שִׁכְמוֹ לְסִבּוֹל דַּעַת כָּל יִשְׂרָאֵל, מֵה שִׁטְיֵלוֹ עֲלָיו צְשִׁבִיל לְוֶרֶךְ הַמְּדִינָה. וַיְהִי לְמַס־עֲבָד. וְנָתַן מִס הַרְבֵּה לְצַעֲלֵי מִלְחָמָה מִשָּׂאֵר שְׂצַטִּים וְהוֹלְאוּת מִלְחָמָה.

העמק דבר שם

*The Netziv explains that the tribe of Yissachar were Torah scholars and not really suited to war. Because of that they did not send many troops to the war effort in the time of the Judges and of King David. Although King David did draft some of the men of Yissachar to his army, he compensated for the lack of their soldiers by imposing extra taxes on their tribe in lieu of them sending troops.*

12. See <https://www.rationalistjudaism.com/p/my-idf-plan-the-netziv>. My thanks to Mr Menachem Broner for bring this source to my attention.

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33. וְזָבוּלֹן אָמַר שְׂמַח זָבוּלֹן בְּצִאתָךְ וַיֵּשְׁכֶר בְּאֹהֶלֶיךָ:

דברים לג:ח

*Famously, Moshe pairs Yissachar and Zevulun in his berachot. Zevulun 'goes out' (usually explained as 'to work') and Yisachar remains 'in the tent' (to learn Torah).*

34. (יח) שִׂמְחָה זָבוּלֹן בְּצִאתָךְ וַיֵּשְׁכֶר בְּאֹהֶלֶיךָ. לְעוֹלָם זֹאת עַל יִשְׂרָאֵל - בְּשַׁעַר שִׂוְלָאִים לְמַלְחָמָה מִיַּיְחָדִים אֲנָשִׁים לְתוֹרָה וּלְתַפְלָה. כָּל הַיּוֹם שִׂוְלָאִים עִם הַלּוֹחָמִים לְאֹהֶלֶי הַשָּׂדֶה. וְכֹדָאִיתָא בְּרַבָּה ר"פ מְטוֹת שְׂבַמְלַחְמַת מַדִּין לְקַחוּ י"ב אֲלָף לְתַפְלָה וְשֵׁשׁ שָׁנָה חָרַצְתָּ לְשׁוֹנֵס בְּקוֹל תּוֹרָה. ... וְזָכוּ בְּרַכַּת מֹשֶׁה, שִׂמְחָה זָבוּלֹן בְּצִאתָךְ לְמַלְחָמָה, וַיֵּשְׁכֶר בְּאֹהֶלֶיךָ. בְּאֹהֶלֶי הַמַּחֲנֶה שֶׁעַל שָׂדֶה הַמַּלְחָמָה עִסוּק בְּתוֹרָה וְתַפְלָה. דִּישְׁכֶר בְּעֵלְמוֹ לֹא הָיָה בְּעַלֵּי מַלְחָמָה עַד בָּא דוֹד כַּמְש"כ בְּרַכַּת יַעֲקֹב לְבָנָיו, אֲזַל הֲלָכוּ עִם זָבוּלֹן לְתוֹרָה וּלְתַפְלָה.

העמק דבר שם

*The Netziv explains the verse to be dealing with the Jewish people going out to war. Zevulun would go out to fight and Yissachar would accompany them to the front lines to set up stations to learn Torah and daven for the success of the soldiers.*

35. There is, then, no halakhic, moral, or philosophic mandate for the blanket exemption of *b'nei torah* from military service. These categorical claims having been laid to rest, however, and their presumed authoritative basis neutralized, we are still confronted by the practical difficulty of weighing conflicting needs - of striking a balance, on both the personal and especially the communal plane, between the spiritual and the material, and of assessing the risks inherent in pressing one at the expense of the other. And we need to do this with reference to both ideology and fact, determining not only whether Hesder is desirable but the extent to which, in one form or another, it is feasible. On this level, that of the practical formulation of public policy rather than the principled invocation of personal prerogative, there is room for disagreement - and, quite conceivably, for pluralistic solutions.

Even assuming such pluralism, however, the composition of our educational mix must be carefully considered. I fully appreciate the contribution of non-Hesder yeshivot to our spiritual life; I grant that they contain some individuals who at present serve their country well by devoting themselves to Torah exclusively, and this not because they might make poor soldiers but because of their spiritual potential; and, much as I would like the great majority of their students to modify their course out of personal conviction, I have no desire to legislate them out of existence or into yeshivot Hesder.

I realize, moreover, that some of the arguments I have raised against full exemption might be pressed by others against the abbreviation of service; and that just as I would vindicate the latter on the basis of spiritual need, so may others justify the former for the same reason. However, I feel strongly that, at the very least, the current proportion of hesder to nonhesder yeshivot is totally out of kilter. Surely, we dare not acquiesce in the protracted spiritual desiccation of *b'nei torah* at a critical juncture in their lives. However, the ethical alternative should not be a self-determined *carte blanche* exemption. Hesder, conceived and implemented not as a compromise but as a bold response to a difficult dilemma, should be the standard rather than the exception. It is the direction which, upon searching examination of the issue, Torah leadership should seek to promote - as a norm, not as a deviant. ....

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