

Should Halakhic speech and writing be censored?

I recently received via email a copy of *Torat HaMelekh*, a book that argues that that practical halakhah permits or mandates the killing of Gentile civilians when doing so would tend to have the effect of preserving Jewish lives. Among its arguments is the claim that the Biblical prohibition against killing Gentiles – even Gentiles whom we are certain observe all of the seven Noachide commandments scrupulously – is not included within the category of acts that Jews must die rather than commit, even though that category includes “bloodshedding and its ancillaries”.

The publication of this book generated an Israeli police investigation of the authors and their associates on suspicion of incitement to violence. Many rabbis, however, objected to the idea that any analysis of halakhah could be criminalized. They pointed out that, on such a basis, publication of *Tanakh*, *Shas*, and the like could also become criminal offenses, as each of these contains halakhic opinions that could, if applied unqualifiedly to our current reality, generate acts that Israeli law would view as criminally violent or murderous.

This is not the forum for a full treatment of the book, but it seems to me that the broad issue requires response. To what extent should the principle of academic freedom, or freedom of speech generally, apply to lecturers or students in yeshivot?

At the height of the controversy, Rav Benny Lau wrote a superb Hebrew [article](#) that charged the yeshivot with hypocrisy; had they not always claimed that yeshiva Torah, unlike university study of Judaism, was intended to influence hearts, minds, and practice? So of course any halakhic work whose conclusion tends to violence constitutes incitement!

Rav Lau correctly points out a fundamental flaw still afflicting much of the Torah world, which is that we have not realized that with a Jewish state, and democratic rights, Jews have much more capacity to do evil than in the past. In medieval Europe, one could generally write as one wished about the halakhot of scenarios of Jewish power over Gentiles, and of political conflict within a Jewish state, without risk that one’s opinions would ever be put into practice. One could therefore, perhaps, pay less attention to the potential some opinions had to encourage homicidal or abusive fantasies, in the same way that opinions about the forms of animal sacrifice today may be forgiven if they pay insufficient attention to issues of *tzaar baaalei chayyim* (animal suffering). But we live in an era in which Jews have guns and missiles, and use them to shoot Prime Ministers and bomb nonJews, and we must never, ever forget that.

At the same time, the anticensorship *reductio ad absurdum* argument seems powerful. For example, in this week’s parashah we read about Shimon and Levi killing all men in the town of Shekhem in consequence of the rape of their sister Dinah.

Maimonides in *Laws of Kings* 9:14 writes:

In what way are they commanded regarding a legal system?

A son of Noah (=gentile) who violates one of these seven commandments must/may be executed by decapitation. For this reason, all the people of Shkhem were liable for execution, as Shkhem (really Chamor) stole (i.e. kidnapped), and they saw and knew but did not try him.

An apparently plausible implication of Maimonides is that Jews are permitted to kill any Gentiles who have acquiesced in theft. Should it therefore be forbidden to teach the *Mishneh Torah*?

I want to approach this question by means of one of my favorite Talmudic passages, found on *Pesachim* 35b, *Yoma* 82a, and *Sanhedrin* 74a. The Talmud is

engaged in finding the source of the ruling that Jews must die before committing avodah zarah (worship of other gods, or radically wrong worship of Hashem), shefikhut damim (bloodshedding), and gilui arayot (serious sexual crimes). Avodah Zarah is derived from a verse; gilui arayot is derived via a verse as equivalent to bloodshedding; but what about bloodshedding itself? That, the Talmud responds, does not require a verse. Rather, it is a requirement of reason, as in a story involving Rava. Rava was asked by someone whether he could obey a local lord's order to kill a third person, under pain of death for disobedience, and he responded: "Let him kill you, but you must not kill! What says that your blood is redder than his?!"

This seems very strange – how can the Torah leave us no explicit guidance on such a crucial issue? And is it not astounding that the Torah requires us to derive the law of arayot from bloodshedding, but leaves us to figure out the law regarding bloodshedding on our own? And really – couldn't Chazal have found some way of fitting this principle into a verse, at least at the level of *asmakhta*?

My suggestion is that the Torah and Chazal here convey the message that no text – even a Divine Text – is immune to misinterpretations arising out of moral blindness. Anyone who doesn't recognize that it is wrong to kill an innocent other to save yourself could not possibly get Torah right, no matter how long and detailed a Book it became.

With that suggestion in mind, we can return to the question of the Mishneh Torah regarding Shkhem. Careful reading shows that Rambam does not explicitly take sides in the debate between Yaakov and his sons as to whether the massacre was wise, or justified; rather, he records the legal basis of the brothers' position. My teacher Rabbi Michael Rosensweig has argued that Rambam would in practice agree with Yaakov, on the ground that the massacre constituted a *chillul Hashem* (desecration of the Name), indeed one that continues to this day.

I do not claim that Rav Rosensweig's reading is demonstrable or compelling. It does, however, point up a fundamental difficulty in the attempt to censor rabbinic conversation. Halakhic thought distinguishes sharply between formal means and substantive ends, and formal halakhic conversation is often focused on means rather than ends. Thus there may be many separate conversations, each relating to a specific prohibition, as to whether that particular prohibition against killing applies to particular categories of nonJews. Each conversation will be conducted in apparent splendid isolation from the others. In each of these conversations, taken independently, a scholar may argue the negative without in any way implying that such killing is practically permitted.

Taking the negative in all five conversations would yield such an implication. But what if a group of scholars each takes the negative in one conversation, and is silent in the others – can one blame them? How does one prevent students/readers/listeners from adopting on their own the negative position in each conversation?

In other words – I suspect that externally imposed censorship is unlikely to succeed in suppressing the transmission of such halakhic positions, although I would not rule censorship out in particular instances of immediate danger. It is the responsibility of the halakhic community to state, loudly and publicly, and in action as well as word, that anyone who takes the position that killing Gentiles is a minor offense so fundamentally misunderstands Torah as to forfeit the right to teach it in any form, at any level. This is a

responsibility that we have thus far failed, and it is hard to blame the state for trying more coercive means a result.

In this week's Parashah we read "Yaakov was very afraid, and he was anguished", on which Rashi comments: "He was afraid lest he be killed, and anguished lest he kill others". We need to ensure that this sensibility is hashkafically central to every member of our community. The alternative is shefikhut damim and chillul Hashem.