

Is there a Mitzvah to Prevent Genocide?

I. Historical and Socio-Axiological Arguments

Is there a mitzvah to prevent genocide? If "mitzvah" means "a deed recognized by Judaism as good," the answer plainly is yes. We still live in the shadow of the Holocaust and see the world's general indifference to the destruction of European Jewry as an epic scandal; surely, then, we must see ourselves as religiously compelled to avoid such indifference, and to protest when we observe it in others.

Jewish history has religious significance. This belief, which Dr. David Berger has powerfully shown underlies and mandates Religious Zionism, also means that the experiences of every Jewish community legitimately and necessarily shape its approach to specific halakhic issues.

At the Seder, we recite the paragraph Ve-hi She-amdah, declaring that a genocidal attempt on us takes place every generation. In that respect at least, the Holocaust is not qualitatively unique in Jewish history. What may well be unique, however, is the attitude toward America that emerged from the ashes. In the aftermath of the Holocaust, instead of being unreservedly thankful towards a country that did not participate, we came out thinking that it should have done more to prevent it!

In previous persecutions, the best we hoped for was nonparticipation. The notion that a gentile country, with a minor Jewish population, should be obligated to intervene in another country's internal affairs to save us, risking its own soldiers and people in the effort, would have been incomprehensible. Now, if we have any sense of moral reciprocity, this new feeling that others are obligated to save us should generate an obligation for us to save them.

Furthermore, our sense that America was obligated to save us during the Holocaust is not formulated in terms of Jewish chosenness, that America has an obligation to save G-d's chosen people, but rather in terms of America's obligation to humanity. This obligation to humanity applies equally to us as it did to 1940s Americans. We seem to accept the notion of universal human responsibility. America has given us a realistic sense that we can require of non-Jews intervention on our behalf, and this sense should require us to intervene on behalf of non-Jews.

Moreover, throughout Exile, Jews only had the power to save themselves, if that. We therefore deferred discussing the responsibilities conferred by power to save others to the Messianic era. The establishment of Israel changed this, as did our American experience. Since America is a genuine democracy, where we have genuine influence— not the power to compel others, but responsibility alongside them, where our voice is as meaningful as anyone else's—American citizenship makes us responsible for the moral tone and actions of American society. Before America, it would have been absurd to discuss Jewish responsibility for the rate of abortion in the society of their host nation; today, we cannot evade partial responsibility for that circumstance in America. Similarly, we bear responsibility for America's reaction to attempts at genocide.

II. Halakhic Arguments

If our community had internalized Rabbi Norman Lamm shlita's pithy declaration that "Halakha is minimalist Judaism"; if we had accepted Rabbi Walter Wurzbarger z"l's contention that covenantal

imperatives lie at the core of Torah; if we saw our religious purpose as expanding G-d's presence in the world beyond the four cubits of halakha, rather than as limiting our own image of His presence to that constricted space; in short, if we read Torah like Ramban – a legal treatment of this issue would discuss the parameters of the obligation without feeling the need to demonstrate its existence. Yet for better or worse, much of the Modern/Centrist Orthodox community tends to understand religious obligation exclusively as a formal legal category. It is accordingly necessary to approach the question again, this time with halakhic rigor: Is preventing the annihilation of defined gentile communities a halakhically significant act? Does this significance rise to the level of mitzvah kiyumit, a legally recognized positive deed, or even more strongly, a mitzvah hiyuvit, a legal obligation?

My answers to these questions are founded on two assumptions which I wish to make explicit from the beginning.

- 1) All human beings are created be-tselem Elokim.
- 2) Halakhic obligations differ from moral obligations in that they are not abstractions that exist regardless of the rulings of poskim, especially contemporary poskim. Moral obligations are generated by principles and circumstances; halakhic obligations are generated by authority.

I cannot argue that halakhic tradition unequivocally obligates us to prevent genocide. I will, however, argue that a plausible case can be constructed that preventing genocide is halakhically significant, perhaps even halakhically obligatory. This case may not convince someone who does not share my moral assumptions and evaluations, but it should convince someone who does share them that they are acting legitimately.

Making that case requires me to show, first, that halakha obligates Jews to intervene on behalf of non-Jews. Second, I will need to show that the category of genocide – the attempt to extinguish a particular cultural, ethnic or racial group – is halakhically significant.

For pragmatic reasons, I would prefer to argue further that genocide is more halakhically significant than the category of mass murder. It seems unrealistic to impose on the United States the responsibility to intervene, militarily or otherwise, every time any government behaves cruelly toward its population. Orthodox Jews do not have to vote for all humanitarian interventions everywhere. The United States, to some degree, has a right to mind its own business. Rather, the obligation to act should be activated only when a humanitarian crisis rises to the level of genocide.

A Jewish obligation to intervene on behalf of non-Jews emerges from the positions of Rabbi Chaim Brisker (Yesodei ha-Torah 5:1, Rotzeah u-Shemirat ha-Nefesh) that the moral sevara "who says your blood is redder than his" prevents Jews from choosing their own lives over those of Gentiles, and that the obligation to defend those pursued with murderous intent against their pursuers, even at the cost of killing the pursuer (rodef), is part of the Noachide commandment of "dinim," i.e. essential to any civilized society.

This is not the forum for a formal evaluation of Rav Chaim's arguments regarding the scope of rodef in the Rambam. It is worth briefly noting, however, the universalistic formulation of Rambam (Sanhedrin 12:3) that one who saves any human life is considered to have saved an entire world. Note also that Sefer ha-Hinukh (Mitzvah 600) formulates the obligation to save a nirdaf in universal terms – "the settlement of the world requires championing of the weak," and "the oppressed turn their eyes to G-d." This appears to impose a particular obligation on Jews, as G-d's agents on earth, to answer the prayers of the oppressed.

Whereas Rav Chaim obligates Jews to prevent murder of gentiles, Rav Yaakov Emden obligates us to rescue gentiles from even less severe injustices. Moshe Rabbeinu's championing of the Gentile daughters of Yitro (Shemot 2:17, and see especially Seforno there) plainly foreshadows his role as redeemer of the Jews. Rav Emden (Sh'eilat Yaavetz 2:51) infers from this narrative that a Jewish adam hashuv is responsible to rescue any oppressed person from any oppressor, even a non-Jew from a Jewish oppressor.

In Rav Emden's case, a Jew borrowed money from a non-Jew, with two Jewish witnesses. The Jew then reneged. R. Emden argues that the two witnesses must respond to a subpoena. He makes the technical argument that the Talmudic prohibition against testifying against Jews in secular court doesn't apply to an adam hashuv. But whereas the Talmudic distinction between hashuv and non-hashuv seems to be pragmatic- whether one can successfully evade the subpoena without consequence – Rav Emden transforms this into a moral claim.

It is not clear why, once R. Emden introduces his rhetoric of universal moral obligation, the Talmud should consider adam hashuv exceptional rather than paradigmatic. For our purposes, however, it suffices that his definition of adam hashuv is somebody who plays a role in the moral functioning of the society, somebody of whom people have moral expectations. In America, where society has moral expectations of Jews as it does of every other citizen, every Jew is an adam hashuv. According to R. Emden, we all have the obligation to save even a non-Jewish oppressed from the hands of a Jewish oppressor.

But this obligation is undefined. How severe does the oppression have to be to trigger our obligation? We cannot be obligated to intervene every time the judicial system goes awry. R. Emden's obligation, as opposed to R. Chaim's, can only be a mitzvah kiyumit. But even R. Chaim's obligation, which is hiyuvit, must have limits; we are not obligated to become roaming knights-errant, to devote all our time to preventing individual murders, even in our day when everyone who reads newspapers is constantly made aware of specific acts of injustice rising to the level of killing and rape all around the globe.

Neither is the United States obligated to play that role throughout the world.

My suggestion is that there is generally a communal analogue to the moral principles that generate halakhic obligations for individuals,. Individuals must keep honest weights and measures – communities must establish fair marketplaces. Similarly, the individual obligation to save a nirdaf from being killed is paralleled by a communal obligation to ensure that everyone can live safely without fear of being killed. Furthermore, the communal obligation to create a safe society exists on both a local and global scale. In other words, communities have obligations both to their own individual citizens, and toward other communities. The communal obligation to save a nirdaf extends to preventing the deaths of entire other communities.

III. Clarification of Halakhic Issues

This argument leaves much undefined. International lawyers have wrangled for decades about the exact meaning of genocide, and halakha need not accept whatever definition emerges from their discussion. There are resources within the Masoret for distinguishing qualitatively between the deaths of individuals and the deaths of communities, but they have not yet been developed. It is certainly a

challenge to distinguish halakhically between Saddam Hussein's killing of 25,000 Kurds and his killing of all 25,000 Marsh Arabs, but I think it can be done.

Similarly, there are resources within the Masoret for determining the boundaries of the obligation to pursue justice and prevent injustice. For example, while Rambam (Laws of Kings 9:14) holds the entire city of Shkhem capitally liable for failing to prevent the kidnapping and rape of Dinah, he does not extend this liability to the rest of the population of Canaan.

What risks must one take to fulfill this obligation to prevent genocide? Surely one must be willing to sacrifice a portion of one's time and money. However, the obligation to intervene does not imply that one has to risk one's life. Individuals have little if any obligation to risk their own lives to challenge a rodef. Certainly, in the context of a volunteer army such as the United States', we cannot risk others' lives for our own moral obligations. It is morally questionable to vote for war when neither one's own life nor those of one's children will thereby be put at risk. Furthermore, Rav Herschel Schachter shlit"a has convincingly argued that there is rarely if ever an obligation to fight a losing war.

At the same time, the Rav z"l argued that a milhemet mitzvah is best defined as "a war that accomplishes a mitzvah," and Minhat Hinukh argues that any mitzvah which requires a war to accomplish necessarily requires risking one's life. Along the lines of our previous argument, it may be that a community has no obligation to risk its existence to save another community, but is obligated to risk the lives of some of its members. We supported a draft to fight against the Holocaust; in the absence of a draft, perhaps we are obligated to volunteer when war is halakhically called for. All these questions require the attention of great lamdanim and poskim. My purpose here is only to call them to that attention, and to argue that ignoring them is a failure of our responsibility to ensure that the face which the eternal Torah presents to our time is one that sanctifies the Divine Name.

Shabbat shalom
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