

SURVEY OF RECENT HALAKHIC PERIODICAL LITERATURE

Only the exemption granted to newly-weds in Deuteronomy 24:5 could excuse my withdrawal from this Department, and from other literary assignments, in order to devote myself exclusively for one year to the task of building a new home and of consolidating my bonds with the community to which I am newly wedded. That year of grace is now over, and I return to these columns as the first and most longed-for literary activity since I assumed my present office. Traditionally it lies in the very nature of the British Chief Rabbinate that any public statements by its incumbent are vested with a certain formal authority or authenticity. I cannot therefore altogether ignore the caution that anything I may henceforth state, particularly in halakhic matters, "may be taken as evidence against me" — or, worse still, against Judaism. Notwithstanding this caution, however, I will continue from time to time to express some personal views in these columns, confident that the reader will appreciate my role here simply as a reviewer, with all the subjective judgments to which he is liable and entitled, rather than as a promulgator of *ex cathedra* rulings. In any event, most of the opinions and judgments here assembled will, as before, reflect their authors' views, not mine.

THE SIX-DAY WAR

Since our last contribution the cataclysmic events of June 1967

have inaugurated a new era for the Jewish people. The high drama of those traumatic days — the like of which can be witnessed only once in two thousand years, or less — has already released a flood of books and articles, some recounting or analysing the War and its antecedents, other probing into the many new problems created by Israel's deliverance. Into the latter category also belongs the fairly sizeable volume of halakhic writings spawned by the War and its aftermath. Halakhic echoes of the June triumph could be found in virtually all Jewish religious, and especially rabbinical journals. It is to these — sometimes noisy, or even discordant — echoes that this survey will be devoted in its entirety.

Most of the numerous responses on questions resulting from the victory deal, not unnaturally, with the most significant *religious* aspect of the War: The conquest of Judaism's holiest sites, not only enabling Jews to have access to them for the first time in twenty years, but placing them under Jewish control for the first time in nearly nineteen hundred years. Though only an incidental by-product of what was essentially a struggle against the threat of sheer physical annihilation, the liberation of the Jewish Holy Places — historically comparable to what the Crusades were meant to achieve for Christendom — gave Israel's victory celebrations their peculiarly devout, almost unworldly, character, with the

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only parades to mark one of history's most spectacular military triumphs being the endless streams of pilgrims wending their way to the Western Wall in reverent exhilaration. But the return of the Holy Places also produced its crop of religious problems — and a few bitter inter-religious controversies.

Among our principal sources will be a series of articles by Rabbi Eliezer Yehudah Waldenberg (of the Jerusalem Beth Din) in *Ha-Pardes* (New York, October 1967-February 1968) and by Rabbi Mordecai Hacohen in *Panim-el-Panim* (Jerusalem, July 14th, 1967-November 24th, 1967). The former are responsa setting forth specific rulings, while the latter provide an historical review of the main rabbinic arguments on the subjects treated; but both largely draw on identical sources. Two other valuable responsa, though limited to the first question discussed below, are a contribution by Rabbi Isaac Jacob Weiss — today probably Europe's leading Halakhist — to the *Siyyum Daf Ha-Yomi Supplement* of the *Jewish Tribune* (London, January 26th, 1968), and an article by Rabbi Kalman Kahane — the foremost rabbinical scholar in the Knesset — published in *Ha-Ma'yan* (Jerusalem, Tamuz 5727) only two weeks after the War.

ENTERING THE FORMER TEMPLE SITE

By far the most immediately acute — and the most acrimoniously debated religious problem arising from the War concerns the right of Jews to enter the precincts on the Temple Mount now occupied by the

Dome of the Rock and Mosque El-Aksa. According to the Mishnah (*Kelim*, 1:8), ascending degrees of sanctity attach to various parts of Jerusalem, ranging from the walled part of the city to the site of the Holy of Holies, with correspondingly limited access being permitted by an ascending order of personal purity or holiness. Thus, all persons rendered impure though "unclean" discharges are debarred from the entire Temple Mount area, and those defiled by contact with the dead from the fortification ("*Hel*") within that area, while anyone not properly purified entering the "men's courts" (or "Israelite enclosure") is guilty of a capital offense ("*karet*"). Now-a-days all are considered ritually defiled, since the means of purification (e.g. through the ashes of the "red heifer") are no longer available. Hence, it has been the almost undisputed practice of Jews, even in times when access was otherwise possible, never to set foot on the Temple Mount site.

There was, of course, no argument about the right of Israeli soldiers to enter the territory during the battle; in times of conquest, even so grave a ban as the prohibition on eating bacon is suspended for Israel's army (*Hullin* 17a).

But, alone among all leading rabbinical authorities, Rabbi Shlomo Goren, the redoubtable Chief Rabbi of Israel's Defense Forces, sought to extend the sanction, firstly by arguing that the suspension applied to the whole period of conquest and not merely to the actual moment of battle, since the original sanction, too, had extended to "the seven years of conquest" under

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Joshua (*ib.*). Rabbi Goren further held that the forbidden Temple area was far smaller than the entire Mount site, and that he could establish the lines of demarcation with certainty. Based, moreover, on documentary evidence that Jews did, in fact, visit and worship on that site during the Middle Ages, Rabbi Goren actually led a small army group on a demonstrative pilgrimage there shortly after the War (after they had immersed themselves in a *Mikva* and removed their shoes). He also announced his intention to hold regular religious services close to the Dome of the Rock, a plan foiled only by the mounting rabbinical outcry against it, combined with some more discreet political pressures against thus further inflaming Arab resentment.

The historical evidence cited consists mainly of a report by the 13th century Provençal scholar R. Menachem Meiri affirming "the accepted custom to enter the site, as we have heard" (on *Shavu'ot* 16a) and the following diary entry attributed to Maimonides: "On Tuesday, Cheshvan 4, 4926 (1165) we left Acre for Jerusalem . . . and on Thursday I entered *the great and Holy House* (of worship), vowing that I would mark these days as festivals in prayer and rejoicing." (Introduction to *Commentary on Rosh Hashanah*; R. Eleazar Askari, *Sepher Charedim, Mitzvat Ha-Teshuvah*, 3). According to the researches of several modern historians published in *Zion* (Jerusalem, vols. 2-3, 1928-9), permission was given by the Caliph Omar for the erection of a synagogue which actually stood on that site (origi-

nally where the Mosque of El-Aksa was later built) for over four hundred years until 1080 (Prof. Ben-Zion Dinur; Prof. Moses Schwarb), which explains why the Western Wall is scarcely mentioned up to that time (Prof. Ezekiel Yehuda). R. Hakohen refers to these claims but is inclined to dismiss them as scientifically unproven, although he does accept as substantiated the statements that Jewish pilgrimages to the Temple site were still held after the Destruction at the time of the Tannaim and Amoraim ("possibly because they then still had ashes of the red heifer for purification") and that Jews in the fourth century, having been permitted by the Byzantine Emperor Julian (361-363) to rebuild the Temple, had actually begun construction on the site when they were interrupted by a "fire from the ground," probably an earthquake (see Dubnow, *History*, vol. 3, pp. 125-6; *Zohar Chadash*, Ruth, 76b).

Nevertheless, rabbinic opinion today is virtually unanimous in seeking to bar Jews from any part of the Temple Mount, as also demanded by the Chief Rabbinate of Israel. The objection is based primarily on the ruling by Maimonides whereby the sanctity of the Temple site, even after its destruction, remains intact for all times (*Hil. Bet Ha-Bechirah*, 6:16). This ruling is contested by his glossator, R. Abraham ibn Daud (*RAVeD*, *a.l.*), but — according to most commentators — only to dispute capital culpability on entering the site, not the prohibition itself (Kahane, Waldenberg). This conclusion is also indicated by ibn Daud's

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refusal to qualify the ban on entering the forbidden parts of the Temple Mount even in post-Destruction times, as defined by Maimonides (*ib.*, 7:7).

In any case, the opinion of Maimonides, prohibiting entry under penalty of *karet* for those defiled by contact with the dead, is accepted by virtually all decisors, from the Middle Ages (e.g. *SeMaG*, *Chinukh*, *RITVA*, *Tur*, *MaHaRIL* and *TaSHBaTZ*) to more recent times (*Magen Avraham* and *Mishnah Berurah*, on *Orach Chayyim*, 561:2). Hence, the warning not to trespass "from the gate to the Temple Mount and onwards" was already affirmed by the scholar-traveler Eshtori Haparchi in the 14th century (*Kaftor Va-Eerach*, chpt. 6), as it was in the present century by Rabbi A. I. Kook (*Mishpat Kohen*, no. 96) who also suggested the erection of a large and exquisite synagogue outside the Temple Mount area and close to the Western Wall (*ib.*).

The alleged references to any prayers on the Temple Mount by Maimonides and Meiri are therefore rejected as either second-hand ("as we have heard") or applicable only so long as the site's sanctity might have been compromised by non-Jewish occupation (Waldenberg). Moreover, the diary statement ascribed to Maimonides would contradict his own ruling; indeed, a careful reading of it in no way suggests that "the great and Holy House" he visited was on the Temple Mount (Weiss).

While, as we have seen, the strict ban mentioned in the Mishnah covers only a limited area with-

in the Temple Mount confines, its extension to the entire site is necessitated by several considerations. Firstly, even if the limits could be defined with precision, it would be impossible to prevent trespasses in error once any part of the site is legitimately opened to Jewish pilgrims (Waldenberg, Weiss). Secondly, several categories of impure persons (other than those defiled by death) may not set foot within a much wider area, and their requisite purification, though technically possible, would be subject to many detailed ritual requirements not otherwise observed in our time (Weiss).

But above all, it is quite impossible to identify the actual Temple area with any accuracy. According to the Mishnah (*Middot*, 2:1), the walled Temple Mount site measured 500 cubits by 500 cubits, corresponding approximately to 61,256 square meters, whereas today's site is more than twice that area, with the Eastern and Western walls extending to 480 meters, the Northern to 321 meters and the Southern to 223 meters (Weiss), comprising an area of about 145,564 square meters (Hakohen). Thus the entire area must be out of bounds as being at least possibly the original site, especially since there is some uncertainty even about the identity of the "Rock" under the Dome of Omar with the "Foundation stone" (*Even Shetiyah*), traditionally the place where the Ark in the Holy of Holies was originally found, so that no fixed points from which to measure the distances given are definitely known. The discrepancy in the measurements may also be due to doubts about the length of the

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"cubit." Already 230 years ago, the Kabbalist R. Emanuel Riki (*Aderet Eliyahu, Kuntres Mei Nidah*, no. 36), after checking the height of ten cubits given in the Talmud for the Eastern Gate against the actual height of the well-preserved gate, concluded that one "holy cubit" (i.e. as used within the Temple precincts) corresponded to 1-2/3 cubits elsewhere. By this reckoning, the 500 x 500 cubit area would, in fact, more or less encompass the entire Temple Mount site as it is today, and the distance from the Dome of the Rock to the Western Wall would tally with the 111 cubits given in our sources for the distance between the Holy of Holies and the Western extremity of the Temple court-yard. On that basis, the original ban would extend to the whole area, and not only to (a possibly unidentifiable) part of it (Waldenberg).

Rabbinic opinion, then, has come down overwhelmingly and implacably on this side of the wall surrounding the Temple Mount. But the extreme vehemence with which this view has been pressed against the more romantic adventures advocated by Rabbi Goren can, perhaps, only be explained, psychologically at least, as another manifestation of the resistance by Orthodoxy's spiritual leadership to any identification of Zionist achievements, so clearly secularist in their motivation and thrust, with the fulfilment of Messianic hopes. Unfortunately, the impotence of these rabbis in asserting their views is painfully demonstrated by the masses of Jewish visitors and tourists ascending the Temple Mount,

undeterred by the warning placards put up by the Chief Rabbinate and the Ministry of Religions forbidding trespass under pain of *karet*.

REBUILDING THE TEMPLE

Access to the site of the Temple is obviously but a pre-condition to its restoration. That the question whether, with the site now under Jewish control, the Temple could or should be rebuilt has nevertheless aroused far less bitterness is simply due to the fact that no one has seriously advocated such a consummation of the Six-Day War. But, at least academically, the question has been widely discussed in the wake of the War, partly stimulated by non-Jewish speculation, and notably again in a comprehensive survey by Rabbi Mordecai Hacohen (*Panim-el-Panim*, October 18th, 1967) and a brief note by Rabbi E. Y. Waldenberg (*Ha-Parades*, October 1967).

Rabbi Hacohen summarises the seven principal arguments for and against building the Third Temple at the present time:

1. According to some authorities (e.g. *Chinnukh*, no. 95), the precept to build the Temple applies only "at the time when the majority of Jews live upon their land," a condition clearly not yet fulfilled. — Against this view, it may be argued that at the time of Ezra the rebuilding of the Temple was undertaken although the number of Jews who returned from the Babylonian exile was far smaller than today, in both absolute and relative terms. Also, the insistence on "the majority of Jews" may have been necessary only so long as the Jewish

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people were divided into tribes.

2. A more substantial objection is the widely-held belief (Rashi, *Rosh Hashanah* 30a, and *Sukkah* 41a; Meiri, *a.l.*; Tosaphot, *Shavuot* 15b, citing *Tanchuma*) that the Third Temple will be erected in a supernatural way by God Himself. This belief is affirmed in some of our best-known statutory prayers, such as the *Musaph Amidah* for festivals (“... and in Thy great mercy rebuild *Thou* it . . .”; “. . . rebuild Thine House as at the beginning. . .”). — This argument (also often used against Zionism in the past — *I.J.*) may be countered by the obvious consideration that prayers for, and trust in, Divine help do not exempt us from making our own efforts towards their fulfillment. (The argument is also refuted by similarly ascribing to God the erection of the First Temple in the *Hagadah*: “. . . and *He* built for us the Temple. . .” — *I.J.*) Surely the duty to build a Temple, codified as a positive commandment by Maimonides (*Hil. Bet Ha-Bechirah*, 1:1), can no more be meant to rely on prayer and hope only than the realization of the verse “The Lord doth build up Jerusalem; He gathered together the dispersed of Israel” (Ps. 147:2).

3. The building of the Temple requires and presupposes conditions of peace. Hence, this commandment is preceded by the duty to appoint a king and to root out the seed of Amalek (Maimonides, *Hil. Melakhim*, 1:1-2), that is, Israel’s enemies. This is implied in the Torah itself (Deut. 12:10-11), and historically borne out by the delay in the construction of the First

Temple — though it was a precept incumbent upon Israel immediately on entering the land — until the time of King Solomon 440 years later. — The order given by Maimonides, while representing the ideal, is not necessarily an indispensable condition. There are, in fact, some sources suggesting that the building of the Temple may precede the annihilation of Amalek (*Jer. Ma’aser Sheni*, 5:2; *Yaikut Shimoni*, on Deut. no. 816).

4. The Temple cannot be built except by the word of a true prophet, as expressly taught in a classic commentary on Deut. 12:5 (*Sifri*), and as historically confirmed by the roles of the prophets Nathan and Gad in the building of the First Temple (2 Sam. 24:18-19; cf. Ps. 132:2-5) and of Haggai, Zechariah and Malachi in the Second Temple. The Third Temple, too, as ruled by Maimonides (*Hil. Melakhim*, 11:1), is to be built by “the annointed king” (i.e. the prophetically endorsed Messiah). — This argument is answered in the very passage of the *Sifri* mentioned above: “You might assume you should wait until a prophet tells you (to build the Temple): therefore it teaches: ‘unto His habitation shall ye seek, and thither shalt thou come’ — meaning, seek and you shall find, and thereafter let the prophet tell you.” In this sense the Sages went so far as to assert: “All the thousands who fell in the days of King David fell only because they failed to demand the (building of the) Temple” (*Midrash Psalms*, 17).

5. The sanctification of the Temple site and premises as such may require the sanction of king, pro-

