

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

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 Provencal 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

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 Hachohen (*Panim-el-Panim*, October 18th, 1967) and a brief note by Rabbi E. Y. Waldenberg (*Ha-Parades*, October 1967).

Rabbi Hachohen 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-

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phet, *Urim ve-Tumim* and Sanhedrin, as suggested by ibn Daud (*Hil. Bet Ha-Bechirah*, 6:14; see also above) and as applicable to the original Sanctuary in the wilderness (*Shavu'ot* 15a; *Jer. Sanhedrin*, 1:3). — This view — in any event based on a minority opinion, as indicated above — seems contradicted by Ezra's sanctification of the Second Temple at a time when the *Urim ve-Tumim* no longer existed. Evidently, then, even those who hold, contrary to the accepted ruling as codified by Maimonides, that the original sanctity of the site has lapsed require for its resanctification the sanction of only one, not all, of the agencies mentioned (*Shavu'ot* 16a).

6. All the measurements of the Temple were revealed to King David in precise detail in a scroll handed to him by Samuel (1 Chron. 28:19) who had himself received this by a tradition going back ultimately to Moses (*Midrash Samuel*, a.1.; *Jer. Megillah*, 1:1). These measurements are now unknown or in dispute (cf. above). — Details on the Third Temple are actually given in the Book of Ezekiel, and their study is to serve the very purpose of facilitating the rebuilding of the Temple (Maimonides, Introduction to *Zera'im*). The accessibility of the site should now also render it easier for architects and other experts to resolve whatever doubts and uncertainties formerly existed as best the human mind can. More we need not attempt; for the Torah was not given to superhuman beings.

7. Most decisive may be the final argument: The bulk of our genera-

tion is neither ready nor anxious for the restoration of the Temple and its form of worship. Only after Israel's religious reawakening can the Temple fulfill its meaning as the supreme symbol and instrument of God's sovereignty over His people (*Midrash Samuel*, 13; based on Hos. 3:5). Hence the order of our constant prayer: "Have mercy, o Lord our God, over Israel Thy people, Jerusalem Thy holy city . . . and the great and holy House over which Thy name is called." — Yet, even this argument may be fallacious. Perhaps just our orphaned and hard-trying generation, which has reached the gateway of redemption after the long ordeal of bitter exile, needs and may expect the spiritual regeneration to inspire, and to be inspired by, the restoration of our national Sanctuary. After all, Herod and his generation were scarcely more deserving, nor were the Babylonian exiles who returned under Ezra, and yet they rebuilt the Temple — praised in the Talmud as "the most magnificent building ever seen" (*Sukkah* 51b).

Quite different from these neutrally-presented views is R. Waldenberg's fairly comprehensive listing of responsa, all of them opposed to any idea of building the Temple in pre-Messianic times. He also refers to Rabbi Kook who, while he evidently considered in one place the possibility of rebuilding the Temple, though without restoring the sacrificial service (*Mishpat Kohen*, no. 94), elsewhere stressed our inability to identify the proper site (endorsement of R. Obadiah Hadayah's *Yaskil Avdi*, vol. 1, Jerusalem, 1931). Of relevance, too, of

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course, is the wide range of sources assembled in Rabbi J. David Bleich's "Review of Halakhic Literature Pertaining to the Reinstitution of the Sacrificial Order" in TRADITION (Fall 1967).

THE WESTERN WALL

The return of the Holy Places also prompts R. Waldenberg (*Ha-Pardes*, October 1967) to mention several rabbinic rulings and customs relating to them. Many authorities doubt whether it is permitted to kiss the stones of the Wall, let alone to place hands or prayer-books upon them, or petition papers between them, since the width of the Wall is invested with the sanctity of the site it encloses (Maimonides, *Hil. Bet Ha-Bechirah*, 6:9). Some, therefore, refrain from touching or even walking close to the Wall. But others of no lesser stature observe none of these restrictions. R. Waldenberg lists a number of responsa discussing these usages in detail.

THE CAVE OR MAHPELAH AND RACHEL'S TOMB

Kohanim should be warned not to enter these burial places and thus defile themselves (*Pe'at Ha-Shulchan*, *Hil. Eretz Yisrael*, 2:18; and others). To prevent such defilement, the marking of Abraham's grave is already mentioned in the Talmud (*Bava Batra* 58a).

In this connection, R. Waldenberg also urges visitors to the Cave not to conduct religious services in what, after all, has been constructed, and is still being used, as a mosque, with displays of Moslem religious inscriptions and emblems,

and what must, therefore, be regarded as a non-Jewish house of worship which, strictly speaking, Jews should not even enter (Maimonides, *Mishnah Commentary*, on *Avodah Zarah*, 1:4; *Yoreh De'ah*, 149:1). He considers it certainly wrong to use the same building for Jewish and Moslem prayers, even if the respective services are held there on different days.

There are also objections to using burial places for regular prayers. This question was already raised last century in regard to the prayers recited in Rachel's Tomb (*Minchat Eleazar*, part iii, no. 53), a practice widely accepted among Jerusalem's most pious men, despite the law against reciting prayers within four cubits of a grave (*Yoreh De'ah*, 367:3, 6). But the resting-places of the Patriarchs, and particularly of Rachel who herself prayed for her children from her tomb (Jer. 31:15), may be excluded from this ban (Waldenberg).

JERICH0

R. Waldenberg regards as no longer valid the ban on rebuilding the city of Jericho originally pronounced by Joshua (Joh. 6:17-26) and extended in the Talmud (*Sanhedrin* 113a) to the reconstruction of any city by that name. For, in contrast to a city condemned for idolatry which may never be rebuilt even after its destruction (Deut. 13:17), the ban on Jericho lapsed once a new city had been raised on the ruins of the original site (R. Meir Simchah of Dwinsk, *Meshekh Chokhmah*, a.l.; based on *Sifri*, a.l.). This may explain why Maimonides makes no reference to the

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ban.

KERI'AH ON SEEING HOLY SITES

The conquest of large parts of the Holy Land previously inaccessible to Jews especially the cities of Judaea, the Old City of Jerusalem and the Temple site, has naturally again raised the question whether one should tear one's garment on seeing these places, a question previously discussed in this department (TRADITION, Spring 1962, p. 270). Such a token of mourning is required on seeing these sites "in their destruction" (*Orach Chayyim*, 561:1-2; based on *Moed Katan* 26a), and opinions differ on whether this qualification is to be understood as referring to the continued desolation of these places or to their domination by a non-Jewish power. The latter interpretation is favoured by Karo himself (*Bet Yoseph*, a.l.) as well as by R. Esh-tori Ha-Parchi before him (*Kaftor Va-Ferach*, chpt. 6) and several commentators on the *Shulchan Arukh* after him (e.g. *BaCH*, *Magen Avraham*, a.l.). Accordingly, R. Waldenberg simply rules that the sight of Jerusalem or any other city of Judaea, now that they are under Jewish control, no longer necessitates the tearing of *keri'ah*. But this cannot apply to seeing the Temple site, which is undoubtedly still "in its destruction"; hence, on visiting the Western Wall and/or seeing the Dome built on the Temple site *keri'ah* should certainly be torn (as also stipulated by the wording of *BaCH*, loc. cit. and *Pe'at Ha-Shulchan*, *Hil. Eretz Yisrael*, 3:1-2). He adds, however, that despite the ruling by Maimonides (*Hil. Ta'a-*

nit, 5:16) requiring the tearing of all garments one wears at the time, the prevailing practice is to limit the act to one garment only (following *RAVeD* and Nachmanides).

The question has also been submitted to a more critical analysis in a scholarly article by Rabbi Samuel Weingarten (*Sinai*, Iyar-Tamuz 5727, p. 163). After discussing several complementary passages in the Talmud (esp also *Berakhot* 58b) and other rabbinic sources, the author concludes that these mourning observances are not related to the degree of sanctity attaching to the various places listed; otherwise they should include any of Israel's walled cities which are also enumerated among "the ten degrees of holiness" (*Kelim*, 1:6). Rather, R. Weingarten suggests (following *DaDBaZ*, part ii, no. 646), the reason for the law is to be found in the anguish experienced on seeing these sacred places in desolation, and the cities of Judaea are specifically included because "they were once the principal seat of Israel's royal rule" (*Pe'at Ha-Shulchan*, loc. cit.). With the restoration of Jewish sovereignty over the entire land, anguish on seeing any of these sites should now give way to joy and therefore suspend the *keri'ah* requirement altogether.

In a rejoinder published three months later (*Sinai*, Tishri-Cheshvan 5728, pp. 95 f.), A. Azrieli argues that the Temple site is halakhically and logically in a distinct category, quite different from that of Jerusalem and the Judaeian cities — halakhically since having torn *keri'ah* for Jerusalem a separate tear is still required on seeing

the Temple site, whilst in reverse on sighting Jerusalem or a Judaeon city after making the tear for the Temple site only an extension of the same *keri'ah* is required (Nachmanides and Asheri, on *Moed Katan* 26a), and logically since the return of Jewish rule clearly does not affect the grief over the desolation of the Temple and of the spiritual glory it represents. But both contributors do agree in criticizing the masses of our people, and particularly our religious leaders, for not even yearning for the restoration of the Temple with sufficient earnestness to generate serious study and effort, a failure no doubt springing from the fear of "what will the non-Jews say?"

THE MOUNT OF OLIVES CEMETERY

The saddest feature revealed by the conquests of the Six-Day War, next to the complete destruction of all synagogues in the Old City of Jerusalem, is the devastation wrought on the Mount of Olives cemetery where hardly a grave was left unmolested by the Jordanian vandals. To add to the fearful desecration of the oldest Jewish cemetery — which, until twenty years ago, had been in almost continuous use for 2,000 years or more — the Jordanians built a road across it, raised largely of broken tombstones over hundreds of wantonly despoiled graves. May this road be used by vehicles or on foot, and must the graves underneath it be uncovered and restored?

After describing the agony of a visit to the site, where every sod and stone cry out in anguish over the desecration of the human re-

mains they were meant to cover and guard, the author affirms with certainty the obligation to close the road immediately, and thereafter to tear it up, searching carefully for any graves beneath it in order to restore them. This decision is borne out by various older responsa. For instance, Rabbi Jacob Saul Alisher (*Olat Ish, Yoreh De'ah*, no. 9), in reply to an inquiry from Algiers, ruled that any stepping upon graves, let alone the constant use of a thoroughfare upon them, constituted a grave indignity to the dead, however deep the graves were under the surface. The prohibitions here involved were the disgracing of the dead as well as their exploitation. Instructive, too, is the decision of Rabbi David Friedman of Karlin (responsa *Sha'alat David*) requiring the demolition of a house which had been erected on grounds presumed to have had Jewish graves. Among the arguments used was the fact that the burial plots had originally been purchased on behalf of the deceased. This rendered it all the more heinous to rob the dead of the ground belonging to them.

Regarding the respect due to the dead, it makes no difference whether the body is still intact or already in an advanced state of decomposition; man, in whatever condition or physical health or blemish, is created in the Divine image (*Chatham Sopher, Yoreh De'ah*, no. 353). This consideration applies even to single human bones.

In conclusion, R. Waldenberg proposes proclaiming a special day of prayer and fasting to seek forgiveness for the revolting offense

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committed against the dead on the Mount of Olives. Even if those responsible were Israel's oppressors, Jews cannot disclaim all guilt, since "the dead are exhumed (i.e. ravaged) by the sin of the living" (*Yevamot* 63b). (The Israeli authorities have meanwhile closed the road. —I. J.)

THE OCCUPIED TERRITORIES

The most far-reaching — to some, perhaps, the most irrelevant — argument generated by the Six-Day War concerns the halakhic attitude to any withdrawal from territories occupied during the War. Many leading rabbis, notably Chief Rabbi Nissim and several followers of the Rabbi Kook school of thought, threw the weight of formal religious rulings behind the growing popular campaign against any retreat, whether under pressure of the world powers or as a price for a peace settlement. Others, claiming to blend their patriotism with a measure of realism, felt that such matters of state belonged primarily to political and military experts, not to rabbinical scholars.

The moderates' principal flag-bearer was Rabbi J. B. Soloveitchik. In a widely publicized address for which even the usually unfriendly *Ha-Pardes* (January, 1968) gave him effusive editorial praise, he berated the exaggerated importance attached to the Jewish "Holy Places," including the Western Wall, when compared to the deliverance of over two million Jews, and he ridiculed rabbinical interference with what were essentially security problems which could only be determined by Israel's govern-

ment and army authorities. Any religious precepts not to surrender the Holy Land to non-Jewish control were suspended, as was any other religious law, in the face of any threat to life, in this case possibly the lives of millions (Report in *Amudim*, published by the Kibbutz Ha-Dati, Cheshvan 5728). In a further classification, he explained that halakhically such political decisions were no different from rulings about fasting on *Yom Kippur* which had to be based on the opinion of medical experts (*Panim-el-Panim*, 13 Kislev, 5728, p. 7).

Leading the more militant camp was Rabbi Zvi Yehudah Kook. In a proclamation under the heading "Ye shall not be afraid" (Deut. 1:17) published by him in the Israeli press, he cited the warning given three hundred years ago that Jewish leaders would be held accountable for the failure to restore God's land to God's people (*Or Ha-Chayyim*, on Lev. 25:25) and argued that the surrender of Israel's territory to others was merely a sign of weak faith, causing Jewish suffering, danger and humiliation. It was the bounden duty of every Jew to prevent any permanent withdrawal from any part of the land historically vouchsafed to Israel, and anything undertaken in contravention of this principle, whether politically motivated or abetted by the hesitations of religious sages, was legally null and void. Rabbi Kook also led a mass demonstration at his Yeshivah "Merkaz Ha-Rav", attended by over a thousand leading citizens, including Israel's President, Chief Rabbi and numerous other dignitaries, culminating

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in an oath taken by all assembled in the words of "If I forget thee, o Jerusalem. . . ." (Ps. 137:5) and the aged rabbi's cry: "The Torah prohibits the surrender of even a single handbreath of our liberated land. . . . We are not conquering any foreign lands. We are returning to our home, to the inheritance of our fathers. . . ." (*Shanah be-Shanah*, Jerusalem 5728, p. 108f.).

The rabbinical debate was not limited to these rather polarified views. Already two weeks after the War, an Israeli daily published the replies of Chief Rabbi I. J. Unterman and Rabbi S. Israeli (member of the Chief Rabbinate Council) to questions about the conquered areas (*Hatzofeh*, 15 Sivan, 5727; also reprinted in *Shanah be-Shanah*, *op. cit.*, p. 105 ff.). A later symposium on the subject featured the views of several other leading rabbis, including Rabbis Bezalel Zolti (Rabbinical Appeals Court), Shlomo Zevin (Editor, *Talmudic Encyclopedia*) and Abraham Schapiro (Rosh Yeshivah, *Merkaz Harav*), in the same journal (*Hatzofeh*, 5 Cheshvan 5728), while a further opinion was published more recently by Rabbi Nathan Zvi Friedman, another outstanding Halakhist (*Zera'im*, Tevet 5728). Among the unpublished contributions to the controversy is an exchange of letters (circulated by the World Mizrahi Head Office in Jerusalem) between Rabbi Joshua Menachem Aaronberg (Tel Aviv, 14 Cheshvan, 5728) and Mr. S. Z. Shragai (Jerusalem, 18 Cheshvan 5728).

All authorities are agreed that there is a religious ban on the surrender by Jews of any territory

within the confines of the Holy Land. This is derived primarily from the precept "thou shalt not favor them" (Deut. 7:2), interpreted in the Talmud (*Avodah Zarah* 20a) and codes (Maim., *Hil. Avodah Zarah*, 10:3-4) as enjoining Jews "not to give them any settlement (rights of possession) in the soil" of the land. While this injunction strictly refers only to the pagan "seven nations" that originally inhabited the Land of Canaan, other relevant Biblical precepts are no so limited. Apposite, for example, is the verse "Every place whereon the sole of your foot shall tread shall be yours. . . ." (Deut. 11:24), which may be considered a law as well as a promise (Israeli). Of greater legal force is the injunction "And ye shall take possession of the land and dwell therein. . . ." (Nu. 33:53), which Nachmanides (*Sefer Ha-Mitzvot*, positive additions, no. 4) counts as a distinct law among the 613 Biblical commandments (Schapiro) and which involves the three obligations (1) to conquer the land, (2) not to surrender its possession to others, and (3) not to leave it uninhabited (Friedman).

Some acknowledge, however, that these laws may not be absolute. Already several early authorities (*Kaftor Va-Ferach*, chap. 10; so also *RAVeD*, in *Shitta Mekubetzet*) recognized that "thou shalt not favour them" is inapplicable when it conflicts with Jewish property interests; hence economic factors must also be taken into account (Zolti). This is, in fact, the basis for the sanction (*Avnei Nezer*, *Yoreh De'ah*) to sell plots in the

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Holy Land to non-Jews (Schapiro). Dealings in real estate between Jews and non-Jews have always been permitted; nevertheless, national considerations may possibly be altogether different and subject to a separate judgment in the light of the existing circumstances (Unterman).

In any event, the borders within which any of these precepts operate are almost certain to exclude the Sinai peninsula — unless its occupation is essential for Israel's security (Zolti); but there is some doubt whether the Syrian heights now occupied by Israel are within the Biblical territory of the Land of Israel (Schapiro).

Support for the more accommodating attitude is mainly founded on the argument, already mentioned above in the name of Rabbi Soloveitchik, that all religious prohibitions automatically give way in the face of any danger to life, and that the determination of such danger is invariably left to experts, such as doctors in the case of violations of the law for medical reasons. Thus, an absolute refusal to entertain any negotiations on border adjustments, or possibly even on the bulk of the territory occupied last June, might well endanger Israel altogether; not to mention the fear that the addition of one million Arabs to Israel's population might in time undermine the character and security of the Jewish State (Zevin). In any case, the whole question is not now acute, since the Arabs adamantly continue to reject any peace talks. Moreover, there were many other religious ideals which could not be realized under present

conditions, such as the obligation to rid the Holy Land of any practices or shrines regarded as idolatrous in Jewish law (Zevin). A precedent for the more moderate view may also be found in the armistice negotiations of twenty years ago when no one raised any halakhic objections to the recognition of borders more confined than the limits set for the Land of Israel in the Torah (Unterman).

But others will recognize only a direct threat to Israel's security from one of the principal world powers as a valid indication for any concessions; even such considerations as local security against terrorism or demographic factors would not be sufficient to override the religious ban on any surrender of territory, especially since the political and military experts themselves are by no means unanimous on their assessment of the danger if Israel refused any negotiations for territorial adjustments (Schapiro). It is also argued that the duty not to give up any territory is absolute; after all, the thrice-repeated miracle of Israel's deliverance from attack by superior military forces may not always be assured, following the pragmatic rule "One must not rely on miracles." It would be indefensible, therefore, to allow the enemy ever again to be close to Israel's life-lines (Friedman).

It may even be questionable whether the suspension rule in the face of danger to life is altogether applicable to the law of waging war for the Jewish occupation of the Holy Land. Otherwise, any danger to life resulting from war or terrorist attacks would justify emi-

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grating from the Land of Israel; nor could one plead for any Aliyah from abroad if such an argument were upheld. Hence, the religious precept to occupy the land, and its obverse not to surrender it, cannot be affected by any risk of life. This point is expressly made in connection with the commandment to wage war, with inevitable losses on both sides, on the original inhabitants of the land (*Minchat Chinukh*, no. 425). Only if without a partial surrender all would be lost might this consideration be varied

(Aaronberg).

The circumstances leading to the Six-Day War may also weigh the scales against any concessions. We may today not be under any religious obligation to conquer the land. Yet, once it has been occupied through an action enforced by pure self-defense against the avowed threat of extermination, we have no right to surrender land which was taken from our people 1900 years ago, and to which we lay historical, moral and religious claims (Israeli).