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## RABBINIC RESPONSES TO CONSCRIPTION

There upon the battlefield of honor . . .  
there also will the barriers of prejudice come tumbling down.  
*Edward Kley and Carl Siegfried Günsburg,*  
*Zuruf an die Jünglinge, 1813*

The profession of a soldier is the profession of an assassin.  
*Chmoul to his Son, in Leon Cabun, La Vie Juive*

Rabbis and schoolteachers in their teaching must present  
military service as a sacred duty. . . .  
*Instructions To The Westphalian Consistory, 1808*

[W]ar is an unmitigated evil, and . . . we should abstain  
from all participation in it.  
*Proposed Resolution Before the Central Conference  
of American Rabbis, 1935*

Is the role of a soldier that of a hero or of an assassin, a fate to be embraced or to be dreaded, a source of pride or of anguish? Living, as they did during the medieval period, a separate existence in the lands of their dispersion in which they constituted an *imperium in imperio*, Jews for a large part of their history were spurned as soldiers and spared the dilemma. But there came a time when the question was placed squarely before them.

In an attempt to force the members of the Jewish community to define their relationship to the state from the vantage point of Jewish law, Napoleon, by a decree of July 10, 1806, convened the Assembly of Notables and, subsequently, on September 24, 1806, announced his decision to summon a Great Sanhedrin to convert the decisions of the

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This essay is based upon a lengthier presentation to the Orthodox Forum convened by the Rabbi Isaac Elchanan Theological Seminary, Yeshiva University, in March 2004. The full paper will appear in *War, Peace and the Jewish Tradition*.

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Assembly of Notables into definitive and authoritative religious pronouncements. Indicative of Napoleon's desire to assure that those synods issue unequivocal declarations regarding the primacy of the responsibilities of Jews as citizens of the state is the sixth of the twelve questions placed before those august bodies: Do Jews born in France, and treated by the law as French citizens, acknowledge France as their country? Are they bound to defend it? Are they bound to obey its laws and to conform to every provision of the Civil Code?

By the time that the Paris Sanhedrin was convened, Jews had already served in the French revolutionary armies, in the National Guard, and in Napoleon's forces. When the sixth question was read before the Assembly and the question of whether Jews were duty-bound to protect France was articulated, the deputies spontaneously exclaimed, "To the Death!"<sup>1</sup> In the course of the ensuing proceedings of the Assembly an affirmative response to the question was formally adopted by unanimous vote. Moreover, during the subsequent deliberations of the Sanhedrin, the only matter regarding which the Sanhedrin formulated a position that went beyond the previous resolutions adopted by the Assembly was with regard to this sixth question. The Sanhedrin went so far as to declare that Jews were exempt from religious obligations and strictures that might interfere with performance of military duties.

The resounding declaration of the Sanhedrin found an echo in numerous public statements in the years that followed. Yet, as Jewish nationals were called upon with increasing frequency to serve in the armed forces of their host countries, that emerging phenomenon evoked contradictory responses.

Consistent with its clear and unambivalent regard for the sanctity and preservation of human life, Judaism manifests a distinctly negative attitude toward warfare and idealizes peace as the goal of human society. Although Scripture is replete with accounts of military conquests, the taking of human life in warfare was consistently viewed as, at best, a necessary evil. Despite King David's distinction, both temporal and spiritual, he was informed, "You shall not build a house in My name, because you have shed much blood upon the earth in My sight" (I Chronicles 22:8). The ultimate utopian society was envisioned as one in which "Nation shall not lift up sword against nation, neither shall they learn war any more" (Isaiah 2:4 and Micah 4:3).

Subsequent to the biblical period there are few instances of Jews voluntarily engaging in armed warfare. Although Jews can hardly be described as a militaristic people, beginning with the garrison of the Jews

of Elephantine five centuries before the common era<sup>2</sup> and extending to the soldiers of the quasi-autonomous Jewish community of Joden Savane, Surinam, in the New World,<sup>3</sup> there have been situations in which Jews served as mercenaries or as volunteers in peacetime army units.<sup>4</sup> Those forces constituted the exception rather than the rule. Over the centuries there have also been occasions when Jews took up arms in self-defense or in order to achieve political objectives, including military uprisings in the Roman Diaspora (115–17 C.E.), the rebellion of Mar Zutra (513 C.E.), and an eighth century rebellion in Iraq led by Abu Isa. In Europe there is ample evidence of Jews having borne arms until they lost that right sometime in the thirteenth century. A Spanish Jewish military figure who headed the armies of Grenada in the early eleventh century was the renowned Samuel ha-Nagid. There are scattered references to Jews rendering military service in Italy and Sicily in the fifteenth and sixteenth centuries. From the sixteenth to the eighteenth centuries there were also occasional instances of Jews using weapons in self-defense in Polish cities and of Jews serving, at times, in civil defense units and even in the national army.<sup>5</sup>

However, it is only after the Emancipation that large numbers of Jews were conscripted into non-Jewish armies. In the global wars of the twentieth century the numbers increased significantly. Thus, for example, a quarter of a million Jews served in the U.S. army in World War I and over a half million in World War II; over a half million Jews were conscripted into the Soviet army in World War II; over 50,000 Jews fought in the British army in World War I and over 60,000 in World War II.<sup>6</sup>

When Jews first began to be conscripted into European armies in the late eighteenth and early nineteenth centuries, two sharply divergent attitudes found expression in the broader Jewish community. For observant, traditional Jews, aside from the quite cogent fear for life and limb, the terrors of the military experience were magnified by the difficulties army service posed in terms of ritual observance of Sabbath and festivals, dietary laws, Torah study, prayer, and the wearing of beards and side-locks. Little wonder that, for such persons, army service was perceived as a calamity to be avoided at all cost. In stark contrast, to liberal elements within the Jewish population service in the army represented a tangible means of demonstrating patriotic zeal and was welcomed as the key to emancipation, enfranchisement, and achievement of political equality. Sadly, although much heroism was displayed and much Jewish blood was shed, nevertheless, prejudice persisted without mitigation and in far too many jurisdictions political and social equality remained a chimera.

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In responsa and writings of the next century and a half both of these contradictory reactions were articulated. Most—but not all—traditionalist halakhic authorities were far more negative toward army service than might be assumed on the basis of the published record. Within the liberal sector, which initially uniformly acclaimed army service as a sacred duty, one finds striking shifts and permutations. In the changed *zeitgeist* of the twentieth century, when pacifism became the vogue and the ideal of *dulce et decorum est pro patria mori* lost its luster, liberal ideologues sought to discover a mandate for pacifism and conscientious objection in Jewish law and tradition. Ironically, in seeking to espouse what they believed to be a non-normative halakhic stance, those writers did, in fact, draw close to the normative, but seldom candidly expressed, halakhic perspective.<sup>7</sup>

### I. PUBLISHED RESPONSA

Although the published corpus of halakhic responsa devoted to the topic of military service is not unduly sparse, it provides but a veiled and hazy portrait of the traditionalist perspective. Perusal of the responsa reveals that the respondents were fully conscious of the need for utmost caution in dealing with so sensitive a subject. They grasped far too well the implications of expressing opinions inconsistent with, or even not fully supportive of, policies espoused by the governing authority. Thus, the respondents were extremely circumspect and wrote with an eye constantly over their collective shoulder. Such vigilance is evident in the cryptic nature of some comments, in the explicit expressions of concern frequently incorporated in their responsa, but most of all in what is not written.

Of the early responsa discussing the compulsory draft in the modern era, the two most significant are those of R. Samuel Landau, son of R. Ezekiel Landau, included in his father's posthumously published responsa volume, *Noda bi-Yehudah, Mahadura Tinyana, Yoreh De'ah*, no. 74 and of R. Moses Sofer, *Teshuvot Hatam Sofer*, VI, *Likkutim*, no. 29. Perhaps the most remarkable aspect of both responsa is the fact that discussion of the most fundamental issue is conspicuous in its absence. There is no reference whatsoever to the basic problem of complicity in an unjust or halakhically illicit war. Another responsum of R. Moses Sofer is the classic source for the ruling that non-Jews are enjoined from engaging in any form of warfare other than for purposes of self-defense.<sup>8</sup> Yet, in his discussion of problems associated with conscription,

Hatam Sofer makes no mention of the problem of Jewish complicity in a war of aggression.<sup>9</sup> Virtually all subsequent discussions of the subject similarly avoid this sensitive issue. It is not surprising that, a century later, in addressing the vexing problem of Jews fighting other Jews in opposing enemy forces, R. Ze'ev Wolf Leiter wrote that he was unable to find this question clarified in the literature of rabbinic decisors.<sup>10</sup>

Moreover, the one clear reference in the writings of early-day authorities to Jews fighting in non-Jewish wars is entirely ignored by later rabbinic scholars who discuss participation in military campaigns. Tosafot (*Avoda Zara* 18b), cite a certain Rabbenu Elhanan who comments cryptically that it is forbidden for a Jew “to be of the number of members of the army.” The omission of this source is far too glaring to have been a simple oversight. Rabbinic writers dealing with questions pertaining to military service appear to have adopted the policy of R. David Sintzheim, a member of the Paris Sanhedrin, as extolled by Hatam Sofer, who said of him: “He . . . knew how to answer his questioners. . . . After he had revealed one handbreadth, he concealed two handbreadths.”<sup>11</sup>

The reason for such reticence is obvious. As a result, these responsa demand careful examination by the reader with close attention to what is hinted at only between the lines. That such scrutiny is required is apparent from explicit cues embedded in the text designed to serve as red flags indicating the delicacy of the topic and underscoring the fact that some matters must remain unsaid.

In discussing cooperation or non-cooperation with the military draft, R. Samuel Landau prefaces his ruling by stressing that “It is difficult to issue a ruling in a matter that primarily entails a question of life and death. Who shall raise his head [to render a decision] in these matters?” In his concluding remarks he adds,

I know that it is difficult to rule with regard to this [question] and with regard to this our Sages, of blessed memory, said, “Just as it is a mitzva to say that which will be accepted, so it is a mitzva not to say that which will not be accepted”<sup>12</sup> and at this time a sagacious person will be silent.<sup>13</sup>

Hatam Sofer, also addressing the question of the conscription of Jews in non-Jewish armies, states that, “Regarding this, silence is better than our speech.” Referring to unspecified reprehensible actions of Jewish communal officials, Hatam Sofer resignedly comments, “Great Jewish authorities perforce looked aside and permitted those appointed by the community to do as was fitting in their eyes according to the times.

And it is a time to be silent.” Presumably, silence was the best response since protest would have proven unproductive. Rabbis did not have the power to reverse or rescind communal policies without creating a situation in which government authorities would become aware of Jewish reluctance to serve in the military. There was a strong probability that overt intervention on their part would give rise to serious punitive reprisals against the entire Jewish community. In such an era, the only course of action open to responsible rabbinical leadership is one involving “the choice of the lesser evil.” Accordingly, Hatam Sofer concludes, “Lo, I have been exceedingly brief for it is not fitting to expand upon this subject, as is understood.”<sup>14</sup> In a similar vein, R. Meir Eisenstadt writes of the situation facing the rabbis: “And if perhaps they looked aside because it is not in their power to find another solution, we, what can we answer in their place?”<sup>15</sup>

The issues addressed in these early responsa are the right of the state to conscript soldiers and the halakhic questions posed by the manner in which the draft was initially conducted. Government authorities demanded that the community produce a given number of recruits and, frequently, Jewish communal officials were placed in charge of filling the quota. Usually the selection was carried out by means of a lottery. In some locales it was also possible for a recruit to hire a substitute. The fundamental halakhic issue raised is the dilemma posed by the classical problem of *tenu lanu ehad mi-kem* (Palestinian Talmud, *Terumot* 8:4), i.e., the question of delivering a single individual in order to save the entire community. Generally speaking, one is prohibited from delivering an individual Jew for execution even in order to save the lives of many (*Mishneh Torah, Hilkhot Yesodei ha-Torah* 5:5). The case discussed in the Palestinian Talmud serves as a paradigm prohibiting the singling out of a Jew for exposure to danger or harm in order to spare others from a similar fate. Assuming that cooperation in conscription is legitimate, a second and closely related question involves the issue of how the lottery is to be conducted and whether deferments or exemptions may be granted to some individuals when such a policy would entail substituting others in their stead.

The earliest rabbinic respondent to the question of communal conscription, R. Samuel Landau rules unequivocally that, “It is forbidden to hand anyone over to them” and that “There is no room to be lenient in this matter.” Individuals may do all in their power to avoid the draft, provided that they have not yet been designated by name. Moreover, the community may also strive to assist such individuals in securing an

exemption prior to their actual designation. However, once an individual has been identified for conscription, the community may no longer seek his exemption if such exemption would be obtained only at the expense of another person who would be taken in his stead. Such substitution is forbidden on the basis of the talmudic argument “Who says your blood is redder than his?” (*Pesahim* 25b). However, faced with a situation in which such efforts were made, R. Samuel Landau counsels, “At this time the wise should be silent.” In contradistinction, R. Samuel Landau is adamant that even non-observant youths or those who mock the law may not be handed over for military service. Although such individuals may be deserving of punishment, it is nevertheless absolutely forbidden to turn them over to civil authorities in order to fill the draft quota imposed upon the community.<sup>16</sup> R. Samuel Landau is cognizant of the difficulty of ruling in matters of this nature. Nevertheless, while fully aware of the delicacy of the situation in negotiating both with lay communal officials and with government authorities, he does not shrink from declaring categorically that if, in fact, individuals were to be handed over to the civil authorities, it would become obligatory to engage in preventive action and in public protest (“*mehuyyav limhot be-yad*”).<sup>17</sup>

In a responsum, dated Sivan 1830, Hatam Sofer, the preeminent halakhic authority of the time, affirms the obligation of conscripted Jews to perform the services required of them. His position is based upon the premise that the power to conscript is encompassed within the ambit of the halakhic principle *dina de-malkhuta dina* (the law of the land is the law) and flows from the power of the ruler to levy “taxes” in the form of personal service. Hatam Sofer affirms the right of the state to require military service from its nationals.<sup>18</sup> The only members of the community who must be excused by communal leaders from the obligation imposed upon the community as a whole are students of Torah who, argues Hatam Sofer, on the basis of Jewish law (*Bava Batra* 8a), are free from the obligation regarding military service. Hatam Sofer notes that rabbinical students and occupants of rabbinical positions were usually exempted by the government<sup>19</sup> and adds that he himself had frequently given testimonials to such students to assist them in obtaining exemptions.

Hatam Sofer recommends utilization of a lottery system for filling the quota imposed upon the Jewish community but emphasizes that it must be equitable and that all persons suitable for military service, observant and nonobservant, be included in the lottery.<sup>20</sup> He stresses that it is absolutely forbidden to compel any person to serve in the stead of an

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already drafted individual, even if the replacement is a Sabbath desecrator or an immoral person. Hatam Sofer regarded such coercion as tantamount to biblically proscribed kidnapping and sale of an innocent victim. Nonetheless, he rules that it is entirely permissible—and indeed advisable—for individuals to seek exemptions or deferments and to devise ways of avoiding military service even by means of hiring a substitute or by paying a sum of money in order to secure a reprieve. Moreover, Hatam Sofer regards it as praiseworthy for fellow Jews to render every assistance to their coreligionists in order to obtain such exemptions (“*ve-kol Yisra’el meluuyavim le-sayye’o ve-yekar pidyon nafsho*”).<sup>21</sup>

In concluding his comments, Hatam Sofer notes that it was common practice for nonobservant individuals to volunteer to serve as substitutes for conscripts in exchange for a sum of money. He rules that it is permissible to avail oneself of such an arrangement since those volunteers were unconcerned with regard to violation of religious law at home as well as in the army and, moreover, in any event, would likely make their services available to others. Using such replacements had become common practice and, given the realities of the overall situation, Hatam Sofer asserts that availing oneself of the services of these substitutes constitutes choosing the lesser of two evils (“*livhor ha-ra be-mi’uto*”).<sup>22</sup>

It is quite evident that Hatam Sofer urges that military service be avoided if at all possible. Although his language is restrained, a decidedly negative view of military service and the necessity for ritual infractions inevitably attendant thereupon is manifestly evident. It should be noted that his comments appear to be directed entirely to peacetime service since the issue of subjecting oneself to endangerment is not raised.

Similar views regarding the draft are articulated by a contemporary of Hatam Sofer, R. Moshe Leib Tsilts of Nikolsburg, who stresses the need to abjure preferential treatment in administering the lottery.<sup>23</sup> Writing in 1841, R. Meir Eisenstadt goes beyond Hatam Sofer in declaring that not only is the hiring of substitutes permissible but, from the perspective of the draftee, may be described as a “mitsva.”<sup>24</sup> *Imrei Esh* declares, “It is absolutely permissible and a mitsva to do so” (“*better gamur u-mitsva la’asot ken*”) and in the conclusion of his discussion he reiterates his view with the emphatic exclamation, “It is permitted and a mitsva” (“*muttar u-mitsva*”). In explaining why this practice is the best available solution to the dilemma, *Imrei Esh*, perhaps naively, asserts that: (a) no one compels the substitutes to transgress Torah law; (b) dietary observances need not be violated by a conscript who is willing to accept inconvenience; and (c) problems involving Sabbath observance can be



resolved since Jewish law permits arms to be carried on the Sabbath under specified conditions. *Imrei Esh* also addresses the issues posed by the danger inherent in military service but concludes that volunteering for army service is not to be forbidden on the grounds that it is tantamount to suicide.<sup>25</sup> Nonetheless, *Imrei Esh* rules that it is forbidden to obtain substitutes by means of coercion simply because a person may not “deliver” another individual to harm, loss, or inconvenience in order to be spared the burden he seeks to shift to another.

Many later respondents assert that it is commendable to avoid army service at all costs. As noted, *Imrei Esh* asserts that it is a mitsva to hire a substitute.<sup>26</sup> Others point to the physical danger associated with military service in ruling that it is preferable to accept employment involving desecration of the Sabbath rather than to serve in a battle zone. Thus, R. Eliezer David Greenwald of Satmar rules that when there is no threat to life, one should not seek exemption from army service by accepting a post in which Sabbath desecration is a certainty.<sup>27</sup> However, one should do everything possible to avoid being sent to the battlefield, including accepting a position that will definitely entail ongoing Sabbath desecration, because “there is nothing that stands in the way of saving life.” R. Mordekhai Leib Winkler maintains that one must assume that any wartime service will entail battlefield conditions, i.e., military service represents at least possible danger to life.<sup>28</sup> Consistent with that view, he rules that unless an individual has already been selected by a draft board, he should not accept a position involving Sabbath desecration in order to avoid being called up because prior to being selected there is no imminent danger.<sup>29</sup> However, if a person has already been selected by a draft board he may accept employment involving Sabbath desecration in order to obtain a deferment from military service since “in our day, in the awesome battle at this time, with multiple instruments of destruction and catapult stones,” such service entails danger to life.<sup>30</sup>

Perhaps because hiring a substitute was no longer a viable option, unlike respondents of an earlier period, R. David Tsevi Hoffmann was forced to confront the issue of outright evasion of the draft.<sup>31</sup> Writing after the first World War, R. Hoffmann rules that one should not seek to evade army service on account of fear of Sabbath desecration for more “than a question of a mitsva” is involved. Evasion of army service may give rise to the profanation of God’s name (*billul Ha-Shem*), R. Hoffmann warns, “because the enemies of the Jews say that the Jews do not obey the laws of the kingdom.”

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Although, in application, R. Hoffmann's ruling is unequivocal, his views regarding military service upon which it is based are somewhat more complex. A careful reading of this responsum indicates that R. Hoffmann does not deem army service *per se* to be a religious duty since he speaks of actions that might be performed by a soldier that would constitute a mitzva "such as to save the lives of Israelites or other mitzva" with the implication that army service in itself does not constitute a mitzva. It is the negative outcome in the form of profanation of the Divine name and possible attendant danger to Jews that is the focus of his concern. R. Hoffmann observes that if rabbinic decisors ruled that an individual was obligated to evade army service to avoid Sabbath desecration, the result would be widespread evasion of the draft. This would be counterproductive "for assuredly the majority would not achieve their desire and it would cause a great profanation of the Name, God forbid, for no purpose." Again the implication appears to be that his ruling is based on a pragmatic assessment of the situation at the time and realistic considerations as distinct from an idealistic position. Were it possible for Jews successfully to avoid army service the conclusion might have been entirely different. R. Hoffmann's own introductory comment in delineating the problem, namely, that the question requires an answer based "not on the inclination of our heart alone" also implies that the instinctive Jewish reaction is to avoid military duty.

It is noteworthy that R. Hoffmann's responsum focusing on avoidance of *hillul Ha-Shem* was penned at a time when there was an upsurge of anti-Semitism in Germany and accusations were widespread that Jews had evaded the draft in large numbers or had shirked frontline service. In World War I, 12,000 German Jewish soldiers died on the battlefield. Yet, the extent to which prejudice persisted is most strikingly apparent in the infamous *Judenzählung* (census of the Jews) ordered by War Minister Wild von Hohenborn in 1916 to determine the number of Jews who served on the frontlines as opposed to those who served in the rearguard. The census disproved the calumnies and demonstrated that eighty percent had served on the frontlines. Not only did the War Ministry fail to make the results public but the findings were also distorted by anti-Semitic agitators.<sup>32</sup>

A further query addressed by R. Hoffmann in the very next responsum is whether it is obligatory for an individual to take advantage of a student deferment in order to delay military service and possible attendant Sabbath infractions or whether one might accept immediate army duty in order, upon completion of the tour of duty, to be able to enter

into a marriage.<sup>33</sup> In the case submitted to him, R. Hoffmann, for a variety of reasons, rules that it is permissible not to accept the deferment.<sup>34</sup> Again, from the context of the discussion, it is evident that R. Hoffmann is far from enthusiastic about military service. He writes to the interlocutor, who had written on behalf of his son, that delay may be inadvisable because it might result in a longer tour of duty since it is possible that your son is not so strong at the present time and may prove inept in army service and will soon be discharged which may not be the case three years later when he will be stronger and assuredly will be taken and will be forced to remain there the entire year.<sup>35</sup>

R. Israel Meir ha-Kohen rules that Jews must allow themselves to be conscripted and implies that failure of Jews to participate in the military when foreign forces attack may enrage the populace and result in loss of life.<sup>36</sup> His comments certainly do not constitute a blanket endorsement of military service and a dispensation to engage in warfare under any and all circumstances; they urge acquiescence to conscription simply as a matter of *pikku'ah nefesh* or preservation of life.<sup>37</sup>

There are, however, two halakhic respondents whose views differ significantly from the majority. Writing in Germany, in the nineteenth century, R. Samson Raphael Hirsch extols the positive religious duty of serving in the army in defense of one's fatherland. R. Hirsch contends that loyalty to one's country is a "religious duty, a duty imposed by God and no less holy than all the others."<sup>38</sup> In *Horeb*, a work devoted to the discussion of mitzvot, R. Hirsch includes this obligation in the fifth section, the section devoted to what he terms "commandments of love." Encompassed in the religious duty of a subject and citizen, he maintains, is the obligation "to sacrifice even life itself when the Fatherland calls its sons to its defense." R. Hirsch goes far beyond most rabbinic writers in positing that this obligation must be fulfilled "with love and pride." In a most remarkable statement, he declares, "But this outward obedience to the laws must be joined by the inner obedience: i.e., to be loyal to the State with heart and mind . . . to guard the honor of the State with love and pride."<sup>39</sup> One can but wonder to what extent R. Hirsch was carried away by the rhetoric of the time and to what extent he internalized these sentiments.<sup>40</sup> R. Hirsch does not address the substantive question of participation in a war of aggression. However, he does conclude his remarks on patriotism with the observation that loyal citizenship is an "unconditional duty and not dependent upon whether the State is kindly intentioned toward you or is harsh."<sup>41</sup> The comment seems to suggest that R. Hirsch assumed that one is duty-bound to

serve in the army even in an unjust war of aggression when such is the mandate of the state.

The strongest rabbinic endorsement of army service as a positive religious obligation and the sharpest rabbinic criticism of army evasion was penned by R. Moshe Shmuel Glasner of Klausenberg, the author of *Dor Revi'i*, who is known as an independent-minded and unconventional scholar. R. Glasner maintains that "According to the law of the holy Torah we are obligated to heed the king's command." In a play on words, R. Glasner declares that Jews are obligated to pay the burden of "*damim*." *Damim*, he notes, is a homonym having a double meaning, namely, "money" and "blood." Thus the word implies both a financial tax and a "blood" tax. R. Glasner concludes that although it is unlikely that soldiers will be able to avoid infraction of dietary and Sabbath regulations, "This mitsva of observing the decree of the king supersedes all."<sup>42</sup>

The position of Rabbis Hirsch and Glasner is the exception to the rule. In contrast, R. Ze'ev Wolf Leiter is much closer to the halakhic consensus in writing negatively with regard to all forms of army service.<sup>43</sup> R. Leiter questions the propriety of a Jew fighting a fellow Jew in opposing enemy forces and is explicit and forthright in ruling that voluntary army service on the part of an individual who has not been conscripted or compelled to enlist<sup>44</sup> is an unequivocally forbidden form of self-endangerment. Giving voice to what in rabbinic writing is a rare approach,<sup>45</sup> R. Leiter calls for resolving the dilemma by obviating the need for army service and advocates a proactive response in declaring: "The obligation devolves upon every God-fearing individual (*haredi*) to labor on behalf of world peace in order that innocent blood not be spilled . . . and that warfare cease."

Jewish participation in World War II may well have been regarded in an entirely different light by rabbinic authorities. That war was waged by the Allies against a power that had targeted Jews for annihilation. Although there is scant published material devoted to the question, the military campaign to defeat the Nazis may readily be considered as an undertaking in the nature of "*ezrat Yisra'el mi-yad tsar*—rescue of Jews from the hand of the oppressor." Such a war is categorized by Rambam as a *milhemet mitsva*, i.e., an obligatory war.<sup>46</sup> In a previously unpublished private letter to his son,<sup>47</sup> the late R. Yosef Eliyahu Henkin discusses volunteering for service in the United States Army in 1942. R. Henkin writes that in the period prior to institution of the draft volunteerism was to be encouraged. With establishment of the draft, those who receive exemptions need not volunteer since others

will be available to fight in their stead. In particular, educators who are exempt and contribute to the needs of society render vital assistance to the war effort. R. Henkin does, however, recommend that those who are suited to do so should volunteer to serve as air-raid wardens. The latter lends itself to being read as a blanket endorsement of voluntary army service. In light of the consensus of rabbinic opinion that regards participation in wars of aggression to be impermissible, it may be the case that R. Henkin's comments were limited to the context in which they were written, i.e., war against the Nazis who were recognized as posing a threat to Jewish survival.

## II. RULINGS REPORTED IN BIOGRAPHICAL SOURCES

A number of biographical studies of Eastern European authorities contain reports of emphatically negative oral pronouncements regarding army service but, understandably, those statements are not to be found in the formal halakhic literary record. Rulings that are not committed to writing, even when transmitted by persons of unquestionable probity, lack the authoritativeness of published decisions. Oral reports often lack contextual clarity as well as nuances of meaning and expression, not to speak of their inherent unreliability because of possible misunderstanding on the part of the transmitter. Nevertheless, in this instance the oral reports must be given a high degree of credence both because they are congruent with the circumspection evident in the published material and because of the unanimity of opinion reflected in those reports.

Even the members of the liberal sector of the Jewish community did not view military service in Russia in the same positive light as did their counterparts in Western Europe for the simple reason that in Russia conscription was clearly neither a harbinger of civil emancipation nor a duty shared equally by all citizens; instead, it was a burden selectively imposed by the government. In the case of Jews, conscription was an integral element of a policy of Russification and forced apostasy. Until 1874, each nationality and ethnic group within Russia was governed by its own set of military regulations. In 1827, shortly after Nicholas I ascended to the throne, obligatory military service was imposed upon Jews. Under the provisions of the new regulations, a specified number of Jews were to be drafted for a twenty-five year period. Conscription began at the age of eighteen, but the regulations contained a provision allowing for the taking of youths from the ages of twelve to eighteen

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for preparatory training. The units in which youths under eighteen served were known as Cantonist battalions. Exemptions were available for some categories of individuals and substitutes might be employed, but only other Jews were acceptable as substitutes.

Sociologically, the worst aspect of the decree was the fact that administration of the draft was placed in the hands of the Jewish communities. Jews guilty of non-payment of communal taxes or of vagrancy, or their children, were often designated for military service by the community in order to meet its quota. Individuals drafted by the community in excess of the quota for a given year might be credited to the following year's quota. Pressured to fill the heavy quota, communities often hired kidnapers (*khappers*) whose ruthless methods, including seizing children under twelve, became legendary. As has been well documented, Tsar Nicholas was driven by a missionary zeal that strongly influenced the policies of his government; tales of forced conversion and torture abound. From 1827 through 1854 some 70,000 Jews were conscripted into the Russian army; of that number, approximately 50,000 were minors.<sup>48</sup>

Rabbinic authorities bemoaned the conduct of the communal officials in implementing the decree and, in isolated instances, strove to forestall acts of injustice. They were, however, powerless to defy the system. The complicity of communal officials and Jewish kidnapers in the oppressive government policies led to an unprecedented breakdown of Jewish society.<sup>49</sup> As might be anticipated, given the fear of reprisal and an atmosphere of terror, there is a dearth of published material in rabbinic writings regarding the plight of the Cantonists.<sup>50</sup>

It is well known that R. Joseph Ber Soloveichik, renowned as the author of *Bet ha-Levi*, was a vociferous opponent of the kidnapers who, with the complicity of communal officials, sought to satisfy the demands of the Russian authorities. In his fierce opposition to this abhorrent social evil, R. Soloveichik is reported to have advocated the total dismemberment of the official *kehillot*, or communal governing structures, throughout Russia so that the Russian government would find itself with no Jewish communal body capable of executing its decrees.<sup>51</sup>

Since he did not succeed in implementing this radical solution, R. Soloveichik undertook the task of providing refuge and securing exemptions in individual cases. In particular, he was moved by the plight of the poor who bore the brunt of the edict. On one occasion, while R. Soloveichik was yet rabbi of Slutsk, he is said to have requested the local commandant to draft only youngsters who were members of wealthy families. He later explained to the distressed and angry lay leaders of

Slutsk that justice demanded such a policy. The rich, R. Soloveichik pointed out, invariably succeeded in obtaining exemptions for their children by one means or another, whereas the poor were helpless and forced to endure army service with attendant exposure to persecution and often enforced baptism.<sup>52</sup>

The accuracy of R. Soloveichik's assessment of the situation is dramatically illustrated in the words of a popular folksong of the time:

Rich Mr. Rockover has seven sons,  
Not a one a uniform dons;  
But poor widow Leah has an only child,  
And they hunt him down as if he were wild . . .  
But the children of the idle rich,  
Must carry on without a hitch.<sup>53</sup>

On the basis of oral reports of his disciple, R. Naftali Amsterdam, the biographers of R. Israel Salanter, founder of the Mussar movement, detail R. Salanter's fruitless efforts to persuade government officials to abolish the harsh decree. They recount how R. Salanter rescued an orphan from his abductors and the manner in which he publicly castigated those in Salant and Kovno who turned a deaf ear to the pleas of indigent women whose sons were among the victims. The day that the decree was finally rescinded R. Salanter proclaimed a day of thanksgiving and was incensed at those of his disciples who did not on that occasion pronounce the full blessing "*ha-tov ve-haMetiv*" with the inclusion of the Divine name.<sup>54</sup>

The hasidic leader, R. Menahem Mendel Schneerson, known as *Tsemah Tsedek*, sought to organize communal strategies to thwart the kidnappers. There is evidence that *Tsemah Tsedek* asserted that the kidnappers were morally and halakhically culpable for violation of the biblical admonition, "And he that steals a man and sells him, or if he be found in his hand, he shall surely be put to death" (Exodus 21:16), and hence, in the struggle against them, even extreme measures might be countenanced.<sup>55</sup>

It is quite apparent that in Poland and Russia, long after mitigation of earlier harsh decrees, avoidance of army service continued to be advocated by rabbinic figures. It is common knowledge that R. Hayyim Soloveichik of Brisk rarely issued halakhic rulings himself, preferring instead to submit the questions that were referred to him to the *daiyan-im* of Brisk or other authorities. However, with regard to questions that involved possible danger of loss of life, R. Hayyim customarily departed from that practice and did not hesitate personally to issue rulings in such

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matters. Those rulings were invariably lenient in nature. R. Hayyim was wont to say that it was his policy to be *mahmir* (stringent) in matters involving preservation of life, i.e., that his apparent leniencies in permitting matters that might otherwise be regarded as forbidden were not at all reflective of a posture of leniency but of a policy of stringency with regard to preservation of life. For example, he was lenient with regard to questions of fasting on *Yom Kippur* because of his conviction that it is necessary to be stringent in avoiding even remote danger to life.<sup>56</sup>

Army service and its attendant perils was viewed by R. Hayyim with great trepidation. It is related that on one occasion an individual approached R. Hayyim on a Friday with the following dilemma: His son who was undergoing medical treatment in a nearby town was scheduled to appear before the draft board the next day for a medical examination to determine his fitness for army duty. The father questioned whether he might desecrate the Sabbath and travel to the neighboring city in an attempt to secure an exemption for his son. R. Hayyim permitted the man to travel on the Sabbath and explained his reasoning as follows: If the young man were to be taken to the army and his service were to extend over a period of years it was probable that, in the course of time, war would break out and he might be sent to the front and killed. Even a “double doubt” (*sfek sfeka*) of danger to life warranted suspension of Sabbath regulations.<sup>57</sup>

A similar ruling of R. Hayyim Soloveichik, as attested to by R. Hayyim Ozer Grodzinski, is recorded by R. Barukh Ber Leibowitz.<sup>58</sup> When asked whether he might accept a position in an office that would involve desecration of the Sabbath in order to obtain an exemption from army service, R. Hayyim ruled permissively. However, in a situation in which an individual was able to secure an exemption only by attending a *gymnasium*, R. Hayyim ruled restrictively, declaring that, in his opinion, the latter case involved the grave transgression of the study of heretical works and hence could not be condoned even for the purpose of avoidance of danger.

Another report regarding R. Hayyim Soloveichik’s attitude toward some of the complex problems posed by army deferments is recorded in two disparate versions. During World War I the Russian authorities granted rabbinical exemptions. Consequently, many synagogues provided letters of appointment to young men eligible for the draft. R. Hayyim was opposed to the granting of spurious letters of appointment indiscriminately lest the fraudulent nature of these appointments be discovered and the government revoke all rabbinical exemptions, thereby



endangering the lives of those who actually occupied rabbinical posts. Despite the fact that his own son Ze'ev and his son-in-law, R. Hirsch Glicksman, were of draft age, R. Hayyim refused to allow them to accept the offer of several congregations in Minsk, where they at the time resided, to "appoint" them as rabbis.<sup>59</sup>

According to another, probably more reliable, version of the narrative, R. Hayyim's motivation in refusing the letters of appointment reflected an entirely different consideration. R. Hayyim harbored a deep and abiding distrust of Czarist officialdom. He was convinced that any official record would eventually be used by the authorities to compromise the interests of persons whose names appeared in such records. He feared that recording the names and addresses of potential conscripts in conjunction with issuance of exemptions would result in that information being entered in an official file that in all likelihood would later be used to their detriment. In dealing with Czarist authorities, R. Hayyim believed that the prudent course of action was to avoid formal documentation in any guise whatsoever. The soundest protection was to remain "invisible."<sup>60</sup>

The extent to which army service was dreaded is also reflected in accounts of the Novardok yeshiva. In accordance with the policy espoused by R. Joseph Yozel Hurwitz, the *Alter* of Novardok, students at the Novardok yeshiva disregarded all government induction orders and simply failed to report to the recruitment stations. For a period of time during World War I the tactic succeeded and most of the students avoided detection. In 1919 the young R. Ya'akov Yisrael Kanievski, later renowned as the *Steipler*, was appointed *mashgi'ah* in a branch of the Novardok yeshiva established in Rogachov. There agents of the Yevsekt-sia arrested R. Kanievski and he was inducted into the Red Army and stationed at a military camp in Moscow. A considerable sum of money was raised but efforts to secure his release by means of bribery failed.<sup>61</sup>

A similar aversion to military service prevailed among hasidic leaders as well. The counsel and assistance of R. Yehuda Leib Alter of Gur, better known as the author of *Sefat Emet*, and R. Yerahmiel Yisrael Yitshak Danziger, Rebbe of Alexander, in avoidance of the draft became legendary. Reports of their subornation of draft regulations reached the ears of government officials whose wrath, as might have been anticipated, was aroused. In an endeavor to put an end to these activities and probably to punish the rabbinic figures involved, they contrived a stratagem designed to trick the rabbis into revealing their antagonism to the draft. Agents were sent who pretended to seek advice and aid in evading military duty. The rabbinic figures in question are reported to have

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astutely recognized that those agents were not *bona fide* supplicants and avoided the trap that had been set for them.<sup>62</sup>

It is related of R. Kalonymus Kalman Shapira of Piaseczno (known later as the Rebbe of the Warsaw Ghetto) that he exerted great effort to obtain army exemptions for his followers. He would not hesitate to expend large sums of money in bribing draft authorities in order to secure a reprieve for a conscript. Failing that, he would employ all manner of other tactics, including the use of amulets or performance of particular mystical acts, in order to spare his disciples the fate of army duty.<sup>63</sup>

### III. RITUAL OBSERVANCE

For the observant, as noted, the difficulties involved in fulfilling religious obligations and observing dietary proscriptions were most worrisome aspects of army service. Away from the battlefield such problems were much easier to resolve. The very first Jewish soldiers in the Western Hemisphere concerning whom a contemporaneous record is extant were Jews who served as mercenaries in the Dutch expeditionary force that arrived in Brazil in 1630. For the privilege of exemption from guard duty on the Sabbath, the Jews who settled in Dutch Brazil and served in the local militia were willing to pay a fee but, nonetheless, on several occasions, the exemption was not honored.<sup>64</sup> In North America the environment was more tolerant. Thus, when Hart Jacobs petitioned the authorities in Philadelphia in January 1776 to be exempt “from doing military duty on the city watch on Friday nights which is part of his Sabbath,” the request was granted provided that he perform “his full tour of duty on other nights.”<sup>65</sup>

In Western Europe when recruitment of Jews for military service began in earnest, there are reports in community after community in France, Austria, and Italy that provide tangible evidence that ritual observance was a grave issue. In France the problem of Sabbath observance was a crucial factor in reluctance on the part of Jews to serve in the army. During the period of 1790–93 the petitions of Jews in a number of different communities for Sabbath exemptions were rejected, and ultimately all Jews were forced to perform military duties on the Sabbath. Municipal authorities frequently made arrangements for provision of kosher food to Jewish soldiers but that practice was curtailed during the Reign of Terror.<sup>66</sup> Service in the army aroused concern among those who wore beards and sidelocks which then were popular targets of ridicule and anti-Semitic acts.<sup>67</sup>

Although a number of Jewish communal leaders in Alsace-Lorraine encouraged army service as proof of patriotic fervor, among ordinary Alsatian Jews who were traditional in observance a lingering aversion to military service prevailed. In the Judeo-Alsatian dialect the term *reik* (empty or devoid of value) was used as a derogatory cognomen for “soldier.”<sup>68</sup> Draft avoidance was extremely difficult since, under the provisions of Napoleon’s “Infamous Decree” of March 17, 1808, unlike other Frenchmen, Jews could not hire substitutes.<sup>69</sup> A mystical ceremony designed to evoke divine mercy in the form of drawing a high number in the lottery and thereby escaping service gained currency. At midnight the young man of draft age would light a lamp with oil, make a pledge to charity, and utter a prayer for exemption from the draft invoking the sage R. Meir Ba’al ha-Nes and the angels Michael, Gabriel, Uriel, and Raphael. Quite obviously, aspirations for equality and civil rights had not quenched the deeply-rooted distrust and fear of military service harbored by the populace.<sup>70</sup>

With tears in his eyes, R. Ezekiel Landau is reported to have addressed the first group of Jewish recruits conscripted in Prague in May 1789. Encouraging them to remain steadfast in their fealty to mitsvot, he suggested that they exchange tours of duty with Christian comrades so that the latter would be on duty on the Sabbath and the Jews, in turn, would perform their duty on Sunday. He also urged the Jewish conscripts to observe dietary regulations for as long as possible, i.e., until malnutrition became life-threatening. He urged that, even in the event of sickness, they endeavor to subsist on tea for warm liquid nourishment unless it became absolutely necessary to partake of non-kosher soup.<sup>71</sup> However, at the same time, R. Landau expressed his awareness that their comportment as soldiers would bring honor and respect to their people and that their actions would demonstrate to the monarch the sacrificial loyalty of his Jewish subjects.<sup>72</sup>

Subsequent to the conquest of Mantua by Napoleon’s forces in February 1797 the walls of the ghetto were razed and the Jews of Mantua were granted civil rights. Rights entailed duties, and with the privileges they received the Jews became subject to civic obligations, including army service. Members of the community turned to R. Ishmael ha-Kohen of Modena with a query regarding performance of guard duty and bearing arms on the Sabbath. R. Ishmael responded permissively, noting that refusal might endanger Jewish lives and that the city had an *eruv*.<sup>73</sup> From the details of the reply it is clearly evident that R. Ishmael condones violation of religious law only when absolutely necessary.<sup>74</sup>

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In the heat of conflict, matters became far more complicated and it required a great measure of self-sacrifice to remain meticulous in religious observance. It is particularly moving to read accounts of the lengths to which some Jewish soldiers went in order to observe mitzvot under trying circumstances. Especially noteworthy are reports of the efforts of soldiers in what was commonly considered to be the godless United States to observe religious precepts even in battle situations. Private Isaac Gleitzman who received the Cross of Honor for “conspicuous gallantry in the field” during the Civil War remarked that he was “prouder of never having eaten any nonkosher food or ‘trefa.’”<sup>75</sup> Similarly, according to the diarist Emma Mordecai, the Levy brothers, Ezekiel J., who attained the rank of captain in the Richmond Light Infantry Blues, and the younger twenty-one year old Isaac J., who was killed by an exploding shell in August 1864, “had observed their religion faithfully, ever since they have been in the army, never eating forbidden food.”<sup>76</sup> A few months before he died Isaac wrote to his sister telling how the brothers had purchased sufficient *matsot* to last the Passover week and that “We are observing the festival in a truly orthodox style.”<sup>77</sup>

Although responsible halakhic authorities certainly did not maintain that mere service in the army automatically entailed exemption from religious observances, there was a marked concern to find ways and means within the halakha to ease the hardships experienced by the conscripts. Thus, R. Israel Meir ha-Kohen, Hafets Hayyim, in the manual he prepared for Jewish soldiers, *Mahaneh Yisra'el* (first published in 1881),<sup>78</sup> states his avowed intention to ascertain whether

There may possibly be found, in accordance with the law, a remedy or expedient to make matters less burdensome for them (the soldiers) in any regard because, assuredly, we perceive individuals such as these as being subject to difficult circumstances.<sup>79</sup>

Presenting a précis of Sabbath regulations and other laws, Hafets Hayyim endeavors to explain to the unlearned how to conduct themselves under duress in a manner that would diminish the seriousness and minimize the number of infractions of Jewish law. Intricate halakhic complexities are unraveled by Hafets Hayyim in uncomplicated language in this remarkable work, the pages of which are suffused with *ahavat Yisra'el*, love and compassionate empathy for fellow Jews.

*Mahaneh Yisra'el* is singularly important in its focus not only on matters of ritual but on ethical and moral issues as well. Hafets Hayyim

identifies those issues as constituting the most serious challenges associated with army service. It is noteworthy that Hafets Hayyim strongly recommends early marriage for recruits both in order to enable them to fulfill the mitsva of siring children and because he believed that marital bonds would strengthen a soldier's ability to withstand the lax morals common in an army milieu.<sup>80</sup> Above all, Hafets Hayyim seeks to raise the recruits' spirits and to bolster their self-esteem. Cognizant of the supreme effort required in order to maintain an observant lifestyle in the army, Hafets Hayyim adds words of encouragement:

If he (the soldier) will become valiant . . . and shall see to observe the Torah in all its details at that time (*in that which is not contrary to the laws of the government*), in the future these days will be the most cherished of all the days of his life. Not as they appear to the soldier [now] in his thoughts that these times are the lowliest of his days. He will be of God's holy ones on account of this and no man free [of military obligation] will be able to stand in his precincts. . . . When a person withstands a trial he becomes most exalted in stature.<sup>81</sup>

#### NOTES

1. Simon Schwarzfuchs, *Napoleon, the Jews and the Sanhedrin* (London: Routledge and Kegan Paul, 1979), p. 62.
2. See A.E. Cowley, *Aramaic Papyri of the Fifth Century B.C.* (Oxford: Clarendon Press, 1923; Rep. Osnabrück: Zeller, 1967), pp. xv, xvi, and 12.
3. See Jacob Beller, *Jews in Latin America* (New York: Jonathan David, 1969), pp. 107-108 and *Historical Essay on the Colony of Surinam 1788*, trans. S. Cohen, Jacob R. Marcus and Stanley S. Chyet, eds. (New York: American Jewish Archives and Ktav Publishing House, 1974), pp. 42-48 and 65-72.
4. Note should be taken of R. Judah ha-Levi's incisive statement, *Kuzari*, Part V, sec. 23, categorizing the behavior of those who endanger their lives by volunteering for army service "in order to gain fame and spoil by courage and bravery" as morally reprehensible and "even inferior to that of those who march into war for hire." Ha-Levi's distinction between frivolous self-endangerment and self-endangerment for purposes of earning a livelihood prefigures the thesis later developed in the classic responsum of R. Ezekiel Landau, *Nada bi-Yehudah, Mahadura Tinyana* (Prague, 1811), *Yoreh De'ah*, no. 10.
5. See the intriguing summary of Jewish military activity in the Middle Ages in David Biale, *Power and Powerlessness in Jewish History* (New York: Schocken Books, 1986), pp. 72-77 and sources cited in Yitshak Ze'ev Kahane, "Military Service in the Responsa Literature" [in Hebrew], *Sinai* 23 (1948), 129-134.

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6. See "Military Service," *Encyclopaedia Judaica*, XI, 1550.
7. The development of diverse attitudes toward warfare within the Reform movement is discussed in my extended paper "Military Service: Ambivalence and Contradiction," to be published in the forthcoming volume of the Orthodox Forum, *War, Peace and the Jewish Tradition*, ed. Joel B. Wolowelsky and Lawrence H. Schiffman (in press).
8. *Teshuvot Hatam Sofer, Yoreh De'ah*, no. 19. Cf. R. Abraham Dov Ber Kahane, *Devar Avraham*, I, no. 11 and R. Menahem Ziemba, *Zera Avraham*, no. 24, sec. 10, and the discussion in R. J. David Bleich, *Contemporary Halakhic Problems*, II (New York: Ktav Publishing House, 1983), 164-166.
9. *Likkutim*, no. 29.
10. *She'elot u-Teshuvot Bet David*, 2 ed. (Vienna, 1932), I, no. 71.
11. Eulogy published in "*Sefer Hatam Sofer*," *Derashot*, I (Cluj, 1929), pp. 80b-82a and republished in R. Joseph David Sintzheim, *Minhat Ani* (Jerusalem: Machon Yerushalayim, 1974), p. 30. English translation in Schwarzfuchs, *Napoleon*, p. 116.
12. *Yevamot* 65b.
13. *Noda bi-Yehudah, Mahadura Tinyana, Yoreh De'ah*, no. 74.
14. *She'elot u-Teshuvot Hatam Sofer*, VI (Pressberg, 1864), *Likkutim*, no. 29.
15. *Imrei Esh, Yoreh De'ah* (Lemberg, 1852), no. 52.
16. Cf. the complex and rather strained argument presented by R. Abraham Teumim, *Hesed le-Avraham, Mahadura Kamma* (Lemberg, 1857), *Yoreh De'ah*, no. 45, in favor of compelling such persons to accept induction in order to preserve observant individuals from transgression.
17. *Noda bi-Yehudah, Mahadura Tinyana, Yoreh De'ah*, no. 74. For a discussion of why R. Samuel Landau demands protest against delivery of prospective soldiers to the authorities but does not demand similar protest against communal intervention to secure the release of designated individuals when substitution of others is a certainty, see R. J. David Bleich, *Be-Netivot ha-Halakha* (New York: Ktav Publishing House, 1996), I, 120-124.
18. "*Dina din u-mimela muttal a-karkafra de-kol mi she-ra'ui la-tset u-sheEin lo isha u-banim ke-fi nimus ve-hok malkhuto.*"
19. Policy with regard to clergymen and rabbinical student exemptions differed from country to country. In France, after 1808, Jewish youths preparing to enter the rabbinate were not granted a clergy exemption. See S. Posener, "The Immediate Economic and Social Effect of the Emancipation of the Jews in France," *Jewish Social Studies*, I (1939), 317. However, in Russia, under a decree issued in 1827, rabbis and students in rabbinical seminaries were exempt from military service. See Michael Stanislawski, *Tsar Nicholas I and the Jews: The Transformation of Jewish Society in Russia, 1825-1855* (Philadelphia: Jewish Publication Society, 1983), p. 19. Cf., also, the comments of R. Barukh ha-Levi Epstein, *Mekor Barukh* (New York, 1954), II, 1060-1061.
20. "*Me-haRa'ui she-ya'amdu kulam be-shaveh lifnei ha-edah ve-yatilu goral.*"
21. Hatam Sofer's ruling was by no means unique. Thus, for example, R. Tsevi Hirsch Chajes reports that he had occasion to advise a synagogue to pawn the synagogue lamps in order to raise funds necessary to enable prospective

- conscripts to avoid military service. See *Minhat Kena'ot*, in *Kol Sifrei Maharats Hayes* (Jerusalem: Divrei Hakhamim, 1958), II, 991.
22. *She'elot u-Teshuvot Hatam Sofer*, VI, *Likkutim*, no. 29. Sheldon Zimmerman, "Confronting the Halakhah on Military Service," *Judaism* 20:2 (Spring, 1971), 207 and 210, errs in positing a fundamental disagreement between Hatam Sofer and R. Samuel Landau and in asserting that R. Landau represented a minority view in censuring the methods used by the Jewish community in filling their quotas. Both respondents categorically forbid substitution of nonobservant youths for draftees who have been designated by name. The stronger language of R. Landau, "*mehuyyavim limbot be-yad*," in contrast to Hatam Sofer's "*ha-sbetika yafah me-dibburenu ba-zehel ve-et la-hasbot*" may simply reflect the difference between an earlier theoretical stance and a later deterioration in communal practice at which time protest might have proven more harmful to the welfare of the greater community. While Hatam Sofer affirms that the conscripted individual has an obligation to serve if he cannot avoid induction, R. Landau states only that once an individual has been designated the community must desist from efforts to secure a reprieve at another's expense, but is silent regarding the individual's own obligation. However, there is no explicit contradiction between the two responsa. Nor does Hatam Sofer express "the majority view" (Zimmerman, p. 207) with regard to the legitimacy of the draft as flowing from the power of the ruler to levy "taxes." Whether or not the prerogatives of the king ascribed by I Samuel 8 to the Jewish king (*mishpetei ha-melekh*) apply to non-Jewish rulers as well is the subject of considerable controversy among halakhic scholars. See Shmuel Shilo, *Dina de-Malkhuta Dina* (Jerusalem: Jerusalem Academic Press, 1974), pp. 62, 64-67, 71-73, and 101.
  23. *She'elot u-Teshuvot Milei de-Avot*, 1, *Hoshen Mishpat*, no. 4. Again, Zimmerman errs (p. 207) in deeming this a stronger position than that of Hatam Sofer. Exemptions are simply not discussed by Hatam Sofer; they are not necessarily forbidden.
  24. *She'elot u-Teshuvot Imrei Esh*, 1, *Yoreh De'ah*, no. 74.
  25. See *infra*, note 44.
  26. Vol. I, *Yoreh De'ah*, no. 74.
  27. *Keren le-David*, *Orah Hayyim*, no. 100.
  28. *She'elot u-Teshuvot Levushei Mordekhai*, *Mahadura Tinyana*, *Orah Hayyim*, no. 174.
  29. Cf., however, *infra*, note 57.
  30. R. Moshe Joshua Judah Leib Diskin, *She'elot u-Teshuvot Maharil Diskin* (Jerusalem, 1911), *Pesakim*, no. 4, forbids a soldier to reveal an infirmity to the authorities in order to avoid army duty lest he be coerced instead to work on the Sabbath. This responsum should not be viewed as contradicting the views of *Keren le-David* or *Levushei Mordekhai* since the responsum does not appear to apply to army service during wartime. The conclusion drawn by Zimmerman (p. 209) that Maharil Diskin deems profanation of the Sabbath a greater evil than danger to one's life is without basis.
  31. *Melammed le-Ho'il*, *Orah Hayyim*, no. 42.
  32. See R. Vogel, *Ein Stück von Uns: Deutsche Juden in deutschen Armeen, 1813-1976. Eine Dokumentation* (Mainz: v. Hase & Koehler, 1977), p. 148 ff and Ruth Pierson, "Embattled Veterans: The Reichsbund jüdischer

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- Frontsoldaten,” *Leo Baeck Institute Yearbook*, 19 (1974), 142-143.
33. *Melammed le-Ho'il, Orah Hayyim*, no. 43.
34. It must be emphasized that this responsum addresses the situation of a peacetime army and involves no discussion of danger to life. In wartime an additional factor would have had to be taken into consideration, namely, preservation of life for as long as possible.
35. *Melammed le-Ho'il, Orah Hayyim*, no. 43. The comments of R. Alfred Cohen, “In this century, R. David Hoffmann (*Or Hachaim* 42-43) considered it the obligation of every citizen, including Jews, to participate in the army like all citizens. Even if one can get a deferment for 2 or 3 years, R. Hoffmann opposes it and says one should enlist right away,” are not an accurate representation of R. Hoffmann’s views. See R. Alfred Cohen, “On Yeshiva Men Serving in the Army,” *Journal of Halacha and Contemporary Society*, No. 23 (Spring, 1992), p. 30, note 65.
36. *Mishna Berura* 329:17.
37. The note below the text marked with an asterisk, “And it has already been ruled in the Gemara ‘the law of the land is the law’” may constitute a somewhat enigmatic reference to the legitimacy of conscription. However, the form in which it appears, i.e., outside the annotations on *Shulhan Arukh* and without the usual marginal signal makes it possible that this comment was intended for the benefit of the authorities rather than the reader.
38. *Horeb: A Philosophy of Jewish Laws and Observances*, trans. Dayan I. Grunfeld (New York: Soncino Press, 1962), sec. 609, p. 462.
39. *Ibid.*
40. The unquestioning patriotism of R. Hirsch is subjected to a pointed critique in R. Howard I. Levine, “Enduring and Transitory Elements in the Philosophy of Samson Raphael Hirsch,” *Tradition* 5:2 (Spring, 1963), 290-293. Cf. the response of R. Shelomo Eliezer Danziger, “Clarification of R. Hirsch’s Concepts—A Rejoinder,” *Tradition* 6:2 (Spring-Summer, 1964), 155-156.
41. *Horeb*, p. 462.
42. *Tel Talpiyot* (Moetzin, 1916), no. 104.
43. *She'elot u-Teshuvot Bet David*, I, no. 71.
44. Surprisingly, *Imrei Esh, Yoreh De'ah*, no. 52, permits voluntary enlistment despite the danger to life involved. For a recent discussion of that issue see R. Yitzchak Zilberstein, *Kol ha-Torah*, No. 55 (Tishri, 2003), 153-154.
45. Another orthodox rabbinic figure of the time who wrote eloquently on pacifism was R. Aaron Saul Tamaret (1869-1931).
46. *Mishneh Torah, Hilkhot Melakhim*, 5:1.
47. This letter has recently been published by his grandson, R. Yehuda H. Henkin, in his article, “The Ga’on R. Yosef Eliyahu Henkin, Of Blessed Memory, Thirty Years After his Demise” [in Hebrew], *Ha-Ma'ayan*, 44:1 (Tishri, 2003), 75-76.
48. See Stanislawski, *Tsar Nicholas*, pp. 13-34 and Salo W. Baron, *The Russian Jew under Tsars and Soviets*, 2<sup>nd</sup> rev. ed. (New York: Macmillan, 1976), pp. 29-32. For a discussion of Cantonists’ memoirs and literary works devoted to the Cantonist theme see Adina Ofek, “Cantonists: Jewish Children as Soldiers in Tsar Nicholas’s Army,” *Modern Judaism*, 13 (1993), 277-308.
49. See R. Barukh ha-Levi Epstein’s description of the “era of the sin of the



- community,” *Mekor Barukh*, II, 962-969 and 999-1003 and III, 1191-1192; cf., Stanislawski, *Tsar Nicholas*, pp 26-34. Cf. also Kahane, “Military Service,” p. 147.
50. Indicative of the wariness of rabbinic scholars to address these matters in print is material on the Cantonists that has only now been published. In a recent article, “‘It is a Decree Before Me’: Sermons Regarding the Cantonists” [in Hebrew], *Yeshurun*, XII (Nisan 2003), 695-726, R. Yisrael Meir Mendelowitz incorporates the text of a number of discourses devoted to the Cantonists as they appear in an unpublished manuscript of R. David of Novardok (1769-1836), author of the celebrated rabbinic work, *Galya Massekhet*. In *Galya Massekhet*, posthumously published (Vilna, 1844) by the author’s son-in-law and grandson, portions of these discourses appear but with the glaring omission of explicit references to the Cantonist decree. Thus, for example, in one discourse that is published in *Galya Massekhet*, R. David of Novardok mentions a prayer assembly called in response to the troubles that had beset the community “which cannot be recorded in writing” (*Galya Massekhet*, p. 13a). The identical prayer assembly is described in the now published manuscript as having been called “in order to stir the populace because of the occurrence of the decree and edict” (*Yeshurun*, p. 717). In particular, in the discourse delivered on the *Rosh ha-Shana* immediately following the conscription edict of August 26, 1827, R. David of Novardok reflects the somber and anguished mood of a stricken community of whom he writes that it is “difficult for us to recite on these holidays the [blessing] *she-beheyanu*” (p. 726) and whose feelings he can best depict (p. 718) in the words of Ezekiel 21:12, “And it shall be when they say unto you: Wherefore do you sigh, that you shall answer: Because of tidings that are coming and every heart shall melt and all hands shall be feeble and every spirit shall grow faint and all knees shall be weak as water. Behold it is come and shall happen. . . .” Rabbis could express such sentiments in the privacy of their congregations but, at that time, were loath to disclose them to alien eyes that might alight upon a published work.
51. Aharon Soraski, *Marbitsei Torah u-Mussar*, I (Brooklyn, NY: Sentry Press, 1977), 80.
52. For a description of various other incidents in which R. Soloveichik intervened in such matters, see *ibid.*, pp 80-81.
53. Cited in translation in Baron, *Under Tsars*, pp. 30-31; for a slightly different Yiddish version see Epstein, *Mekor Barukh*, II, 964. See also *ibid.*, pp. 965-967 and p. 967, note 2, for the exploits of R. Eliyahu Shik and for a description of efforts of other rabbinic figures to oppose the tyranny of the communal officials who surrendered children to army authorities. Regarding R. Eliyahu Shik cf. Stanislawski, *Tsar Nicholas*, p. 129 and the popularized account of Larry Domnitch, *The Cantonists: The Jewish Children’s Army of the Tsar* (Jerusalem and New York: Devora Publishing, 2003), pp. 55-56.
54. See Dov Katz, *Tenu’at ha-Mussar*, I (Tel Aviv: Avraham Zioni, 1958), 204-206.
55. See Mendelowitz, *Yeshurun*, XII, 443, note 18. Cf. Domnitch, *The Cantonists*, pp. 57-60. The hasidic leaders, R. Yitshak of Worki and R. Israel of Rizhin, prevailed upon Moses Montefiore to travel to Peterburg in order to intercede with Tsar Nicholas and urge mitigation of the harsh draft decree

- but Montefiore's intervention was unsuccessful. See Aaron Marcus, *Ha-Hasidut*, trans. into Hebrew from German by M. Schonfeld (Tel Aviv: Nezah, 1954), pp. 213-214. For the application of the conscription decree in the areas of Poland under Russian rule and Polish Jews' fruitless efforts to mitigate provisions of the law, see also Jacob Shatzky, *Die Geschikhte fun Yidn in Varshe* (New York: Yiddish Scientific Institute-Yivo, 1948), II, 74-81.
56. R. Shelomo Yosef Zevin, *Ishim ve-Shittot* (Tel Aviv: Avraham Zioni, 1958), pp. 63-64 and Soraski, I, 112.
57. Zevin, *Ishim*, p. 65; Soraski, *Marbitsei*, p. 112. For a discussion of how that ruling involves an expansion of the *holeh le-fanenu* ("a patient before us") principle necessary to justify suspending biblical strictures, see R. J. David Bleich, *Bioethical Dilemmas: A Jewish Perspective* (Hoboken: Ktav Publishing House, 1998), pp. 154-156. Cf., however, *Hazon Ish, Ohalot* 22:32 and *Yoreh De'ah* 208:7.
58. *Birkat Shemu'el*, I (New York, 1947), *Kiddushin* 27:6, p. 41.
59. Zevin, *Ishim*, pp. 73-74, as related to him by R. Iser Zalman Meltzer.
60. *Ibid.*, p. 74, note. As related to R. Zevin "by a reliable source." R. Zevin suggests that R. Hayyim's attitude may have been formed by his personal experience in the Volozhin Yeshiva. So long as the Yeshiva did not come to the attention of the authorities, its operation was unimpeded. Once the Yeshiva was formally recognized by government bureaus, harassment and attempts at regulation began. The lesson to be learned was that safety was to be found in obscurity.
- R. Hayyim's aversion to army service was shared by other members of his family. His grandson, the late R. Joseph B. Soloveitchik of Boston and New York, was not eager to serve in the army. In 1924 he enrolled in the Free Polish University in Warsaw and in 1926 left for Berlin to continue his studies in the philosophy department of the University of Berlin. A factor influencing his decision to leave for Berlin was the possibility of being drafted into the Polish army. See Aaron Rakeffet-Rothkoff, *The Rav: The World of R. Joseph B. Soloveitchik*, vol. 1 (Hoboken, NJ: Ktav Publishing House, 1999), 26 and 68, note 11 and Bertram Leff, "Letter to the Editor," *Torah u-Madda Journal*, IX (2000), 268-269. Another grandson, the late R. Moshe Soloveitchik of Switzerland (together with R. Aaron Leib Steinman, currently Rosh Yeshiva of Yeshiva Ga'on Ya'akov in Bnei Brak), fled Poland in 1937 after receiving draft notices from the Polish army and thus survived the war. See Moshe Musman, "A Reiner Mentsch, A Reiner Torah: HaRav Moshe Soloveitchik zt"l," *Yated Ne'eman*, May 3, 1996, p. 19.
61. M. Sofer, *Homat Esh* (Israel, 1985), I, 114-115, and 126-130.
62. A number of incidents are recorded by the popular historian Abraham I. Bromberg in his *Admorei Aleksander* (Jerusalem: Ha-Makhon le-Hasidut, 1954), pp. 93-94 and *Ha-Admor R. Yehuda Leib Alter mi-Gur, Ba'al "Sefat Emet"* (Jerusalem: Ha-Makhon le-Hasidut, 1956), pp. 114-117. Cf. Yisroel Friedman, *The Rebbes Of Chortkov* (Brooklyn: Mesorah Publications, 2003), pp. 221-222, for a similar unsuccessful attempt on the part of the authorities to apprehend R. Yisrael Friedman, the Rebbe of Chortkov, in the act of advising his followers to evade conscription.
63. Aharon Soraski, "Foreword: Kalonymus Kalman Shapiro, Rebbe of the Warsaw Ghetto," in R. Kalonymus Kalman Shapiro, *A Student's Obliga-*

- tion: Advice from the Rebbe of the Warsaw Ghetto*, trans. by Micha Odenheimer (Northvale, NJ: Jason Aronson, 1991), pp. xxv and xxxiii-xxxiv. On the use of amulets and other mystical practices for avoidance of conscription cf. *infra*, note 70 and accompanying text. See also Epstein, *Mekor Barukh*, II, 1061, note 1.
64. Arnold Wiznitzer, "Jewish Soldiers in Dutch Brazil (1630-1654)," *Publication of the American Jewish Historical Society (PAJHS)*, 46:1 (1956), 40-50.
65. Arthur Hertzberg, *The Jews in America: Four Centuries of an Uneasy Encounter: A History* (New York: Simon and Schuster, 1989), p. 52.
66. Zosa Szajkowski, *Jews in the French Revolutions of 1789, 1830 and 1848* (New York: Ktav Publishing House, 1970), pp. 557-558, 786 and 794.
67. *Ibid.*, p. 792. In some instances Jews were forced to have their beards and sidelocks publicly cut off and were forced to pay the barbers for this service. A surprising exception is the case of the head of the yeshiva in Metz, R. Aaron Worms, who reportedly voluntarily shaved off his beard and enlisted in the National Guard, and, upon being given a lance, proclaimed in Hebrew, "This is the day that we awaited" (*loc. cit.*). R. Aaron Worms, the author of novellae entitled *Me'orei Or*, later, in 1815, became Chief Rabbi of Metz.
- It is noteworthy that during the Polish uprising of 1831, at a time when several hundred Jews bore arms in the national army, there were several Jewish units comprised of observant individuals in the Warsaw militia who received specific dispensation not to cut their beards and sidelocks. See N.M. Gelber, "Jews in the Polish Army" [in Hebrew], in *Hayyalim Yehudim be-Tseva'ot Europa*, Yehudah Slutzky and Lt. Col. Mordecai Kaplan, eds. (Tel Aviv: Ma'arkhot, 1967), pp. 94-95 and Shatzky, *Geshikhhte*, I, 322-323.
68. Paula E. Hyman, *The Emancipation of the Jews of Alsace: Acculturation and Tradition in the Nineteenth Century* (New Haven & London: Yale University Press, 1991), p. 74 and p. 174, note 29.
69. Hyman, *ibid.*, p. 17, observes that, since many other departments were exempt from the decree, the burden of this provision fell heavily on the Jews of Alsace-Lorraine. Regarding the question of substitutes in the French army and Jewish agents active in recruiting and pressuring individuals to serve as substitutes, see Szajkowski, *French Revolutions*, pp. 564-565.
70. Hyman, *Jews of Alsace*, pp. 69-70, and p. 174, note 26.
71. For the text of the address see Solomon Wind, *R. Yehezkel Landau: Toldot Hayyav u-Pe'ulotav* (Jerusalem: Da'at Torah, 1961), Appendix 3, pp. 115-116.
72. *Ibid.*, p. 116. Yekuti'el Aryeh Kamelhar, *Mofet ha-Dor: Toldot Rabbenu Yehezkel ha-Levi Landau Ba'al ha-Noda bi-Yehudah ve-ha-Tslah* (Pietrkow, 1934), p. 82, note 6, cites a communication regarding a letter from R. Shlomo Kluger of Brody in which R. Kluger delivers a report concerning R. Landau's reaction to the conscription edict. According to this account, R. Landau was told that the king had announced that the Jews would be accorded great honor in that they would henceforth be able to serve in the army. Of this honor R. Landau is said to have remarked that it constituted the curse alluded to in Leviticus 27:44: "And yet for all that, when they be in the land of their enemies, I will not cast them away, neither will I abhor them to destroy them utterly and to break My covenant with them for I am the Lord their God." R. Landau allegedly declared that because in the

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- army Jews will be susceptible to violating all the dietary laws, to give Jews the honor of military service and no longer to “abhor them” and “cast them away” is “to destroy them utterly and to break My covenant with them.”
73. *Zera Emet*, part 3, *Orah Hayyim*, *Hilkhoh Shabbat*, no. 32.
  74. The text of the question is included in Barukh Mevorakh, *Napoleon u-Tekufato* (Jerusalem: Mosad Bialik, 1968), part 1, p. 37.
  75. Robert N. Rosen, *The Jewish Confederates* (Columbia, SC: University of South Carolina Press, 2000), p. 173. His family still has in its possession his two mess kits—one for meat and one for milk. See *ibid.*, p. 421 note 39.
  76. Myron Berman, *Richmond's Jewry, 1769-1976: Shabbat in Shockoe* (Charlottesville: University Press of Virginia, 1979), p. 175; Rosen, *Jewish Confederates*, p. 199. Knowledge of the rudiments of Jewish dietary law was common among the non-Jewish populace as is evident from the following charming vignette: Major Alexander Hart of New Orleans, one of the highest ranking Jewish Confederate infantry officers, was seriously wounded in his thigh by grapeshot early in the war. The surgeon wished to amputate the leg but was restrained by the mistress of the house to which Hart had been taken after the battle. She implored the doctor to delay the amputation and permit her to try to nurse Hart back to health because, she argued, so young and handsome a man should not lose a leg. After the war Hart visited his benefactress annually. Once, when her daughter-in-law complained that there was no ham on the table, the elderly lady responded, “No, there shall be no ham on my table when my ‘Jewish son’ is here.” See Herbert T. Ezekiel and Gaston Lichtenstein, *The History of the Jews of Richmond from 1769 to 1917* (Richmond, Virginia: Herbert T. Ezekiel, 1917), p. 157.
  77. Rosen, *Jewish Confederates*, p. 200. See also *ibid.*, p. 115, Edward Kursesht's letter in which he communicates, “I have not been able to see the Chanucka [*sic*] lights this year.” For further details regarding observance of Passover and the Day of Atonement and informal Sabbath services see Bertram W. Korn, *American Jewry and the Civil War* (Philadelphia: Jewish Publication Society, 1961), pp. 88-94.
  78. I am indebted to R. Samuel N. Hoenig for drawing my attention to the fact that a slim English-language manual for Jewish soldiers was distributed in the United States during World War II. That work by Moses M. Yosher, based on Hafets Hayyim's *Mahaneh Yisra'el*, is titled *Israel in the Ranks* (New York: Yeshiva Chofetz Chaim Publication, 1943).
  79. R. Israel Meir ha-Kohen, *Mahaneh Yisra'el* (New York: Shulsinger Bros., 1943), Introduction, p. 8. Hafets Hayyim's concern for Jewish soldiers expressed itself in other practical endeavors as well. An open letter, “Regarding Kosher Food for Soldiers,” signed by him dated 5683 (1923) emphatically underscores the interdependence and mutual responsibility of each Jew for his fellow and calls on Jewish communities to establish kosher soup kitchens for the benefit of soldiers stationed in their environs. The letter is published in *Hafets Hayyim al ha-Torah*, ed. S. Greiniman (New York: Shulsinger Bros., 1943), p. 237.
  80. *Mahaneh Yisrael*, “Davar be-Itto,” pp. 175-187.
  81. *Ibid.*, pp. 19-20.