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LIVING DANGEROUSLY: PIKUACH NEFESH IN WAR

Adapted from the writings of Dayan Yitzhak Grossman

President Biden has faced widespread criticism¹ over his withdrawal from Afghanistan, much of it directed against the breaking of his commitment that “if there’s American citizens left, we’re going to stay until we get them all out,” even past August 31.² As the *National Review* put it:

[L]eaving Americans behind is a low point in the nation’s diplomatic and military history, and a rank failure of the most basic obligation of a government to take care of its own.³

A serious assessment of the Afghanistan withdrawal and its implementation is beyond the scope of this article, which will simply consider

the basic question of the morality of military personnel risking their lives to save those of others.

Although many *poskim* rule that in general, it is wrong to risk one’s life to save someone else’s, R’ Eliezer Yehuda Waldenberg maintains that the rules of war are different, and a soldier is indeed permitted and even obligated to risk his life to save that of a comrade who lies wounded on the battlefield exposed to the enemy and will certainly die if he is not promptly removed. The ordinary rules prohibiting voluntary self-endangerment do not apply in war, because war inherently entails the risking of lives in the service of some objective. He adduces various precedents in support of this thesis that war is not governed by the standard rules of *pikuach nefesh* (preservation of life), including the following:

- R’ Meir Eisenstadter (the Maharam Ash), in justification of the permissibility of volunteering for military service (he is

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PARSHAS VAYEILECH

CHILD BENEFIT

Excerpted and adapted from a shiur by
Dayan Yitzhak Grossman

Assemble the people: the men, the women, and the children, and your stranger in your cities, in order that they hear, and in order that they learn and fear Hashem, your G-d, and they will observe to do all the words of this Torah.

Devarim 31:12

The Gemara (Chagigah 3a) explains that the only reason this *pasuk* says to bring children to *hakhel* is to provide reward for those that bring them. It would seem from this formulation that Chazal interpreted the reference to children to mean very young children who cannot understand the proceedings, which consisted of the king reading portions of Sefer Devarim. Since they will not understand, the only reason to bring them is to receive reward. The Maharal in Gur Aryeh notes that it is difficult to understand why the Torah would require the bringing of young children for this reason alone. He therefore holds that the mitzvah applies only to older children, who *can* understand, and he interprets the statement of Chazal differently.

Most commentators (including the Maharscha, Ramban, and Or Hachaim), assume that Chazal do indeed apply the mitzvah to young children. The Ram-

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Q&A from the
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General Admission

Q In the Vidui of Yom Kippur, some *aveiros*, such as *chilul* Shabbos, are not mentioned. Must I insert my own *aveiros* that are not listed into the Vidui?

A The Gemara (Yoma 86b) discusses whether the obligation of Vidui requires a person to specify the *aveirah* that he committed. R’ Yehuda ben Bava says yes, R’ Akiva says no.

The Rambam (*Hil. Teshuvah* 2:3) rules like R’ Yehuda ben Bava, but the Tur (O.C. 607:2) and Shulchan Aruch (*ibid.*) codify the view of R’ Akiva.

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discussing volunteering to serve as a paid surrogate for a draftee) even in wartime, declares that this does not constitute suicide, for if it would, elective war would be prohibited by the commandment of “But you shall greatly beware [for your souls],” and Dovid Hamelech would not have so extensively engaged in elective war.⁴

R’ Naftali Tzvi Yehuda Berlin (the Netziv) maintains that “The truth is that a king is permitted to go to war, even elective war, and he [need not be] concerned for the danger to life, since the danger of war is different from other dangers;”⁵ “[A] Jewish king is permitted to engage in elective war even though many Jews will thereby be killed;”⁶ “[A] king is not prohibited from engaging in elective war that entails danger to life...and similarly, there is no prohibition for an individual to participate in battle and to endanger himself.”⁷

The Netziv (followed by Rav Waldenberg) alludes to a remarkable source in the Gemara for this doctrine:

Shmuel says: A monarchy that kills one of every six individuals in the world is not punished for doing so, as that is the prerogative of a monarch, as it states: “My vineyard, which is mine, is before me; you, Shlomo, shall have the one thousand”—this is a reference to the monarchy of Heaven—and two hundred for those who guard its fruit”⁸—this is a reference to the monarchy of Earth.⁹

Of the 1,200 mentioned in the *pasuk*, two hundred, or a sixth, are the prerogative of

the earthly monarch. Tosafos explains that the legitimacy of killing one of every six individuals refers to engaging in elective war. Apparently, a kingdom’s—and perhaps any government’s—jurisdiction over its subjects extends even to the expenditure of their lives in the national interest! This point was already made by the Chasam Sofer, who suggests that this is actually the source of the principle of *dina demalchusa dina* (the law of the government is the law—i.e., recognized as valid by halacha):

[Shmuel’s statement] is not limited to killing, but it adopts the extreme case; even if [the king] needs to kill, e.g., for his wars, as Tosafos has explained there: Since this is necessary for the “guarding of the vineyard,” i.e., the national interest, it is entirely appropriate, and a fortiori [taking his subjects] property, even in peacetime, for the sake of governance, is entirely appropriate...¹⁰

Rav Waldenberg subsequently cites an interpretation by R’ Dovid Pardo of a passage in the Sifri according to which a soldier is obligated to risk his life in order to save his fellow from death at the hands of the enemy. He concludes that the principle that *chayecha kodmin* (your life takes precedence) does not apply in the context of war, and that this is among “the halachos of the *tzibur* (public) for the benefit of the state and the good of the people.”¹¹

It should be noted that Rav Waldenberg is discussing a soldier risking his life to save that of another soldier; it is unclear how this would apply to doing so to save a civilian. Rav Waldenberg’s arguments for **allowing** a soldier to risk his life apply equally to doing so in order to save civilians, but it is difficult to say whether Rav Waldenberg’s assumption that a soldier is **obligated** to risk his life would extend to saving civilians, since he never ful-

⁴ Shu”t Imrei Aish Y.D. *siman* 52.

⁵ Meromei Sadeh Eruvin 45a, on Rashi s.v. *Veha lo ba’u*.

⁶ Ha’amek Davar Bereishis 9:5 (and cf. Harchev Davar there).

⁷ Ibid. Devarim 20:8.

⁸ Shir Hashirim 8:12.

⁹ Shevuos 35b.

¹⁰ Shu”t Chasam Sofer C.M. *siman* 44 s.v. *Vehinei ha deShmuel*.

¹¹ Shu”t Tzitz Eliezer *cheilek* 12 *siman* 57 and *cheilek* 13 *siman* 100.

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ban nevertheless concedes that he would have theoretically understood the *pasuk* to include only older children. Although the mitzvah of *hakhel* does not apply today, Tosafos comments that the custom to bring children to shul stems from this Gema-

ra. The Or Zarua writes similarly and adds that bringing young children to shul instills in them *yiras shamayim*.

R’ Menachem de Lengzano of Italy (quoted by the Shelah, Magein Avraham, and Mishnah Brurah) argues strongly against this practice. He writes that today, parents who bring young children to shul will not receive reward but be punished. He explains that children do not act



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Nevertheless, the Shulchan Aruch writes that it is more correct to mention the specific *aveirah*. When a personal confession is added into the Vidui, it is undoubtedly more meaningful and effective (Mishnah Brurah *ibid.* 8).



RAV ARYEH FINKEL

Preferably, the *aveirah* should be inserted in its appropriate position in the *Ashamnu's* aleph-bais sequence (Chayei Adam 143), so *chilul Shabbos* should be inserted under *ches*. This is not vital and may be forgone if arranging the Vidui gets too complicated. Even finding the Hebrew word for the *aveirah* is not necessary, as Vidui may be said in any language.

The Rama (*ibid.*) notes that personal additions are only for the private Vidui recited within the silent *Shmoneh Esrei*. At the communal Vidui recited during *Chazaras Hashatz*, one should not mention any personal *aveiros*. The *pasuk* in Tehillim (32:1) praises Hashem as the “One who carries wrongdoing and covers sin.” This indicates that the proper conduct is to avoid publicizing one’s sin, because doing so diminishes the honor of Hashem (Mishnah Brurah *ibid.* 6).

Aside from the Vidui, one should not forget about the other components of *teshuvah*, including *charatah* (remorse) and *kabalah al he’asid* (the undertaking of future improvement).

ly explains or justifies this assumption. Perhaps his responsibilities toward civilians are even greater than those toward his fellow soldiers, since they are noncombatants—or perhaps on the contrary, his responsibilities toward his fellow soldiers are greater, since they face the enemy and danger together in mutual reliance.

appropriately in shul but are disruptive, so they must be kept at home. One may only bring older children who can sit quietly and participate in the davening.

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