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ASK NOT, PART II: MAY A MITZVAH BE DELEGATED TO A SHLIACH?

Adapted from the writings of Dayan Yitzhak Grossman

Our previous article discussed the plaintiffs' argument in *Silver Spring Jewish Center, Inc. v. Montgomery County* that "Halachically, reliance on volunteer members of the community (to staff the shul's security team), rather than outsourcing the religious obligation to others, is preferred under Jewish law" based on the principle of "mitzvah bo yoser mibishlucho." In this article, we consider another halachic basis, not mentioned by the plaintiffs, for such a preference.

The Gemara cites a *breisa*:

We heat water for a sick person on Shabbos, either to give him to drink or to bathe him to strengthen him...And we do not do these things through non-Jews or through Kusim (alternatively: children¹), but through *gedolei Yisrael*.²

Some understand the last phrase to mean what it usually does—great Jews³—but R' Yosef Karo understands it to mean *adult* Jews.⁴

The *Rishonim* offer various explanations for the preference for *gedolei Yisrael*:

- Tosfos: Even if a non-Jew is readily available, it is a mitzvah for a Jew to do it, lest the non-Jew be indolent and not do it.⁵
- Rosh: We don't use children, even if they are readily available, out of concern that if we did, the next time people would go looking for children, and the delay would endanger the patient.⁶
- Ran: We don't use non-Jews or children lest onlookers think that chillul Shabbos for *pikuach nefesh* was only permitted reluctantly, and adult Jews, who are obligated in mitzvos, should *lechatchilah* not do it. Then the next time someone is in danger when no non-Jews or children are available, they won't want to be *mechalel Shabbos*.⁷
- Riaz, citing his grandfather the Tosfos Rid: We don't look for a non-Jew or a child, because the delay endangers the patient, but if one is already present, we have him do it rather than desecrate Shabbos unnecessarily.⁸

¹ See Rosh cited below; Hagahos HaGra to Yoma ibid.

² Yoma 84b.

³ Taz O.C. siman 328 s.k. 5; Aruch Hashulchan ibid. se'if 7 (explaining the Rambam).

⁴ Bais Yosef O.C. siman 328 and Kesef Mishneh Hilchos Shabbos 2:3.

⁵ Tosfos ibid. s.v. *Ella bigdolei Yisrael*.

⁶ Piskei HaRosh ibid. perek 8 siman 14.

⁷ Ran ibid. p. 4b in Rif pagination.

⁸ Shiltei Hagiborim, Yoma ibid.

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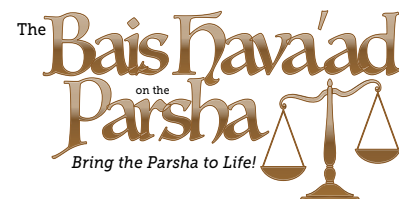
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PARSHAS KI SAVO

BOUNDLESS

Excerpted and adapted from a *shiur* by Dayan Yitzhak Grossman

Accursed is one who moves the boundary of his fellow...

Dvarim 27:17

This curse of the *masig gvul* refers to an *issur* in Parshas Shoftim: "You shall not move a boundary of your fellow..." (Dvarim 19:14).

The Sifri lists four acts that are included in *hasagas gvul*.

- The first, cited by Rashi and the Ramban, is expanding one's property in Eretz Yisrael by moving back his neighbor's boundary. The Sifri explains that this form of *hasagas gvul* was already prohibited under *gzeilah*, and the separate prohibition imposes an additional *lav* upon the transgressor.
- The second is uprooting the border of one of the *shvotim* in Eretz Yisrael. The Ramban seems to understand this to include challenging the borders of both *shvotim* and individuals (see Bemidbar 33:54).
- The third is reversing the views of R' Eliezer and R' Yehoshua on a particular question of *tum'ah*. Some say this is just an *asmachta*, but others say it's a true *lav*.¹
- The fourth is selling ancestral property that contains a cemetery.

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¹ The *mefarshim* debate whether this prohibition encompasses reversing the views in any machlokes or only that of R' Eliezer and R' Yehoshua—because R' Eliezer followed Beis Shamai, whom the halacha doesn't follow.

The Rama, following the Riaz, rules that non-Jews should be utilized if that will cause no

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Q&A from the
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Foreign Policy?

Q Is there a problem with buying life insurance?

A Many *poskim* say that taking out life insurance to provide for one's family is not only permitted but obligatory. The Chovos Halevavos (*Sha'ar Habitachon*) teaches that while a person must place his trust in Hashem, he must work within the framework of *teva*: working to earn *parnasah*, seeking medical care, and shielding his family from foreseeable hardship—with the *emunah* that success comes entirely from Hashem.

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delay at all.⁹ But the Taz strongly disagrees and maintains that it is preferable for a Jew to act even if non-Jews are available, for two reasons:

- Onlookers might mistakenly think that it is forbidden for a Jew to be mechalel Shabbos for *pikuach nefesh*, and future patients will be endangered while people look for a non-Jew.
- The Jew will act with greater alacrity (*bizrizus tfei*).¹⁰

The Shulchan Aruch HaRav records that the custom “in these countries” follows the Riaz and the Rama. But he himself disagrees, as he shares the Taz’s first concern.¹¹ Several other *Acharonim*, including the Mishnah Brurah, also cite (and possibly endorse) the Taz, though their brief summaries of his position mention only his second reason.¹² The Aruch Hashulchan accepts both of the Taz’s considerations.¹³

R’ Moshe Feinstein discusses this in two *teshuvos* addressing whether the Hatzolah ambulance service should, where possible, have non-Jewish ambulance drivers on Shabbos. In the first one, dated 5738/1978, he ruled that this is preferable on several grounds, and it would cause no delay, because every ambulance driver drives as fast as possible.¹⁴ But in the second one, dated 5742/1982, he says he was informed that this is not the case.¹⁵ Would this Gemara apply to shul security? The reasons of the Rosh and Ran would not seem germane, at least in the context of the lawsuit, because if we employ non-Jews not for religious reasons but to comply with a county ordinance, it won’t result in halachic misconceptions with fatal future consequences. But the concern of Tosfos that non-Jews may be indolent and the assumption of the Taz and later *Acharonim* that Jews will presumably act *bizrizus tfei* would apply. The Uvalde school shooting might serve as a vivid illustration of this concern:

Almost 400 law enforcement officers, including 150 U.S. Border Patrol agents and 91 Texas DPS officers, came to Uvalde during the shooting. Before tactical units arrived, police officers inside the school, who numbered at least 19, made “no effort” to breach the room where Ramos was located, according to the Texas Department of Public Safety (DPS). According to the DPS, the decision to wait for tactical units to arrive was based on the false belief that Ramos had been isolated to a classroom where he could do no more

harm. This decision was made by the incident commander, identified as Pedro Arredondo, UCISD’s chief of police.

Police arrested and handcuffed one mother who drove to the school after hearing about the shooting, which prevented her from trying to save her children. Body camera footage also shows one of the officers, Ruben Ruiz, being held back by other officers and prevented from rescuing his wife (a Robb Elementary teacher), who was inside one of the classrooms, dying of a gunshot wound...

On June 21, Steve McCraw, Texas Department of Public Safety Director, testified during the Texas Senate Committee Meeting on the Uvalde School Shooting that the police response was an “abject failure and antithetical to everything we have learned over the past two decades” and that the police could have stopped the shooter in three minutes.

McCraw said, “The only thing stopping a hallway of dedicated officers from entering Room 111 and 112 was the on-scene commander who decided to place the lives of officers before the lives of children.”

On July 17, the Texas House Investigative Committee released a 77-page report on “systemic failures and egregiously poor decision making” that exacerbated the shooting, and criticized state and federal officials and agencies in addition to local police. The report said a total of 376 law enforcement officials responded to the shooting, including 149 Border Patrol agents and 91 state police officers. According to The New York Times, the report found that the Uvalde Police chief knew that a child had made 911 calls from inside a classroom, but that “none of the officers who learned of the calls advocated for ‘shifting to an active shooter-style response or otherwise acting more urgently to breach the classrooms.’”¹⁶

While this is obviously anecdotal, it seems clear that all else being equal, the presumption that a Jew will act *bizrizus tfei* is quite applicable to shul security, particularly if the Jew is a member of the community he is protecting. It seems obvious, however, that the halachic preference for a Jew in this role assumes he has an equal level of competence and training. The extent to which that assumption holds true for community volunteers over professional security would have to be determined, and it would likely vary by the community and the available professionals.

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R’ Moshe Feinstein (Igros Moshe O.C. 2:111) rejects the notion that buying a life insurance policy reflects weak *emunah* and likens it to ordinary *hishtadlus* for *parnasah*. Just as one may not sit idle and expect food to



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arrive miraculously, he may not leave his family financially exposed on the assumption that Hashem will intervene supernaturally. He cites Chazal’s caution against davening for miracles (Brachos 60a) and compares that to praying for money without exercising *hishtadlus*. R’ Moshe adds that the very existence of life insurance may be seen as *hashgacha*, a mechanism Hashem placed in the world to protect families. R’ Shmuel Wosner (Sheivet Halevi 4:1) and R’ Ovadiah Yosef (Yechaveh Da’as 3:85) also advocate for life insurance.

Importantly, there is indeed a *hanhagah*, practiced by *tzadikim gemurim*, of absolute *bitachon* without the need for *hishtadlus*. But most people are not on that level and should not attempt it (Rav Wosner *ibid.*).

Some have raised the concern of *al yiftach piv laSatan*—that planning for death may itself invite misfortune. R’ Ovadiah Yosef responds that ordinary, responsible worldly conduct is not an invitation to harm. It is no different from purchasing burial plots and *tachrichim* in advance, which has long been normative practice (see Rivash 114).

Rav Yosef notes that one must make sure the policy itself does not generate problems, e.g., a provision requiring an autopsy before a payout. In certain investment-linked policies, there may be *ribbis* problems if the insurance company has significant Jewish ownership.

⁹Hagahos Shulchan Aruch *ibid.* se’if 12.

¹⁰Taz *ibid.*

¹¹Shulchan Aruch HaRav *ibid.* se’if 13.

¹²Elyah Rabah *ibid.* s.k. 12; Tosefess Shabbos *ibid.* s.k. 15; Mishnah Brurah *ibid.* s.k. 37.

¹³Aruch Hashulchan *ibid.*

¹⁴Shu”t Igros Moshe O.C. cheilek 4 siman 80 s.v. *Ucheshe’ira zeh* beShabbos veYom Tov.

¹⁵*ibid.* cheilek 5 siman 25.

¹⁶Chut Shani cheilek 4 p. 189 and p. 190 as 21; Shmiras Shabbos Kehilchasah, cited in Nishmas Avraham (Second Expanded Edition) O.C. p. 446.

¹⁶Wikipedia contributors. Uvalde school shooting. In Wikipedia, The Free Encyclopedia. https://en.wikipedia.org/w/index.php?title=Uvalde_school_shooting&oldid=1369837146.

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The Radvaz notes that although many assume *hasagas gvul* means improper business competition, this explanation is not found in Chazal (though it may still violate an *issur deRabanan*).

The business competition element is found only in passing in the *Rishonim*, in a *teshuvah* of the Rambam and in a comment of the Rokeiach. But the Maharshal defends the explanation and says that the *arur* here adds business encroachment to the *issur* of *hasagas gvul* in Parshas Shoftim. A number of

Acharonim accept this Maharshal and maintain that improper competition violates this *arur mideOreisa*.



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