

Halakhah and the Regulation of Firearms

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The sources of Jewish law do not directly address the issue of firearms control and regulation as that issue is framed in any particular political community.¹ Still, they do offer us a *language*, a Jewish way of conceiving, defining, and talking about the issue that we might use when participating in social and political conversation. We know of no better example of this language than two responsa on firearms regulation written by Rabbi Hayyim David Halevy (d. 1998), the chief S'fardic rabbi of Tel-Aviv-Yafo who is perhaps best known for his collection of *t'shuvot* entitled *Aseh L'kha Rav*.² Taken together, these *t'shuvot* act out the parameters of a productive (which is to say *sane*) argument over an issue that is all too often raucous, angry, and bitterly divisive.

The *t'shuvot* respond to specific questions having to do with the political and social reality in Israel. We'll read through them and then consider how they might teach us to speak and argue about firearms control and regulation in all societies.

1. Resp. Aseh L'kha Rav 1:19 (1976)

המותר למדינת ישראל למכור נשק למדינות אחרות?

In the first responsum, Halevy's correspondent (*sho'el*) asks: is it halakhically permissible for the state of Israel to sell weapons to other nations? The *sho'el* has done some homework here, although, as we'll see, not enough. He or she notes that the Mishnah prohibits Jews from selling dangerous objects to non-Jews:

M. Avodah Zarah 1:7

אין מוכרין להם דובין ואריות וכל דבר שיש בו נזק לרבים.

It is forbidden to sell [to Gentiles/idolators] bears, lions, or anything that might endanger people.

¹In the United States, for example, the issue is enmeshed in a debate over the meaning of "the right to bear arms" as stated in the second amendment to the federal constitution. Jewish law obviously does not address the meaning of the second amendment, not least because it doesn't know of a concept of "rights" like that embedded in the American legal systems.

² Although he was a traditional/Orthodox rabbi, Halevy wrote these responsa in modern Hebrew, in a style pitched to educated readers who were not necessarily *talmidei hakhamim*. This raises another interesting question: to what extent, if any, does literary *style* influence *p'sak halakhah*? The hypothesis would be that because he writes explicitly for educated non-specialists who participate fully in modern culture (*i.e.*, they aren't all *haredim*), his will express the *halakhah* in a fashion calculated to be persuasive to that audience. This hypothesis has yet to be tested.

And Rabbi Ovadyah mi-Bartenura, the great 15th-century commentator on the *mishnayot*, makes sure that we know that weapons fall under this ban:

כל דבר שיש בו נזק לרבים. כגון כלי מלחמה חרבות ורמחים:

Anything that might endanger people – such as weapons of war, swords and spears.

We should note here that in the days of the Mishnah, all “Gentiles” were presumed to be *ovdei avodah zarah*, idol worshippers, who by that token could not be counted upon to live by anything resembling a moral code. Our *sho'el*, apparently, doesn't distinguish between those “Gentiles” and the non-Jewish nations of our own time. The *sho'el* also seems to take for granted that the economic and military policy of the modern, sovereign Jewish state is subject to the strictures of ancient *halakhah*. That, of course, is a controversial question. Halevy nonetheless considers the question at face value: does Jewish law forbid today's Jewish state to sell weapons to other countries?

T'shuvah.

נכון הדבר, וכך מבואר במשנה שהזכרת, ויותר מבואר הדבר בברייתא (מסכת ע"ז טו ב) אין מוכרים להם לא זיין ולא כלי זיין ואין משחזין להם כלי זיין וכו', ואין אדם מישראל רשאי למכור שום כלי נשק למי שחשוד להשתמש בו לרעה ולהביא נזק לרבים.

Rabbi Halevy answers that the *mishnah* in *Avodah Zarah* indeed prohibits the sale of “dangerous objects” to Gentiles. Indeed, he points out, a *baraita* in *B. Avodah Zarah* 16b explicitly extends the ban to weapons (כלי זיין).³ And he draws the more general conclusion that “a Jew is not entitled to sell any weapon to any person” – that is, not only to a Gentile – “whom one suspects will use it for a nefarious purpose and cause a public danger.” Clearly, then, the prohibition against the sale of weapons applies domestically as well as to commerce between nations.

אלא שהגמרא עצמה שואלת בהמשך הדברים: והאידנא דקא מזבנין (ועכשיו שאנו מוכרים, ומשיבה) א"ר אשי לפרסאי דמגני עלן (ע"ז טז א).

In reality, though – and here is what the *sho'el* misses by relying on the Mishnah without reading the Talmud – we learn in *B. Avodah Zarah* 16a that “nowadays” (האידנא), at least in Babylonia, the ban on weapons sales has been lifted. The custom is to sell weapons to “our” Gentiles, the Persians. As Rav Ashi explains it, we sell them weapons because they are the ruling power and “they defend us.” We depend on them for protection and security.

ועל זה כותב המאירי “שבימי רבותינו התירו למכור כלי זיין לפרסיים מפני שהיו שרויים בתוכם ומגינים עליהם, וכל שאדם חוסה בצילו ראוי לעזור כפי האפשר. ואף אנו באלו וכיוצא בהן (כלי זיין) אנו מתירים לעצמנו... מפני שכל מלאכת ישראל נעשית על ידם וכל שאנו נעזרים בהם באותם הדברים שאנו מוכרים להם מותר.”

R. Menachem Hame'iri (13th-14th c. Provence) derives a general rule from Rav Ashi's logic.

³ Which is presumably the source upon which Bartenura relies in his comment “Anything that might endanger people.”

The Sages permitted the sale of weapons to the Persians⁴ because [the Jews] lived in their midst and because the Persians offered them protection (defense). And when one finds refuge under the protection of another person, it is proper (*ra'ui*) to help that person in whatever way possible. We too [in our time] permit ourselves to sell weapons to Gentiles... because we are dependent upon them economically.⁵ It is thus permitted to sell to them anything that might prove beneficial to us.

Rabbi Halevy summarizes the rule as follows:

נמצא יסוד ההיתר כפול. א) שכל שאדם חוסה בצילו ראוי לעזור לו כפי האפשר. ב) שאנו נעזרים בהם באותם הדברים שאנו מוכרים להם.

The *halakhah*, he concludes, permits weapons sales on the basis of two arguments.

- An *ethical* argument: it is proper (*ra'ui*) to help those who protect us.
- A *pragmatic* argument: providing weapons is useful to us, in terms of both security and economics.

והתוסי' (שם ד"ה לפרסאי) כתבו בפשיטות שגם אנו רשאים למכור עתה לעכו"ם כלי זיין מאותו טעם. ר"ל מהטעם שנוזכר בגמרא "דמגני עלן". והרמב"ם (בהלכות עבודה - זרה פ"ט ה"ח) הגדיר את יסוד ההיתר בכריתת - ברית, וזו לשונו: היו ישראל שוכנים בין העכו"ם וכתרו להם ברית מותר למכור כלי זיין לעבדי המלך וגייסותיו מפני שעושים מלחמה עם צרי המדינה להצילה ונמצאו מגינים עלינו שהרי אנו שרויים בתוכם. (וכל זה נפסק להלכה גם בטור ושו"ע יו"ד סי' קנ"א. פרט לתנאי שהטיל הרמב"ם כריתת - ברית, ואין זו המסגרת לבירור מעמיק של דברי הרמב"ם)

Halevy surveys the other *poskim* who have ruled on the subject – Tosafot, Rambam, *Tur* and *Shulhan Arukh* – and finds their reasoning similar to that of Hame'iri.⁶

ואף כי המדובר בהלכה הנ"ל הוא בהיות ישראל בגלות וחוסים בצל העמים אשר בקרבם חיו, אעפ"כ מיסוד ההיתר שם יש ללמוד גם לגבי היתר המכירה למדינת - ישראל. שכן יסוד ההיתר נעוץ בעובדא שקיימת ברית ידידות אתם ומגינים הם עלינו.

Now Halevy applies the *halakhah* to the question that was submitted to him. He acknowledges that the sources speak of a Diaspora situation, where the Jewish community exists as a minority within the surrounding society “and finds refuge in the protection of the nations.” The *sh'elah*, by contrast, addresses the reality of a modern sovereign Jewish state that is capable of defending itself, which might lead us to conclude that the Mishnah's ban on weapons sales should be reinstated. Yet Halevy argues that the reasoning behind the permit of those sales is still valid: “it is based in the fact that a treaty of friendship exists between us and other nations, who help defend us.” In other words, sovereign independence does not mean that the security of Israel (or, by extension, any other state) does not require the assistance of other, friendly nations. Rav

⁴That is, they lifted the Mishnaic ban on weapons sales to Gentiles.

⁵ Literally, “all of our work/business is done by them.”

⁶ The one difference is that Rambam (*Hilkhot Avodah* 9:8-9) conditions the permit for weapons sales upon the existence of a formal treaty (*b'rit*) between the Jews and the surrounding Gentile authority. No other *posek* mentions this requirement.

Ashi's explanation for the permit of weapons sales (דמגני עלן, "they defend us") applies to present-day reality: Israel sells weapons to allies "who defend us."

מעתי ברור, שמדינת ישראל מוכרת נשק למדינות ידידותיות בלבד, ואין שום ספק שעושה זאת מתוך שיקולים בטחוניים, ומביאה בחשבון את התועלת שתצמח לנו מכך, ולכן פשוט שמותר.

Rabbi Halevy concludes: "It is clear that the state of Israel sells weapons only to friendly countries and undoubtedly does so out of security considerations, taking into account the benefits that will accrue from the sale. *Halakhah* quite obviously permits this."

2. *Resp. Aseh L'kha Rav* 9:2 (1987)

The second responsum of Rabbi Halevy deals with a more "normal" halakhic question, relating to synagogue governance rather than national defense policy.

הנני מאשר קבלת מכתבך מיום י"ז באלול תשמ"ז, בשאלתך על מה שבישובכם "נוהגים חלק מהתושבים לשאת נשק עפ"י הוראה לשם כוננות... ויש כהן שעלה לדוכן כשבחגורתו אקדח. ושאלת אם מותר לכהן לברך... או שעליו להניח האקדח במקום בטוח בשעת הברכה ואם יש הבדל בין אקדח קטן לבין רובה או נשק אחר גדול?"

The question: some of the members of a synagogue community, in accordance with government instructions, carry weapons for purposes of security. One of them, a *kohen*, came up to the front of the sanctuary to perform the Priestly Benediction while wearing a pistol. The *sho'el* wishes to know whether it is permitted for a *kohen* to bless the community while carrying firearms or whether he should store his weapon in a secure place during the *b'rakhah*? Further, might there be a difference in this regard between a pistol and a rifle or other large weapon?

למעשה לא מצאנו איסור מפורש לכהן לברך את ישראל כשהוא חגור כלי נשק, אבל מצאנו גדולה מזו (ובכלל מאתים מנה) שאסור ליכנס לבית - הכנסת בסכין ארוך (שו"ע או"ח סימן קנ"א סעיף ו'). ואעפ"י שכתב מרן דין בשם "יש אומרים", האמת היא שאין חולק בדין זה, ועיין בגדולי האחרונים. ושם בבית - יוסף הביא דין זה שכתוב בא"ח בשם הר"מ שאסור ליכנס לבית - הכנסת בסכין ארוך לפי שהתפלה מארכת ימיו של אדם והסכין מקצרת ע"כ.

Halevy points to the passage in R. Yosef Caro's *Shulhan Arukh Orah Hayyim* 151:6 that prohibits a "long knife" (*sakin arokh*) from being brought into a synagogue.⁷ The source for this ruling (cited by Caro in his *Beit Yosef* as the 14th-century Provençal *Orhot Hayyim*) gives its reason as follows: "because while prayer lengthens human life, the knife cuts it short." That is, the presence of weapons is antithetical to the purpose of the synagogue as a place of prayer.

וברור איפוא שרק בסכין ארוכה אסור, ומסתבר הטעם משום שעל כרחו היא גלויה לעיני כל וזה עיקר האיסור, אבל סכין קטנה ומוצנעת בין בגדיו או בכיסו, אין מקום לאסור, וכך נראה מבואר מדברי הטו"ז (שם) סק"ו ועיין מה שכתב להקשות מדין סכין על השולחן בשעת ברכת - המזון).

But if that is the reason, then why is only a *long* knife prohibited? Isn't a short knife also a deadly weapon? The reason would seem to be that a long knife is visible (perhaps the sight of it

⁷ While Caro presents the rule as *yesh omrim*, "some say," Halevy notes that no *poskim* disagree with it (האמת היא) (שאין חולק בדין זה).

bothers the worshipers), so that a smaller knife, which can be concealed in a pocket or in one's clothing, would not fall under the prohibition of the *Shulhan Arukh*. That, at least, is the opinion of the *Turei Zahav* commentary (no. 2), who rules that we need only cover the knife rather than ban it entirely from the synagogue.⁸

הן אמת שסברא אין כאן, שכן מקור לדין זה הוא איסור התורה לגבי מזבח שעליו נאמר, "ואם מזבח אבנים תעשה לי... כי חרבך הנפת עליה ותחללה". והגר"א ציין (שם ס"ק ט"ז) מקורו ממסכת מדות (פ"ג מ"ד), לא היו סדין אותו בכפיס של ברזל שמא יגע ויפסול שהברזל נברא לקצר ימיו של אדם והמזבח נברא להאריך ימיו של אדם אינו בדין שיונף המקצר על המאריך עיין שם. ומשם למדו לבית - הכנסת, ולפי"ז מה לי סכין ארוכה ומה לי קטנה. אלא שלא מצאנו מי שחולק בזה על הטורי - זהב, ולא חששו אלא בסכין גדולה הנראית לעיני כל בלבד.

Halevy sees the problem with this reasoning. The prohibition against bringing a knife into a synagogue is based upon Exodus 20:22: וְאִם־מִזְבֵּחַ אֲבָנִים תַּעֲשֶׂה־לִּי לְאִתְבִּנָּה אֲתֶהוּ גִזִּית כִּי חֶרֶבְךָ הִנֵּפֶת: "If you make for Me an altar of stones, do not build it of hewn stones, for by wielding your tool [literally, "sword"] upon them you have profaned them." According to the Gaon of Vilna, who relies on *M. Midot* 3:4, this is the source of the *minhag* to prohibit a knife in the synagogue – i.e., just as the altar was created in order to lengthen life and not to shorten it, so, too, that which shortens life should not be permitted in the place of prayer. If so, Halevy concludes, what's the difference between a long knife and a short one, given that they both kill? Nonetheless, it seems that no *poskim* disagree with the *Turei Zahav*, who restricts the prohibition to a long knife - that is, a weapon that is visible to all.⁹

הן אמת שהמקובלים הרחיקו מאד הברזל, והזהירו שלא ישא אדם עליו שום דבר של ברזל בשעת התפלה, והחמירו יותר שלא להחזיק פרי במזלג של ברזל בשעת הברכה כמבואר בספרי המקובלים, אעפ"כ אין לנו להחמיר כל כך נגד דעת חכמי הפשט, וביחוד בזה שכל האיסור הוא קלוש, שהלא אפילו במקדש לא נאסר אלא להניף הברזל על המזבח, אבל לא נאסר מציאות הברזל במקום הקודש, והלא היו בעזרה סכינים שבהן שחטו הקרבנות.

There is a tendency in the kabbalistic literature to prohibit the wearing of any iron implements during prayer, but Halevy doesn't want to rely on this against the clear thrust in the *halakhah*, which forbids iron only in relation to the building of the altar. After all, even in the Temple there was no prohibition against carrying iron implements (e. g., knives used to slaughter the sacrifices).

וכל שכן בנדון דידן שהיא שעת דחק, שכן כל אדם מופקד הוא על נשק שנמסר לידו, ואינו רשאי למוסרו לשום אדם אחר או "להניחו במקום בטוח" כהצעתך, שאין שום מקום בטוח מחוץ לביתו ורשותו של אדם, והוא הלא חייב "לשם כוונות" להתהלך תמיד בנשקו. ולכן, בשעה שנכנס לבית - הכנסת יש להצניע האקדח בין בגדיו ודיו. וכך גם יעלה לדוכן לברך את העם.

There is even less reason to prohibit individuals from bringing firearms into the synagogue, certainly not in Israel, which lives in a state of alert (*sha`at hadahak* and *konenut*) and where individuals who are commissioned to carry weapons must keep them under their personal

⁸ He mentions the custom of covering the knife during the recitation of *birkat hamazon* (*Shulhan Arukh Orah Hayyim* 180:5) – i.e., the knife need only be concealed, not removed from the table, during the *b'rakhah*.

⁹ See *Mishnah B'rurah*, no. 22, who also seems to distinguish between the rationale of the prohibition, which would apply to all weapons, and the actual rulings of the *poskim* who speak only of visible, unconcealed weapons.

supervision at all times. Therefore, the proper procedure is for one to conceal one's weapon upon entering the synagogue. A *kohen* who does so may participate in the *birkat kohanim*.

ומכאן שברובה שדומה לסכין ארוכה יש לאסור הכניסה לבית - הכנסת, וכל - שכן לעלות לדוכן לברך את ישראל.

By the same token, one may *not* bring a long gun (similar to a long knife) into the synagogue and *kal vachomer*, one may not carry such a weapon while taking part in *birkat kohanim*.

אלא שגם לזה נראה למצוא פתח היתר, משום שלצערנו אנו עדיין מוקפים אויבים שמידי פעם בפעם מפתיעים אותנו בצורה אחרת, והכוננות היא מחוייבת לצורך פיקוח - נפש ממש... וכל שכן הוא בנדון דידן, שכאמור החזקת הנשק הוא משום פיקוח - נפש, וכל שעה ושעה הוא בגדר תשמישו לשם כוננות... ולכן נראה שיש להתיר הכניסה לבית - הכנסת עם רובה לתפלה.

Except that, given the constant and ongoing terrorist threat against the lives of our citizens, carrying weapons is a matter of *pikuah nefesh* at any and every moment. For this reason, we should permit those who are commissioned to carry even long guns to bring those weapons into the synagogue during services.

אבל לגבי נשיאות - כפים, רצוי מאד שלאותה שעה קלה בלבד ימסור את הרובה שהוא בולט ביותר לידי איש מהימן ואחראי, ולא יעלה לדוכן עם רובה. אבל לגבי אקדח כבר כתבנו לעיל שיש להתיר כשהוא מוצנע בין בגדיו.

But during the *birkat kohanim* it is preferable that the *kohen* hand his long gun to a responsible individual before going up to the front of the sanctuary to bless the congregation. As for a handgun, he may conceal it under his clothing during that time.

Now we can consider what these *t'shuvot* have to teach us about firearms regulation, not only under the specific circumstances in Israel but in all societies.

The first responsum begins with the Mishnaic ban on the sale of bears and lions – *and* weapons (*Mishnah Avodah Zarah* 1:7 and *B. Avodah Zarah* 16b). Jewish law fundamentally permits communities to outlaw or otherwise regulate the sale or transfer of firearms to persons who should not have them. This proposition makes so much sense that it is difficult to think of a serious counterargument. Not that some don't try. The opponents of gun regulation in the United States argue that the problem is not with weapons but with those who misuse them. We have all hear their famous saying: "guns don't kill people; people do." That is true; it is also as incredibly stupid thing to say.¹⁰ We can imagine idolators in ancient Judea protesting: "bears and lions don't kill people; people do." The framers of the Mishnah would have dismissed such nonsense out of hand. Yes, *people* are the ones who kill, but they use guns to do it, and as we have witnessed time and again to our sorrow and rage, when they use automatic or semiautomatic weapons to do it, they can kill multitudes of other people quite efficiently. Why would we not at least *try* to keep those weapons out of their hands? Jewish law would not tie *our* hands, and that should be our starting point.

¹⁰ We are getting out of our lane here – we're not constitutional scholars, after all - but we can't help but note that from a *halakhic* point of view the maximalist interpretation of the second amendment to the U.S. Constitution, which opposes *any* meaningful limitation upon the possession of firearms, is similarly absurd.

The sources tell us, of course, the Mishnaic ban was lifted (*B. Avodah Zarah* 16a). Talmudic sages justified this action on ethical and pragmatic grounds, a rationale adopted by subsequent *poskim*. What this teaches is that our approach to firearms regulation should be based on *those* grounds rather than on moral principle. Don't get us wrong: we're not saying that moral principle is a bad thing! But we *are* suggesting that arguments in which the two sides proceed from firmly rooted moral principle tend to be unproductive. They often degenerate into a clash of absolutes – “all guns are bad” versus “we have a God-given right to carry weapons” – that ends up getting us nowhere. It's better to focus our attention upon ethical and practical considerations, the need to protect our communities from gun violence versus the solid reasons that some people under some circumstances have for carrying firearms. The goal is to distinguish between those circumstances and others, where weapons are *not* an ethical or practical necessity and where considerations of public safety argue for the opposite course, namely restrictions on weapons possession.

Halevy's second responsum is an example of this sort of practical reasoning. The dominant consideration is that of public security: Israelis live in an ongoing state of alert. (We hardly need to add that outside of Israel, too, Jewish communities increasingly face threats of violence and terrorism.) It is therefore essential to interpret *permissively* the halakhic rules that would prohibit weapons in the synagogue. We have to read those rules in such a way as to permit individuals required to carry firearms to keep those weapons on their person during *t'filot*. That's not so hard to do. If you are persuaded, as Rabbi Halevy and most Israelis certainly are persuaded, that the situation for all intents and purposes is one of *pikuah nefesh*, preservation of human life obviously takes precedence over the *minhag* that prohibits “long knives” in the synagogue.

At the same time, Halevy will not have us lose sight of the moral demand of the *halakhah*. He acknowledges that there is no rational basis for the distinction between “short knives” – i.e., concealed weapons – and long, visible firearms. A weapon is a weapon; they *all* shorten human life, and they do not belong in a synagogue. For this reason, he draws the line at *birkat kohanim*: while a *kohen* may be required to bring his gun into the synagogue, he shouldn't carry it while blessing the congregation and asking God to “grant you peace.” The point is that firearms are at best a necessary evil: necessary at times but evil just the same. Guns in our midst are a measure we permit only because we have no choice. *Halakhah* permits the carrying of firearms to ensure our physical safety, but it also forbids us to glorify these weapons – the agent of so much death and misery in our world - as though they are something beautiful, a symbol of macho toughness or other such nonsense. It forbids us, in short, to join the cult of the gun.

Halakhah would have us talk and argue about firearms regulation within the boundaries set by Rabbi Halevy's responsa. We may permit the carrying of firearms in situations where they are necessary to preserve public safety. Our argument should focus upon carefully defining just what those situations are. At the same time, we may adopt whatever controls, limits, or regulations upon the use of firearms that we deem proper.