

# **The Right to disobey laws (or orders) that contradict one's religion.**

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## Introduction – The Conflict.

**F**reedom of Religion is one of the basic rights in modern democracy; it represents one's distinct and inherent right for one's freedom of Morals, Beliefs, Values and Creeds. In Israel (though I will tend to use the Israeli law only for the purpose of general examples), a relative Freedom of Religion exists<sup>1</sup> in spite the fact that the state is defined as a "Jewish-Democratic" state. The tension between Judaism and Democracy had influenced the courts of Israel in several decisions that regard the nature of the state<sup>2</sup>, Is Israel more Jewish or more Democratic? Moreover, what is the contradiction between Judaism and Democracy?

The affinity between Religion and Nationalist groups is inherent in the state of Israel<sup>3</sup>; where most national groups tend to be of a religious orientation. One of the major conflicts in the Israeli society is regarding its Constitution, whilst the secular left and the moderate right tend to agree on the necessity of founding an Israeli Constitution, the extreme right and most religious parties tend to disagree; these parties claim that the Jewish 'Halakha' is the true basis of all laws, and as such is serves as the Supreme Law which reigns this country (as well as and all other countries).

Arguments regarding this issue have caused many coalitional conflicts during the state's early years, finally ending in the 'Harari Compromise'<sup>4</sup> of 1950. In this compromise it was agreed that there would be no constitution for the state of Israel, however *basic statutes* would be legislated. These statutes will be protected statutes regarding the nature of the state, The *Sabbath* would be respected, Familial and Matrimonial issues will be dealt with by the religious courts<sup>5</sup> and the laws of *Kashruth* would be kept<sup>6</sup>. Though the normative situation of these laws is irrelevant<sup>7</sup> to this work, one must comprehend that their status is not fully obvious. These *Basic Statutes* provide two different solutions. The first is for the order and functionality of governing bodies, and the other is for the protection of human rights.

These Basic Statutes were legislated in two different periods; the first period was in the early 1950s, mainly regarding governmental authorities, whilst the other period began in 1993, when the basic statute of

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<sup>1</sup> The Israeli statement of independence entitles every individual the same rights, no matter what his system of beliefs is. Israeli Statement of Independence can be found at: <http://www.knesset.gov.il/docs/heb/megilat.htm>

<sup>2</sup> For example see BGZ 5016/96 Lior Horev V. The Minister of Transportation, CD 51(4) p.1 – discussing the closing of several streets for transportation of Saturdays, BGZ 4674/96 Meatrael and Others V. The Parliament of Israel, CD 50(5) p. 15, discussing the import of non-kosher meat, CA 506/88 Yael Schaefer V. The State of Israel, CD 48(1), p. 87, regarding passive euthanasia and the law of Israel. PA 2831/95 Rabbi Ido Alba V. The State Of Israel, CD 50(5), p. 221, that deals with racism and the Jewish origin of the state. There is a great dispute over this issue whether Israel is a Jewish state, Democratic state or Both, which some people claim that it cannot be.

<sup>3</sup> Unlike nationalism in other states, which attempts to prevent religion, as Hitler did in Nationalist Germany or Mussolini did in Fascist Italy. Israel's nation is believed to be related to its religion as a forming act. Religion is believed to be the tether that binds the Jews upon their return to Israel. **BGZ 6698/95 Adal Ka'adan V. The Israeli Land Authority, CD 54(1), p. 258.**

<sup>4</sup> The Harari Compromise was a decision accepted in the Knesset (the Israeli parliament) and decided, on June 13<sup>th</sup>, 1950, that "The First Parliaments assigns the Constitution, Statute and Law committee to draft a constitution proposal to the state. The constitution shall be made of chapters and chapters, in a way that every one shall be a basic statute by itself. The chapters shall be brought to the Knesset in case that the committee finishes its work, and all chapters together shall be packed as the constitution of the state". Needless to say, that such a thing never occurred.

<sup>5</sup> The Statute of Judgement by Rabbainic Courts, 1953. also see: Karpin & Friedman (1998): p. 72

<sup>6</sup> The Statute of Meat and its products. Also: Karpin & Friedman (1998): p. 54, the Kashruth issue was raised again in the Case of Meatrael (BGZ 4674/96), and Meatrael (BGZ 7198/93), that following this case, the Statute of Meat and its products was legislated.

<sup>7</sup> A complete discussion on the normative status of these basic laws with full opinions from 7 supreme court judges exists in Mizrahi (BGZ 6821/93)

“*Human Dignity and Freedom*”<sup>8</sup> was legislated. The Said statute provided each person with the basic right for freedom of creed<sup>9</sup>. Since 1993, the extreme right in Israel (that objected to this statute), had used it several times to justify disobeying the law in cases which dogmatic religion stood in contradiction with the positive laws or when relevant freedom was needed and the state’s ability to supply it was not forged. Cases like the Baruch Goldstein (and his followers who published books regarding his acts<sup>10</sup>), Noam Federman<sup>11</sup> and Yigal Amir<sup>12</sup> demonstrate that where this contradiction existed, the religious extreme right prefer to obey the divine law rather than the law of the state.

The basic tension between the Jewish Religion and the Israeli Positive law resulted in several disputes regarding the desired structure of society; When Abraham came to the holy land in biblical times, it was already inhabited by the other nations of “*Kna’an*”; and so it was, when the Jews returned to the holy land after 2000 years of persecution, this land was inhabited by the Palestinians. This Zero-Sum game over territory caused wars and civil rebellions which began in the riots of 1929, followed by the “*1<sup>st</sup> Intifada*” of 1936-1939 and the war of 1948. The last 20 years were well-known for bloody events such as the Intifadas of 1987 and of 2000; these conflicts had caused many casualties in both sides. The claim of the nationalist right is that the real state of Israel justly spreads from the where the two greats rivers in Iraq of today, until the shores of the Nile in Egypt. This was the Promised Land, the land of our fathers, the Land of Milk and Honey. This land is the land that the religious right believes to be the land of Israel. For them, any territorial compromise would be a disobedience of the divine word.

When the Zionist movement ‘Returned’ to Israel, after 2000 years in exile and life amongst gentiles, it had arisen in distant countries, where most of the Jews were considered wealthy. They arrived to this “Land of Milk and Honey” in which there were very few assets, hardly any agriculture and no proper means of transportation; after many disputes over territory and bloody battles, this barren land was ‘freed’ from *British occupation*<sup>13</sup> and was supposed to be divided into two states. There were many conflicts regarding the state’s destiny. The Zionist movement had accepted the plan to divide Israel into two different entities, a Palestinian state and an Israeli state, and accordingly founded the state of Israel in 1948.

This state, though considered ‘Jewish’ was not solely for the Jews, for it was occupied by many Palestinian, Druze and Cherquees, whose right to live in Israel was acknowledged by the Israeli statement of independence acknowledged their right to live in Israel and they were thus provided with equal rights. The

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<sup>8</sup> The Basic Statute Of Human Dignity and Freedom

<sup>9</sup> Clauses 1 and 2 of this statute.

<sup>10</sup> Zeini (CA 2014/01), Lerner (PA 1517/98).

<sup>11</sup> Federman (BGZ 8529/01), Federman (BGZ 4327/01), Federman (BGZ 547/98)

For an explanation regarding Federman’s views, please see Kahalani (DRP 5113/02):

"Indeed, Adv. Golan is aware that Arabs who hurt the vehicles of Jews for "Nationalist" reasons are ordered to be arrested by the courts until the end of their proceedings, but to his claim there is a difference between their matters and ours: in the matter of Arabs that burn cars of Jews, the courts had decided that this is a crime to be eliminated, while up to now we had yet to learn of burning of Arab's cars by Jews. Therefore the distinction, allegedly, and the reason not to arrest the appellants." Also see: Federman (DRP 212/99).

<sup>12</sup> Amir (PA 3126/96)

<sup>13</sup> The United Kingdom had gotten a mandate to rule over Israel after WWI until it would be able to establish a sovereign and independent state. After many arguments and disputes, it was decided on November 29<sup>th</sup>, 1947, to establish 2 states over the land of Israel, one Arab and one Jewish, following the establishment of Israel, on May 15<sup>th</sup>, 1948, began the first war, in which Israel fought against Egypt, Syria, Jordan, Lebanon and Iraq, where in the end Jordan had occupied the west bank and Egypt had occupied the Gaza strip.

two nations coexisted (disregarding military curfew/regime that the Israeli Arabs were under) until 1967, in which new territories were returned/conquered/annexed/occupied<sup>14</sup> to the state of Israel, these new occupied territories were contained Jewish holy places, some were genuine and the rest were actually and some were even invented in order to maintain this sanctity<sup>15</sup>.

From 1967 until today, new settlements had been built within these occupied territories. These settlements are chiefly occupied by ultranationalists and extreme religious groups. These understand the act of 'Settling' as a form of "Geula"<sup>16</sup> (Redemption<sup>17</sup>) and the prevention of which will lead to the downfall of the Israeli redemption that started in the late 19<sup>th</sup> century and continues until today.

*Habad*, the messianic movement, holds that it is not within the government's jurisdiction to return territories since the Halakha does not allow it<sup>18</sup>, the prime minister has no right to give away Israeli territories since he does not own the land.

Due to their religious belief that this land is sacred and that it is a form of religious redemption, which avoiding means tempering with the returning of the Messiah (that will be followed by divine reign) these groups reject all option if Returning/Reallocating/Leaving/Selling these territories, this standpoint relies of the claim that the right for this land is religious and based on the holy scripts. This belief had caused many rivalries between Jews and Palestinians and influenced the way Jews themselves define the role of these territories. Where the left (and moderate center) agrees that these territories have no function for the state of Israel, the Right believes that there is no government has the right to *relinquish* these territories and whomever does is acting against the will of God<sup>19</sup>. This dogmatic belief had led to the taken of many lives, including hundreds of Palestinians and several Israelis, including one Prime-Minister, Mr. Yitzhak Rabin.

In my work I will examine the right to disobey the law when it stands in contradiction to one's creed in the Extreme National Religious Israeli Right regarding the issue of the occupied territories, as well as the practical form of this "Disobedience". I will achieve this by interpreting scholars, analyzing Israeli court decisions and analyzing Israeli statutes. Indeed, I hope that this work might affect the way we visualize the Israeli right nowadays, as an extreme and dreamy group without any relation to reality.

In order to do so I will detach from the everyday conversation about the occupied territories, ignoring 'who began the conflict' and 'whether these lands should be forsaken'. My assignment, in my view, basically comes down to analyzing the Rightwing's acts against the elected government (and against the state) which executed its policy. However, it would be inevitable to write such an assignment without incorporating my own personal standpoint on the conflict; therefore I shall express my opinion where it is believed to be an academic opinion and not a political one.

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<sup>14</sup> Due to many disputes over this correctness of any form of naming the current state, either "freed", "redeemed", "occupied" and "held", I shall use the word "occupied" due to the political correctness of it.

<sup>15</sup> Ziv (2001): p. 120

<sup>16</sup> Geula is the release and rescue of a person or people from wrong or enslavement, to which the side effects of joy and blessing are attached. The form of Geula relies on the belief in god, he rescues the needed and saves from slavery, <http://mikranet.cet.ac.il/pages/item.asp?item=4232&kwd=467>

<sup>17</sup> Kimmerling (2001): p. 46

<sup>18</sup> Karpin & Friedman (1998): p. 203

<sup>19</sup> Klinger (2003)

## Chapter I – Theoretical Overview

**D**uring the years, many philosophers have discussed the moral right to obey the law and the duty to disobey it when it contradicts one's conscience. In the modern society of the third millennium a person is subject to various "Circles" of laws, originating from different statuses that he or she bears: Religion, State and Family are merely a small portion of these. Is a child free to say in school that he does not wish to clean the blackboard since his father told him that this is an activity done only by women?

One's freedom is tempered by these "Circles" and must be balanced. Lately we have heard about a law that forbids the wearing of any religious signs at public schools in France<sup>20</sup>, this was meant to strengthen the French nationality, while biting the religious law of the Jews and Muslims. Is a pupil say free that this law defies his right for freedom of religion and therefore to disobey it?

The Nuremberg Trials were a perfect example of trials which were conducted against an unwritten law which was defied; the "Natural Law"<sup>21</sup> that most philosophers have dealt with, this law is the law that is above all<sup>22</sup>. This law is the law of justice, which proclaims that says that all men were created equal under the shade of god.

The United States were emerged from Civil Disobedience<sup>23</sup>, where the founding fathers had rebelled against the laws of England which were, in their view *unjust* and which contradicted the dogma that all men were created equal. However, this Civil Defiance had caused the United States to form a state that was subjected to slavery; Slavery that was only abolished 200 years later, this time by another civil defiance of the Afro-Americans.

Judaism was one of the first religions that accepted civil disobedience, being formed as the religion of shepherds that had no home and moved from country to country, under the sovereignty of various Kings.

When a local law contradicts the religious law, one must take passive action<sup>24</sup>.

A Direct form of civil disobedience, from the blatant side, is the case of Antigone; in her defiance of the law that forbids to bury her brother, she carries out a public display of non violent disobedience<sup>25</sup>, by burying him. The public effect of this burial is what differentiates the civil disobedience from regular crimes. This public display, the total transparency of the crime, and lack of *Mens-Rea* in the linguistic form of the word is what makes this form disobedience so interesting. This is an absolute form of publicity in violating the law of the state, where admitting to the facts and accepting incarceration for the committed crimes. Only because she believed in the justice of her cause. This chapter provides a short and incomplete overview of the right for disobedience, thus supplying us with general tools to comprehend the Israeli problem.

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<sup>20</sup> International Herald Tribune, 21.01.2004, New York Times, 10.02.2004

<sup>21</sup> Hazoni (1998): p. 14

<sup>22</sup> Hazoni (1998): p. 14

<sup>23</sup> Hazoni (1998): p. 15

<sup>24</sup> Hazoni (1998): p. 34

<sup>25</sup> Pearlstein (2003)

## ***Freedom of Religion and the Right for Creed.***

The laws of religion are called *Halakha*, they consist of the *Torah* (the first 5 books of the holy bible), *Neviyim & K'tuvim* (the other parts of the holy bible), the *Mishna* (interpretation of the bible in later books written after the closing of the Bible), the *Talmud* (interpretation of the Bible and the Mishna) and *Shut*, which is the Questions and Answers that are transferred between Rabbis and Jews who came forth with questions. The Halakha is the set of laws to which a Jew must obey in any state he lives, no matter which government rules, justly or unjustly.

The state of Israel had been set up as the country of the Jews, for the Jews, by the Jews; however, it was set up under a secular reign, and not under a Halakhaic one, thus creating a dissonance between the secular government and the religious leadership. The Halakha does not regard the secular regime as a part of it, even if it is almost entirely controlled by Jews<sup>26</sup>. The Regime does not have to be religious in order for the Halakha to recognize it, therefore acknowledging "*Dina Demalchuta Dina*"<sup>27</sup> – The law of the kingdom is the law, meaning that Jews around the world are bound to acknowledge the law of the state in which they reside and accept it as their law. This is valid as long as the law does not contradict the Halakha. Even during the rule of 'Evil' kings, their right to rule was acknowledged<sup>28</sup> if the public recognizes (or elects) the king, he is a just ruler<sup>29</sup>; The Halakha portrays a democratic essence which basically "agrees" with Rousseau's social covenant<sup>30</sup>.

The Jewish belief is that in the struggle between the *The Saying of the Pupil and the saying of the Rabbi, the Rabbi's words prevail*<sup>31</sup>. If something does not contradict the Halakha in a *Strictly* ('*Bealil*') manner it should be obeyed<sup>32</sup>. This analogy refers to the king's laws and the Halakhaic laws, by which the king is analogous to the pupil of the Rabbi and cannot leave his sphere of authority, defined by the Rabbi.

One's freedom of religion is stronger than many other constitutional rights. There is a great difference between the *freedom of religion* and the *freedom from religion*. This can be demonstrated by the Castenbaum case<sup>33</sup>, determining that one's freedom of expression supercedes the public's belief and the Horev case<sup>34</sup>, providing the right for freedom of religion. The freedom of religion is one of the rights that is entitled by the Statement of independence<sup>35</sup>, where it has been already active in the Israeli law system since 1924, when sign 83 of "The Kings Words in council of the land of Israel"<sup>36</sup> granted freedom of belief and religious action, when the freedom of conscience was already accepted by the Israeli courts<sup>37</sup> but as a relative freedom that should be adjusted against other freedoms and rights.

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<sup>26</sup> Henkin (1992):365

<sup>27</sup> Henkin (1992): p. , Baba Kama 113a, Baba Batra 54b, Gittin 10b, Nedarim 28a

<sup>28</sup> Henkin (1992): p. 366

<sup>29</sup> Henkin (1992): p. 367

<sup>30</sup> Henkin (1992): p. 368

<sup>31</sup> In Hebrew – "Divrey Harav vedivrey hatalmid, divrey harav kodmim". (Mishne Torah, Hilchot Melachim, 3,9)

<sup>32</sup> Henkin (1992): p. 369

<sup>33</sup> Kadisha (CA 294/91)

<sup>34</sup> Horev (BGZ 5016/96)

<sup>35</sup> Statement of Independence

<sup>36</sup> The Kings Words in council of the land of Israel, LLI (3), 2569

<sup>37</sup> Neemaney Har Habait (BGZ 292/83), Peretz (BGZ 262/62).

## ***The Duty to Obey the Law***

The dogma that “*The King Can Do No Wrong*” was accepted in the states in which the ancient Jews lived<sup>38</sup>, in Ancient Egypt the King was the voice of God and defying his authority was an act against god’s will -> thus punishable<sup>39</sup>. Rawls claims that in a democratic society, one must act according to the way he believes that the government wishes him to act<sup>40</sup>. Henkin thinks that this dogma is outdated; the *King can indeed do wrong*, whilst the people have to obey the divine order<sup>41</sup>. Moreover, in the modern state, when the state is the Overlord and Ruler, one must respect the law as representing the respect to others<sup>42</sup> thus respecting both worlds.

Avinery claims that since Democracy is the only accepted form of government<sup>43</sup>, one must also accept the legitimacy of the laws legislated within the framework of democracy<sup>44</sup>. He moreover adds that in a Democratic state people have to respect and obey the law<sup>45</sup> blindly; as long as democracy persists, Citizens must obey the law since it is expected to be obeyed<sup>46</sup>. In My own view, in this case, democracy cannot be considered as the only just government, since we cannot know that there is no better way to rule and to live;

therefore we cannot state limitative statements. What if, there was an alternatively accepted form of government, The Halakhaic Government? Could this be a different form of accepted government? Whether *all Jews accept to be ruled by the Halakha*?

The Israeli state is unique since it was established on the ashes of the “Land of Milk and Honey”, the land where the people were nomads and were not subjected to a monarch until returning from exile<sup>47</sup>. Upon their return to the land of Israel from Egypt<sup>48</sup>, the Israelites had asked God to find a king for them<sup>49</sup>; it was only then that he ruled under the jurisdiction of God. Aviner says that the Israeli Government serves as a representative of Israel worldwide, and therefore the heavenly kingdom rules justly<sup>50</sup>, for Aviner, the Prime Minister, as the angel of God is sacred, as was the king<sup>51</sup>

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<sup>38</sup> Hazoni (1998): 20

<sup>39</sup> Hazoni (1998): 20

<sup>40</sup> Rawls (1966): 162

<sup>41</sup> Henkin (1992): p. 369

<sup>42</sup> Plato (1979): p. 222

<sup>43</sup> where one always sees his form of government as the accepted form when he holds the power.

<sup>44</sup> Aviner (1991): p.170

<sup>45</sup> Aviner (1991): 176

<sup>46</sup> Gans (1996): 36

<sup>47</sup> Hazoni (1998): 25

<sup>48</sup> Numbers 33, 55 : "But if ye will not dispossess the inhabitants of the land from before you, those that ye let remain of them shall be thorns in your eyes, and pricks in your sides, and they shall harass you in the land wherein ye dwell. <sup>56</sup> And it shall come to pass that I will do unto you as I thought to do unto them.", *Numbers 34*: " And Jehovah spoke to Moses, saying, <sup>2</sup> Command the children of Israel, and say unto them, When ye come into the land of Canaan, this shall be the land that shall fall to you for an inheritance, the land of Canaan according to the borders thereof. <sup>3</sup> Then your south side shall be from the wilderness of Zin alongside of Edom, and your southern border shall be from the end of the salt sea eastward; <sup>4</sup> and your border shall turn from the south of the ascent of Akkrabbim, and pass on to Zin, and shall end southward at Kadesh-barnea, and shall go on to Hazar-Addar, and pass on to Azmon. <sup>5</sup> And the border shall turn from Azmon unto the torrent of Egypt, and shall end at the sea. <sup>6</sup> And as west border ye shall have the great sea, and [its] coast. This shall be your west border. <sup>7</sup>

<sup>49</sup> *Samuel 8:5* " Then all the elders of Israel gathered themselves together, and came to Samuel to Ramah, <sup>5</sup> and said to him, Behold, thou art become old, and thy sons walk not in thy ways: now appoint us a king to judge us, like all the nations. <sup>6</sup> And the thing displeased Samuel, when they said, Give us a king to judge us. And Samuel prayed to Jehovah. <sup>7</sup> And Jehovah said to Samuel, Hearken unto the voice of the people in all that they say unto thee: for they have not rejected thee, but they have rejected me, that I should not reign over them. <sup>8</sup>

<sup>50</sup> Aviner (1996): 6

<sup>51</sup> Aviner (1996): 7



Even Socrates, as it was described by Plato, who lived under a “Democracy”, had defied the law when he found it as unjust, and was willing to bear the punishment for doing so<sup>52</sup>. Socrates speaks of wisdom beyond man and beyond the law<sup>53</sup>, he claims that human wisdom is worthless (and thus so is the law) since it is aware of what it does not know<sup>54</sup>.

Tolstoy claims that no wrong can rise from a person who acts according to his Conscience<sup>55</sup>. Moreover, according to King, a law that is unjust is not a law<sup>56</sup> and must be disobeyed. A just law, According to Rawls, is created when a norm that is acceptable by free and rational people in the natural state of free-equality<sup>57</sup> receives formal legislation/recognition. In order to explain why laws are obeyed and accepted by the public, I shall use a game theory model for civil obedience, which almost explains why the law is obeyed and when is one free to (and must) disobey it.

Gans rejects most reasons to obey the law, including Rousseau’s social covenant<sup>58</sup> and believes that one must obey the law as an extra-legal obligation<sup>59</sup>. One should obey the law since one holds respect for the state, and regards it as a part of the consensus<sup>60</sup>. However, this is only a quasi-duty, and not a full obligation<sup>61</sup>, the positive law serves merely as a declaration of the required norms of society but it cannot stand in contradiction with the natural law<sup>62</sup>. Once an unjust act is committed by the state, one should reconsider the reason to respect it<sup>63</sup>.

Upon using the Game theory to analyze the duty to obey the law, we arrive at a clear explanation as to why most people obey the law most of the time<sup>64</sup>; Granting giving the individual maximum credit when one disobeys the law when everyone obeys it, and correspondingly granting least credit when one obeys the law and no one else does, we can deduce a rational reason for obedience. Thinking rationally, when breaking the law would cause the person greater benefit (or prevent greater damage) than when obeying in an extent which justifies all future results (including incarceration or even death), one may chose to break the law.

|           | Everyone Obeys | Everyone Disobeys |
|-----------|----------------|-------------------|
| I Obey    | +5             | -10               |
| I Disobey | +10            | -5                |

Using this rational scheme, one can understand why everyone obeys the law most of the time, and why casual mishaps may occur<sup>65</sup> when the players are playing various rounds. According to Poundstone, even

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<sup>52</sup> Hazoni (1998): 22

<sup>53</sup> Plato (1979):210

<sup>54</sup> Plato (1979): 213

<sup>55</sup> Tolstoy (1900): 110

<sup>56</sup> King (1963): 131

<sup>57</sup> Rawls (1966): 149

<sup>58</sup> Gans (1996): 54

<sup>59</sup> Gans (1996): 21

<sup>60</sup> Gans (1996): 26

<sup>61</sup> Gans (1996): 27

<sup>62</sup> Gans (1996): 28

<sup>63</sup> Gans (1996): 29

<sup>64</sup> Gans (1996): 62-63

<sup>65</sup> Poundstone (2000): p. 145

when two sides are willing to cooperate, they will generally choose randomly (or not randomly when using non mathematical models) not to cooperate when it is in his interest<sup>66</sup>.

According to Tolstoy, governments are not sacred and are not a part of religion<sup>67</sup>. As such, we should search for the cause to obey the law. It would appear that there is no such duty. One would appear to obey the law only due to Game-Theory models of social justice. If every person would take the law into his own hands, there is no telling who could rule the land (and the state). In order to reach relative stability, people are willing to limit their freedom in order to maintain total justice<sup>68</sup>; however, using the Game Theory model, a specific breach of the law, when not committed constantly, may be accepted due to the good arising from it.

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<sup>66</sup> Poundstone (2000): p. 292

<sup>67</sup> Tolstoy (1900): p. 104

<sup>68</sup> Tolstoy (1900): p. 105

## ***Moral Freedom***

The Freedom of Morals is a part of the positive Israel law<sup>69</sup> and represents the basis for all other rights<sup>70</sup>, however, this freedom does not survive when it comes in contradiction with other laws of Israel. As it was stated in the Rogojinsky case<sup>71</sup>, a person cannot, for example, marry outside the laws of the Halakha even if it contradicts his morals; one cannot use this freedom in order to cause violent riots<sup>72</sup> or to publish insulting and racist publications<sup>73</sup>.

One's right for freedom of morals comes into together with his freedom of speech<sup>74</sup>, where Gandhi believes that the prevention of one's freedom of speech is an act of terror and by the government and may cause civil disobedience<sup>75</sup>, in the Israeli cases, it was mostly decided that the prevention of speech, even about oppression, is needed in order to maintain national security<sup>76</sup>.

Unlike the positive law, Avinery claims that no government can monopolize the conscience of a person<sup>77</sup>, if ones creed is harmed by the legislator, one can act to repair the damage done within the freedom given to him by democracy. A part of this freedom is the right to disobey the law.

One's freedom of Thought is the distinct right of being. Legislated in the basic statute of Human Dignity and freedom<sup>78</sup> - all men were created equal and have their equal right of thought. A world without freedom of opinion would be the projection of Orwell's apocalyptic prophecy of '1984'<sup>79</sup> - "*Thoughtcrime does not entail death: thoughtcrime is death.*" carrying out a Thought Police and monitoring every person, where no one is able to express his opinions even inside his own head.

Such a situation is difficult to comprehend in these days, even though there is no real distance from it to what actually happens in several states worldwide. Understanding this freedom of Thought and Moral, we still need to realize the nature of the relations between civil-disobedience and freedom of thought.

We can see that Socrates acted in civil disobedience using his freedom of thought<sup>80</sup>, having no other option but to defy the law when it stated specifically that no one can say that the sun is made of rock and that the moon is a piece of land. Socrates fulfilled his right for freedom of thought using civil disobedience.

As we can see from this theory, civil disobedience can be used as a **tool** for freedom of religion, morals or thoughts, and is not a right by itself.

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<sup>69</sup> Neemaney Har Habait (BGZ 292/83)

<sup>70</sup> Kol Ha'am (BGZ 73/53)

<sup>71</sup> Rogojinsky (CA 450/70)

<sup>72</sup> Neemaney Har Habait (BGZ 292/83)

<sup>73</sup> Soskin (PA 697/98)

<sup>74</sup> Kol Ha'am (BGZ 73/53)

<sup>75</sup> Gandhi (1922): 116

<sup>76</sup> Schnitzer (BGZ 680/88)

<sup>77</sup> Avinery (1991): 174

<sup>78</sup> Basic Statute of Human Dignity and Freedom

<sup>79</sup> Orwell (1972), Book 2 P. 27

<sup>80</sup> Plato (1979)

## ***The Right (and Duty) To Disobey The Law***

Since there is no *Right* for civil disobedience, merely a justification to implement it when one of the basic rights of a person or people are breached, I do not believe that there can be any claim for a generalization of reasons or causes for disobedience; at least in my opinion; however, many scholars have attempted to generalize these reasons and had arrived to several conclusions, which are at relevance to our outline.

Gans considers the right to disobey the law as a value of the Western Culture<sup>81</sup>; the democratic state holds that political violence may be considered as a manifestation of the extreme *right for freedom*<sup>82</sup>. Rawls defines disobedience as a political action which addresses the masses' sense of justice in order to re-discuss the actions being protested against<sup>83</sup>. When one breaches a law of the country, even for a just cause, one must also accept upon himself the appended punishment<sup>84</sup> to his breach<sup>85</sup> the government must accept civil disobedience as long as it does not jeopardize its autonomy<sup>86</sup>.

In order to control the masses the government holds the monopoly on using Violence<sup>87</sup>; by doing so, it prevents others from using violence and uses force (and sometimes brute force) in order to confine the individuals who stand in competition with its monopoly. Therefore, if one wishes to protest against the government's actions, one must face the consequences and be prepared to relinquish his freedom. Moreover, Tolstoy believed that civil disobedience must be non violent<sup>88</sup>.

Hazoni Claims that the Bible was the first scripture that permitted to defy God's decrees – when those were considered unjust<sup>89</sup>. As an example he relies on several stories biblical stories. In the story of Abraham and Isaac<sup>90</sup>, Abraham is asked to sacrifice his only child, the one he loves, to God. Though some might consider this as an act of belief and the testing of such, it may also be interpreted as an attempt to defy god. Though God is aware that the act is unjust, he wishes to show Abraham that not all his edicts are dogmatic. Finally, Abraham obeys God, and only after God has proven the act of obedience does he call upon Abraham to stop.

Jacob's name was changed to *Israel* after he had fought against God, this name derives comes from two words in Hebrew "Sara" – Fights and "El" which is God<sup>91</sup>, his fight against God is the foundation for the *Nation* of Israel, binding Nomadic tribes into one nation<sup>92</sup>, the Israeli nation.

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<sup>81</sup> Gans (1996): p. 17

<sup>82</sup> Sprinzak (1995): p. 2

<sup>83</sup> Rawls (1966): p. 147

<sup>84</sup> Gans (1996): p. 38

<sup>85</sup> Rawls (1966): p. 155

<sup>86</sup> Gans (1996): p. 41

<sup>87</sup> As I was commented on this issue, usually scholars tend to regard the State's monopoly on force, however Weber sees the government as holding the monopoly on violence, more relevant to our issue.

Weber (1947) : P. 156 "the use of force is regarded as legitimate only so far as it is either permitted by the state or prescribed by it." Weber sees the state as the only legitimate authority to use force. In another essay he wrote: "*Every state is founded on force*" said Trotsky at Brest-Litovsk. that indeed is right. If no social institutions existed which knew the use of violence, the concept of "state" would be eliminated, and a condition would emerge that could be designated as 'anarchy' in the specific sense of this word." Weber (1919) para. 4.

<sup>88</sup> Tolstoy (1900): p. 100

<sup>89</sup> Hazoni (1998): p. 24, Genesis 24

<sup>90</sup> Genesis 22, 4-11.

<sup>91</sup> Hazoni (1998): p. 25

<sup>92</sup> Genesis 22, 17-19: "I will richly bless thee, and greatly multiply thy seed, as the stars of heaven, and as the sand that is on the sea-shore; and thy seed shall possess the gate of his enemies; <sup>18</sup> and in thy seed shall all the nations of the earth bless themselves, because

Another Story in the Bible concerned *Bil'am*, which his she-ass had rebelled against him when he could not see that his act is a defiance of the words of god<sup>93</sup>, seeing what he cannot see. This metaphor exemplifies that sometimes there is a *need* for civil defiance since the ruling government is not always able to see that it did wrong and requires proclamation from the people. After considering the people's words, the government must correct its ways in order to rule again<sup>94</sup>. The Bible itself says that the king can only rule as long as he is acting according to the will of God<sup>95</sup>

The Story of the Jews in Egypt is another example of civil disobedience, however on this occasion occurred an active civil disobedience, whereby Moses had organized an active rebellion against an unjust slavery<sup>96</sup>. As we explained in the last four examples, the Jewish Halakha is in favor for an active rebellion against an unjust government whereby there is discrimination and breach of the natural law, even if that government rules under the authority of God. Therefore as we can observe, Civil Disobedience is essential for maintaining the correct structure of society<sup>97</sup>

Gandhi spoke against the implementation of force by the government for purposes of forcing their will on its subjects<sup>98</sup>. According to him disobedience does not cause anarchy, rather - oppressing it may result in dictatorship. However, criminal disobedience is wrong and should be prohibited<sup>99</sup>. One should limit the use of the tool and prior to taking action of civil disobedience all the means should be taken<sup>100</sup>

Tolstoy believes that the difference between occupation and feudalism lies the intimidation used by the occupation element<sup>101</sup> to force one's sovereignty. He claims that the deceit used by the government in order to maintain its control over the people will be unveiled as soon as the disobedience to an unjust law shall begin<sup>102</sup>. Tolstoy calls for passivism<sup>103</sup> against any unjust law<sup>104</sup>, in hope that that passivism will force the government to change its ways.

Aviner also believes in Passivism, stipulating that one must use his Rhetoric abilities (and rights) in order to change society<sup>105</sup>, rather than violence. He claims not only that the cause does not justify the means, but moreover, that using sinful means (like murder) can even make a heavenly sinful<sup>106</sup>

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thou hast hearkened to my voice. <sup>197</sup>

<sup>93</sup>Genesis 22, 21: And Balaam rose up in the morning, and saddled his ass, and went with the princes of Moab. <sup>22</sup> And God's anger was kindled because he went; and the Angel of Jehovah set himself in the way to withstand him. Now he was riding upon his ass, and his two young men were with him. <sup>23</sup> And the ass saw the Angel of Jehovah standing in the way, and his sword drawn in his hand; and the ass turned aside out of the way, and went into the field, and Balaam smote the ass to turn her into the way.

<sup>94</sup> Hazoni (1998): p. 29

<sup>95</sup> Hazoni (1998): p. 31

<sup>96</sup> Hazoni (1998): p. 27

<sup>97</sup> Gans (1996): 24

<sup>98</sup>Gandhi (1922): 116

<sup>99</sup> Gandhi (1922): 116

<sup>100</sup> Gandhi (1922): 116

<sup>101</sup> Tolstoy (1900): 101

<sup>102</sup> Tolstoy (1900): 101

<sup>103</sup> unlike pacifism, passivism believes in non violent action, regardless of the other side.

<sup>104</sup> Tolstoy (1900):106

<sup>105</sup> Aviner (1996): 56

<sup>106</sup> Aviner (1996): 69

Tolstoy Claims that once one has encountered an unjust law, one must activate a total and public disobedience<sup>107</sup>, unlike Thoreau<sup>108</sup> who acted alone. Gans believes that there is no grounds for Political disobedience due to its inefficiency<sup>109</sup>.

Unlike Gandhi and Tolstoy, Martin Luther King Believed that taking violent action can assist in the struggle against unjust laws<sup>110</sup>, King's 4 stages of Civil Disobedience<sup>111</sup> are as follows:

- (1) Collecting the facts in order to determine whether an unjust action had taken place
- (2) Negotiation in purpose of preventing the recurrence of the unjust action taken
- (3) Cleansing
- (4) Direct action.

After resolving all means, King believes that one should perform an act of disobedience in order to persuade the authorities<sup>112</sup>. However, King Believes that fundamentalism cannot serve as a cause for civil disobedience<sup>113</sup>.

Haetzni's version of the elements for civil disobedience<sup>114</sup>, varies from King's statement:

- (1) Divine Law
- (2) Non Violent Protest
- (3) Willingness to face the consequences
- (4) Ideological-Moral Motivation
- (5) Political goal for the public good
- (6) Disobeying one law, not general mutiny.

Haetzni presents the example of Paul Grüninger who in the time of World War II had helped Jewish refugees to penetrate into Switzerland from Austria and Germany. He states that when there are human rights are involved, the state's claim for supreme sovereignty is rejected<sup>115</sup> in favor of a higher law<sup>116</sup>. According to him in several occasions when there is a real need, there is also justification to *Break The Law*<sup>117</sup> in order to achieve the purpose of protest.

Rawls believes that an unjust law is not a sufficient cause to take action and disobey it<sup>118</sup> since there is no warranty that any law that was legislated by the government is right<sup>119</sup>. He claims that the law's justness is irrelevant and rather emphasizes on the correct legislation process<sup>120</sup>.

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<sup>107</sup> Tolstoy (1900): 107

<sup>108</sup> Thoreau (1998): pp. 74-95

<sup>109</sup> Gans (1996): p. 45

<sup>110</sup> King (1963)

<sup>111</sup> King (1963): p. 127

<sup>112</sup> King (1963): p. 127

<sup>113</sup> King (1963): p. 136

<sup>114</sup> Hatzni (1998): p. 185

<sup>115</sup> Hatzni (1998): p. 190

<sup>116</sup> Plato (1979): p. 235

<sup>117</sup> Haetzni (1998): p. 195

<sup>118</sup> Rawls (1966): p. 151

<sup>119</sup> Rawls (1966): p. 152

<sup>120</sup> Rawls (1966): p. 152

One should consider disobedience when the laws are unreasonably unjust, not only when they are merely unjust<sup>121</sup>. According to Rawls, one can use civil disobedience *only* whence there is a breach of ones equality and where minorities are involved<sup>122</sup>.

Avinery claims that when a law is incongruent with Kant's universal legislation rule, i.e if a law can't be applied equally to all individuals in every situation; it is void and can be disobeyed<sup>123</sup>. Furthermore, when an order is *Strictly*<sup>124</sup> *Illegal* it contradicts the general conscience and must be disobeyed, thus returning to Rawls' model of the conditions for breaching the law<sup>125</sup>.

Cohen<sup>126</sup> adds that there are times when one **must** disobey the law - cases in which the law is unjust. He quotes Thomas Equines and explains that an unjust law is not a law at all<sup>127</sup>. If the law is not a law, there is no duty to obey it<sup>128</sup>.

John of Salisbury called for an active disobedience when the state is ruled by a tyrant<sup>129</sup> who jeopardizes the subjects. In the middle ages, it was relatively more acceptable to disobey the law and initiate violent acts<sup>130</sup>. However, as times progressed, it was considered wrong to take violent acts against *Statuti ad hoc*<sup>131</sup>.

The Right to refuse oppression is laid down in many constitutions, the *French Constitution of 1793* acknowledged the right for civil disobedience and active action against oppression<sup>132</sup>, however the clause was omitted from the *1795 constitution*<sup>133</sup>, only to be reincorporated in 1953, after the Nazi occupation<sup>134</sup> in France. In light of the acts committed by the Nazi Regime, The German Constitution had also acknowledged the individual right to actively resist an unjust<sup>135</sup>. Even in the case of Socrates, his everlasting freedom of opinion prevailed only many years later, once it was discovered his disobedience the law was justified by when teaching his students that the sun is actually a great balloon of rock and the moon is a peace of land<sup>136</sup>.

The similarity between Civil Disobedience and Terrorism lies on the public aspect of these actions; Sprinzak Believes that Violent Civil Disobedience, ending in Political Violence and possibly in Terrorism, are a part of a gradual process rather than chaotic arisen events<sup>137</sup>, it is a group phenomenon and mostly originates from organized groups. *Political Violence*, according to Sprinzak, is violence applied in a political manner, i.e in the purpose of gaining political power<sup>138</sup>.

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<sup>121</sup> Rawls (1966): p. 153

<sup>122</sup> Rawls (1966): p. 157

<sup>123</sup> Avinery (1991): p. 171

<sup>124</sup> Regarding the interpretation of the word "Be-Alil" in Hebrew, see the court decision regarding Kfar Quasem that deals with an illegal order to kill every person that is in the street. Melniki (AC 3/57MR).

<sup>125</sup> Avinery (1991): p. 180

<sup>126</sup> Cohen (1960): p. 213

<sup>127</sup> Cohen (1960): p. 213

<sup>128</sup> Cohen (1960): p. 214

<sup>129</sup> Cohen (1968): p. 215

<sup>130</sup> Gierke, (1958): p. 35

<sup>131</sup> Cohen (1968): p. 217

<sup>132</sup> Cohen (1968): p. 219

<sup>133</sup> Cohen (1968): p. 221

<sup>134</sup> Cohen (1968): p. 221

<sup>135</sup> Cohen (1968): p. 221

<sup>136</sup> Plato (1979): p. 218

<sup>137</sup> Sprinzak (1995): p. 4

<sup>138</sup> Sprinzak (1995): p. 6

## Chapter II – The Israeli Extreme Right’s Right to Disobey The Law

### *Religious Laws and the State of Israel*

The Jewish religion holds the Bible as the source of the divine promise. God had Promised Abraham that “*To your seed I had given this land from the river of Egypt to the great river, the river of Prath*”<sup>139</sup>. This divine promise had sanctified The Land of Israel and therefore it cannot be given to any non-Jewish individual.

The *Yesha Council* had issued a manifest for National Unification, claiming by which that Israel is not authorized to return (*or render*) any territories, as it is not in within the boundaries of its jurisdiction. such an act would be deemed illegal and will not be accepted by the people<sup>140</sup>. This laid the foundation for public awareness to the possibility of breaking the law in cases where it contradicts with the divine law.

In several more extreme sects of the religious right wing there is a belief that killing an Arab is different from killing a Jew<sup>141</sup>. Several of its streams believe that the foreign nations, such as Arabs, have a right to coexist with the Jews, only upon their acceptance of the kingdom of Judaism and are willing to obey the Jewish law<sup>142</sup>.

In his essay, written after the Murder of Prime Minister Rabin, Gans states that the Right in Israel cannot whatsoever see the government as just as long as it holds its current views<sup>143</sup>. According to Gans the struggle regarding the Civil Disobedience basically comes down as whether Democracy is the Regime or merely the vessel<sup>144</sup>; he claims that the law cannot serve as a mechanism to solve the differences in society<sup>145</sup>; the law being created by man, cannot be superior to anything<sup>146</sup>. An opposite situation is exemplified in the Divine law deriving its authority from God; in this case the Halakha, serves merely as vessel; in cases there is no *theoretical* excuse for disobedience.

The Religious Right believed that the “Domino Theory” is applicable in the act of in the “Rendering” of settlements<sup>147</sup>, meaning that once a territory is given, an hatch to rendering more settlements is open, consequently stopping *Geula*. Whereas, the religious Right sees the settling in new territories as a catalyst for redemption and the building of the new temple<sup>148</sup>. Fundamentalist groups also believe that using violence may hasten redemption<sup>149</sup>, Religious philosopher Aviner believes that the use of force will temper with the arrival of redemption, and that one cannot forcibly promote this event<sup>150</sup>.

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<sup>139</sup> Genesis, 15, 17.

<sup>140</sup> A manifest by the Yesha Council, March 15<sup>th</sup>, 1981.

<sup>141</sup> Karpin & Friedman (1998): p. 19, this issue also arose in my conversation with I' the settler, described later.

<sup>142</sup> Karpin & Friedman (1998): p. 59

<sup>143</sup> Gans (1996): p. 10

<sup>144</sup> Gans (1996): p. 10

<sup>145</sup> Gans (1996): p. 11

<sup>146</sup> Gans (1996): p. 12 – Compare with Plato (1979)

<sup>147</sup> Karpin & Friedman (1998): p. 20

<sup>148</sup> Karpin & Friedman (1998): p. 21

<sup>149</sup> Karpin & Friedman (1998): p. 23

<sup>150</sup> Aviner (1996): p. 52



The Zionist movement had received assistance from several religious groups prior to the founding of The State of Israel, even though it was basically a socialist movement<sup>151</sup>, the “Mizrachi” movement supported and worked alongside the secular groups in the Zionist Congress where Mizrachi presented its Mantra as “*Religion and Work*”, meaning that one must accept the local laws as well as obeying the divine laws<sup>152</sup>.

One of the Judaic principals proclaims “*Dying in the Sanctification of God*”; meaning one ought to choose death instead of committing an act which stands in contradiction of the divine order<sup>153</sup>. For this reason, Jews chose to die during the Spanish Inquisition and during the Roman occupation in Israel<sup>154</sup>. Henkin believes that an elected government may execute its policy even if by doing so, it endangers several of its citizens (let alone territories)<sup>155</sup>.

Avinery states that in a democratic state one must obey the law<sup>156</sup>; however, in practice, one might assert that a state which occupies another state (or nation, it depends on the eye of the beholder) is not democratic and therefore there is no duty to obey its laws. According to this thesis, there is no obligation to obey ANY LAW of such a state.

Over the years, the Right had constantly justified taking violent measures by claiming that violence applied today will lead to a reduction of the threats endangering of israel<sup>157</sup>. In the 80s, Rabbi Yoel Ben-Nun had feared that the extreme religious groups will execute active means against the government should it render territories. He therefore stated that “There is no Land without People”<sup>158</sup>, in hope that this would help the people understand that no one can go against a person that gives territories.

According to Aviner, there is no Justification of Civil Disobedience in the form of Gandhi or King when the government is Jewish<sup>159</sup>; one must allow the government to *give* the occupied territories<sup>160</sup> in order to strengthen it against its enemies.

Another Case of executing active disobedience by the extreme right might be in claim of oppression by the state, when in some instances they executed suspicion that the state of Israel is using its own secret police against religious movements<sup>161</sup>.

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<sup>151</sup> Karpin & Friedman (1998): p. 53, Also see Rubinstein (1997).

<sup>152</sup> Karpin & Friedman (1998): p. 53

<sup>153</sup> Karpin & Friedman (1998): p. 63

<sup>154</sup> Haetzni (1998): p. 184

<sup>155</sup> Henkin (1992): p. 372

<sup>156</sup> Avinery (1991): p. 176

<sup>157</sup> Karpin & Friedman (1998): p. 135

<sup>158</sup> Karpin & Friedman (1998): p. 145

<sup>159</sup> Aviner (1996): p. 15

<sup>160</sup> Aviner (1996): p. 23

<sup>161</sup> Karpin & Friedman (1998): p. 25

## ***Refusing to Remove Settlements***

Since 1967, when the occupied territories (or *Judea and Samaria*) had been annexed to Israel<sup>162</sup>, *Gush Emunim*, an extremist group of religious activists, wished to settle these territories in order to hasten redemption<sup>163</sup>. The Purpose of holding these territories under occupation was, according to Aviner, to raise the national awareness within Israel<sup>164</sup>. Gans believed that process was illegal<sup>165</sup> and at first was conducted in secrecy and with the application of force.

Rabbi Zvi Yehuda Kook, who acted as one of the religious leaders of this movement, believe that a government is only just if it fulfills god's will to rule the occupied territories<sup>166</sup>, This opinion disputed his father's claim that the Jewish Zionism is a justified act and any government resulting from it would be blessed<sup>167</sup>. The Jewish underground which was active during the 1980s was a first sign of civil disobedience regarding the occupied territories and the sanctity of Israel<sup>168</sup>.

Whilst Kook Sr. believed that the Zionist Government is just, even though it is secular, Kook Jr. Believed that once Judea and Samaria are 'freed', there must be a *Halakhaic Kingdom*<sup>169</sup>, every grain of soil was considered sacred in the kingdom of Israel due to god's divine promise<sup>170</sup>. At first the process of settling did not serve as a protest, rather a way to ensure God's will in the earthly kingdom<sup>171</sup>, where the *Gush* decided to draw its extra-legal authority from the Halakha<sup>172</sup>.

"Gush Emunim" also believed that during the Oslo peace talks that commenced in 1993, the government had later lost its mandate and therefore none of its laws should be obeyed<sup>173</sup>. The Israeli Settling movement was messianic and fundamentalist - it believed in the reign of the Halakha over the people of Israel<sup>174</sup>.

According to Henkin, the government's sovereignty does not rely on its ownership of the land, but rather on the support from the people<sup>175</sup>, therefore it is within its authority to "render" land or to sell it for the purpose of maximizing the collective benefit even if land is sanctified.

The Yesha Council is an organization of all the municipalities within the Occupied Territories (including only Jewish settlements, of course) and receives a major portion of its budgets from the municipalities which obtained grants from the Government, the Yesha Council exploits resources allocated by the government, in its struggle against the government in legitimate and illegitimate methods<sup>176</sup>. This stands in strict contradiction with Thoreau's thesis regarding civil disobedience in the following manner: if one believes that the government is unjust, one must do anything in one's power to avoid accepting money

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<sup>162</sup> Though the occupied territories were not annexed in a formal manner, they were settled and held by the Israel regime.

<sup>163</sup> Karpin & Friedman (1998): p. 57

<sup>164</sup> Aviner (1996): p. 3

<sup>165</sup> Gans (1996): p. 19

<sup>166</sup> Karpin & Friedman (1998): p. 57

<sup>167</sup> Sprinzak (1988)

<sup>168</sup> Karpin & Friedman (1998): p. 61

<sup>169</sup> Sprinzak (1988): p. 202

<sup>170</sup> Sprinzak (1988): p. 202

<sup>171</sup> Sprinzak (1988): p. 203

<sup>172</sup> Sprinzak (1988): p. 203

<sup>173</sup> Karpin & Friedman (1998): p. 69

<sup>174</sup> Sprinzak (1988): p. 201

<sup>175</sup> Henkin (1992): p. 368

<sup>176</sup> Karpin & Friedman (1998): p. 93

from the government<sup>177</sup>. The Yesha Council, governmentally funded, had believed that in civil disobedience the use of violence is legitimate<sup>178</sup>.

Haetzni provides an example in his writings of a manual that was distributed to soldiers, telling them why it is *Strictly* illegal to dismantle settlements<sup>179</sup>, he writes that when a person chooses to disobey the law, there is always an option that after several years he will, in turn, have the upper hand and the new ideology will prove that he held the universal conscience. For example, Parliament member Landau's creed is that the dismantling of settlements is *Strictly*<sup>180</sup> Illegal<sup>181</sup>; he expresses this opinion during his position as a member of the opposition; whereas today he serves as member of the coalition, without attending his creeds, rather it is the government's position who had changed, and now it is his creed which represents the public.

The Problem is, that Haetzni had already called for Mutiny in 1993 when he stated that all orders calling to remove settlements are unjust and must not be obeyed<sup>182</sup>, demonstrating that in practice, his quote from the manual distributed to soldiers was actually drafted by himself.

In 1994 the Association of Yesha Rabbis drafted a Halakhaic decision that a soldier must not obey an order to remove settlements<sup>183</sup>. In 1995, only a year later, the Association of Rabbis for the Land of Israel decided that even an Army Base is a Jewish settlement and must not be removed<sup>184</sup>.

According to Henkin, if a place becomes so dangerous to an extent where no one can live there, there is *no duty to leave it*, however, *there is no duty to hold the territory forcibly*, including the loss of lives<sup>185</sup>. Therefore one may claim that there is a possibility to leave the occupied territories in order to prevent the endangerment of lives.

During the first half of 2004, Ariel Sharon, Israel's Prime Minister, decided to undergo a quick unilateral withdrawal from the occupied territories, mainly in the Gaza strip, and soon to be followed at the west bank, though not according to the international border of 1967. I cannot ignore the fact that during the days in which I am writing this essay, there is such a conflict and an actual option to see these theories in progress. The two main impediments that prevent active civil disobedience from occurring are that Ariel Sharon is an elected prime minister from the Right, acting in government with extreme right activists and that this unilateral withdrawal is done without any (real) protest from the left. In consideration to the virginity of the subject matter, and that an academic study has yet to be written in the field, I will have to rely not on academic studies, but on opinions expressed on various platforms.

In his essay<sup>186</sup>, Visoly states that the Israeli government is the executive authority and upon the *basic statute of the government* it shall be authorized to act on behalf of the state where no other authority is authorized<sup>187</sup> to do so. In his essay, he adds that in the case of *Federman V. The Minister of Police*<sup>188</sup>, it was

<sup>177</sup> Thoreau (1998)

<sup>178</sup> Karpin & Friedman (1998): p. 96

<sup>179</sup> Haetzni (1998): p. 190

<sup>180</sup> Haetzni (1998): p. 191

<sup>181</sup> Yedioth Ahronot, May 29<sup>th</sup>, 1995

<sup>182</sup> Karpin & Friedman (1998): p. 100

<sup>183</sup> Karpin & Friedman (1998): p. 150

<sup>184</sup> Karpin & Friedman (1998): p. 152

<sup>185</sup> Henkin (1992): p. 371

<sup>186</sup> Visoly (2004)

<sup>187</sup> Clause 40, The Basic Statute Of The Government,

<sup>188</sup> Federman (BGZ 5128/94)\

decided that there are actions that are not in the authority of the government, including tempering with one's property. He adds that in the case of the withdrawal from settlements, there will be a contradiction between this action of the government and clause 8 of the *basic statute of human freedom and dignity*<sup>189</sup>. He states that the settlements, being one's property, cannot be removed. Still, this is a great distance from calling for civil disobedience; while in fact, challenging Prime Minister Sharon's government's sovereignty.

Journalist Dan Margalit fears the expected uprising due to the civil disobedience from the extreme right, as he wrote in his article from February 2004<sup>190</sup> that unlike the left "Refusal" movement which calls for disobedience in the margins of society<sup>191</sup>, the extreme right "Refusal" movement will form a mass movement which will be used to determine public policy regarding withdrawal from settlements.

In an answer<sup>192</sup> written to him by Breiman in the *Gamala will never fall again website*<sup>193</sup>. Brieman differentiates between the left and right 'Refusal' movements, and claims that unlike the Left "Refusal" movement that calls for passive civil disobedience, the Righteous active disobedience movement calls for a refusal to obey *Strictly* illegal laws, he claims that any order to withdraw from settlements is illegal and calls for its disobedience. Briemen, is an active member of the extreme right's organization "The Professors for a Strong Israel"<sup>194</sup>.

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<sup>189</sup> Clause 8, The Basic Statute of Human Freedom and Dignity

<sup>190</sup> Margalit (2004)

<sup>191</sup> Nader (2004)

<sup>192</sup> Breiman (2004)

<sup>193</sup> <http://www.gamla.org.il>

This website has been the stage for many extreme right activists and is considered even extreme for several settlers.

<sup>194</sup> <http://www.professors.org.il>

## The Jewish Underground

The first sign of a pause in *Geula* was Menachem Begin's peace accord with the Egyptian government. This was the first time that territory captured by the Israeli-Messianic-State was to be rendered to another authority<sup>195</sup>. A group of extreme nationalists led by Menachem Livni and Yehuda Etzion believed that blowing up the mosque on Temple Mount, *the Dome of Rock*, would restart the act of *Geula* started only 15 years ago by the Jewish-Israeli Government<sup>196</sup>.

The Jewish underground which started in the 1980s, believed in Uri Zvi Greenberg's "*Kingdom of Israel*" and its methods for active *Geula*<sup>197</sup>. Greenberg has spoken on Israel as a Theocracy, hastening the building of the 3<sup>rd</sup> Temple and reconstructing the Halakhaic government<sup>198</sup>. The Government of Israel decided that Temple Mount must stay in Muslim hands. The Gush's people believed that in spite of this, the government is just and will soon come to its ways<sup>199</sup>; Jews, moreover, were forbidden<sup>200</sup> from entering Temple Mount by the Israeli<sup>201</sup> law, and the religious right sits and waits until the *Third Temple* would be constructed.

Etzion, as the follower of Greenberg, wanted to take the power from the government that ruled unjustly. He said that an erroneous government is illegitimate<sup>202</sup>. However, it is needless to say that the Rabbis of the Gush were not willing to cooperate and give a decision regarding the blowing up of Temple Mount<sup>203</sup>.

According to the Jewish Underground's member, *Geula* had stopped when the Israeli government decided not to release Temple Mount from Muslim hands. Therefore, only a destruction of the Dome of Rock, the Muslim Temple, would grant redemption<sup>204</sup>. According to Sprinzak, Etzion believed in two different sets of laws: the laws of *existence* and the laws of *destiny*<sup>205</sup> whereas the laws of *Destiny* applied on the Jews committing crimes in the international level and even crimes against other nations.

Etzion's belief was that the Jews' reason for living is to preserve *destiny* and that they live under a different set of laws, not controlled by this world<sup>206</sup>. Etzion wanted to blow up Temple Mount in order to transform it from a 'Regular' State to the "*Kingdom of God*"<sup>207</sup>; Menachem Livni said that the reason to blow up the Temple Mount was that its existence is an error that stands to impede *Geula*<sup>208</sup>. The first act of the Jewish Underground was blowing up two cars of Arab Mayors, which began the escalation of the bilateral interretaliations<sup>209</sup>. The Jewish Underground was caught in 1984, prior to exploding 4 Palestinian buses<sup>210</sup>. The underground believed that their acts were right and just, and that their retaliation was legal under the

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<sup>195</sup> Sprinzak (1988): p. 197

<sup>196</sup> Sprinzak (1988): p. 199

<sup>197</sup> Sprinzak (1988): p. 204

<sup>198</sup> Sprinzak (1988): p. 205

<sup>199</sup> Sprinzak (1988): p. 204

<sup>200</sup> The Statute of Conservation of Holy Places (1967)

<sup>201</sup> Neemaney Har Habait (BGZ 292/83)

<sup>202</sup> Sprinzak (1988): p. 205

<sup>203</sup> Sprinzak (1988): p. 209

<sup>204</sup> Sprinzak (1988): p. 206, Etzion (1985).

<sup>205</sup> Sprinzak (1988): p. 206

<sup>206</sup> Sprinzak (1988): p. 207, Etzion (1985) (2)

<sup>207</sup> Sprinzak (1988): p. 207

<sup>208</sup> Sprinzak (1988): p. 208, Livni (1984)

<sup>209</sup> Sprinzak (1988): p. 210

<sup>210</sup> Sprinzak (1988): 210

laws of The State of Israel<sup>211</sup>. the Underground's actions were considered as *Vigilante* and not as an act of terror<sup>212</sup>.

The Jewish underground had a refreshing experience during the months of writing this essay. In spring 2004, when *Eliran Golan*, an extreme right activist, not of a religious origin, had been caught by the police while planning to execute a plan to murder several Arab Parliament members<sup>213</sup>. The religious media had been *proud* that there is finally a secular terrorist<sup>214</sup>. Although what Golan had done is considered more like a hate crime and not civil disobedience, his actions remain close to those of *Noam Federman's Group*, captured again only a few months earlier<sup>215</sup>.

Their arrest, and placement in administrative custody, was disputed in a court of law<sup>216</sup>, and afterwards was disputed again, claiming that there is no authority to place him under such arrest<sup>217</sup>. Again, the same people who were the students of Rabbi Meir Kahane, 20 years earlier, are now faithful activists of the ultra-nationalist movement, and act with no respect to the Israeli Law.

It seems like Federman had felt oppressed just as King, where the government's acts will endanger him just like the Afro-Americans felt endangered prior to the emancipation proclamation<sup>218</sup>. Federman probably felt oppressed as King did, being held captive under arrests without reason, and therefore believed to be discriminated. Such discrimination, according to King<sup>219</sup> may justify civil disobedience.

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<sup>211</sup> Sprinzak (1988): 210

<sup>212</sup> Sprinzak (1988): 211

<sup>213</sup> Basharat (2004)

<sup>214</sup> Pasko (2004)

<sup>215</sup> <http://news.walla.co.il/?w=/443985>

<sup>216</sup> Federman (BGZ 4880/03)

<sup>217</sup> Federman (BGZ 10287/03)

<sup>218</sup> King (1963): p. 131

<sup>219</sup> King (1963): p. 132

## **Arutz 7**

Since 1988 the extreme religious right in Israel has been operating a radio station, which is called Arutz-7<sup>220</sup>. This channel broadcasts from outside the territory of Israel and is without any governmental licensing. During its fight over the territories of Israel, the Right has been using this channel to centralize their activities.

In the beginning of 1999, the Israeli parliament legislated a statute stating that Arutz-7 can broadcast legally<sup>221</sup>. This Statute was challenged in the Israeli High Court of Justice, by Parliament Member Haim Oron<sup>222</sup>. This appeal canceled the statute legislated and returned the situation to the original legal situation. This channel, though its illegitimacy with the Israeli law, has been a mainstream channel, broadcasting for most of the national-religious segment of the Israeli society and acted as a stage for most right wing parliament members in their fight against the peace coalition in 92-96 as well as their fight against the left in general.

On the Arutz-7 website, Advocate Misgav called for Righteous disobedience, writing "*If a person thinks he cannot obey an order since he believes it is strictly illegal, he should not obey it*"<sup>223</sup>. In the same article he doubts the government, saying that he does not think that even one minister will resign from his chair for his beliefs. Still, the Arutz-7 website (and radio) apply a tone of disrespect when discussing leftist<sup>224</sup> disobedience<sup>225</sup>, encouraging the services in the Occupied Territories to keep the settlers safe.

Through this legitimate framework (theoretically), Arutz-7 has been using its *Freedom of Speech* in order to call for direct violations of the law; statements that could be interpreted in various forms, like : "... *Sharon, like Rabin and Peres, is above such trivial matters of "advise and consent". He refuses advice and certainly avoids the consent of the governed. Rabin and Peres found that they could get away with their leap into a democratic dictatorship when the number of people who demonstrated against Oslo were not enough to stop the imperial actions of a non-democratic prime minister and his cronies.*"<sup>226</sup>

There were several claims that a channel like Arutz-7 is needed in the Israeli pluralist society<sup>227</sup>. However, Arutz 7 bares a remarkable contradiction – it cannot be civil disobedience if it, as it claims, broadcasts from outside Israel, and if it is broadcasting from inside Israel, while hiding it – it cannot be disobedience, since it lacks the public character.

It is important to show that Arutz-7 works as a part of the Religious Right's system; it has its own advertisements, interviews parliament members and creates a subculture in Israel. This subculture, as I will try to show, is the one acting violently and encouraging violence in Israel against the Left and against Arabs.

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<sup>220</sup> Karpin & Friedman (1998): p. 119

<sup>221</sup> Clause 3(7) to The Statute of Bezeq

<sup>222</sup> Oron (BGZ 1030/99)

<sup>223</sup> Misgav (2004)

<sup>224</sup> <http://www.a7.org/news.php?id=73177>

<sup>225</sup> <http://www.a7.org/news.php?id=68938>

<sup>226</sup> Winston (2003)

<sup>227</sup> Gordon (1999)

## ***Rabbi Meir Kahane***

Rabbi Meir Kahane was a religious Jew who migrated to Israel from the United States. After being persecuted by the American society he came to Israel in hope of spreading his wisdom. Kahane was a nationalist Jew who believed that the greatest problem of the Israeli society is its separation. The Jews must see the Halakha as their *law of life* and not to take any other ideology that could compromise regarding the dogma in which they live according to<sup>228</sup>. He believed that a decision made by the Israeli parliament that contradicts the way of the Halakha will make the religious Jew deny the sovereignty of the Parliament<sup>229</sup>. He believed that the actions of the state against Judaism is dangerous to the Israel society<sup>230</sup> and will lead to chaos and self destruction - being the chosen nation, we should found the chosen state under the reign of God<sup>231</sup>; The State of Israel can only exist under the “Eretz Israel”<sup>232</sup> – the land of Israel, which is the land promised to the Jews by God.

Rabbi Kahane wrote that obeying the law is just when it coincides with the Halakha<sup>233</sup>, since it was the direct covenant of God with the Jewish nation<sup>234</sup>. A Jew can only take his ideals from Judaism<sup>235</sup>. Kahane had gone against Arabs, saying that killing them is just, and stating that he believes in the freedom of speech of the machine gun<sup>236</sup>; he believed that Violence is a moral force and may be used whenever needed<sup>237</sup>. Kahane’s violent ways demonstrated that one must kill a Jew if he stands in the way of *Geula*<sup>238</sup>. Kahane’s ways, in his opinion, were contradicting Kook’s ideology. Whilst Kook, the founder of the Zionist religious settling movement, believed that even though the state of Israel was not a theocracy, it is a reward for the Jews, Kahane believed the opposite, that is, that Israel came as a punishment for the gentiles after the Holocaust<sup>239</sup>. The state of Israel was perceived as a revenge against the gentiles, not as a reward for Jews. Kahane rejected the “*Atchalta D’Geula*” – meaning the redemption theory, by saying that redemption cannot exist within a secular state<sup>240</sup>.

Kahane’s view on the state of Israel was problematic<sup>241</sup>; as a Jew, it was hard for him to see a Jewish state that isn’t sovereign by the laws of the Halakha. He saw the state as a Jewish state and not as democratic<sup>242</sup>. According to Kahane, *Geula* is inevitable and the Jews will just have to choose when. He thought that the 67 war was a clear sign to the Jews of God’s will<sup>243</sup>. He claimed that there is no *Palestinian*

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<sup>228</sup> Kahane (1973): p. 166

<sup>229</sup> Kahane (1973): p. 167

<sup>230</sup> Kahane (1973): p. 174

<sup>231</sup> Kahane (1973): p. 66

<sup>232</sup> Kahane (1973): p. 135

<sup>233</sup> Karpin & Friedman (1998): p. 65

<sup>234</sup> Kahane (1973): p. 07

<sup>235</sup> Kahane (1973): p. 14

<sup>236</sup> Karpin & Friedman (1998): p. 64

<sup>237</sup> Sprinzak (1991): p. 51

<sup>238</sup> Karpin & Friedman (1998): p. 66

<sup>239</sup> Sprinzak (1991): p. 49

<sup>240</sup> Kahane (1973): p. 75

<sup>241</sup> Sprinzak (1991): 48

<sup>242</sup> Kahane (1973): p. 10

<sup>243</sup> Sprinzak (1991): p. 53



*Nation* and that Palestine was invented by the Romans in order to rule the land of Israel<sup>244</sup>. According to his belief, the Arabs must now, upon the return of the Jews, migrate from Israel and give back the land to the holy nation<sup>245</sup>.

A slight problematic approach could be taken when analyzing Kahane's writings of 1973, in which he wrote that there is no *Palestinian nation since there is no Palestinian country*<sup>246</sup>; today, when we are close to the day that such a country will reside next to the state of Israel, will he claim differently? I think not; in an interview I held with a few Yesha Council activists on March 21, 2004 around midnight, during their protest rally in front of the Prime Minister's office<sup>247</sup> (regarding their refusal to remove settlements in the occupied territories), they claimed that Kahane had adjusted his views to be acceptable by the public and prevent his delegitimization.

Kahane's belief was that since Jews were victimized for so long, Jewish violence against Evil is different from Jewish violence against Good, and that Jewish violence in defense is always good<sup>248</sup>. He saw settling as the order of God that must be obeyed<sup>249</sup>.

But were these activities, originating from Kahane, acts of Violence and Terror or Vigilante Acts? A Vigilante act is an act that citizens commit since they believe that the government does not supply them with the proper protection<sup>250</sup>. Kahane set up an order of violence; he adopted Jabotinsky's ideology of using force to take Israel<sup>251</sup>.

Kahane's civil disobedience was not only against the illegitimate state of Israel but also existed before his migration to Israel. While residing in the United States, he was trialed for violent crimes against minorities and Jews and for holding firearms<sup>252</sup>.

Kahane ran for public office in Israel during the 1980s, and was even elected for Parliament. During his term in Parliament, he tried to legislate several racial laws and was prevented by the Chairman of Parliament<sup>253</sup>. Following his racial remarks and violent activity, he was rejected from running for office by

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<sup>244</sup> Kahane (1973): p. 18

<sup>245</sup> Kahane (1973): p. 19

<sup>246</sup> Kahane (1973): p. 21

<sup>247</sup> Conversation with I' (asked to remain confidential due to the nature of such a conversation) was done in the midst of night, where no other person could listen to such a conversation being done, in order to achieve closeness and obtain information that could not be gathered on other publications. I met a 17 year old activist who claimed that the Yesha council was a moderate organization and by being funded by the government it cannot go against it. He had told me that they were taught that Kahane's views were modified in order to fit the public opinion and prevent his delegitimization. The culture of the extreme right is a very interesting subject by themselves, this person, differs from the "Regular" tel-avivic Israeli, he still uses a cell phone, but his cell phone logo says "Kahane was Right" and has the fist insignia appearing on the screen; he is more opinionated, but when I attempted to go deeper, seeking his opinions regarding deeper understanding of the subject – he, like other people his age, decided to claim "this is for the G'dolim (the wiseman of the Halakha – J.k), you can't ask me to comprehend that", showing that when the youth of the centre are influenced by the television, the youth of the extreme right are being influenced by their Rabbis. Moreover, in this conversation, I asked him whether he would fight violently against the IDF when coming to remove his settlement; he specifically said "no", however, when I changed the circumstances and said "and if the UN soldiers would come to remove you from your settlement" he responded "I would put a bullet in their head", and added, "they are not different from Arabs".

<sup>248</sup> Sprinzak (1991): p. 56

<sup>249</sup> Kahane (1973): p. 12

<sup>250</sup> Sprinzak (1995): p. 7-8

<sup>251</sup> Sprinzak (1991): p. 55

<sup>252</sup> Sprinzak (1991): p. 55

<sup>253</sup> Kahane (BGZ 669/85)

the election committee, only to be re-entered by the Supreme Court<sup>254</sup>, where 4 years later he had been disqualified<sup>255</sup>.

Kahane said that the Jewish terror organization that he founded (TNT - *Terror Neqed Terror* – Terror against Terror) must be like an Arab organization, having support from the government on one hand, while denying any connection between them on the other<sup>256</sup>; he called for an “Anti” terror movement which denies the laws of Israel<sup>257</sup>; he believed that through random acts of violence he can assist in *Geula* and justified his followers random acts against Arabs<sup>258</sup>.

Even without knowing, Kahane expressed his will to educate the young for rebellion<sup>259</sup>, when saying: “*The Jewish children lack national education: their knowledge of the Jewish freedom fighters in our time – Etsel, Lechi and Hagana – in Israel, and the Jewish Partisans in Europe during World War II – is short and shallow*”. He believed that an inherent part of the Jewish tradition is rebellion<sup>260</sup>; he taught active rebellion and encouraged it wherever he believed it would serve justice<sup>261</sup>.

One of Kahane’s followers was Baruch Marzel, an extreme activist that following the Oslo agreement had decided to “*Wash [foreign minister] Peres’ fantasies in a river of blood*”<sup>262</sup>. He had been arrested several times, and was placed in administrative custody<sup>263</sup> and was even rewarded by the state once regarding an unjust arrest made when he was suspected (with others) of trying to hurt the Pope in his visit to Israel<sup>264</sup>. Baruch Marzel was a candidate for the Israeli parliament in 2003 and was close to becoming a Parliament Member. Like Kahane, his legitimacy to run for office was questioned<sup>265</sup>; he was allowed to run for office but was not elected.

Marzel’s movement, “*Zo Artezno*” (‘This is our land’) had used non violent Civil Disobedience in protest against the Israeli government<sup>266</sup>. His associate in this movement was Moshe Feiglin who was disqualified from running for public office due to his conviction in rebellion and rebellious publications<sup>267</sup>, though he was elected to the Likud movement in 2003.

Kahane, and his followers, were a great part of the ideology of the Israeli right, and their actions (and call for actions) still affect many of the right's activists and ideologists.

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<sup>254</sup> Neiman (EA 2/84)

<sup>255</sup> Neiman (EA 1/88)

<sup>256</sup> Sprinzak (1991): p. 57

<sup>257</sup> Sprinzak (1991): p. 57

<sup>258</sup> Sprinzak (1991): p. 58

<sup>259</sup> Kahane (1973): p. 84

<sup>260</sup> Kahane (1973): p. 89

<sup>261</sup> Kahane (1973): p. 113

<sup>262</sup> Karpin & Friedman (1998): p. 108

<sup>263</sup> Federman (BGZ 2029/94)

<sup>264</sup> Marzel (CC 3701/00)

<sup>265</sup> Legal Consultant for the Government (EA 55/03)

<sup>266</sup> Karpin & Friedman (1998): p. 126

<sup>267</sup> Feiglin (BGZ 11243/02)

## ***The Story of Baruch Goldstein***

On February 25<sup>th</sup> 1994, a cold winter day, Baruch Goldstein had put the last brick in his “Theological Masterpiece” that he had been planning for quite a while. He had put on his military uniform and took his M-16 rifle and traveled to the “Machpela” Cave, which is sacred for both Jews and Muslims. Goldstein was one of Kahane’s students and has followed his ways, acting as a spokesman for Kahane’s movement<sup>268</sup>.

Goldstein took his automatic rifle and shot cold blooded, killing dozens of Muslims, and ended up dead after his rifle malfunctioned.

The followers of Goldstein claimed that he was a saint and published a book that glorifies him as a religious saint, using their freedom of speech and religion. They were tried several times<sup>269</sup>, regarding several different crimes. Several civil suits were cross filed also regarding this publication.

In this publication of articles which was not published legally in Israel, and could only be found on the Internet with pirate copies, there are some articles that claim that Goldstein’s acts were justified. Segal claims that Goldstein was a messenger of God and was doing so to bring Justice back to the land<sup>270</sup>. Federman uses Israel’s own legal philosophers and decision makers in order to claim that the murder of Muslims was justified<sup>271</sup>.

Goldstein had felt persecuted like K’ in “Der Prozess”<sup>272</sup>, he had felt that the government was against him for no reason<sup>273</sup> and was a victim of an unjust government that persecutes innocent citizens. Goldstein himself is quoted in the book. In an interview held with him prior to the municipal elections, when he decided to run for public office<sup>274</sup>, he expressed extreme nationalist views. He calls for a transfer of Arabs from the occupied territories (without mentioning where); Stated in this interview is his words that “*All legal efforts should be made in order to prevent Arabs’ entrance to Kiryat Arba*” and that “*The law is only a vessel for the residents’ benefit*”<sup>275</sup>. The only example for civil disobedience in this interview is Goldstein’s words: “*We must act for soldiers positioned in our area, that because of laws that prevent them from protecting themselves are in danger*”; Goldstein believed that the law was unjust, but not even in his book there is a strict support for violent civil disobedience.

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<sup>268</sup> Karpin & Friedman (1998): p. 24

<sup>269</sup> Ben Horin (AAA 4/94), Federman (BGZ 2029/94), Lerner (PA 1517/98)

<sup>270</sup> Segal (1)

<sup>271</sup> Federman (1)

<sup>272</sup> Kafka (1992)

<sup>273</sup> Karpin & Friedman (1998): p. 105

<sup>274</sup> Goldstein (1)

<sup>275</sup> In comparison, there is no real difference between this and the comment made by Chaim Gans, [Gans (1996), p.10], both of them believe in the need for a just law, where breaking it may be allowed in certain cases.

## ***The Murder of PM Rabin***

It was November 4<sup>th</sup>, 1995, at 21:45 Israel's prime minister had been assassinated. The Killer, Yigal Amir, a religious Jew, stated that his motive to kill Prime Minister Rabin was that he betrayed the Halakha and that since he was *giving* territories to Palestinians and jeopardizing Jews, he must be killed. It was the Left's tolerance towards the right which was believed to have caused all the violent acts toward them<sup>276</sup>. Amir had shown that he is willing to carry the punishment for the assassination of Prime Minister Rabin<sup>277</sup>, therefore applying all characters of Civil Disobedience (except non-violent action).

Analyzing Sprinzak's definition of Political Violence<sup>278</sup>, one may say that this was a result of political violence and that the result of this murder was the change of governments in Israel.

Unlike Rawls who claims that Civil Disobedience is non-violent<sup>279</sup>, the Bible acknowledges "*Din Rodef*" which is a special permission to execute someone without a trial, prior to him taking any action that may cause more harm than the unjust killing. Although usually when a "*Din Rodef*" is issued against someone, there is a belief that he will account to God. In this instance, Amir believed that God needed assistance<sup>280</sup>.

In January 1995, a letter was sent to 40 Rabbis worldwide, querying whether Rabin's act of giving settlements (or returning) is unjust and makes Rabin a "*Rodef*" or a "*Mosser*" according to the Halakha<sup>281</sup>. This letter was written by the same people that founded Arutz-7 a few years earlier and by the same people involved in the Jewish underground. Only 2 Rabbis confirmed that Rabin is a "*Rodef*", while the others had either not replied or gave mixed answers which did not determine one or the other<sup>282</sup>. The great secrecy that followed this event was due to the belief that it is sinful to raise this question against a ruling government, even with the possibility of making the one who raises this question a "*Rodef*"<sup>283</sup>. Amir claimed to do what he had done according to the words of his Rabbis<sup>284</sup>, who stated that Rabin was a *Rodef* and must be executed.

Moreover, he sent his follower, Margalit Har-Shefy (the niece of Parliament member and Religious ideologist Benny Eilon) to query regarding the "*Rodef*" Decision with the Rabbi of her settlement<sup>285</sup>. According to Henkin, one can justify Amir's assassination of Rabin since he believed that the peace process will lead to Armageddon<sup>286</sup>, and when this is the cause, there is a justification to execute a "*Rodef*". Despite this incident, the Israeli police found no proof that there was a "*Rodef*" decision on Prime Minister Rabin in its investigation that followed the assassination of Rabin<sup>287</sup>.

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<sup>276</sup> Gans (1996): p. 9

<sup>277</sup> Karpin & Friedman (1998): p. 41

<sup>278</sup> Sprinzak (1995): p. 6

<sup>279</sup> Rawls (1966): p. 154

<sup>280</sup> Karpin & Friedman (1998): p. 33

<sup>281</sup> Karpin & Friedman (1998): p. 155

<sup>282</sup> Karpin & Friedman (1998): p. 156

<sup>283</sup> Aviner (1996): p. 47

<sup>284</sup> Karpin & Friedman (1998): p. 170

<sup>285</sup> Karpin & Friedman (1998): p. 221

<sup>286</sup> Henkin (1992): p. 370

<sup>287</sup> Karpin & Friedman (1998): p. 166

The Religious right had put a *curse* on the head of Prime Minister Rabin when it called for a “Pulsa Denura” (‘Hit of Fire’) against Rabin; it was believed that using this curse, Rabin will die in 3 weeks<sup>288</sup>. A religious statement was made calling Rabin a “*Rodef*”, which is a religious declaration that now there is a permission to kill the Israeli Prime Minister - he must be caught, beaten and if this doesn’t stop him, killed<sup>289</sup>. This helped the right to justify the murder of Rabin; this warrant was given by many religious Rabbis, mainly of the extreme religious right<sup>290</sup>.

Karpin and Friedman state that when they met Amir, he kept smiling and speaking of “The Sanctity of Israel”<sup>291</sup>; According to Amir, one should only keep the laws of the Halakha<sup>292</sup>. Amir believes that though “*Dina Demalchuta Dina*” Exists, when there is a contradiction between secular and religious laws, religion prevails<sup>293</sup>. Karpin and Friedman Claim that one of the catalysts for the political assassination of Prime Minister Rabin was the death of Rabbai Hazani, who sanctified the just government and had respected the law<sup>294</sup>. Hazani’s death left a vacuum for extreme and radical groups to gain power over the nationalist right in Israel. Unlike common belief, Rabbi Henkin believes that a government that does not have a full Jewish support (like the support given to Rabin by the Arab parties during its regime of 1992-1995) is still a just government and cannot be impeached<sup>295</sup>; this could be strengthened by the statement of Aviner that a government which stands on a non-Jewish vote still rules justly; however its ways should be corrected and returned to the *Right* path<sup>296</sup>.

Parliament member Yehushua Matzha does not agree with the opinions of both Aviner and Henkin; during the reign of Rabin, he had said that once the government does not have a “Jewish Majority” that supports it, like in the days of Prime Minister Rabin, which relied on the support of Arab Parliament members in order to hold a coalition, there is a duty to rebel and to execute an active mutiny<sup>297</sup>. Once the Oslo process started, the right called for Civil Disobedience<sup>298</sup> and afterwards started to cooperate with Political Parties in order to overturn the government<sup>299</sup>. Unlike Matza’s approach, most of the Political Parties that were in opposition to Rabin’s government accepted its right to rule<sup>300</sup>

Some scholars say that that there is an excuse for political murder as a form of political anarchy and it might even be just in certain cases<sup>301</sup>. Gans believes that this murder was an act of ‘helping’ the Total Israel<sup>302</sup>, as a state, and that there are cases in which even killing a person could be morally right<sup>303</sup>

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<sup>288</sup> Karpin & Friedman (1998): p. 128

<sup>289</sup> Rambam, Chap. 1

<sup>290</sup> Karpin & Friedman (1998): p. 146

<sup>291</sup> Karpin & Friedman (1998): p. 14

<sup>292</sup> Karpin & Friedman (1998): p. 14

<sup>293</sup> Karpin & Friedman (1998): p. 17

<sup>294</sup> Karpin & Friedman (1998): p. 103

<sup>295</sup> Henkin (1992): p. 369

<sup>296</sup> Aviner (1996): p. 12

<sup>297</sup> Karpin & Friedman (1998): 87

<sup>298</sup> Karpin & Friedman (1998): p. 88

<sup>299</sup> Kaplan & Friedman (1998): p. 88

<sup>300</sup> Karpin & Friedman (1998): p. 92

<sup>301</sup> Gans (1996): p. 14

<sup>302</sup> Gans (1996): p. 15

<sup>303</sup> Gans (1996): p. 31

Karpin & Friedman Believe that nowadays with the changes made in the Jewish community there is no justification for the “*Rodef*” warrant to be given<sup>304</sup>. This is also the approach taken by Henkin who states that a “*Rodef*” cannot be executed against a Jewish government<sup>305</sup>. Like Rabin, Socrates was considered a Sinner as well<sup>306</sup> since he went against what was the dogmatic law at that time. Socrates claimed that the stars are not gods, but made of stones, a thought that was unaccepted at that time.

King does not believe that **two wrongs can make a right**<sup>307</sup>, meaning that you cannot sin in order to cure another sin; one cannot kill a ruling prime minister in order to change its err. Cohen states that Zwingli<sup>308</sup> said that the ones who are in charge of the appointment of the governor are the ones who have to impeach him when he sins. No violence should be used during this impeachment<sup>309</sup>.

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<sup>304</sup> Karpin & Friedman (1998): p. 148

<sup>305</sup> Henkin (1992): p. 374

<sup>306</sup> Plato (1979): p. 215

<sup>307</sup> King (1963): p. 143

<sup>308</sup> Cohen (1968): p. 217

<sup>309</sup> Cohen (1968): p. 217

## Is the Right Right?

Should we, in a liberal democracy (or in this case, in the state of Israel), accept the Extreme Right's struggle for creedic autonomy? Moreover, should their struggle for this autonomy be just in an ex-post view of this conflict? In my opinion, and by analyzing the writings of several scholars and philosophers, I found almost no justification for the violent struggle that occurred between 1980 and 2004 between the nationalist Right and the government. However, one justification may be used by the right that could not be contradicted with the modern academic approach.

*The Right claims that Arabs are not humans*, the right also claims that the Arabs are putting the lives of the Jews living in Israel in Jeopardy; moreover, there is a claim that without the settlements<sup>310</sup> there can be no Israel, since the Palestinian takeover is stopped by these settlements. Therefore, we are in need to examine the Right's justification over their argument.

Although Tolstoy would have objected to any statute that contradicts a person's creed, he would also object to the occupation itself and would consider the right's actions as non-moral<sup>311</sup>. Does the religious right disobey the law in order to bring the abolishment of slavery (which is a just cause for disobedience<sup>312</sup>)? I think not. In my opinion, the Slavery of the government that is shown by the draft of soldiers is justified and does not demand to disobey the law, unlike the causes that Tolstoy claims to be.

The laws that the right protest against do not stand in one line as the laws that Rawls wishes to define as unjust<sup>313</sup>. The Right's actions taken against the government are not Civil Disobedience (according to Rawls) since they are violent<sup>314</sup>. Rawls claims that Civil Disobedience is a political action and not a religious one<sup>315</sup>.

Gans rejects the Right's Right to disobey the law since it is un-human to act with violence<sup>316</sup>, and by no way could murder, or any violent act, be called Civil Disobedience<sup>317</sup>.

According to Avinery<sup>318</sup>, Civil Disobedience is a "Conscious Breach of the law for a needed purpose". In his essay he analyzes the works of Howard Zinn<sup>319</sup> and differentiates between his theory and the theory of John Rawls<sup>320</sup> in order to discuss the issue of the occupied territories. Avinery shows that in Israel, some think that keeping the occupied territories is a "Needed Purpose" whilst others think that *releasing* them from the occupation is the "Needed Purpose"; Avinery gives these examples to show that there could be no "One" truth and that it is, in fact, vague and open to interpretation<sup>321</sup>.

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<sup>310</sup> which the linguistic phrasing shows the triumph of the right over the left, since in Hebrew there is a different between settlements (hityashvut) and settlement (hitnachalut), where in Israel the left won with their linguistic definition

<sup>311</sup> Tolstoy (1900): 100

<sup>312</sup> Tolstoy (1900): 103

<sup>313</sup> Rawls (1966): 149

<sup>314</sup> Rawls (1966): 154

<sup>315</sup> Rawls (1966): 156

<sup>316</sup> Gans (1996): 13

<sup>317</sup> Gans (1996): 13

<sup>318</sup> Avinery (1991): 172

<sup>319</sup> Zinn (1981), P. 281

<sup>320</sup> Rawls (1966)

<sup>321</sup> Avinery (1991): 173

In my opinion, Avineri's example is not explained properly. He chooses to disregard the main criteria added by most philosophers, which is Discrimination and oppression of Human Rights. In his example, one can show that in fact, every person is entitled to his Freedom of Creed. However, one cannot commit violent acts in order to fulfill his creed – only resist to executing certain actions.

As I tried to explain in my essay, the right for Civil Disobedience due to creedic reasons could be executed when it stands with the strict restrictions of the theoretical models which were set up by the theoreticians of our time. The Right's activities, as presented in this essay, fail, in the least, if not break, all standards of passive disobedience. The Right's excuses for disobedience lack the logic and explanation brought by scholars.

In my opinion, the right decided to engage in violent disobedience (of the laws of the state) due to the incompetence of the non-violent refusal<sup>322</sup>. Using this public display of violent disobedience, the right was able to gain more and more public support, playing as the underdog and gaining the assistance of other oppressing groups world-wide, such as the religious white community in the United States.

The Right refused to take the "Jurisdiction" issue to courts, and left it in the academic realm, when writing about disobedience, not advocating it in a court of law. Therefore, even though I cannot say it clearly, I can say that the right fears that the Israeli courts would decide that the Halakha has no jurisdiction and sovereignty over Jews in the state of Israel, and will follow the opinions of Henkin and Aviner. The Halakha will remain a theoretical codex that will be annulled by time, and since it was not changed, it will become archaic and irrelevant for Jews.

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<sup>322</sup> Nader, (2004)



## Summary and Closure

Though my Political and Ideological opinions are known<sup>323</sup>, I have tried not to present them in this overview in order not to temper the academic professionalism of my work. However, I believe that in the summary I am entitled to express my opinion regarding the Right's activities in order to elaborate on the situation as I see it.

The days in which this assignment was written were hard days for the religious right. Prime Minister Ariel Sharon decided to dismantle settlement and begin his "Detachment" plan, in which he had also started the setting up of a separation wall between Israel and the occupied territories. The extreme right had greatly opposed this plan, even though it was popular among the mass crowd, being presented as an "Anti-Terror wall".

In the days of Prime Minister Sharon there were many arrests of activists from the right; whereas no left activists who were placed in administrative custody like Federman and his friends, mostly since the Left's protest against Sharon was not violent. Sharon had used the "*divide and conquer*" strategy in order to gain his high appreciation from the public, while being interrogated by the Israeli police for various crimes regarding bribe and corruption.

One can expect that the extreme right will not be silent regarding Sharon's *Detachment* plan, if he chooses to execute it. There is much disbelief in the left regarding the execution of such a plan – and many more disbeliefs regarding this way. The left claims that detachment is wrong and that we should exit these territories with a peace agreement. The right tends to think that Sharon's plans are only political and are done in order to maintain his power inside the government and influence the public, and that he will soon come back to his righteous ways (literally).

It was on March 28<sup>th</sup>, at 22:30 at night, as I sat down to write the closing clauses for this assignment, I read that the newly elected leader of the left party, Yachad, was attacked by Yeshiva Students while giving a lecture on the Geneva Accord<sup>324</sup>, a comprehensive peace treaty with the Palestinians. Though I cannot classify this act as pure civil disobedience, it couldn't have come at a better time to prove my final thoughts.

It was just as a few minutes earlier that I read that Prime Minister Sharon will be charged by the State's attorney for crimes related to bribery and will be forced to resign or suspend himself<sup>325</sup>, therefore we can see that everything is political in the state of milk and honey. Though the laws of the state appear equal, their implementation is not. **Everything in Israel is Political**, be it the question of what school to go to, whether to serve in the military or not<sup>326</sup>, whether to import meat<sup>327</sup>, whether it is the issue of Marriage<sup>328</sup>, or

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<sup>323</sup> I had written several articles against the settling issue, and am an active member of the left movement "Yachad", writing in favor of a Socialist Peace movement.

<sup>324</sup> <http://www.haaretzdaily.com/hasen/spages/409619.html>

<sup>325</sup> [http://www.jta.org/page\\_view\\_story.asp?intarticleid=13920&intcategoryid=1](http://www.jta.org/page_view_story.asp?intarticleid=13920&intcategoryid=1)

<sup>326</sup> Rubinstein (BGZ 3267/97)

<sup>327</sup> Meatrael (BGZ 4674/97)

<sup>328</sup> Peretz (BGZ 262/62)

even the fact that there is no Constitution<sup>329</sup>. Everything comes down to the corrupt political interests of the Israeli political system.

When a law is political, there is no reason to obey it<sup>330</sup>. Disobeying a political law could be considered as justified political protest. Just as most stores still sell *Hametz* during the days of Passover, and prefer to pay the minor fine of several Shekels, and just as the Israeli Law forbids the opening of stores during the *Sabbath*, and employment of Jews during it, most people still open the stores and employ Jews, willing to face the legal consequences – doing so in public.

The Political Protest in Israel is woven in the fabric of the society in such a way that people fail to understand that their breach of the law is NOT from egotistical reasons but from political reasons. This breach of the law could be considered “Just” or maybe “Considerable” due to its political nature. In my opinion, NO LAW in Israel that was legislated due to political reason carries a duty for Obedience.

As I had tried to show in my assignment, the same group who had plotted the conspiracy to murder Rabin is the group who now holds the power. The Righteous<sup>331</sup> disobedience in Israel has caused the political change needed. Testing it upon results, we can clearly say that it was efficient. However, was it legal? Was it moral? Legality and Morality in Israel are dependant on the one who holds the pen, the Journalists, the Politicians and the Legal professionals, they all belong to the same Elite group, and they all work alongside.

Can there be a reason for a codification of the Civil Disobedience in Israel, I think not. I think that before we grasp the meaning of disobedience, we must first grasp the notion of obedience to the law. It is only in Israel where an acting Prime Minister, and several acting ministers, can be interrogated for felons regarding disorderly conduct, bribe and corruption. Only in Israel will someone have the *Chutzpah* to do so.

To sum up the last few months of research and reading – In my opinion, it would be interesting to continue the research regarding the right's activities after the *Detachment* or the separation from the occupied territories, to see how the religious right copes with the end of *Geula*, and whether their Armageddic prophecies come true.

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<sup>329</sup> The Harari Compromise

<sup>330</sup> Avinery (1991), p. 170, Gans (1996), p. 26, 29, Rawls (1966), p. 147

<sup>331</sup> In the meaning – originating from the right

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