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Enigmatic Passage from the Rambam's *Mishne Torah**

Steven Weisberg

Dedicated in loving memory of Gavriel Ben Chaim Choter, Yehuda Avner by Harav Zvi Halevi Bamberger, Noam Ben Yosef Apter and Zvi Dov Ben Uziel Ziman, students at the Otniel *Hesder yeshiva*, who were killed in cold blood while singing *zmirot* on *Erev Shabbat, Parshat Shemot*.¹

The final two passages in the Laws of *Shmitah* and *Yovel* raise two very intriguing issues in today's Torah world. The subject they raise is fascinating for two reasons. They address extremely controversial issues that are of paramount importance to the Torah-observing community. And resolving an apparent conflict in the Rambam's work is always an appreciated challenge in Torah-learning.

This article will examine these issues vis-à-vis the passage below:

Halacha 12

Why did the tribe of Levi not acquire a share in the Land of Israel and in its spoils together with their brothers? Because this tribe was set apart to serve God and to minister to Him, to teach His straight ways and righteous ordinances to the multitudes, as is written, *They shall teach Jacob Thine ordinances, and Israel Thy law* (Deuteronomy 33:10). Therefore they are set apart from the ways of the world; they do not wage war like the rest of Israel, nor do they inherit land or acquire anything for themselves by their physical prowess. They are rather the army of God, as is written, *Bless, Lord his substance* (Deuteronomy 33/11). He, blessed be He, acquires (goods) for them, as is written: *I am thy portion and thy inheritance* (Numbers 18:20).

Halacha 13

Not only the tribe of Levi but every single individual from among the world's inhabitants, whose spirit moved him and whose intelligence gave him the understanding to withdraw from the world in order to stand before God to serve and minister to Him, and to know God, and who walked upright in the manner in which God made him, shaking off from his neck the yoke of the manifold contrivances which men seek – behold, this person has been totally consecrated, and God will be his portion and inheritance forever and ever. God will acquire for him sufficient goods in the world just as He did for the priests and the Levites. Behold, David, may he rest



in peace, says *O Lord the portion of mine inheritance and of my cup, Though maintainest my lot* (Psalms 16:5).”

*Mishne Torah, Chapter 13, concluding the Laws of Shmitah and Yovel.*²

On the surface, this passage seems to offer support for living a life of unadulterated spirituality, unencumbered by the everyday burdens and responsibilities of society or of earning a livelihood. Therefore, this passage is widely quoted as a source for two veritable institutions in modern-day Orthodox Judaism — Kollelim, where older, married students continue yeshiva studies indefinitely, and exemption from military service in the Israel Defense Forces (IDF) for yeshiva students.

Kollel and Earning a Livelihood

It has been suggested that the Rambam may be included among the *Rishonim* who support the concept of our present-day Kollel, an institution for full-time learning with financial support provided by the community at large³. According to this interpretation, the Rambam extols living a life of complete separation and holiness and refrain from the everyday worries of earning a livelihood.

This passage in the Rambam’s code seems to contradict his own sharp criticism of this practice, which can be found in many other passages. In these, he vehemently **opposes** receiving any consideration for Torah study and opposes refraining from earning a livelihood. This can be most clearly seen in the Rambam’s rather lengthy passage in the *Perush Hamishna* (*Pirkei Avot*, Chapter 4, *Mishna* 6) and in the *Mishne Torah* (Laws of *Talmud Torah*, Chapter 3, *Halacha* 10), where he describes the desecration of G-d’s name when scholars accept money from others for Torah study.

The Radbaz is also bothered by this apparent contradiction in the Rambam’s teaching. He claims that the passage from the Rambam’s Laws of *Shmitah* was apparently developed without additional sources, and must be reconciled with his clear opposition to accepting compensation of any kind for Torah study. The Radbaz, in his commentary on the passage, concludes that in the Laws of *Shmitah*, the Rambam is describing a situation where G-d provides him with his needs, but in no way condones a situation wherein a person becomes a burden on society. Other commentators⁴ suggest that there were additional ways to support oneself and one’s family without seeking employment AND without being a burden on society. But the underlying assumption is clear: this passage must be understood in light of the Rambam’s clear and vehement position opposing compensation for Torah study. Therefore, the passage that begs for clarification and needs to be placed in context is in fact our passage at the conclusion of the Laws of *Shmitah*. The passages in the Laws of *Talmud Torah* and in *Avot* are simply too clear and concise to be interpreted any other way and unequivocally reflect the Rambam’s true position on the idea of compensation for Torah study.

We know that the Rambam’s position is disputed by other *Rishonim* from the lengthy *Kesef Mishne* on the passage in the Laws of *Talmud Torah*. But no one questions the Rambam’s underlying opposition to the concept. In fact, in Rabbi Moshe Feinstein’s strong words defending the Kollel phenomenon,⁵ he never attempts to make his point



based on the Rambam. Rather, he ruled according to the opinion of other *rishonim*, and not the Rambam on this issue.

Military Exemption for Torah study

In Israel, this passage has been widely quoted to support another concept entirely—exemption from obligatory military service to defend the Jewish state due to full time Torah study. To make this argument though, one must apply the Rambam's ruling operatively, and derive such an exemption from military obligation from the Rambam's general appreciation of the value of heightened spirituality, unburdened by earning a livelihood.⁶ In most traditional yeshiva circles, it has always been taken for granted that young men learning Torah should be exempt for an unlimited period from active service in the IDF. This position, of course, is supported by many *gedolim*, as well as by various political parties in Israel and their sister organizations in the Diaspora. However, based on the passages in the Rambam, this is a highly contentious issue.

As we saw regarding the Kollel, this claim needs to be examined vis-à-vis the Rambam's own words that appear elsewhere in the Mishne Torah.

The *Mishna* in the eighth chapter of *Sotah* discusses cases of obligatory military exemptions, as defined in the Torah. These include a newly married bridegroom, someone who planted a vineyard and an individual who experiences great fear. In the concluding verse of *Mishna 7*, it is stated unequivocally that every able-bodied man is obligated to participate in a *milchemet mitzvah* (a war that is a *mitzvah*, or commandment) The *Mishna* makes no mention of an exemption for aspiring Torah scholars. There is little, if any, dispute among the later *poskim* that the Israel Defense Forces are very much that—an army for defense, and that their activities qualify, in no uncertain terms, as a *milchemet mitzvah*. The overriding principle is clear: a *milchemet mitzvah* of self-defense obligates one and all. This principle was codified by the Rambam in *Hilchot Melachim Umilchamot* (the Laws of Kings and Wars), Chapter 7, paragraph 4. On this issue there is no dispute. There is absolutely no evidence, from the straightforward reading of the classical passages in both the Talmud and the Rambam's Code of Law, of a permanent exemption from military service for yeshiva students.⁷

Suggested Interpretation of the Rambam

We have seen that the passage in the Laws of *Shmitah* cannot practically be applied to the issue of Kollel study or exemption from obligatory military service. It simply contradicts a myriad of other, much clearer passages in the Rambam's works. In addition, it is important to emphasize that the passage in the Laws of *Shmitah* is certainly not in its natural context regarding either issue. The alternative sources quoted regarding Kollel studies and IDF exemption are found in *Hilchot Talmud Torah* and *Hilchot Melachim Umilchamot*, respectively, where they appear in the proper context. To resolve this apparent contradiction presented by the Rambam, it is critical to identify the primary, unequivocal source for the issue at hand, and the



enigmatic source subject to interpretation. I suggest that the enigmatic source on these issues is the passage that appears in the Laws of *Shmitah*.

I would like to suggest an alternative interpretation of this passage that minimizes the conflict with other sources found in the Rambam. Moreover, this interpretation allows our passage in the Laws of *Shmitah* to remain in, what I understand to be, its intended context—an idyllic and beautiful aspiration for spiritual fulfillment, which by its very nature has very little practical ramifications in everyday life.

A salient point that must be noted is that this passage not only concludes the Laws of *Shmitah*, but also concludes the entire set of laws dealing with the world of agriculture. The Rambam ended several of the fourteen volumes of the *Yad Hachazakah* with a philosophical-theological passage⁸ like this one. It appears our passage concluding the Laws of *Shmitah* represents his thoughts on an elevated state of utopian existence for a G-d-fearing Jew, rather than an operative point of law. I propose that this is quite clearly what the Rambam's intentions were, since there are no sources that support the application of this passage to justify military exemption or consideration for Torah study. And it is extremely unlikely that the Rambam would have invented such a revolutionary operative code on his own.⁹

There are a number of points to support the conclusion that this passage was intended as literary and not literal.

1. The Rambam includes this passage at the end of the Laws of *Shmitah*, specifically to raise the possibility that the purpose of these laws is to raise the level of man's moral perfection.¹⁰
2. The Rambam suggests this option to Jew and non-Jew alike. It has nothing to do with Torah-observant Judaism per se. Although the Radbaz, in his commentary cited previously, interpreted this passage vis-à-vis Torah study, a careful reading reveals no such reference. The subject of the Rambam's words is moral and spiritual perfection.
3. The Rambam sets forth praise for this way of life for individuals and individuals alone. No mention is made of whole sectors of society, communities, or for society as a whole. Indeed, how can we accept the right of an entire society, community or individual by birthright to assume automatic worthiness to such an exalted, exceptional state and way of life?
4. The Rambam himself did not live this way¹¹. Therefore, a community or individual adopting such a lifestyle as a matter of law would have to claim loftier motives than of the Rambam himself!
5. The exemption of *Shevet Levi* would seem intrinsically dependent on their not receiving territory and therefore applicable only to wars for conquering territory (such as occurred when the Jewish people conquered the land in the times of Yehoshua) but they are NOT exempt from military service where it is a *milchemet mitzvah* (which includes defensive life saving wars). The extended concept to yeshiva boys cannot be broader than the source upon which it is based.¹²



This interpretation resolves the contextual problem and any apparent contradictions with other passages in the Rambam's work.

Voluminous amounts of Torah wisdom can, and are, extrapolated from a single phrase or word in the Rambam's expansive writings. At times, *Chidushei Torah* are admittedly extrapolated from a questionable¹³ *diyuk* (attention to detail). Sometimes, this process is questionable.¹⁴ But any student of the Mishne Torah cannot be but overwhelmed by the Rambam's precise organization and categorization, which have always deserved appropriate attention. I personally cannot fathom that the Rambam makes a suggestion for military exemption, or the release from earning a livelihood for the sake of Torah study, that is so out of context. It seems eminently clear that the Rambam did not mean exemption from military obligation or from earning a living. Rather, he meant to declare that the Tribe of Levi was not unique in their aspiration to achieve spiritual heights. We all can aspire to achieve this level of spiritual fulfillment. I contend that the Rambam's beautiful wish and prayer for the Jewish people has been misappropriated for that which it was never intended.

The issues of Kollel and IDF exemption are interrelated since both involve a removal from normative societal obligations. But in light of the life and death urgency of military duty, I think a few words need to be added regarding the concept of IDF exemption.

A detailed discussion of all the sources is beyond the scope of this article. Though I primarily addressed the Rambam here, I hope that I have demonstrated that the Talmudic and rabbinic sources obligating military service are straightforward, while the sources used to justify unlimited military exemption require a somewhat convoluted approach in order to reach such a conclusion.

I assume that there are those that accept the exemption regarding military duty without too much question and without delving into the intricacies of the issue. In fact, I clearly recall growing up in an educational environment in the U.S. that supported this position, and when I began my studies in Yeshivat Kerem B'Yavne, a *Hesder* yeshiva (combining learning with military duty), in *Elul* on the eve of the Yom Kippur War, I was quite surprised to find that yeshiva students were also part-time combat soldiers. My surprise turned to sadness as I saw young men with whom I studied, prayed and lived with leave urgently on *motza'ei* Yom Kippur for the front lines—some never to return. Given the unfortunate reality of the ongoing need to defend Israel and the Jewish people, I think my own personal feelings that learning Torah cannot be a permanent exemption from obligatory military service were strengthened when I heard a senior IDF commander speak of the fallen at a memorial service in the yeshiva. It was then that I began to comprehend the enormity of the *kiddush Hashem* involved.

While we have faith that Torah study serves as a form of defense in that it is a catalyst for divine intervention for safety and security, one cannot stretch this principle to



declare that this Torah study must be performed by young men ages 18-24. Indeed, an individual or community's belief that his study or that of his community is the direct reason for the nation's salvation requires a leap of conceit that can never be countenanced.

A Final Note

I have suggested, and I am certainly not the first to do so, that applying this passage from the Rambam to justify compensation and military exemption for Torah study reflects a problematic interpretation. I am aware that great *gedolim* used this passage as a basis for military exemption, but I question their consideration of the passage as a serious *halachic* source. It is much more likely that the rabbis who adopted this way some fifty years ago did so at a time in Jewish history that witnessed the almost complete destruction of the Torah community and its institutions by the Nazis. Perhaps they saw the unique opportunity to restore Torah Judaism in the Land of Israel, in the newly born State of Israel. Perhaps it was originally meant for a small group of exceptional students, at such a critical time in Jewish history,¹⁵ and they relied on this passage polemically, when there was so much fear that Hitler had succeeded, *chas veshalom*, in destroying all of Torah Judaism.¹⁶

It is my hope and prayer that my attempt to understand the Rambam's words will lead us to question these sensitive issues in the spirit with which it has been analyzed here, and teach us to realize that these vital aspects of our lives—the commandment of able-bodied young men to defend our nation and the value of earning a respectable livelihood—are not nearly as simple and clear-cut as they are often presented.

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¹ At the memorial service about a week after the murder, the father of one of the boys asked that each of us do some positive act in their memory.

² Translation from *Introduction to the Code of Maimonides (Mishne Torah)*, Isidore Twersky, pages 441-442.

³ In the Winter, 5763 issue of *Jewish Action*, Rabbi Yaakov Feitman described the impressive growth of Kollels. In his list of *Rishonim* that support the concept, R. Feitman included the above passage of the Rambam. I feel it imperative to point out how much I appreciated R. Feitman's mentioning of philosophies that may differ from his personal ones, and recognizing that *limud Torah* is an important foundation in Jewish faith. I also note my personal connection to Rabbi Feitman who served faithfully as the rabbi of my parents' *shul* some years ago.

⁴ See, for example, *Maase Rokeach*, quoted in the index at the conclusion of the Frankel version of the Rambam.

⁵ *Yorah Deah*, II, 116. Rabbi Feitman mentions this response in his article.

⁶ Some time ago, for example, Jonathan Rosenblum quoted this passage in this context in his weekly *Jerusalem Post* column.

⁷ It is worthwhile noting that the Radbaz makes no mention of any conflict presented by this passage in the Rambam vis-à-vis military service. While it is possible that the Radbaz did not entertain the possibility of such an extension simply because the issue of a Jewish army was so far removed from his experiences, the commentators on the Rambam did not limit themselves to *halacha l'maaseh*. I believe that the connection was too preposterous to consider.

⁸ See for example, the end of the book of *Taharah*.

⁹ It seems to me that if in the context of a *shiur* in *Hilchot Shabbat* or *Nidah* a student would apply a source in a similar way, any Rosh Yeshiva I've ever had the honor of hearing or reading would either chuckle or throw the student out of class.

¹⁰ Twersky, page 442.

¹¹ It is possible that the Rambam had a "Yissachar-Zevulun" arrangement with his brother, R. Dovid. Also note that the Rambam fully supported learning full time if one has the personal means. For an interesting discussion about these points, see *Perush Harambam L'Avot*, *Maalot* Edition, translated by Yitzchak Shilat, pages 73-76.

¹² See *Milchamot Hashem*, Harav Dovid Hacoen ("The Nazir") quoted by Harav Reem Hacoen.

¹³ The claim of a particular *diyuk* being questionable often need not be determined by contemporary reading but rather by simply noting that earlier commentators were not particularly disturbed by the problem. For example, *Rav Chaim* has *chidushim* based on *diyukim* that the *Kesef Mishne* never imagined.

¹⁴ In *Bet-Midrash* parlance, one would say in these cases that the answer is better than the question.

¹⁵ One of the major contemporary poskim today in America told me that he believes the Chazon Ish intended this exemption for a small group at that critical time in history and that he never intended it as a wholesale exemption.

¹⁶ Lest one recoil at the notion of *Talmidei Chachomim* making polemical arguments, I refer the reader to Rabbi Yosef Kapach's comment, in a different context, to the Rambam's *Perush Hamishna*, Introduction to *Perek Chelek*, the eleventh article of faith. The Rambam unequivocally extends the belief in the *mashiach* to include the prerequisite that he be a descendent of Kings David and Shlomo. Clearly the Rambam was included this as a response to Christian and Moslem dogma, and while it might be correct, it is impossible to fathom that this would be a subject included in an article of faith.