YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**Halakha and Israeli History**

**Rav Aviad Tabory**

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In loving memory of Rabbi Dr. Barrett (Chaim Dov) Broyde ztz"l

הוֹלֵךְ תָּמִים וּפֹעֵל צֶדֶק וְדֹבֵר אֱמֶת בִּלְבָבוֹ

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**Shiur #06: 7 June, 1967**

**“*Har Ha-bayit Be-yadeinu*”:**

**The Six-Day War and Reunification of Yerushalayim**

The great miracles of the Six-Day War can only be fully understood and appreciated if one internalizes the events that took place in the weeks leading up to June 1967. Egyptian President Gamal Abdel Nasser created a united front together with Syria and Jordan, putting Israel in a chokehold. The purpose and goal of this united front was clear: to destroy the Jewish state. There was real fear and even some panic in the Jewish world, as well as in the State of Israel. Memories of the Holocaust resurfaced, reminding the people how real the threat of annihilation can be.

Israel pleaded with King Hussein of Jordan to refrain from entering the war. He was promised by Prime Minister Levi Eshkol that Israel would not attack first. The king, convinced by rumors he heard on the radio that Egyptian forces were victorious, ignored the appeal.

As the news of the successful daring attack of the Israeli Air Force on the morning of 5 June spread around the world, fear and anxiety turned to relief and joy. However, nothing prepared Israel and the Jewish people for the dramatic events that took place two days later, as the Israeli army entered the old city of Yerushalayim and liberated *Har Ha-bayit*, the Temple Mount. Motta Gur, commander of the paratroopers brigade, made an historical announcement on the radio: “*Har Ha-bayit be-yadeinu!*” “The Temple Mount is in our hands!” With Gur’s permission, an Israeli flag was fastened onto a pole topped with an Islamic crescent.

However, total sovereignty of the holy site was not to last for long. Moshe Dayan, the defence minister at the time, standing on Mount Scopus, was watching the events through binoculars. As the flag was raised, he radioed Gur demanding him to remove the flag immediately. After the war, Dayan met with the Muslim Waqf, who governed the site, and formally returned the Temple Mount to their control.

The arrangement made by Dayan and the Muslim leaders was that while Israel would be responsible for security, the Waqf would determine who would pray on the holy site. In other words, this agreement meant that although Jews would be allowed on the mountain, they would be denied the right to pray. Since then, the status quo on the mountain has remained the same.

The irony of such a decision is that Moshe Dayan received support from the rabbis who agreed with him that Jews should refrain from entering the Temple Mount.

In the summer of 1967, a poster prohibiting entrance to *Har Ha-bayit* was published. The declaration was signed by many rabbis, amongst them the Chief Rabbis of Israel, Rav Nissim and Rav Unterman. Besides claiming the *issur* to enter, the poster also mentioned that this had been the common custom for generations. What were the reasons for the rabbis’ strong opposition?

***Kedushat Har Ha-bayit***

The Rambam explains the halakhic ramifications of the *kedusha* (sanctity) of *Har Ha-bayit*[[1]](#footnote-1):

The Temple Mount is holier than [the city of Jerusalem]. Neither men who have the flux nor women who have the flux, are menstruating or have recently given birth may enter there. [However,] a corpse itself may be brought onto the Temple Mount, so obviously one who has contracted ritual impurity from a corpse may enter there.

The *Cheil* is holier than *Har Ha-bayit*. Non-Jews and those who have contracted impurity through contact with a corpse… may not enter there.

The *Cheil* was the enclosed section on the mountain, containing the courtyards and the Temple itself. The punishment for trespassing on certain parts of the Temple grounds is *karet* (death by the hands of God).[[2]](#footnote-2)

Regarding whether or not this *kedusha* applies at all times is a *machaloket* between the Rambam and his famous critic, the Ra’avad (12th century Provence).

While the Rambam claims that the Temple Mount retains its sanctity at all times,[[3]](#footnote-3) the Ra’avad argues that the *kedusha* was abolished at the time of destruction:[[4]](#footnote-4)

According to the opinion in the Talmud which states that it was not originally consecrated for eternity, no differentiation was made between the Temple, Jerusalem, and the remainder of the Land of Israel... Therefore, entering [the Temple grounds] in our days is not punishable by excision.

There are some who are of the opinion that the Ra’avad’s understanding would be the basis for permission to walk in the Temple area itself.[[5]](#footnote-5) Others, like Rav Kook,[[6]](#footnote-6) explain that the Ra’avad is arguing with the Rambam about the level of transgression of entering the Temple Mount; however, he would still agree that it is forbidden to walk in the area where the Temple stood.

**Location, Location, Location**

The Rambam’s opinion is commonly accepted, which is the reason that no halakhic authoritytoday allows one to enter the area on which the *Beit Ha-mikdash* stood.[[7]](#footnote-7) Theoretically, if one claims to know the location of the original *Beit Ha-mikdash*, one is permitted to enter *Har Ha-bayit* on the conditions that he purifies himself by immersing himself in a *mikve* and is careful not to walk on the original borders of the *Beit Ha-mikdash*. A *mikve* would purify a person only from *tuma ha-yotzeit mi-gufo* (an impurity that emanates from his body) and not the impurity that is the result of coming in contact with a corpse. For that, we would require ashes of a red heifer, which we do not currently have.

The reason that so many rabbis oppose entering the Temple Mount today is the concern that we do not know exactly the location of the original *Beit Ha-mikdash*. Some rabbis are concerned that even if we claim to know the original borders, permission to ascend would bring many people who do not follow the strict laws of *tuma ve-tahara* (ritual impurity and purity) to violate the *kedusha* of the site of the Temple.

Immediately following the Six-Day War, Rav Shlomo Goren, Chief Rabbi of the Israeli army, began measuring the Temple Mount in order to establish the original borders of the *Beit Ha-mikdash*. His findings let him to a conclusion that in certain areas of the mountain, it is permissible for Jews to walk.[[8]](#footnote-8)

The Mishna[[9]](#footnote-9) states that *Har Ha-bayit* was 500 by 500 *amot*, an area of approximately 62,500 square meters. Today the area referred to as *Har Ha-bayit* is a rectangle that is twice as long, covering an area of about 145,500 square meters. Rabbis who permit entry to parts of the mountain suggest there are areas in the south and north that were clearly added by King Herod and thus do not have *kedusha*.

***Mora Beit Ha-mikdash***

Besides the prohibition of entering the *Beit Ha-mikdash* and *Har Ha-bayit* in a state of impurity, the Torah commands us to fear the *Beit Ha-mikdash* and to treat it with proper awe and reverence (*mora*).[[10]](#footnote-10) This includes not entering *Har Ha-bayit* while wearing leather shoes or with a walking-stick or purse. Also, one may not spit, have dust on one’s feet, use Har Ha-bayit as a shortcut or engage in idle chatter while there.[[11]](#footnote-11) The Rambam also adds that this law permits entrance to the *Beit Ha-mikdash* only for *devar mitzva* (a religious purpose).[[12]](#footnote-12)

The Rambam, while explaining the meaning of this law, argues that this law applies at all times, even when the *Beit Ha-mikdash* is destroyed:

Even though the Temple is now in ruins because of our sins, a person must hold its [site] in awe, as one would regard it when it was standing. [Therefore,] one should only enter a region which he is permitted to enter. He should not sit in [the area of] the Temple Courtyard, nor should he act frivolously when standing before [the place of] the Eastern Gate…[[13]](#footnote-13)

HaRav Aharon Lichtenstein argues that it is possible that the Ra’avad, whose opinion was mentioned before, argues with the Rambam only about impure people entering the *Beit Ha-mikdash* but would still agree with him that the mitzva of fearing the *Beit Ha-mikdash* applies at all times.[[14]](#footnote-14)

It is interesting that both opinions, for and against ascending to *Har Ha-bayit*, use this mitzva for their argument. Some Poskim mention that this mitzva includes precautions one must take not to come close to the holy mountain. Others argue that by following the strict *halakhot* of *Mora Ha-mikdash* together with immersion in *mikve,*[[15]](#footnote-15) we are able to fulfil this mitzva in the correct fashion and even fulfil other *mitzvot,*  such as *Shemirat Ha-mikdash* (guarding the Temple), as well as showing a great yearning and desire for building the Temple.

**Precedents**

Rav Shlomo Goren finds evidence of a Jewish presence on *Har Ha-bayit* from the Second Temple period up until 300 years ago.[[16]](#footnote-16) He mentions the Rambam, who on his visit to Yerushalayim on 6 Marcheshvan, 4925 (1164), prayed on the Temple Mount.[[17]](#footnote-17) In his letter, the Rambam writes:

I entered the great and holy house and prayed there.

Rav Ovadya Yosef claims that it is prohibited to ascend for some of the reasons discussed above.[[18]](#footnote-18) He mentions a story about the great Jewish philanthropist, Sir Moses Montefiore, who entered *Har Ha-bayit* on his visit to Israel in the year 1856. As a result, certain rabbis declared a *cherem* on him (excommunication). Even though it was later lifted as result of Montefiore’s admission of his mistake, we can see how delicate and sensitive this matter was at all times.

**Guarding the Temple Mount**

A practical question related to our discussion is about the soldiers guarding the Temple Mount. The religious soldiers stationed at the mountain refused to enter the mountain due to the halakhic restrictions mentioned before. Furthermore, argued the soldiers, let the irreligious soldiers who are not concerned with the halakhic matters guard the mountain, and we will remain outside the entrance.

In the early 70s, their commander turned to Rav Avraham Sherman, a *Dayan* who served in the courts of the Israeli rabbinate, and asked him to give a *pesak halakha* (halakhic ruling). Rav Sherman forwarded the question to one of the prominent Poskimof the generation, Rav Yosef Shalom Elyashiv.[[19]](#footnote-19) Due to an understanding that keeping guard on the Temple Mount is an action of *pikuach nefesh* (saving lives), Rav Elyashiv permitted soldiers to walk on all areas of the mountain. At the same time, he argued, the soldiers and police should only ascend the mountain after immersion in a *mikve*. They should not wander around for no reason, they should wear shoes without leather and they should keep in mind the mitzva of *Mora* *Ha*-*mikdash* to the best of their ability.

Interestingly enough, Rav Elyashiv argues that is preferable for the religious soldiers to guard the Temple Mount itself, as they would take precautions to keep the laws of *Mora Ha-mikdash*.

**Theological Arguments**

The rabbis who permit ascending the mountain argue that under the political circumstances of today, abandoning the mountain to the Waqf and the Muslim world would be a terrible mistake. It conveys to the world that we are not interested in this holy site and agree that it is a Muslim site.

Furthermore, argues Rav Goren, praying by the Western Wall is a relatively new custom which began 300 years ago. In a letter he wrote to Prime Minister Yitzchak Rabin, he claims:

The prayers taking place by the Western Wall symbolize the exile of the Jewish people and our expulsion from the Temple Mount. However, prayers on the Temple Mount symbolize the return of our people to their land and the site of the Temple.[[20]](#footnote-20)

1. *Hilkhot* *Beit Ha-bechira* 7:15. [↑](#footnote-ref-1)
2. *Hilkhot* *Beit Ha-bechira* 7:18. [↑](#footnote-ref-2)
3. *Hilkhot* *Beit Ha-bechira* 6:16-17. [↑](#footnote-ref-3)
4. In his footnotes on the Rambam above. [↑](#footnote-ref-4)
5. See Meiri, *Beit Ha-bechira, Shevuot* 16a. [↑](#footnote-ref-5)
6. *Mishpat Cohen* 96. [↑](#footnote-ref-6)
7. See Rav Eliezer Waldenberg, *Tzitz Eliezer,* Vol. 10, I 5. [↑](#footnote-ref-7)
8. For a detailed summary of the different opinions, see Rav Shemuel Weingarten*,* *Kovetz Torah She-be’al Peh* (1969), pp.146-181. [↑](#footnote-ref-8)
9. *Middot* 2:1. [↑](#footnote-ref-9)
10. *Vayikra* 19:3. [↑](#footnote-ref-10)
11. BT *Berakhot* 54a. [↑](#footnote-ref-11)
12. *Hilkhot* *Beit Ha-bechira* 7:2. [↑](#footnote-ref-12)
13. *Hilkhot* *Beit Ha-bechira* 7:7. [↑](#footnote-ref-13)
14. *“*Visiting the Temple Mount in Our Time**,”** [https://etzion.org.il/en/visiting-Temple-mount-our-time](https://etzion.org.il/en/visiting-temple-mount-our-time). [↑](#footnote-ref-14)
15. For a detailed list of *halakhot* of preparations for ascending to *Har Ha-bayit,* see [Rav Yosef Zvi Rimon’s article](https://etzion.org.il/he/%D7%94%D7%9C%D7%9B%D7%95%D7%AA-%D7%A2%D7%9C%D7%99%D7%99%D7%94-%D7%9C%D7%94%D7%A8-%D7%94%D7%91%D7%99%D7%AA). [↑](#footnote-ref-15)
16. Rav Shlomo Goren, *Har Ha-bayit*, Chap. 26. [↑](#footnote-ref-16)
17. This letter is recorded in the *Sefer Charedim, Sha’ar Teshuva,* Chap. 4. There are those who doubt the letter and its meaning. For further discussion, see Gedalia Meyer and Henoch Messner, “Entering the Temple Mount in Halacha and Jewish History,” *Hakirah* 10 (2010), p. 63. [↑](#footnote-ref-17)
18. *Yabia Omer*, Vol. 5, *YD* 26; *Kovetz Torah She-be’al Peh* (2008), pp. 14-22. [↑](#footnote-ref-18)
19. *Kovetz Torah She-be’al Peh*, 2008 pp. 116-118 [↑](#footnote-ref-19)
20. The entire letter appears in Rav Eliezer Melamed’s *Peninei Halakha: Ha-am Ve-ha’aretz,* pp. 288-293. [↑](#footnote-ref-20)