

Bo 5781 Sermon

Jacob Chansley is one of the most visible symbols of the violent uprising against the US government that took place in Washington on January 6. Chansley is the QAnon supporter decked out in face paint, tattoos, fur, flag, and horns. Chansley claimed he was “answering the call of the former president” as a defense after his arrest. His lawyer said that Trump’s words “meant something to my client and a lot of other people.”

A Honolulu lawyer said much the same thing of his client, Nicholas Ochs, who was arrested for breaking into the capitol. The lawyer said his client doesn’t deserve full blame for what happened, but the finger should be pointed directly at Trump and his acolytes who encouraged Ochs and others to lay siege to the capitol.

Is that a defense? I was just following orders!

Jews know better than anyone else that “I was just following orders” is not a defense for the morally indefensible.

In 1962, after he was convicted and sentenced to death, Adolf Eichmann wrote a letter to Israeli president Yitzhak Ben-Zvi pleading for a pardon. Eichmann wrote,

There is a need to draw a line between the leaders responsible and the people like me forced to serve as mere instruments in the hands of the leaders.

Eichmann also argued,

I was not a responsible leader, and as such do not feel myself guilty.

As we all know, Eichmann’s plea was rejected, and he was executed for his crimes.

“I was just following orders” is a common defense in such circumstances – it’s called “superior orders.” So many defendants tried using it during the Nuremberg trials that it’s also known as the “Nuremberg defense.” But it’s much older than that, and it’s been fairly consistently rejected all along.

The oldest recorded use of the defense was in 1474. Peter von Hagenbach, a German knight who served as an administrator in the upper Rhine region, was a tyrannical ruler, and he brutally put down a revolt. While he wasn't personally engaged in the acts of violence, he was found guilty of murder, rape, and perjury because of the actions of his troops. His defense was he was only following the orders of the Duke of Burgundy. The court said that's no excuse and had him beheaded.

There's also a subtle difference between following orders if the order itself is illegal and following orders if the order is legal – but immoral.

Judaism is big on obedience to the law. There is a halachic principle *dina d'malkhuta dina*, the law of the land is the land. The rabbis tell us this is halacha: so, if you disobey civil law, you are also disobeying halacha. In theory speeding becomes not just a civil offense, but a religious offense as well.

Does that mean we should blindly obey all laws?

Obviously not. Eichmann didn't do anything illegal according to German law in effect at the time. He was not only obeying orders, but he was obedient to the national law. That still was no defense. It is, indeed, possible for an entire country to go down an evil path and have laws that must be disobeyed.

But how do you tell the difference between an order you should obey, and an order you should refuse to obey?

American soldiers disgracefully murdered innocent civilians in the My Lai massacre in Vietnam in 1968. One of the soldiers charged, tried using the "just following orders" defense. The Court of Military Appeals ruled: "the justification for acts done pursuant to orders does not exist if the order was of such a nature that a man of ordinary sense and understanding would know it to be illegal".

In 1956, 48 Arabs from the Israeli Arab village of Kafr Qassem were killed by the Israeli Border Police when they were returning home after work during a curfew they didn't know existed. The border policemen involved were brought to trial and found guilty. The judge said, "The distinguishing mark of a manifestly illegal order

is that above such an order should fly, like a black flag, a warning saying: 'Prohibited!' Illegality that pierces the eye and revolts the heart, if the eye is not blind and the heart is not impenetrable or corrupt."

Someone posted a guide that could be used in situations such as the one that unfolded at the US Capitol on January 6. In a divided world where everyone thinks they are right; how do you tell which side is right? The suggestion is that the presence of Nazis can be a helpful indicator.

If I am attending a local demonstration or event and I see Nazis...neo-Nazis, casual Nazis, master race Nazis, or the latest-whatever-uber-mythology-Nazis, I figure out which side they are on. And if they are on my side of the demonstration? I am on the wrong side. It is tough to argue moral equivalence when I am standing next to a Nazi. Look to my right. Is there a guy wearing a 6MWE (6 million wasn't enough) t-shirt? I am on the wrong side. Look to my left. Is that guy wearing a Camp Auschwitz t-shirt? Wrong side. Are speakers being applauded for referring to things that Hitler got right? Wrong side.

If you see someone decked in face paint, tattoos, and horns, that's a somewhat ambiguous sign, but I'd stay away from them even at a hockey game.

If you use the following orders argument, does it matter who's giving the orders? Ex-President Trump was the commander-in-chief on January 6. If he did tell his supporters they should go storm the capitol, can't they rely on that?

The Torah would tell us no. In this week's Torah reading, Bo, we are commanded

תּוֹרָה אֶחָת יְהִי־לְאֶזְרָח וְלִגֵּר הַגֵּר בְּתוֹכְכֶם:

There shall be one law for the citizen and for the stranger who dwells among you.

In the book of Bamidbar, the commandment is repeated:

תּוֹרָה אֶחָת וּמִשְׁפָּט אֶחָד יְהִי־לְכֶם וְלִגֵּר הַגֵּר אִתְּכֶם

the same ritual and the same rule shall apply to you and to the stranger who resides among you.

Everyone is subject to the same laws; all are equal under the law. The Torah also specifically applies the law to a king. Kings were commanded to carry a sefer Torah with them, so that they would be reminded they too must follow the law.

The Torah also cautions us against blindly following a charismatic leader: in Devarim, we are told,

If there appears among you a prophet or a dream-diviner and he gives you a sign or a portent, saying, “Let us follow and worship another god”—whom you have not experienced—even if the sign or portent that he named to you comes true, do not heed the words of that prophet or that dream-diviner. For the LORD your God is testing you to see whether you really love the LORD your God with all your heart and soul.

People have always been drawn to charismatic leaders. They say that in the 16th century a fourth of the world’s Jews believed Shabtai Tzvi was the messiah. In the 18th century Jacob Frank claimed he was the reincarnation of the Shabtai Tzvi, and many Jews followed him into acts of heresy – neglecting the above commandment of the Torah, not to follow a false prophet.

There are people who will blindly follow a rabbi, even when to any observer the rabbi is going down a bad path. The Lev Tahor cult, headed by the late Rabbi Shlomo Helbrans, has been called the Jewish Taliban for their practices of women being covered from head to toe and forced marriages of teenage girls to men 20 years older than them. You may remember them, they settled here in Quebec for a while and fled Canada for Guatemala in 2014 after the government took six children away from them and placed them in foster care.

Secular law, halacha, and ethics all expect us each to have a functioning moral compass. Yes, there will always be gray areas, but in extreme cases there should be no question when a person must take a stand and NOT blindly follow a charismatic leader or blindly follow a blatantly immoral law.

It doesn't matter whether the charismatic leader is the president of the United States, the prime minister of Canada, a rabbi, or a rap singer.