

CONTINUED CONVERSATION:

Ethics and Warfare Revisited

Gerald J. Blidstein

Michael J. Broyde

The last edition of *Meorot* (6:1, *Shevat* 5767) included a discussion of *Halakhab* and Morality in Modern Warfare. In the interchange, Gerald J. Blidstein offers a critical response to some of the claims of Michael J. Broyde's paper in that original conversation and Michael J. Broyde responds.

Biographies:

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Ethics and Warfare Revisited

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Rabbi Michael J. Broyde's recent contribution to the *Meorot* symposium on ethics and warfare served as a catalyst for the crystallization of some thoughts of my own. These will be presented, then, as comments on that piece, but I trust it will be apparent that this is a formal literary convention. I will not be commenting much on the conclusions R. Broyde reached but will focus instead on some of the concerns and arguments he raised, more to broaden the base of discussion and explore the topic than to present conclusions of my own.

I

A frequent motif of R. Broyde's presentation is that war willy-nilly, and legitimately, causes suffering and death to the innocent, people who in a non-war situation could not legitimately be harmed. This violation can be justified only by the legitimacy of war, a fact that then becomes probative for other issues raised by war. If war legitimately causes the innocent to suffer, it is difficult to protect any innocent. But lacking an initial and detailed discussion of when "war legitimately causes suffering and death to the innocent," we are begging the question, inasmuch as the heart of the matter concerns, precisely, the questions of when and how the innocent may be harmed, which innocent may be harmed, and why—perhaps those same innocent, I fear, whose fate has already been foreclosed by our initial assumption. Less radically, we have to know which innocent are legitimately given over to suffering so as to judge whether that list reflects a consensus and is itself agreeable to all.

Is it obvious that since war legitimately harms some innocent, other innocent are therefore fair prey? One could, after all, make just the opposite argument—that only the designated innocent in a designated situation may be harmed—no others. And, in less black or

white fashion, what precautions should be taken to protect those innocent who can perhaps be saved? Is there no obligation to protect life if the same military goals can be achieved by less violent means? Matters, in brief, seem less simple now.

II

R. Saul Israeli's well-known position is that the rules of Jewish war are those adopted by the rest of the world. To the best of my recollection, R. Israeli bases this stand first on Deut. 17: 14, which has the people asking for a king "like all the nations that are around me"—no mean *biddush*, as this phrase is normally not seen as normative. War is a universal activity and should be waged by universal rules. By the same token, I might add, governance is a universal activity, inasmuch as the people also ask for a king to govern them "like all the nations." This in fact is the case: as Me'iri claims, the "law of the king" bears a strong family resemblance to Noahide law, an argument I fleshed out in my (Hebrew) *Political Ideas in Maimonidean Halakha*. Whether Noahide law is, in fact, identical with that law operative among the nations of the world is, of course, a topic for discussion, as is the question of which nations and which world one considers probative.

Is it obvious that since war legitimately harms some innocent, other innocent are therefore fair prey?

R. Israeli also makes an argument for a non-squeamish military ethos from a supposedly international *dina de-malkhuta dina* ("the law of the land is law"), which ostensibly enables Israel's army to behave as all other armies do (or are supposed to). I find this argument difficult. True, the operation of *dina de-malkhuta* is not limited to matters fiscal, as is

sometimes stated; it will even be utilized in the context of corporal and capital punishment. So my difficulty does not lie in that direction.

Dina de-malkhuta radiates alienation and oppression as defining our relationship to the world.

What is the problem then? *Dina de-malkhuta* is not a metaphor but a norm. *Dina de-malkhuta* obliges a Jew in a diaspora situation, that is, when he is subject to the political governance of non-Jewish authority (and hence, of course, the statement of R. Moshe cited). It is essentially a colonialist rubric. It does not apply to the situation of an independent Jewish society (at least as politically independent as states can be). *Dina de-malkhuta* radiates alienation and oppression as defining our relationship to the world, hardly the model Israel likes to work with. There is a basic tension between *dina de-malkhuta* and Deut. 17: 14. The latter describes a people that wishes to integrate with the rest of the world; the former suggests a people that sees itself as subjected to the world. R. Israeli has been critiqued, by the way, for this surrender of halakhic authority and discretion to comparative law. I have argued elsewhere that he does not seem to have internalized fully the idea of sovereignty, conceiving of the state as a medieval community writ large.

For R. Israeli, *dina de-malkhuta* in our context is welcomed as a *beter*—whatever the *goyyim* do, or approve, we may do. Classic *dina de-malkhuta* would work in just the opposite direction; it would tell you what you must do or may not do.

But the argument may also move in a different direction. The *malkhut* to which R. Broyde refers is, I imagine, that of the nations of the democratic world, in one of which R. Broyde lives and of which he is a citizen. As a citizen in a participatory democracy, R. Broyde has the opportunity/obligation to participate in the formation of its laws, including its laws of war. Indeed, given his status, I can imagine R. Broyde being questioned by, let's say, the Senate Armed Services Committee about how

U. S. doctrine of war ought to read; being asked what his Jewish tradition says on these questions. Of course, the question is not, really, what do your texts say, but what do you, a Jew ethically formed within this tradition, have to say. Is there a Jewish contribution? Will R. Broyde answer that the Jewish tradition finds anything the rest of you folks suggest, just fine?

I suspect that R. Broyde fully realizes this problem in R. Israeli's doctrine. Thus, in his discussion of the *lamed-heb* and the Arab shepherd, he knows exactly what Jewish law would say, and what would be a "direct violation of *halakhab*." But to be consistent with R. Israeli, we should learn what the Geneva Convention says about this situation.

Will R. Broyde answer that the Jewish tradition finds anything the rest of you folks suggest, just fine?

Perhaps it does not square with Jewish law. Supposing Jewish law says "kill" and the Geneva Conference says that (even if it allows for holding the elderly civilian shepherd) you have to take prisoners alive and keep them that way. What then? Can this paradigm be multiplied? Alternatively: Many serious people now think that the Geneva Conventions are inadequate to deal with terrorism. What does one put in their place, even as an interim measure? Or are we (Israelis? Americans?) committed to the Conventions so long as they have not been replaced, whatever damage is done?

III

I have noticed a difference between Catholic and Jewish moral argumentation. Much Catholic discussion of the ethics of war (and the ethics of abortion as well) is rooted in "double effect" theory. Put broadly, you may bomb a munitions factory even if you will inexorably and knowingly destroy the toy factory adjacent (and its innocent workers), if your aim was not to bomb the toy factory. *Intention* is the crux. Permission is given not on the basis of the simple right of the good to

triumph over the evil, but on the basis of moral reasoning. There is a single ethic that applies in both war and peace, for the collective as for the individual. (Needless to say, I am not claiming that Christian governments at war have necessarily abided by this doctrine.)

Now, although some very prominent scholars have assumed that Christianity invented double effect, it is recognizable in talmudic discourse. You simply combine the familiar doctrines of *davar she-eino mitkavven* (unintended act), and *pesiq reisha de-la niha leih* (inevitable but unwanted result) and receive a workable doctrine of double effect. Naturally, there is room for fine-tuning—but that is true for all "double effect" cases as well.

How has it happened that humanity and halakhah are so far apart?

Catholic moralists use their "double effect" doctrine widely in discussing ethical issues. Halakhists don't use the halakhic double effect the same way. A quick check of the entry for *davar she-eino mitkavven* in the *Talmudic Encyclopedia* reveals that most discussion takes place in the context of Sabbath law, with a minor paragraph devoted to other topics, and those are also matters of ritual law, by and large. I wonder why this is so. Since they deal with other ritual issues, these doctrines are not rooted in or limited to *meleket mahshevet* of Shabbat law; yet they are not exploited in ethical/social *halakhah*. Could it be that the answers they offer are too pat or formalistic? Yet perhaps a search of the responsa literature would give a more varied result and show that halakhists exploited the Jewish equivalent of "double effect" theory in relating to a variety of problems.

IV

R. Broyde urges that not everything that is halakhically permissible is wise. This seems reasonable. Indeed, one wants to explore this possibility further. Examples of the merely unwise might be useful here. Are we speaking of behavior that is permitted but unwise

because it is held in revulsion by too many other human beings? How has it happened, then, that humanity and *halakhah* are so far apart? Does this reflect a spurious and even hypocritical Christian morality? Perhaps some systems of ethics have overtaken *halakhah* and even progressed beyond it, to what we would define as a sort of *lifnim mi-shurat ha-din*. Might this have halakhic implications for us? Or are we speaking of behavior useful in the short run but dysfunctional in the long run? This is worth discussion, as is the more general topic of short run/long run in *halakhah*.

V

Would that all problems were as manageable as those solved by hindsight! Actually, though, hindsight is derided far too much, it seems to me. Suppose that the Arab shepherd hadn't sought out the Legionnaires and betrayed the *lamed-beh*. Well, the possibility that he would have done so always exists, and that possibility may well be enough to have justified killing him. On the other hand, hindsight proves far less that it is made out to prove. The fact that something did happen does not imply more than a chance that it will happen again. How much of a chance is enough to kill for? Any chance? Alternatively, suppose the *lamed-beh* could have maimed the shepherd—but not killed him—so as to prevent him from moving or calling out? How would that rate in the calculus of survival/sacrifice? Actually, of course, that option probably didn't exist. What about pre-emptive action on the model of Swift's *Modest Proposal*? For example: I was once involved in an exchange of views with someone who argued—in a report commissioned by the Israeli police—that even deliberate killing of a passive bystander at a violent political demonstration may be justifiable, since the demonstration if not broken up might bring about the collapse of the government which could then...; the bystander, therefore, is a *rodef*. I have no easy answer to these problems, problems that have the quality of never repeating themselves precisely.

Indeed, one of the more valuable characteristics in discussions such as this (as in

much discussion of Israel's current situation and options), is the quality of humility. Few people are willing to say they don't know; many, on both right and left, are fully certain. But the fully certain, it seems to me, don't really appreciate the complexity of virtually any facet of the situation, its full potential.

After decisions are made, we may well have to fulfill them unhesitatingly, but the decision-making process itself walks through the valley of uncertainty. As Dr. Ish-Shalom pointed out, the most uncertain person is sometimes squinting through the rifle sights.

The Role of Secular Law in *Halakhah*: A Brief Response to Gerald Blidstein and a Note on Jewish Legal Theory

Michael J. Broyde

Since my most recent foray into military ethics at the Orthodox Forum three years ago, I have found myself frequently involved in conversations—mostly scholarly but sometimes polemical—about war. Professor Gerald Blidstein’s comments allow a broader perspective. He raises a number of important issues, but I must confine my short remarks to only one substantive point, namely the role of secular law in *halakhah* as a matter of Jewish legal theory.

The Jewish legal tradition desires not to participate in proselytizing and conversion, either as a proselytizer, or the proselytizee² Judaism desires to be left alone in the grand clash of religious faiths, and to focus on in-reach, the process by which Jews make Jews into better Jews. It recognizes some limited ability to accept proselytes, and thus does have a complex mechanism for joining the

Jewish faith. But there is no right of exit in the Jewish tradition.³ This narrow focus of *halakhah* is neither universalistic nor particularistic. It does not maintain that only Jews can enter heaven; both Jews and Gentiles can. It does not maintain that Jewish law is binding on all; Jewish law binds Jews, *Noahide* law binds Gentiles. It does not maintain that all must acknowledge the “Jewish” God; rather it recognizes that monotheism need not be accompanied by recognition of the special role of the Jewish people⁴.

Jewish tradition recognizes that even in messianic times there will *and should be* Gentiles—people who are not members of the Jewish faith.⁵ The existence of those who are not Jewish is part of the Jewish ideal, which requires that all worship the single God, although not exclusively through the

¹ Though I had written on the topic before (See “Fighting for Peace: Battlefield Ethics, Peace Talks, Treaties and Pacifism in the Jewish Tradition,” in Patout Burns, ed., *War and its Discontents: Pacifism and Quietism in the Abrahamic Traditions* [Washington, D.C.: Georgetown University Press, 1996], 1–30), my presentation and paper for the Orthodox Forum, “Just Wars, Just Battles and Just Conduct in Jewish Law: Jewish Law Is Not a Suicide Pact” in Lawrence Schiffman and Joel B. Wolowelsky, eds., *War and Peace in the Jewish Tradition: Proceedings of the 16th Orthodox Forum (2004)* (New York: Michael Scharf Publication Trust of the Yeshiva University Press, 2007), 1–43, concluding that halacha permits a broad range of conduct during wartime, stirred up quite a bit of controversy. I have since presented those conclusions even more forcefully in *The Bounds of Wartime Military Conduct in Jewish Law: An Expansive Conception*, (Flushing, N.Y.: Center for Jewish Studies, Queens College, CUNY, 2006); “Only the Good Die Young?” *Meorot: A Forum of Modern Orthodox Discovery* (formerly the *Edah Journal*) 6(1):1–6 (*Shevat* 5767 [Winter 2006]); “Jewish Law and Torture,” *The Jewish Week*, July 7, 2006, and “Military Ethics in Jewish Law,” in Elliot N. Dorff and Bernard S. Jackson, eds., *Jewish Law Association Studies XVI: The Boston 2004 Conference Volume* (2007).

² For an excellent survey of many different facets of conversion, see Menachem Finkelstein, *Ha-Giyur, Halakhah u-Ma’aseh* (Bar Ilan, 1994).

³ See Michael J. Broyde, “Proselytism and Jewish Law: Inreach, Outreach, and the Jewish Tradition,” in John Witte, Jr. and Richard C. Martin, eds., *Sharing the Book: Religious Perspectives on the Rights and Wrongs of Proselytism* (Maryknoll, N.Y.: Orbis, 1999), 45–60.

⁴ See generally, Maimonides, *Laws of Kings*, Chapters 9 and 10. For a thorough discussion of these issues, see David Novak, *The Image of the Non-Jew in Judaism* (New York, 1983) and idem, “Proselytism in Judaism,” in John Witte, Jr. and Richard C. Martin, eds., *Sharing the Book: Religious Perspectives on the Rights and Wrongs of Proselytism* (Maryknoll, N.Y.: Orbis, 1999), 17–44.

⁵ Maimonides, *Laws of Kings* 12:1.

Jewish prism of worship. Indeed, the Talmud insists that in messianic times conversion into Judaism will not be allowed; Jews and Gentiles will peacefully co-exist.⁶

Many different fundamental insights derive from this unique formulation of the scope of the Jewish tradition. In this limited response, I will focus on one of them: the role of foreign law in the Jewish tradition. Precisely because Jewish tradition does not think it needs to be the exclusive source of law governing all of the world's inhabitants, Jewish law has within it doctrines of comity—substantive recognition of the inherent validity of legal rules and systems besides Jewish law—that are encapsulated in an interrelated group of doctrines of *dina de-malkhuta dina*, *dinim*, and *din melekh*.⁷

Since we do not think that all people ought to be Jewish, we do not think all ought to ideally obey Jewish law

The rubrics of *dina de-malkhuta dina*, *din melekh*, and *dinim* say to adherents of *halakhab* that there will be times and places (almost always outside of ritual law⁸) where Jewish law mandates that Jews obey a legal code besides Jewish law, and that in certain situations can even supplant native Jewish law. The reason these doctrines are so strong in Jewish tradition is obvious: Since we do not think as a matter of theology that all people ought to be Jewish, we do not think all ought to ideally

⁶ *Yevamot* 24b.

⁷ *Minbag ha-sokbarim* is a distant cousin of these three doctrines and deals with law as practiced, a related but different concept. Moreover, *minbag ha-sokbarim* is essentially contractual in nature, while the others are deeply structural.

⁸ The one exception I can think of is in cases where the Jewish tradition has a number of permissible ritual options and *dina de-malkhuta dina*, *din melekh*, or *dinim* seek to curtail one of those options. Some authorities will recognize that as a valid application of *dina de-malkhuta dina* and others will not. Consider, for example, the question of whether Israeli law can preclude *yibum* for a Sephardi man living in Israel and insist he only perform *halitzah*. Numerous authorities aver that the state may do so under the rubric of *dina de-malkhuta dina*; R. Ovadia Yosef strongly disagrees. For a discussion of this issue in the context of a broad portrait of multiple marriage models, see Elimelech Westreich, "A Western View of Eastern Marriage: Comments on the *Nusrat Shaulian v. Sultana Shaulian* Decision," *Jewish Law Association Studies* XIV:249-282 (2004), at 257-58.

⁹ *Shulhan Arukh*, *Hosben Mishpat* 26.

¹⁰ See Michael J. Broyde, *The Pursuit of Justice and Jewish Law: Halakbic Perspectives on the Legal Profession*, Second Edition (New York: Yashar Books, 2007), pp. 122-24.

¹¹ Thus in the view of R. Moshe Feinstein and R. Yaakov Breisch on the prohibition of *mesira* (informing a non-Jewish government of a fellow Jew's violation of the law), while the non-Jewish authorities may arrest Jews, Jews are not to assist in the capture or prosecution of non-violent offenders. For a lengthy discussion of this issue, see Michael J. Broyde, "Informing on Others to a Just Government: A Jewish Law View," *The Journal of Halacha and Contemporary Society* 41:5-49 (2002).

obey Jewish law. Other legal systems must then be valid, too, and we are called upon to respect and obey these legal systems when they correctly operate in their spheres.

Furthermore, sometimes those other legal systems will regulate Jews and their conduct. For example, Jewish law maintains that secular courts and secular laws are the proper legal framework for resolving disputes between Jews and gentiles,⁹ and secular criminal law is the proper framework for punishing Jewish or gentile criminals in the general society.¹⁰ There are yet dozens of other such examples where *halakhab* comfortably and ideally tells its adherents that it is proper to use secular law as the foundation for one's interactions with the general community.

Of course, ritual law can almost never be effected by these doctrines, and the application of the rules of *dina de-malkhuta dina*, *din melekh*, and *dinim* to cases where all the participants are Jewish is complex and much more limited—but it is obvious to one who has thought structurally about Jewish law that Jewish law assumes valid legal systems exist independent of Jewish law and that sometimes Jews ought to participate in such legal systems. So too, there might be cases where the secular legal system is valid as a matter of Jewish law, but still the talmudic rabbis insisted that Jews ought not to participate in the system.¹¹ More generally, I have argued that Jewish law is frequently acutely aware of the content of the secular law in any given environment and considers the

relationship between Jewish law and secular law on an ongoing basis. Such reciprocity would seem to be the very basis of much of Jewish law's exclusionary doctrines in commercial matters.¹²

Consider, for example, the final commandment in the *Noahide* code *dinim*, commonly translated as “laws” or “justice”. Two vastly different interpretations of this commandment are found among the early authorities. Maimonides rules that the obligations of *dinim* require only that the enumerated *Noahide* laws be enforced in practice. Maimonides states:

How are [*Noahides*] obligated by *dinim*? They must create courts and appoint judges in every province to enforce these six commandments . . . For this reason the inhabitants of Shechem [the city] were liable to be killed¹³ since Shechem [the person] stole¹⁴ [Dina], and the inhabitants saw and knew this and did nothing.¹⁵

According to Maimonides it is logical to assume that other types of regulations that society might make are subsumed under the rubric of either “laws of the land” or “laws of the king.”¹⁶

Nachmanides argues with this formulation and understands the obligations of *dinim* to be

much broader. It encompasses not only the obligations of society to enforce rules, but it also obligates society to create general rules of law governing such cases as fraud, overcharging, repayment of debts and the like.¹⁷ Both of these views assume the existence of vast substantive and complete codes¹⁸ of law outside of Jewish law.

It appears to this author that Maimonides accepts that the biblical commandment of *dinim* (or some *Noahide* cognate of it) compels enforcement by Jews as well as Gentiles of these seven laws, perhaps because Jews too are bound by them. In his explanation of the laws of *dinim* Maimonides, does not appear to limit them to *Noahides* only. Indeed, writing much more recently, Rabbi Yosef Engel.¹⁹ Rabbi Meir Simcha of Dvinsk, Rabbi Yechezkel Ya'akov Weinberg, Rabbi Shelomoh Zalman Auerbach,²⁰ and Rabbi Moshe Feinstein²¹ all seem to indicate that there is residual jurisdictional impact upon Jews from their *Noahide* obligation. For example, Rabbi Meir Simcha recounts that if a Jewish child who is not yet *bar* or *bat mitzva*, and thus not an adult according to Jewish law, comprehends the nature of right and wrong, he or she is obligated according to Torah law in the *Noahide* commandments, since according to *Noahide* law he is an adult.²² In a similar vein, Rabbi Weinberg states that a marriage entered into between two Jews that is technically

¹² See Michael J. Broyde and Michael Hecht, “The Gentile and Returning Lost Property According to Jewish Law: A Theory of Reciprocity,” *Jewish Law Annual* XIII:31–45 (2000).

¹³ See Genesis 34.

¹⁴ As to why Maimonides uses the word “stole” (*gazal*) see *Sanbedrin* 55a and *Hatam Sofer, Yoreh Deah* 19.

¹⁵ *Laws of Kings* 10:14.

¹⁶ See generally *Teshuvot Hachmei Provence* 48, which clearly distinguishes between regulations based on the *Noahide* laws and regulations based on the law of the land or the law of the king. For more on this distinction, see Arnold Enker, “Aspects of Interaction between the Torah Law, the King's Law, and the *Noahide* Law in Jewish Law,” *Cardozo Law Review* 12:1137-1156 (1991).

¹⁷ Commentary of Nachmanides to Genesis 34:14.

¹⁸ In the sense that different societies will apply *dinim* differently.

¹⁹ See Rabbi Yosef Engel, *Beit Otzar Ma'arekhet* 1-1:7,9. “The seven *Noahide* commandments are still obligatory to Jews, and their authority derives from their pre-Sinai obligation. The Torah . . . merely added to *Noahide* laws.”

²⁰ Rabbi Pinhas Hayyim Scheinman, “Teshuvah be-Inyan Yeladim Mefaggerim le-Gabbei Hinuch u-Mitsvot” *Moriah* 11(9-10):51-65 (1982). (This article contains an appendix written by Rabbi Shelomoh Zalman Auerbach.)

²¹ *Iggerot Moshe, Yoreh De'ah* 1:6. Rabbi Feinstein there discusses whether one who is legally excused from observance of commandments generally because of blindness (according to one opinion) is nonetheless obligated in the *Noahide* laws.

invalid according to Jewish law still creates a *Noahide* marriage between the couple.²³

If Noahides are obligated in the creation of general secular law it is logical that Jews must also obey these dinim.

The same basic claim is true according to Nachmanides (as interpreted by those who disagree with Rama.)²⁴ Jews, too are obligated to obey *dinim*, even if not to formulate them. Indeed, it is clear that a number of authorities find some connection between the obligation of *dinim* and the halakhic mandate of *dina de-malkhuta dina*, the obligation of Jews to obey the secular law.²⁵ If Noahides are obligated in the creation of general secular law and not only the enforcement of these six specified commandments, it would seem logical that Jews must too obey these *dinim*, at least in interactions with *Noahides*.²⁶

Thus, I think that Professor Blidstein is mistaken when he states that “*dina de-malkhuta* radiates alienation and oppression as defining our relationship to the world, hardly the model Israel likes to work with.”²⁷ Rather, *dina de-malkhuta dina*, *din melech*, and *dinim* radiate a sophisticated understanding of complex conflict of law principles that is well nigh unique to *halakhab* as compared to other systems of religious law. Jewish law is comfortable with Jews only obeying secular law when interacting with people who themselves are only called upon to obey secular law.

Of course, its application to international law requires further fleshing out, and I am in the process of doing such,²⁸ Yet there is no obvious reason why *halakhab* would limit the application of *dina de-malkhuta dina*, *din melech*, and *dinim* to national, rather than international law, assuming such a legal system where both just and impartial. War, it would seem, is almost a perfect case where *halakhab* would

²² Or *Sameach*, *Issurei Bi'ah* 3:2. This presupposes the correctness of the Minchat *Hinuch*'s famous assertion (*Minkbat Hinuch* 190; also found in *Hatam Sofer*, *Yoreh De'ah* 317) that *Noahides* become adults (and thus are obligated in obedience of the law) when they reach intellectual maturity, not when they reach any particular age. It is likely that the correctness of this assertion is itself in dispute between Rosh and Rashi; cf. *Teshuvot ha-Rosh* 16:1 and Commentary of *Rashi to Pirkei Avot* 5:21. See also *Yabia Omer*, *Yoreh De'ah* 2:17.

See also *Sefer ha-Mikaneh* 1:8(5) that states, “for violations of the seven commandments Jews certainly are to be punished . . .” Perhaps similar sentiments are expressed by R. Abraham Isaac Kook when he states “in our time, when Torah is not upheld . . . still it seems that the principles of fairness applied by force of torah law of *dinim* to *Noachides* applies, since we are no worse than they” (*Etz Hadar*, p. 42).

²³ *Seridei Eish* 3:22; Rabbi Menashe Klein, *Mishneh Halakhot* 9:278 also agrees with this.

²⁴ Within the opinion of *Nachmanides* there is a secondary dispute as to what substantive laws *Noachides* are supposed to adopt. Rama, writing in his responsa (*Responsa of Rama* 10; his ruling is also accepted by *Chatam Sofer*, *Hoshen Mishpat* 91 and R. Yakov Linderbaum (mi-Lisa), *Responsa Nahalat Ya'akov* 2:3), states that according to *Nachmanides*, in those areas of *dinim* where Gentiles are supposed to create laws, they are obligated to incorporate Jewish law into *Noahide* law unless it is clear contextually that it is inappropriate. Most authorities reject this interpretation and accept either *Maimonides*' ruling or that, according to *Nachmanides*, those rules created under the rubric of *dinim* need be only generally fair and not identical to Jewish law. (See Rabbi *Yitzchak Elchanan Spector*, *Nachal Yitzchak*, *Choshen Mishpat* 91; R. Abraham *Isaiah Karelitz*, *Chazon Ish to Hilkehot Melakhim* 10:10 and *Bava Kama* 10:3; R. Isser *Zalman Meltzer*, *Even ha-Azer*, *Hovel u-Mazzyk* 8:5; R. *Yechezkel Michel Epstein*, *Aruch ha-Shulchan be-'Atid*, *Laws of Kings* 79:15; R. *Naftali Tzvi Yehudah Berlin*, *Ha'amek She'elah* 2:3; R. *Abraham Kook*, *Etz Hadar* 38, 184; R. *Tzvi Pesach Frank*, *Har Tzvi*, *Orach Chaim II*, *Kuntres Mili de-Berachot* 2:1; R. *Ovadia Yosef*, *Yechaveh Da'at* 4:65; R. *Yitzchak Ya'akov Weiss*, *Minhat Yitzhak* 4:52:3.) This author cannot find even a single *rishon* who explicitly accepts the ruling of Rama, and one can find many who explicitly disagree. (See *Maimonides*, *Kings* 10:10; R. *Yom Tov Ishbili* (Ritva), *Responsa* 14 (quoted in *Beit Yosef*, *Hoshen Mishpat* 66:18); *Tosafot*, *Eruvin* 62a (s.v. “*Ben Noah*”) and R. *Joseph Albo*, *Sefer ha-Ikarim* 1:25.)

²⁵ See *Rashi*, *Gittin* 9b and Rabbi *J. David Bleich*, *Jewish Law and the State's Authority to Punish Crime*, *Cardozo Law Review* 12:829 (1991), at 856.

²⁶ See for example, *Rashi* commenting *Gittin* 9b. Rabbi *Isser Zalman Meltzer*, *Even ha-Azer*, *Nizkei Mammon* 8:5 freely mixes as near synonyms the terms *dina demalkhuta*, *din melech*, *benai noah metzve al ha-dinim* in a discussion about why a Jew must return property lost by another when such is required by secular law and not halacha. See also Rabbi *Meir Dan Polachi*, *Chemdat Yisrael*, *Ner Mitzvah* 72 *Mitzvah* 288.

²⁷ Cross-citation.

recognize that—assuming war is a legitimate activity—that these legal frameworks would provide the basis for such, as in any activity

outside of ritual law, *dina de-malkhuta dina*, *din melekh*, and *dinim* are the touchstones for interactions with the secular world.

²⁸ For a preliminary assessment of the topic, see Michael J. Broyde, “A Jewish Law View of World Law,” *Emory Law Journal* 54:79–93 (spec. ed., 2005). A further article entitled, “Jewish Law and International Law: Halacha and the Law of Nations,” is forthcoming.