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Fighting the War and the Peace: Battlefield Ethics, Peace Talks, Treaties, and Pacifism in the Jewish Tradition

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Rabbi Jesse the Galilean states: "How meritorious is peace? Even in time of war Jewish law requires that one initiate discussions of peace."¹

INTRODUCTION

Judaism is a system of law and ethics whose scope of regulation is designed to cover nearly every area of human action. Unlike many other religious legal systems, the mandate of Jewish law is limited only by the scope of human activity; no area of activity is free from direction, either legal, ethical, or both. Unlike many secular legal systems, Jewish law does not, however, set its boundaries at merely determining what is legal or illegal; Jewish law also regulates that which is ethical.² Frequently Jewish law will conclude that a certain activity is completely legal, but is not ethically correct.³ This article reviews Jewish law's attitude to one of the areas of modern social behavior that "law" as an institution has shied away from regulating, and that "ethics" as a discipline has failed to regulate: war. In this area, as in many others, the legal and the ethical are freely combined in the Jewish tradition.

This article will start with a review of the legal or ethical issues that can justify the *starting* of war (*jus ad bellum*). This issue is crucial for any discussion of the ethics of the battlefield itself in the Jewish tradition. As developed below, there are numerous different theories as to why and when it is morally permissible to start a war that will kill people. What theory one adopts to justify the war, and what category of "war" any particular military activity is placed in, significantly affects what type of conduct is legally or morally permissible

on the battlefield (*jus in bello*). This article continues by addressing various ethical issues raised by military activity as they would be chronologically encountered as hostilities advance and then recede, including the issues raised by peace treaties and pacifism in the Jewish tradition.

This article demonstrates that the Jewish tradition has within it a moral license that permits war (and killing) which is different from the usual rules of individualized self-defense. However, the permissibility to "wage war" is quite limited in the Jewish tradition and the requirement that one always seek a just peace is part and parcel of the process one must use to wage a legitimate war. The love of peace and the pursuit of peace, as well as the eradication of evil, all coexist in the Jewish tradition, each in its place and to be used in its proper time.

GROUNDS FOR STARTING WAR

Jewish Law's View of Secular Nations at War

Jews have historically been a people living in the Diaspora and were (and still are) citizens of countries where Jewish law was not the ethical or legal touchstone of moral conduct by the government. As citizens of such countries it is necessary for Jews to develop a method for determining whether the country's military activity is permissible according to Jewish law.⁴

Two distinctly different rationales are extant to justify the use of military force. The first is the general rules of self-defense, which are as applicable to the defense of a group of people as they are to the defense of a single person. The Talmud⁵ rules that a person is permitted to kill a pursuer to save his own life regardless of whether the person being pursued is a Jew or a Noachide. While there is some dispute among modern Jewish law authorities as to whether Jewish law *mandates* or merely *permits* a Noachide or bystander to take the life of one who is trying to kill another, nearly all authorities posit that such conduct is *at the least* permissible.

While Jewish law *compels* a Jew to take the life of a pursuer (Jewish or otherwise) who is trying to take the life of a Jew,⁶ such is not obligatory for a Noachide. Rabbi Joseph Babad, writing in *Minchat Hinuch*, says that this is permissible but not mandatory for a Noachide.⁷ The source quoted for this statement is the Talmud in Sanhe-

drin,⁸ which derives from the verse in Genesis 9:6 ("One who sheds man's blood by man shall his blood be shed"), one of the dispensations to kill the pursuer. All commandments derived from this verse are binding equally on Jews and Noachides.⁹ Tosaphot notes that this verse only makes the killing of the pursuer permissible but not obligatory.¹⁰ Tosaphot claims that it is Deuteronomy 22:27 ("the betrothed damsel cried and there was none to save her") that makes this action obligatory rather than optional, and this verse only has legal effect on Jews.

Rabbi Shlomo Zevin argues with this position. He notes that the verses in Obadiah 1:11-13 chastise the kingdom of Edom for standing by silently while Israel was destroyed. Hence, he claims, it appears that all have an obligation to help.¹¹ He also argues that the Talmud in *T.B. Sanhedrin* 72b was referring to a house robber¹² and not to a pursuer. Other modern commentaries also disagree with Rabbi Babad and accept Rabbi Zevin's ruling.¹³

It is obvious that the laws of pursuit are as applicable to a group of individuals or to a nation as they are to a single person. Military action thus becomes permissible, or more likely obligatory, when it is defensive in nature, or undertaken to aid the victim of aggression. However, using the pursuer paradigm to analyze "war" leads one to conclude that all the restrictions related to this rationale apply also.¹⁴ War, if it is to exist legally as a morally sanctioned event, must permit some forms of killing other than those allowed through the self-defense rationale; the modern institution of "war" cannot exist as derivative of the self-defense rules alone.

There are a number of recent authorities who explicitly state that the institution of "war" is legally recognized as a distinct moral license (independent of the laws of pursuer and self-defense) to terminate life according to Jewish law even for secular nations. Rabbi Naphtali Zevi Yehudah Berlin¹⁵ argues that the very verse that prohibits murder, permits war. He claims that the words "from the hand of a man, your brother"¹⁶ prohibit killing only when it is proper to behave in a brotherly manner, but *at times of war, killing that would otherwise be prohibited is permitted*. Indeed, such an opinion can also be found in the medieval Talmudic commentary of Tosaphot.¹⁷

Other authorities disagree. Rabbi Moshe Sofer¹⁸ appears to adopt a middle position and argues that wars of aggression are never permitted to secular nations; however, he does appear to recognize the institution of "war" distinct from the pursuer rationale in the context

of defensive wars. A number of other rabbinic authorities appear to accept this position also.¹⁹

A Jewish Nation Starting a War

The discussion in the commentaries concerning the issues involved in a Jewish nation starting a war is far more detailed and extensive than is that devoted to secular nations going to war.²⁰

The Talmud²¹ understands that a special category of permitted killing called "war" exists which is analytically different from other permitted forms of killing, like the killing of a pursuer or a house robber. The Talmud delimits two categories of permissible war: 1) obligatory; and 2) authorized.²² It is crucial to determine which category of "war" any particular type of conflict is. As explained below, many of the restrictions placed by Jewish law on the type of conduct prohibited by war are frequently limited to authorized rather than obligatory wars.²³ Logic would dictate, and Jewish law accepts, that a specific divinely mandated conflict has certain ethical rules not found in any other type of military engagement.²⁴

According to the Talmud,²⁵ obligatory wars are those wars started in direct fulfillment of a specific biblical commandment, such as the obligation to destroy the tribe of Amalek in biblical times. Authorized wars are wars undertaken to increase territory or "to diminish the heathens so that they shall not march," which is, as explained below, a category of military action given different parameters by different authorities.²⁶ Maimonides, in his codification of the law, writes that:

The king must first wage only obligatory wars. What is an obligatory war? It is a war against the seven nations, the war against Amalek, and a war to deliver Israel from an enemy who has attacked them. Then he may wage authorized wars, which is a war against others in order to enlarge the borders of Israel and to increase his greatness and prestige.²⁷

Surprisingly enough, the category of "to save Israel from an enemy . . ." is not found in the Talmud. In addition, the category of preemptive war²⁸ is not mentioned in Maimonides' formulation of the law even though it is found in the Talmud.²⁹

What was Maimonides' understanding of the Talmud and how did he develop these categories? These questions are the key focus of a discussion on the laws of starting wars. The classical commentar-

ies, both ancient and modern, grapple with the dividing line between "a war to deliver Israel from an enemy who has attacked them" and a war "to enlarge the borders of Israel and to increase his [the king's] greatness and prestige." Each of these approaches underlies different understandings of when a war is obligatory, authorized, or prohibited and the ethical duties associated with each category.

Ibn Tibbon's translation of Maimonides' commentary on the Mishnah suggests that Maimonides felt that an obligatory war does not start until one is actually attacked by an army; authorized wars include all defensive wars and all military actions commenced for any reason other than immediate self-defense.³⁰ According to this definition, the use of force prior to the initial use of force by the enemy other than for clearly defensive purposes can only be justified through the "pursuer" or self-defense rationale. All other military activity is prohibited.

Rabbi Joseph Kapach in his translation of the same commentary of Maimonides understands Maimonides to permit war against nations that have previously fought with Israel and that are still technically at war with the Jewish nation—even though no fighting is now going on. An offensive war cannot be justified even as an authorized war unless a prior state of belligerency existed.³¹

Rabbi Abraham diBotton, in his commentary on Maimonides (*Lechem Mishneh*),³² posits that the phrase "to enhance the king's greatness and prestige" includes all of the categories of authorized war permitted in the Talmud. Once again, all wars other than purely defensive wars in which military activity is solely initiated by one's opponents are classified as authorized wars or illegal wars. Obligatory wars are limited to purely defensive wars.

Rabbi Abraham Isaiah Karlitz (*Chazon Ish*) claims that Maimonides' definition of an authorized war is referring to the use of force in a war of attrition situation.³³ In any circumstance in which prior "battle" has occurred and that battle was initiated by the enemy, the war that is being fought is an obligatory one.³⁴ According to this approach, the use of military force prior to the start of a war of attrition is prohibited (unless justified by the general rules of self-defense, in which case a "war" is not being fought according to Jewish law).

Summary

Wars by secular governments according to Jewish law can thus be divided into three categories:

1. *War to save the nation which is now, or soon to be, under attack.* This is not technically war but is permitted because of the law of "pursuer" and is subject to all the restrictions related to the law of pursuer and the rules of self-defense.
2. *War to aid an innocent third party who is under attack.* This too is not technically war, but most commentators mandate this, also under the "pursuer" rationale, but some rule this as merely permitted. In either case, it is subject to all the restrictions related to the "pursuer" rationale.
3. *Wars of self-defense or perhaps territorial expansion.* A number of commentators permit "war" as an institution even in situations where non-combatants might be killed; most commentaries limit this license to defensive wars.

So too, Jewish law divides wars by the Jewish government into three (different) categories:

1. Defending the people of Israel from attack by an aggressive neighbor. This is an obligatory war.
2. Fighting offensive wars against belligerent neighbors.³⁵
3. Protecting individuals through the use of the laws of "pursuer" and self-defense from aggressive neighbors. This is not a "war" according to the Jewish tradition.³⁶

Finally, it is crucial to realize that there are situations where war—in the Jewish tradition—is simply illegal. The killings that take place in such a war, if not directly based on immediate self-defense needs,³⁷ are murder, and participation in those wars is prohibited according to Jewish law.³⁸ How specifically one, as a citizen, is to respond to an improper war (by silence, protest, draft evasion, or disobedience, civil or otherwise) is a question beyond the scope of this paper. It is clear, however, that one may not actually serve in the army and kill the enemy unjustly.

BATTLEFIELD ETHICS

Type of War

The initial question that needs to be addressed when discussing battlefield ethics is whether the rules for these situations differ from all

other applications of Jewish ethics, or is "battlefield ethics" merely a general application of the rules of Jewish ethics to the battlefield situation. This question is essentially a rephrasing of the question, "What is the moral license according to the Jewish tradition that permits war to be waged?" As explained above, Jewish tradition categorizes "armed conflict" into three different categories: obligatory war, permissible war, and societal applications of the "pursuer" rationale.³⁹ Each of these situations comes with different licenses. The easiest one to address is the final one: the pursuer rationale. Battlefield ethics based on the pursuer model are simply a generic application of the general field of Jewish ethics relating to stopping one who is an evildoer from killing an innocent person. While it is beyond the scope of this article to completely explain that detailed field of Jewish ethics, the touchstone rules of self-defense according to Jewish law are four-fold. Even when self-defense is mandatory or permissible and one may kill a person or group of people who are seeking to kill one who is innocent, one may not:

1. Kill an innocent⁴⁰ third party to save a life;
2. Compel a person to risk his life to save the life of another;
3. Kill the pursuer after his evil act is over as a form of punishment;
4. Use more force than is minimally needed.⁴¹

Thus, the rules of this type of "armed conflict" would resemble the activities of a police force rather than the activities of an army. Only the most genteel of modern armies can function in accordance with these rules.

On the other hand, the situations of both obligatory war and authorized war are not merely global extrapolations of the principles of "self-defense" or "pursuer." There are ethical liberalities (and strictures) associated with the battlefield situation that have unique ethical and legal rules unrelated to other fields of Jewish law or ethics.⁴² They permit the killing of fellow human beings in situations where that action—but for the permissibility of war—would be murder. In order to understand what precisely is the "license to kill," it is necessary to explain the preliminary steps needed according to Jewish law to actually fight a battle after war has been properly declared. It is through an understanding of these requirements that one grasps the limits on the license to kill one's opponents in military action according to

The Civilian, the Siege or Blockade, and Standards of Conduct

The obligation to seek peace, as explained above, applies to battles between armies in which no civilian population is involved. Jewish law requires an additional series of overtures for peace and surrender in situations where the military activity involves attacking cities populated by civilians. Maimonides states:

Joshua, before he entered the land of Israel sent three letters to its inhabitants. The first one said that those that wish to flee [the oncoming army] should flee. The second one said that those that wish to make peace should make peace. The third letter said that those that want to fight a war should prepare to fight a war.⁵⁷

Nor was the general obligation to warn the civilian population enough to fulfill the obligation: Maimonides codifies a number of specific rules of military ethics, all based on Talmudic sources.

When one surrounds a city to lay siege to it, it is prohibited to surround it from four sides; only three sides are permissible. One must leave a place for inhabitants to flee for all those who wish to abscond to save their lives.⁵⁸

Nachmanides elaborates on this obligation in a way that clearly explains the moral obligation:

God commanded us that when we lay siege to a city that we leave one of the sides without a siege so as to give them a place to flee to. *It is from this commandment that we learn to deal with compassion even with our enemies even at time of war; in addition by giving our enemies a place to flee to, they will not charge at us with as much force.*⁵⁹

Nachmanides believes that this obligation is so basic as to require that it be one of the 613 basic biblical commandments in Jewish law. However, Nachmanides clearly limits this ethical obligation to authorized and not obligatory wars, and this is agreed to by most other authorities.⁶⁰

Essentially, Jewish law completely rejects the notion of a "siege" as that term is understood by military tacticians and modern articulators of international law. Modern international law generally assumes that in a situation where "the commander of a besieged place expel[s] the noncombatants, in order to lessen the number of those who consume his stock of provisions, it is lawful, though an extreme measure, to drive them back so as to hasten the surrender."⁶¹ Secular law and morals allow the use of civilians as pawns in the siege. *The Jewish tradition prohibited that and mandated that noncombatants who wished to flee must be allowed to flee the scene of the battle.* I would add, however, that I do not understand Maimonides' words literally. It is not surrounding the city on all four sides that is prohibited; rather, it is the preventing of the *outflow of civilians or soldiers* who are seeking to flee. Of course, Jewish law would allow one to stop the *inflow of supplies* to a besieged city through this fourth side.⁶²

This approach solves another difficult problem according to Jewish law: the role of the "innocent" civilian in combat. Since the Jewish tradition accepts that civilians (and soldiers who are surrendering) are always entitled to flee from the scene of the battle, it would logically follow that all who remain voluntarily are classified as combatants, since the opportunity to leave is continuously present. Particularly in combination with Joshua's practice of sending letters of warning in advance of combat, this legal approach greatly limits the role of the doctrine of "innocent civilian" in the Jewish tradition. Essentially, the Jewish tradition feels that innocent civilians should do their very best to remove themselves from the battlefield and that those who remain are not so innocent. If one voluntarily stays in a city that is under siege, one has the status of a combatant.⁶³

The unintentional and undesirable killing of involuntarily remaining innocent civilians seems to me to be the one "killing" activity permissible in Jewish law in war situations that would not be permissible in the pursuer/self-defense situations. Just as Jewish law permits one to send one's own soldiers into combat (without their consent), possibly to be killed, Jewish law would allow the unintentional killing of innocent civilians as a necessary (but undesired) by-product of the moral license of war.⁶⁴

The Jewish tradition mandated a number of other rules so as to prevent certain types of tactics that violated the norms of ethical behavior even in war. Maimonides recounts that it is prohibited to remove fruit trees so as to induce suffering, famine, and unnecessary

waste in the camp of the enemy and this is accepted as normative in Jewish law.⁶⁵ Maimonides, in his *Book of Commandments*,⁶⁶ explicitly links this to the deliberate intention to expose the enemy to undue suffering. Nachmanides adds that the removal of all trees is permissible if needed for the building of fortifications: It is only when it is done deliberately to induce suffering that it is prohibited. Nachmanides too, however, understands the Jewish tradition as requiring one to have mercy on one's enemy as one would have mercy on one's own and not to engage in unduly cruel activity.⁶⁷ Even the greatest of scourges—rape of the enemy female civilian population—was regulated under Jewish law.⁶⁸

A Note on Nuclear War and Jewish Law

The use of nuclear weapons as weapons of mass destruction is very problematic in Jewish law. In a situation of mutually assured destruction if nuclear weapons were used, it is clear that the Jewish tradition would prohibit the actual use of such weapons if such weapons were to cause the large-scale destruction of human life on the earth as it currently exists. The Talmud⁶⁹ explicitly prohibits the waging of war in a situation where the casualty rate exceeds a sixth of the population. Lord Jakobovits, in an article written more than thirty years ago, summarized the Jewish law on this topic in his eloquent manner:

In view of this vital limitation of the law of self-defense, it would appear that a defensive war likely to endanger the survival of the attacking and the defending nations alike, if not indeed the entire human race, can never be justified. On this assumption, then, that the choice posed by a threatened nuclear attack would be either complete destruction or surrender, only the second may be morally vindicated.⁷⁰

However, one caveat is needed: It is permissible to threaten to adopt a military strategy that is in fact prohibited in order to deter a war. While one injustice cannot ever justify another injustice, sometimes threatening to do a wrong can prevent the initial wrong from occurring. *Just because one cannot pull the nuclear trigger does not mean that one cannot own a nuclear gun.*⁷¹ It is important to understand the logical syllogism that permits this conduct. It is prohibited—because of the prohibition to lie—to threaten to use a weapon that one is prohibited from actually using. However, it can be clearly demon-

strated that lying to save the life of an innocent person is permissible.⁷² Thus, this lie becomes legally justifiable to save one's own life too. An example proves this point: If a person desired to kill an innocent person and one could not prevent this act by killing the potential murderer, one could threaten this person by saying, "If you kill this innocent person, I will kill your children." While, of course, one could not carry out that threat in response to the murder, the threat itself would be a permissible deterrence because lying to avoid a murder is permissible. Thus, this demonstrates that threatening to do that which one cannot actually do is permissible to save a life. The possession of nuclear weapons is simply an amplification of this logical analysis.

Overemphasis on the minor prohibition against telling an untruth at the expense of letting a person die is an example of an ethical valuation that is completely contrary to the Jewish ethical norm. In general, the underemphasis of the biblical ethical mandate "not to stand by while one's neighbor's blood is shed" is the hallmark of those who adopt a system of pacifistic ethics and explains why such an ethical direction is contrary to Jewish law. If one could save a life by telling a lie, such a lie would be mandatory in Jewish ethics.

The use of tactical nuclear weapons designed solely to be used on the field of battle,⁷³ in circumstances in which the complete destruction of the combatants would be permissible (such as after the proper warning had been given and peace seeking tried), would be acceptable.

Summary

There clearly is a license to wage certain kinds of war and to kill certain people in the Jewish tradition. However, in order to exercise this license, one must first seek peace; this peace must be sought prior to declaring war, prior to waging a battle, and prior to laying a siege. While war permits killing, it permits the intentional killing only of combatants. Innocent people must be given every opportunity to remove themselves from the field of combat.

FIGHTING ON THE SAME TEAM: ETHICS WITHIN THE ARMY

Judaism not only mandated a particular type of ethical behavior towards one's enemies, but compelled one to adopt certain rules of conduct towards one's own soldiers as well. The Bible explicitly

addresses the question of who shall be compelled to fight in a war. It states:

And when you approach the time for battle, the priest shall approach and speak to the people. He should say to them, "Listen Israel, today you are approaching war with your enemies; do not be faint in heart; do not be fearful and do not be alarmed; do not be frightened of them. Because God, your God, is going with you to battle your enemies and to save you." And the officers shall say to the people, "Who is the person who has built a house and not yet dedicated it? He should return to his house lest he die in battle and another dedicate it. Who is the person who has planted a vineyard and never used the fruit? He should leave and return lest he die in battle and another use the fruit. Who is the person who is engaged to a woman and has not married her? He should leave and return home lest he die in battle and another marry her." *And the officers should add to this saying, "Who is the person who is scared and frightened in his heart? He should leave and return lest his neighbor's heart grow weak as his has."*⁷⁴

Two distinctly different exemptions are present in the Bible. The first is that of a person whose death will cause a clear incompleteness in an impending life-cycle event. The second is a person whose conduct may be deleterious to the morale of the army as a whole. While the position of Maimonides is unclear, Ravad immediately notes that these two categories of exemptions are different in purpose and application.⁷⁵ Ravad states that the exemptions relating to impending life-cycle events apply only to an authorized war; in an obligatory war all must fight. However, he states that it is possible that the exemption for one who is fearful would apply even to an obligatory war.⁷⁶

The Talmud⁷⁷ explains this exemption in two different ways. Rabbi Akiva states that this refers to a person who is lacking the moral courage to do battle and to see combat and watch people perish. Rabbi Yosi asserts that it relates to a person whose personal actions have been sinful (and who is thus afraid that in wartime he will be punished for his sins).⁷⁸ Most authorities maintain that one who is fearful of war to such a degree that he qualifies for such an exemption is compelled to take this deferral—it is not optional;⁷⁹ Jewish law prohibits one who is of such character from fighting.⁸⁰ While one could claim that this type

of exemption is a form of selective conscientious objection, such an understanding of the law would be in error. A person who "objects" is not given an exemption; certainly a person who is physically and psychologically capable—but who merely objects to this particular war—can be compelled to fight. It is only a form of psychological unfitness that earns one this type of exemption.

In addition to the question of who serves, Jewish law mandated certain ethical norms on the battlefield so as to ensure certain moral behavior. For example, the Bible requires, and this is quoted in the Talmud and codes, that basic sanitary rules be observed in military encampments.⁸¹

PEACE TREATIES

The book of Joshua (9:3–12) recounts the story of the first treaty the Jewish nation entered into as follows:

The people of Givon [who live in Israel] heard what Joshua did to Jericho and to Ai [they were destroyed]. And they worked with trickery and they made themselves to look like ambassadors And they went to Joshua at Gilgal and said to him, and to all the people of Israel, "We have come from a far land; make a treaty with us." . . . And they said to Joshua, "We are your servants." He said to them, "Who are you and where do you come from?" They replied "From a very far away land. . . ." And Joshua [and the Jews] made peace with them and he signed a treaty with them which was sworn on [ratified by] the presidents of the tribes. And it was at the end of three days after the treaty was signed that the Jewish nation heard that the Givonites were neighbors and lived nearby. The people of Israel traveled and came to their cities on the third day. . . . And the Jews did not attack them since the presidents of the tribes had ratified [the treaty]—in the name of God, the God of Israel. The Jews complained to the presidents of the tribes. The presidents replied, "We swore [not to attack them] by the name of the God of Israel and thus we cannot touch them."

Even though the treaty was entered into under fraudulent pretenses, the Jewish people maintained that the treaty was morally binding on

them. Indeed, Maimonides, basing himself almost exclusively on just this incident, codifies the rules of treaty as follows:

It is prohibited to lie [or breach] in treaties and it is prohibited to make them [the defeated nation] suffer after they have settled and accepted the seven commandments.⁸³

Rabbi David Ibn Zimra (Radvaz) in his commentary on Maimonides explains that "this is learned from the incident of the Givonim since breaking one's treaties is a profanation of God's name."⁸³ According to this rationale, the reason the Jewish nation felt compelled to honor its treaty with the Givonim—a treaty that at the very least was entered into under fraudulent circumstances—was that *others would not grasp the full circumstances under which the treaty was signed, and would have interpreted the breach of the treaty as a sign of moral laxity on the part of the Jewish people*. One could argue, based on this rationale, that in circumstances where the breach of a treaty would be considered reasonable by others, it would be permissible to break it.⁸⁴

Rabbi Levi ben Gershon (Ralbag) understands the nature of the obligation to observe treaties differently; he claims that the reason the treaty with the Givonim had to be honored was that the Jewish nation "swore" to observe its obligation, and if it did not do so, the nations of the world would think that the Jewish people do not believe in a God and thus do not take their promises seriously.⁸⁵

Rabbi David ben Kimchi (Radak) advances an even more radical understanding of the nature of the obligation. Among the possible reasons he advances to explain why the treaty was honored—even though it was a void treaty because it was entered into solely on the basis of the fraudulent assurances of the Givonim—was because others would not be aware that the treaty was really void and would (incorrectly) identify the Jewish nation as the breaker of the treaty. This fear, that the Jewish nation would be incorrectly identified as a treaty breaker, he states, is enough to require that the Jewish nation keep all treaties duly entered into.⁸⁶

Each of these theories, whatever the obligation to keep treaties is based on, presupposes that treaties are basically binding according to Jewish law. It is only in the case of a visibly obvious breach of the treaty by one party that the second party may decline to honor the treaty. Thus, Jewish law accepts that when the war is over, the peace that is agreed to is binding. Indeed, even in a situation where there

is some unnoticed fraud in its enactment or ratification, it is still binding.

PACIFISM AND QUIETISM

Individual Pacifism

Difficult as it is in our society today to take a stand against pacifism as a social or individual moral philosophy, it is clear that the Jewish tradition does not favor pacifism as a value superior to all other values or incorporate it as a basic moral doctrine within Judaism. Judaism clearly has accepted a practical form of pacifism as appropriate in the "right" circumstances. For example, the Talmud recounts that in response to the persecutions of the second century (C.E.), the Jewish people agreed (literally: took an oath) to adopt pacifism in the process of seeking political independence or autonomy for the Jewish state.⁸⁷ This action is explained by noting that frequently pacifism is the best response to total political defeat; only through the complete abjuring of the right to use force can survival be ensured. So too, the phenomenon of martyrdom, even the extreme example of killing one's own children rather than allowing them to be converted out of the faith,⁸⁸ represents a form of pacifism in the face of violence.⁸⁹ However, it is impossible to assert that a pacifistic response is based on a deeply rooted Jewish tradition to abstain from violence even in response to violence. It is true that there was a tradition rejecting a violent response to anti-Semitism and pogrom; yet it is equally clear that that tradition was based on the futility of such a response rather than on its moral impropriety. Even a casual survey of the Jewish law material on the appropriateness of a violent response to violence leads one to conclude that neither Jewish law nor rabbinic ethics frowned on violence in all circumstances as a response to violence.⁹⁰

Three examples prove this point. Jewish law commands (compels) one to save the life of one who is being murdered even if it is necessary to do so at the expense of the life of the murderer; the Talmud commands that one should have no mercy on the murderer and should take his life if need be—indeed this is true even if the murderer could not be punished by a court for his crime after the fact (for example, if the murderer were a minor).⁹¹ So too, Jewish law recounts that if one sees two individuals fighting in circumstances in which one could hurt the other, Jewish law allows the use of force

to separate the two combatants. In circumstances where force is the only means to separate the combatants, force is mandatory.⁹² As is noted by Rabbi Joshua Falk-Cohen (Sema) and others, this rule encompasses two different moral duties. The first is to help one who is being attacked; the second is to separate a person from sin; *the use of force to hurt a person is wrong, but Jewish law sanctions the use of force to prevent another from using force improperly*. A clearer rejection of the philosophy of pacifism is not possible. Indeed, one who examines even the ritual area of the law discovers that the use of violence in the service of that which is right is sanctioned. Thus, *Shulchan Aruch*⁹³ mandates the use of force on the Sabbath in response to the threat of invasion of the Jewish community. It is simply untenable to claim that as a matter of theoretical ethical duty Jewish law perceives pacifism as the ideal response to evil in all circumstances.⁹⁴ But it is crucial to emphasize that the Jewish tradition does not reject pacifism as a practical response to immorality or evil. Rather, tactical pacifism has a place as the clearly superior alternative to cooperating with evil or perhaps even actively trying to separate one from evil and failing.

There is one element of pacifism that is clearly found in the Jewish tradition: the minimization of violence. In nearly all situations where Jewish law allows violence to prevent an evil from occurring, it mandates that the minimal amount of violence be used to accomplish one's goal. Thus, if one can stop a murderer from committing his crime without the use of deadly force, deadly force is prohibited;⁹⁵ if one can separate combatants without using physical force, nonviolent means are certainly preferred.⁹⁶ Judaism accepted that it is best not to use violence, and looked upon violence as the last resort, but when no other action would suffice, violence was morally acceptable and typically mandatory.

Societal Pacifism

The question of societal, rather than individual, pacifism is a much more complex topic in Jewish law. As demonstrated elsewhere in this paper, Judaism does not require that society go to war in all circumstances in which war is permissible. The decision as to whether or not to wage war is a societal burden, a judgment made by those who are part of the society who will suffer the consequences of waging the war. In response to a belligerent action, in situations where war is authorized rather than obligatory, *society has the right to adopt a*

pacifistic stance and decline to wage war (or to wage some kind of limited war). In that sense, a society could adopt a generally pacifistic response to aggression and decline to exercise its right to respond to every aggression. That form of societal pacifism is permitted according to Jewish law. Even in that situation, these considerations are limited to cases of authorized war.⁹⁷

Rabbi Maurice Lamm in his excellent seminal essay on pacifism and selective conscientious objection in the Jewish tradition concludes by stating:⁹⁸

It must be affirmed that Judaism rejected total pacifism, but that it believed strongly in pragmatic pacifism as a higher morally more noteworthy religious position. Nonetheless, this selective pacifism is only a public, national decision, and not a personal one.

Rabbi Lamm's essay demonstrates what is obvious to all students of Jewish law and ethics: *Theological pacifism has no place in the Jewish tradition.*

An individual's "selective conscientious objection" can be justified in the Jewish tradition as a response to an *unjust* war. Frequently societies will embrace a military policy directly contrary to the Jewish tradition as to when a war is permissible. Jewish citizens in that society are faced with a dilemma as to their own conduct: Should they fight in an unjust war? Should they publicly oppose the war (and risk societal scorn and perhaps a rise in anti-Semitism), or should they simply find a way to avoid fighting? A number of solutions have been addressed to this question, which forces an individual to weigh the consequences to Jews in one's country with the biblical commandment not to kill and not to stand by when others are killed. A number of solutions to this dilemma have been advanced in Jewish law, and there is no reason why selective conscientious objection should not be acceptable in a society that allows one to declare such a status and avoid military service in that manner. Second, pragmatic pacifism is a moral value in the Jewish tradition, but in my opinion, it is only a value of significance in situations where active (physical) removal of the impropriety is not possible.

One may not, under any circumstances, kill an innocent person to save one's own life; however, one *may* (but need not) be silent in the face of the killing of an innocent person by another if that murderer

will seriously punish or kill one in retaliation for protesting. Historically, Jews in the Diaspora have sometimes been persecuted when they were involved in political opposition to a governmental policy. While Jewish law prohibits murder no matter what the consequences, Jewish law does not require that one do whatever one can, no matter what the consequences, to save the life of another. Indeed, as has been noted elsewhere, the obligation to save the life of another is perhaps suspended in the face of very significant financial consequences.⁹⁹ Absent an anti-Semitic taint, certainly it is suspended in the face of significant physical duress.¹⁰⁰

Quietism

Evaluated from the Jewish perspective, quietism¹⁰¹ as a moral philosophy suffers from all the failures of pacifism and then some. While without a doubt some aspects of this philosophy can be found in modern Hasidic doctrine,¹⁰² the abrogation of responsibility for one's physical actions, the lack of moral responsibility towards other individuals in the world, and the tendency in quietism towards sexual promiscuity¹⁰³ can only lead a reasonable person to conclude that it is not a doctrine of any significance in the Jewish ethic.¹⁰⁴ Much of the doctrinal basis of quietism presupposes the lack of religious value of the routine rituals of prayer and penitence, whereas such doctrines are essential to Judaism. As a complement to ritual, the doctrines as incorporated in Hasidism have some basis in Jewish ethics; in contrast or opposition to religious ritual, it has no place.

CONCLUSION

When one reviews the rules found within Jewish law for waging war, one grasps a crucial reality of Jewish military ethics. The moral license that "war" grants a person or a country varies from situation to situation and event to event. The Jewish tradition treats different permissible wars differently. The battle for vital economic needs carries with it much less moral license than the war waged to prevent an aggressive enemy from conquering an innocent nation. Jewish law recognized that some wars are completely immoral, that some wars are morally permissible but accompanied by a very limited license to kill, and that some wars are a basic battle for good with an enemy that is evil. Each of these situations comes with a different moral response and

a different right to wage war. In sum, it is crucially important to examine the justice of every cause. However, violence in the service of justice is not to be abhorred within the Jewish tradition.

NOTES

1. Leviticus Rabba, Tzav §9.

2. For a brief review of the methodology, structure, and history of Jewish law, see David Feldman, "The Structure of Jewish Law," *Contemporary Jewish Ethics*, ed. Menachem Kellner (New York: Hebrew, 1978), pp. 21-38.

3. For an example of this type of discussion, see our manuscript in preparation, M. Broyde and M. Hecht, "The Return of Lost Property in the Jewish and Common Law: A Comparison."

4. Should the country's military activities be deemed a violation of Jewish law, Jewish law would prohibit one from vitally assisting the host country in its military activity and certainly would prohibit serving in its armed forces and killing soldiers who are members of the opposing army. For precisely such a determination in the context of the Vietnam War, see David Novak, "A Jewish View of War" in *Law and Theology in Judaism* 1 (1974): 125-35. I do not intend to directly relate any of the arguments advanced in this article to any particular military activity of any particular government.

5. B.T. *Sanhedrin* 74a-b.

6. *Shulchan Aruch*, *Choshen Mishpat* 425.

7. Rabbi Joseph Babad, *Minchat Hinuch*, *Aseh* 296.

8. B.T. *Sanhedrin* 72b.

9. Since it was stated twice in the Bible, once before and once after the giving of the Bible to the Jews.

10. Commenting on B.T. *Sanhedrin* 72b.

11. See Rabbi Shlomo Yosef Zevin, *Le-Or ha-Halacha*, 2d ed. (Jerusalem: Beit Hillel, 1978), pp. 150-57.

12. Literally, *bah ba-machteret*; according to Jewish law, one who robs houses presumably will kill the owner of the house if interrupted. Thus the owner of the house may kill the robber during the burglary.

13. For a summary of the discourse on this point, see R. Yehuda Shaviv, *Beizer Evi ezer* (Jerusalem: Zomet, 1990), pp. 96-99, who appears to conclude that most authorities are in agreement with Rabbi Zevin's ruling; see also R. Yitzchak Schmelks, *Bet Yitzchak*, *Yoreh De'ah* 1:162 and Novella of R. Chaim Soloveitchik on Maimonides, *Rotzach* 1:9. For an excellent article on this topic and on the general status of preemptive war in Jewish law, see Rabbi J. David Bleich, "Preemptive War in Jewish Law," *Contemporary Halakhic Problems* (New York: Ktav, 1977-89) 3:251.

14. What precisely these restrictions are will be explained below, pp. 7-8.

15. *Ha'Emek Davar*, Gen. 9:5.

16. Literally "m'yad ish echiv."

17. Tosaphot *Shavuot* 35b, "Going to an authorized war." *Maharal Mi-Prague*, in his commentary on Genesis 32, also states that war is permitted under Noachide law. He claims that this is the justification for the actions of Shimon and Levi in the massacre of the people of Shechem. Furthermore, under this analysis even preemptive action, like the kind taken by Shimon and Levi, would be permitted. He at least implies that the killing of civilians who are not liable under the pursuer rationale is permissible; see also R. Shlomo Goren, "Combat Morality and the Halacha," *Crossroads* 1 (1988): 211; [published by Zomet in Jerusalem].

18. Rabbi Moshe Schreiber, *Chatam Sofer*, *Yoreh De'ah* 1:19.

19. See, e.g., Rabbi Abraham Kahana-Shapiro, *Devar Avraham* 1:11; Rabbi Menachem Zemba, *Zera Avraham* 24. The issue of selling weapons to Gentile nations is addressed in an essay of Rabbi J. David Bleich, "Arms Sales," in *Contemporary Halakhic Problems* 3:10-13. In this essay it is demonstrated that the consensus opinion within Jewish law permits the sale of arms to governments that typically use these weapons to protect themselves from bandits.

20. For reasons beyond the scope of this article, Jewish law did not historically develop a complete system of regulations relating to how Jewish law governs Gentiles. For many years this was perceived to be mainly a theoretical discussion, as Jewish law and ethics were not truly part of the Judeo-Christian ethic of Western culture; see, e.g., Rabbi Yecheil Michael Epstein, *Aruch ha-Shulchan he-Atid*, who wrote two different works: *Aruch ha-Shulchan*, a standard code of Jewish law, and *Aruch ha-Shulchan he-Atid*, a code of Jewish law for the future, which contained those areas of law not practical in his opinion; the laws of war are in the second work.

21. *B.T. Sotah* 44b.

22. The word *reshut* is sometimes translated as "permitted"; this is not correct, for reasons to be explained below. Rabbi J. Karo, in *Kesef Mishneh* (Kings 6:1), further divides the category of "obligatory" into two categories: "compulsory" and "commanded." Thus some modern commentaries divide the types of war into three. While this division is not incorrect, the legal differences between "commanded" and "compulsory" wars are not very significant, and it is for this reason that the *Mishnah*, Maimonides, and this article will continue to use that bifurcation rather than any other type of division. *Betzer Evezzer*, at 84, notes that the Talmud implicitly creates one other category of war, an illegal war. See note 4 above and note 39 below for a discussion of the ramifications of concluding that a war is illegal.

23. Or perhaps "compulsory" wars, according to those who accept a trifurcation of the categories; see note 22 above.

24. As explained above, Jewish ethics clearly distinguishes between the different categories of war. An obligatory war requires a different mode of ethical conduct from all other types of war. Particularly when discussing the obligation in the time of Joshua to conquer the land of Israel for the first time and the generic biblical obligation to destroy Amalek, Jewish law mandates a different set of ethical norms for these historical obligations. Thus Maimonides states: "It is a positive commandment to vanquish the seven nations [that

used to occupy Israel] since it says 'you shall vanquish them.' Anyone who has one of the members of that nation subservient to him and does not kill him violates the negative commandment, since it says 'no life shall survive [from the seven nations]. Their identity has since disappeared.' So too, Maimonides, basing himself on a Talmudic source, states that in the wars against Amon and Moab, Jewish law forbids the Jewish people from initiating peace discussions with them, although if they initiate such discussions Jewish law allows one to reciprocate (*Laws of Kings* 6:6; similar sentiments can be found in *Yerayim Mitzvah* 250). Rabbi Joseph Karo, writing in the *Kesef Mishneh*, disagrees, stating that it is inappropriate to accept overtures of peace even when they are initiated by Amon and Moab. Unlike the Jewish law's rules concerning "regular" war, these rules are not based on normative ethical values, but were designed to be used solely in the initial period of the Jewish conquest of the land of Israel or solely in circumstances where God's direct divine commandment to the Jewish nation was clear. Thus, for example, Rabbi David Kimchi (Radak) notes that the primary sin of the Jews in the incident of the Givonim was that they had clear means of seeking God's counsel on what to do, and yet they chose not to seek his assistance; see, generally, Rabbi Eleizer Berkovits, *Not in Heaven: The Nature and Function of Halakha* (New York: Ktav, 1983), for a discussion of the role of the divine in Jewish law. Thus, "Jewish law" as used in this article refers to that time period when direct, visible divine interaction in the world ceases; it is methodologically improper to compare Jewish ethics in the presence of the active divine with any other system of ethics, since the active (acknowledged) presence of the divine changes the ground rules for ethical norms. Normative Jewish law confines itself to a discussion of what to do when the active divine presence is no longer in the world, and thus normative rules are in effect. This distinction, and the distinction between Old Testament Judaism and modern Jewish law, has been lost to some commentators; see, e.g., B. Roberts, "Note: Judaic Sources of and Views on the Laws of War," *Natal Law Review* 37 (1988): 221.

25. B.T. *Sotah* 44b.

26. The Talmud additionally recounts that there are three ritual requirements for an authorized war to commence. The first is the consent of the Sanhedrin (Parliament); see B.T. *Sanhedrin* 29b. The second is the presence of a king or ruler; see B.T. *Sanhedrin* 20a. The third is consultation with the *urim ve-tumim*, a mystical ornament worn by the High Priest (not in existence for more than 3,000 years); see B.T. *Sanhedrin* 16b. (For an explanation of what this garment is, see Maimonides, *Kelei Mikdash*, 8:1-6.) A number of commentators significantly limit each of these three Talmudic requirements. Maimonides does not list the requirement of *urim ve-tumim* at all in his code. He does, however, state elsewhere (see *Book of Commandments*, chap. 14) that the *urim ve-tumim* are needed. So too, *Aruch ha-Shulchan he'Atid, Melachim* 74:7 states that the *Urim* are not needed and this is confirmed by R. Zevin, *Le-Or ha-Halacha*, p. 12. Nachmanides states (see Addendum to Maimonides, *Book of Commandments*, positive commandment 4) that a king is not actually needed. Rather war may be undertaken by "a king, judge, or whoever

exercises jurisdiction over the people." Menachem ben Meiri argues that approval of the Sanhedrin is needed only if a significant minority of the nation does not approve of the war. However, he states that no approval is needed for popularly supported wars; see *B.T. Sanhedrin* 16a. The details of the ritual requirements for such a war are beyond the scope of this paper; see, generally, Bleich, note 13 above, and Zevin, note 11 above.

27. Maimonides, *Hilchot Melachim*, 5:1.

28. "War to diminish."

29. It is worth noting that Christian ethics developed a similar dichotomy between types of war: "Augustine and the other later Christian (Catholic and Protestant) writers recognized another type of war not recognized by Greek and Roman law. This was the concept of the Holy War. That is, a war in which God himself called His people to fight. In such a war, ruthlessness was the norm. . . . In just wars God's express will could not be so clearly discerned, so restraint was required." Roberts, "Judaic Sources," 221. However, the "failure" of Christian ethics occurred when this category was expanded beyond the small number of specified holy wars. "Later Christian writers maintained that the Church could 'take the part earlier played by God in commanding wars for the faith and directing Christians to battle against the Church's enemies. . . . ' It was argued that the Pope, as God's earthly representative, had the authority that, in the Old Testament, God wielded by His own hand. Hence, the justification and rationale for putting all heretics, pagans, and infidels to the sword. Christians were not only permitted to fight, they were commanded to by God's messenger, the Pope." *Ibid.* Jewish law never greatly expanded the category of compulsory war; Christian ethics might have had no choice, because it had no doctrine of authorized wars.

30. See Maimonides' commentary to the Mishnah, *B.T. Sotah* 8:7. Maimonides' commentary to the Mishnah was originally written in Arabic. This is the most common translation and is found in numerous reprints of the *Babylonian Talmud*.

31. See translation of J. Kapach, *Mishnah Sotah* 8:7. This is generally considered the better translation.

32. Commenting on Maimonides, Rabbi David Frankel, in *Korban Ha'Edah* (in his addendum, *Shiurei Korban*, to the Jerusalem Talmud, 8:10), has a slightly narrower definition, which is very similar to diBoton's. An authorized war may be undertaken: "against neighbors in the fear that with the passage of time they will wage war. Thus, Israel may attack them in order to destroy them." Thus, an authorized war is permitted as a preemptive attack against militaristic neighbors. However, war cannot occur without evidence of bellicose activity.

33. See Rabbi Abraham Isaiah Karlitz, *Chazon Ish*, *Mo'ed* 114:2. He writes, "they kill Israel intermittently, but do not engage in battle." Rabbi Menachem ben Meiri, in his commentary on the Talmud (*B.T. Sotah* 43b), states that an authorized war is any attack that is commenced in order to prevent an attack in the future. Once hostilities begin, all military activity falls under the rubric of obligatory.

34. Rabbi Yecheil Michael Epstein, *Aruch ha-Shulchan he'Atid*, advances a unique explanation. He writes that the only difference between an authorized and an obligatory war is the status of those people exempt from being drafted—those people mentioned in Deuteronomy 20:5. In an obligatory war, even those people must fight. However, he writes, the king is obligated to defend Israel "even when there is only suspicion that they may attack us"; see *Laws of Kings*, 74:3-4. Thus the position he takes is that vis-à-vis the government there is only a slight difference between authorized and obligatory wars—the pool of draftable candidates.

35. See pages 4-5 for the various opinions on what is belligerent.

36. In addition, the varying types of wars are flexible, not rigid. Armed aggression can begin as being permissible because of "pursuer" and then, owing to a massive unwarranted counterattack by the enemy, can turn into an obligatory war; after the battlefield has stabilized, the war can become an authorized war.

37. See Rabbi Joseph Karo, *Beit Yosef, Choshen Mishpat* 425:6-7 (uncensored version, available in the Yeshiva University Library).

38. How one categorizes each individual conflict can sometimes be a judgment about which reasonable scholars of Jewish law might differ; that does not, however, mean that such decisions are purely a function of individual choice. As with all such matters in Jewish law, there is a manner and matter for resolving such disagreements. For further discussion of this issue, see *Shulchan Aruch, Yoreh De'ah* 242 and commentaries *ad locum*.

39. And prohibited wars. Perhaps the most pressing ethical dilemma is what to do when society is waging a prohibited war and severely penalizes (perhaps even executes) citizens who do not cooperate with the war effort. This question is beyond the scope of this paper, as the primary focus of such a paper would be the ethical liberalities one may take to protect one's own life, limb, or property in times of great duress; see, e.g., R. Mordecai Winkler, *Levushai Mordechai* 2:174 (permitting Sabbath violation to avoid fighting in unjust wars); but see also R. Meir Eisenstadt, *Inrai Eish, Yoreh De'ah* 52.

40. The question of who is "innocent" in this context is difficult to quantify precisely. One can be a pursuer in situations where the law does not label one a "murderer" in Jewish law; thus both a minor (*B.T. Sanhedrin* 74b) and, according to most authorities, an unintentional murderer may be killed to prevent the loss of life of another. So too, it would appear reasonable to conclude from Maimonides' rule that one who directs the murder, even though he does not directly participate in it, is a murderer and may be killed. So too, it appears that those who assist in the murder, even if they are not actually participating in it directly, are not "innocent"; see comments of *Maharal Mi-Prague* on Genesis 32. From this *Maharal* one could conclude that any who encourage this activity fall under the rubric of combatants. Thus, typically all soldiers would be defined as "combatants." It would appear difficult, however, to define "combatant" as opposed to "innocent" in all combat situations; each military activity requires its own assessment of what is needed to wage this war and what is not. (For example, sometimes the role of medical personnel is to repair injured troops so that they can return

to the front as soon as possible, and sometimes medical personnel's role is to heal soldiers who are returning home so as to allow these soldiers a normal civilian life.)

41. These rules are generic rules of Jewish law derived from different Talmudic sources and methodologically unrelated to war as an institution. For a discussion of these rules generally and various applications of them, see Rabbi Joseph Karo, *Shulchan Aruch, Choshen Mishpat* 425 (and commentaries). In addition, Jacob ben Asher, *Tur, Choshen Mishpat* 425, contains many crucial insights into the law (however, the standard text of this section of the text has been heavily censored, and is not nearly as valuable a reference as the less widely available uncensored version).

42. See pp. 1-2.

43. Deut. 20:10.

44. See, e.g., Num. 21:21-24, where the Jewish people clearly promised to limit their goals in return for a peaceful passage through the lands belonging to Sichon.

45. *Leviticus Rabba, Tzav* §9.

46. Commenting on Deut. 20:10. One could distinguish in this context between obligatory wars and commanded wars in this regard, and limit the license only to wars that are obligatory. It would appear that such a position is also accepted by Ravad; see Rabbi Abraham ben David (Ravad), *Commentary on Laws of Kings* 6:1, and Meir Leibush Malbim, *Commentary on Deuteronomy* 20:10.

47. Maimonides, *Laws of Kings* 6:1.

48. See his commentary on Deut. 20:10.

49. I would, however, note that such is clearly permissible as a function of prudent planning. Thus, the Jewish nation offered to avoid an authorized war with Emor if that nation would agree to a lesser violation of its sovereignty; see Num. 21:21.

50. Of course, there is no obligation to do so with specificity as to battle plans; however, a clear assertion of the goals of the war is needed.

51. *Laws of Kings* 6:1. These seven commandments are: acknowledging God; prohibiting idol worship; prohibition of murder; prohibition of theft; prohibition of incest and adultery; prohibition of eating the flesh of still living animals; and the obligation to enforce these (and perhaps other) laws. For a discussion of these laws in context, see *Aruch ha-Shulchan he'Atid, Laws of Kings* 78-80.

52. Nachmanides, *Commentary on Deuteronomy* 20:10. Of course, if after the surrender, a Jewish government were to rule that society, such a government would enforce these seven laws; however, it is not a condition of surrender according to Nachmanides.

53. Maimonides, *Laws of Kings* 6:4.

54. *Laws of Kings* 8:1-5.

55. See also *Laws of Kings* 14:14 for a similar sentiment by Maimonides.

56. For a general discussion of this, see R. Yehudah Gershuni, *Mishpatim Melucha*, 2d ed. (Jerusalem, 1982), 165-67. It is worth noting that a strong claim can be made that the *Tosaphot* agrees with Nachmanides in this area. See *Tosaphot, B.T. Avoda Zara* 26b.

57. *Laws of Kings* 6:5. Maimonides understands the Jerusalem Talmud's discussion of this topic to require three different letters. If one examines *Shevit* 6:1 closely, one could conclude that one can send only one letter with all three texts; see *Aruch ha-Shulchan, Laws of Kings* 75:6-7.

58. Maimonides, *Laws of Kings* 6:7.

59. Supplement of Nachmanides to Maimonides' *Book of Commandments*, Positive Commandment 4.

60. *Ibid.* See also R. Joseph Babad, *Minchat Hinuch* 527. Rabbi Gershuni indicates that the commandment is limited to compulsory wars, rather than obligatory wars. His insight would seem to be correct; *Mishpatei Melucha* at 165-67. It is only in a situation where total victory is the aim that such conduct is not obligatory.

61. Charles C. Hyde, *International Law* (Boston: Little, Brown, 1922), §656; for an additional article on this topic from the Jewish perspective, see Bradley Artson, "The Siege and the Civilian," *Judaism* 36 (1987): 54-65. A number of the points made by Rabbi Artson are incorporated in this article, although the theme of the purpose of the Jewish tradition in the two articles differs somewhat.

62. See R. Yecheil Epstein, *Aruch ha-Shulchan he'Atid, Laws of Kings* 76:12.

63. Although I have seen no modern Jewish law authorities who state this, I would apply this rule in modern combat situations to all civilians who remain voluntarily in the locale of the war in a way that facilitates combat. For example, I doubt if anyone who voluntarily remained in Berlin during World War II would be classified as an innocent civilian according to Jewish law.

64. See Rabbi Saul Yisraeli, *Amud Hayemini* 16:5, and R. Joseph Babad, *Minchat Hinuch* 425, who discuss "death" in war in a way that perhaps indicates that this approach is correct. See also Bleich, "Preemptive War," note 13 above, at p. 277, who states: "To this writer's knowledge, there exists no discussion in classical rabbinical sources that takes cognizance of the likelihood of causing civilian casualties in the course of hostilities. . . ." In many ways this provides guidance into the ethical issues associated with a modern air- (and long-range artillery-) based war. Air warfare greatly expands the "kill zone" of combat and (at least in our current state of technology) tends inevitably to result in the deaths of civilians. The tactical aims of air warfare appear to be fourfold: to destroy specific enemy military targets; to destroy the economic base of the enemy's war-making capacity; to randomly terrorize civilian populations; and to retaliate for other atrocities by the enemy on one's own home base and thus to deter such conduct in the future. The first of these goals is within the ambit of that which is permissible, since civilian deaths are unintentional. The same would appear to be true of the second provided that the targets are genuine economically significant targets and are related to the economic base needed to wage the war and provided that civilian deaths are not directly desired. It would appear that the third goal is not legitimate absent the designation of "compulsory" or "obligatory" war. The final goal—retaliation designed to deter—raises a whole series of issues beyond the scope of this article and could perhaps provide some sort of

justification for certain types of conduct in combat that would otherwise be prohibited, although its detailed analysis in Jewish law relates to circumstances in which retaliation or specific deterrence might permit what is normally prohibited; see Rabbi Moses Isserless (Rama), *Yoreh De'ah* 334:6 and Rabbi David Helevi (Taz) (*ad locum*) and *Minchat Hinuch* 338.

65. *Laws of Kings* 6:8; see *Betzer Eviezer*, at 120-21.

66. Negative Commandment 57.

67. In his supplement to *Maimonides' Book of Commandments*, Positive Commandment 6.

68. The rules related to sexuality in combat are unique in Jewish law because the Talmud (*Kiddushin* 21b) explicitly states that even that which is permissible was only allowed because of the moral weakness of men in combat. While the details of these regulations are beyond the scope of this paper (see Zevin, *Le-Or ha-Halacha*, pp. 52-54, for a detailed description of these various laws), it is clear that the Bible chose to permit (but discourage) rape in wartime in very narrow situations so as to inject some realistic notion of morality into what would otherwise be a completely immoral situation. The rules explicitly prohibited multiple rapes, encouraged the marrying of such women (in fact, nearly mandated it), and limited the time period when such rape was permitted to the immediate battlefield situation. A number of liberalities in ritual law were also allowed, reflecting the unique aspects of war. Why these particular laws did not apply in wartime, but others did, is a topic beyond the scope of this paper.

69. *Shevuot* 35b. *Tosaphot* notes that this applies even to a Jewish government fighting an authorized war; see generally, Rabbi J. David Bleich, "Nuclear War," *Tradition* 21 (1984): 84-88, reprinted in *Confronting Omnicide: Jewish Reflections on Weapons of Mass Destruction*, ed. Daniel Landes, (Northvale, N.J.: Jason Aronson, 1991), p. 209.

70. Immanuel Jakobovits, "Nuclear War," *Tradition* 4 (1962): 202, reprinted in *Confronting Omnicide*, p. 199. See also Walter Wurzberger, "Nuclear Deterrence and Nuclear War," *ibid.*, p. 224, and "Judaic Sources of and Views on the Laws of War," *Naval Law Review* 37 (1988): 221.

71. Rabbi J. David Bleich, "Nuclear War." Although I find this statement logically persuasive, it is difficult to find a clear source in the Jewish tradition that permits one to threaten to do that which is prohibited to do; see, e.g., Rabbi Moses Isserless, *Shulchan Aruch Choshen Mishpat* 28:2.

72. See, e.g., Rabbi Aaron Zakai, *HaBayit ha-Yehudi* 7:3.

73. Assuming that such weapons exist and have the stated limited effect.

74. *Deut.* 20:2-9.

75. See *Laws of Kings* 7:1-4 and comments of Kessef Mishnah, Rabbi David ibn Zimoe (Radvaz), and Rabbi Abraham diBoton (Lechem Mishnah), *ad locum*, all of whom interpret Maimonides as agreeing with Ravad on this issue. Maimonides in his *Book of Commandments*, commandment 191, appears to adopt the position of Ravad in total.

76. Compare Lechem Mishnah commenting on *Laws of Kings* 7:1-4, and *Aruch ha-Shulchan*, *Laws of Kings* 76:3 for an analysis of Maimonides' position.

77. B.T. *Sotah* 44a.

78. There is some dispute over how a person would prove his acceptability for any one of these exemptions; see R. Yehudah Gershuni, *Mishpatei Melucha* 169, for a detailed discussion of this issue and Zevin, *Le-Or ha-Halacha*, pp. 31-32.

79. See commentaries on Maimonides, note 78 above.

80. Maimonides accepts the opinion of Rabbi Akiva as normative (*Laws of Kings* 7:3), while *Minchat Hinuch* (526) accepts the opinion of Rabbi Yossi. Most authorities accept Rabbi Akiva's opinion as normative; see *Aruch ha-Shulchan* 76:22, and also *Sha'agat Aryeh he-hadashot* 14:2 for more on this dispute.

81. See *Aruch ha-Shulchan Kings* 75:18.

82. As explained above, it seems to follow that those who argue with Maimonides' requirement of acceptance of the seven Noachide laws would disagree with its application here too; see, e.g., Rabbi Yehuda Gershuni, *Mishpatei Melucha* 173.

83. Such can also be implied from Maimonides' own comments on *Laws of Kings* 6:5.

84. In Judaism, the term *chilul hashem* (desecration of God's name) denotes a prohibition whose parameters are fixed not by objective legal determinations but by the moral values of the observers. This is a very atypical prohibition in the Jewish legal system.

85. Rabbi Levi ben Gershon (Ralbag) commenting on Joshua 9:12.

86. Radak, commenting on Joshua 9:12. This theory would have relevance to a duly entered into treaty that was breached by one side in a nonpublic manner and that the other side now wishes to abandon owing to the private breach of the other side. Radak would state that this is not allowed because most people would think that the second breaker was actually the first one and was not taking the treaty seriously.

87. B.T. *Ketubot* 111a.

88. See, e.g., Prof. H. Soloveitchik, "Religious Law and Change: The Medieval Ashkenazic Example," *AJS Review* 12 (1987): 205-23.

89. See, e.g., *Shulchan Aruch, Yoreh De'ah* 151 for a description of when such conduct is permissible.

90. See, e.g., *Shulchan Aruch, Choshen Mishpat* 421:11 and 425-26, which mandate violence as a response to violence. That is, of course, not to say that pacifism as a tactic is frowned on. Civil disobedience as a tactic to gain sympathy or as a military tactic to resort to in a time of weakness is quite permissible.

91. B.T. *Sanhedrin* 72a.

92. *Shulchan Aruch, Choshen Mishpat* 421:11.

93. *Shulchan Aruch, Orach Chaim* 329:6.

94. However, it is quite clear that there are many circumstances in which violent wrong unquestionably will occur regardless of the Jewish response. In that situation, certainly Jewish law prefers pacifism to assistance in the commission of a wrong. The Jewish response to intentional wrongdoing comes in three forms: 1) stopping the wrong; 2) rebuking the wrongdoer; and 3) declining to assist the wrongdoer. Level one is better than level two and level

two is better than level three. For a detailed response on the hierarchical relationship among these three values, see Rabbi Moses Feinstein, *Iggrot Moshe Even Ha'ezzer* 4:61(2).

95. Rabbi Jacob ben Asher, *Tur, Choshen Mishpat* 425; Maimonides, *Laws of the Murderer* 1:13.

96. *Shulchan Aruch, Choshen Mishpat* 421:11.

97. Of course there are circumstances in which even obligatory wars need not be fought; however, these circumstances all relate to the inability to triumph rather than to a theological opposition to war.

98. Maurice Lamm, "After the War—Another Look at Pacifism and Selective Conscientious Objection," in *Contemporary Jewish Ethics*, pp. 221–38.

99. See Rabbi A. Cohen, "Privacy: A Jewish Perspective," *Journal of Halacha and Contemporary Society* 1 (1981):84.

100. See *Shulchan Aruch, Yoreh Deah* 157:1–2 and commentaries *ad locum*.

101. Quietism originated as a late-seventeenth-century devotional movement in the Catholic church whose main figure was Miguel Molinos, a priest (d. 1696). Quietism maintained that anyone "can achieve an entirely disinterested insight into God; this insight is permanent, internally undifferentiated and free from images and affects, and it involves a previous destruction of one's own will and consciousness. . . . This state of perfectly passive contemplation is not only the highest form of religious life, but makes other, more specific forms of worship . . . either useless or even harmful insofar as they divert the soul from union with God." See "Quietism" in *Encyclopedia of Religion* (New York: Macmillan, 1987) 12:153–55.

102. See Rebecca Shatz-Uffenheimer, *Hachasidot Kemistiah* (Jerusalem: Manges, 1980), chaps. 2–4 for a description of the various quietistic practices found in modern Hasidism.

103. "[S]exual permissiveness is thus justified. . . ." in "Quietism," *Encyclopedia of Religion*, p. 154.

104. That is not to say that each and every one of its values is without a place in the Jewish tradition. Certainly, as ably demonstrated in *Hachasidot Kimistiah* (see the English preface, pp. vi–vii, for a clear statement of this principle), there are certain overlaps in philosophy between early Hasidism and quietism. However, Hasidism never denied the legal or moral value of Jewish law as quietism denied the value of canon law. So too, Hasidism kept the essential framework of Jewish ritual observance; the same cannot be said of quietism.