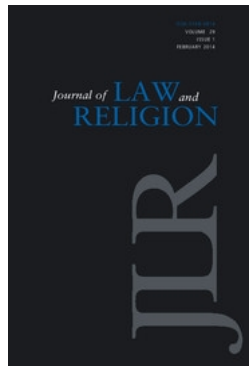

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HAPPINESS—AND UNHAPPINESS—AS LEGALLY SIGNIFICANT CATEGORIES IN JEWISH LAW

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ABSTRACT

This essay seeks to place happiness and sadness as values in their proper place in the Jewish legal tradition—as secondary concerns that are properly invoked and considered in cases where Jewish law is indefinite and unclear. This article provides a number of illustrative examples where such is done, and it then seeks to place happiness and its related values in their proper place in Jewish law as compared to other second-tier principles.

KEYWORDS: happiness, sadness, Jewish law, Chief Rabbi Sacks

Emeritus Chief Rabbi Jonathan Sacks, in his brilliant exposition on happiness ("Happiness: A Jewish Perspective"), which appears in the current issue, notes that a key word for happiness in the Hebrew Bible is *ashrei*, indicating that happiness is not a single thing, whether that be a feeling, an emotion, a state of mind, or a judgment on life as a whole, but rather, that happiness is many things, the sum of which is greater than the parts.

From a jurisprudential perspective, obedience to the law is central to Judaism. The Jewish tradition has but one true virtue: the pursuit of the right and the good as defined by God's commandments. In the Jewish tradition, one is told to "serve God with happiness," but it is the following verse in Psalms that defines what this means: "Know that the Lord Himself is God; It is He who has made us, and not we ourselves; we are His people and the sheep of His pasture."[1] Because the telos of human life is not self-directed, a seeming contradiction is ever present in the pursuit of happiness and the pursuit of the good. In other words, the focus on obedience supersedes personal definitions of happiness to the point that a person should be discouraged from pursuing what may make him or her happy if it contradicts God's commandments and, instead, be encouraged to live an unhappy life consistent with the need to do the right and the good. This view is expressed by Rabbi Israel Meir Kahan, the author of the *Mishnah Berurah*, who writes, "ואשרי מי שעובד ה' בשמחה" (Content (*Ashrei*) is the one who worships God with Happiness).[2]

This essay seeks to show how happiness, and unhappiness, are second-order values within Jewish law. I will show that even though happiness and unhappiness are not necessarily obligations, they serve as means to select one of several legitimate avenues that the law could potentially take. Sometimes the need for happiness or unhappiness permits that which is otherwise prohibited, and sometimes that need prohibits that which is otherwise permissible. I will then provide a broader

1 Ps. 100:3.

2 Israel M. Kahan, *Mishnah Berurah*, vol. 5 (Jerusalem: Feldheim Publishers, 1989), 477:5. Translations are those of the author unless otherwise noted.

context for how happiness must be tempered by a sense of obligation, and I will consider the inauthenticity that results when happiness is a primary goal. Yet in order to understand the complex relationship between Jewish law and happiness, and between Jewish law and discontent, we must first understand the nature of Jewish law.

INTRODUCTION TO JEWISH LAW

Jewish law is by many reasonable measures an incomplete legal system in that it lacks a clear method for resolving disputes. Talmudic, medieval, and contemporary debates linger: they are frequently not resolved by referring to direct categorical rules of resolution such as, for example, majority votes of the Supreme Court in the United States, or Papal pronouncements in canon law. Due to the complexity that resulted from the lack of a centralized legislative/judicial system, Jewish law became multidimensional, both in terms of allowing for different opinions, which accounts for geographical and historical variegations, and in terms of allowing for a hierarchy of juridical principles to settle disputes.

As a result, in many cases one is hard-pressed to actually resolve disputes with logical tools that prove one position consistent and another inconsistent with the Talmudic touchstone of Jewish law. Indeed, there are many cases in which the post-Talmudic discourse has reached an impasse, and an intellectually honest determination of which view is analytically correct has become impossible. Frequently, the best one can do is to insist that only two or three positions are in fact reasonable. Determining which of those reasonable positions ought to be followed cannot be done in many cases through first-tier principles of analytical jurisprudence alone.

Commentators and codifiers have therefore developed second-order rules of decision-making—rules that allow one to determine what to do when logical reasoning and close textual analysis alone do not provide answers. These second-tier rules of decision-making help a judge to determine what to do when one cannot reach a decision based on the merits of a matter; the rules relate to many nuanced and complex situations, such as whether the matter in doubt is a biblical or rabbinic obligation, whether the matter is a ritual obligation or a financial obligation, and so on.[3] There are more than fifty such rules, and there is a great deal of interplay among them. Sometimes, when deciding among various reasonable options, Jewish law invokes principles that are neither deeply analytical nor probing of the truly correct opinion; rather, it uses social principles of community, such as the needs of the community,[4] the fear of dire financial loss,[5] or conduct permitted for the sake of the ill.[6] Sometimes, one of the second-tier rules invoked is the promotion of happiness (or even unhappiness). There are occasions when Jewish law recognizes the value of happiness (or sadness) as a condition that would allow one to adopt a more lenient understanding of Jewish law, thus showing that happiness is sufficiently valuable as a "good" to be factored into the consideration of which reasonable opinion ought to be followed.

In the following sections, I explore two examples of this phenomenon, one being an intentional decision of Jewish law to invoke happiness as a legal category, and the other being an intentional

3 See *Shulhan Arukh*, *Yoreh Deah* 110–11, 242 and *Shulhan Arukh*, *Hoshen Mishpat* 25, each of which codifies many of these rules.

4 See *Shulhan Arukh*, *Orah Hayyim* 544:1; *Yoreh Deah* 228:21.

5 See *Shulhan Arukh*, *Orah Hayyim* 467:11, 12; *Yoreh Deah* 23:2, 31:1.

6 See *Shulhan Arukh*, *Orah Hayyim* 464:4.

decision to invoke sadness. In each case, had Jewish law relied on legal analysis alone, it would not have reached the conclusion that it did.[7]

HAPPINESS IN FESTIVAL LAW

Jewish law prohibits carrying objects in a public domain on the Sabbath, but it recognizes that on a festival (Passover, Tabernacles, Jewish New Year, and the like), carrying is permitted.[8] However, carrying is only permitted for the sake of the festival day—carrying for any other reason is prohibited. For example, even though one may carry a bottle of wine that one wishes to drink on the festival, and though one may carry one's handkerchief to use as needed, one cannot deliver packages from one house to another, unless one does so for the sake of the festival.

Among the medieval Jewish law *decisors* (legal scholars who make decisions when there is ambiguity in Jewish law), there was a group that held that all carrying was permitted on the festivals, whether the carrying was for the sake of the day or not. Yet another group maintained that only carrying for the sake of food preparation was permitted; carrying for the sake of the festival but not for the sake of food preparation was prohibited. A third group permitted all types of carrying for the sake of the festival day, even if the carrying was unrelated to food preparation.[9] I wish to make the following claim, which I believe to be borne out by the traditional sources: Considering no other factors, Jewish law would have adopted the most restrictive view on this matter, both because the view is, analytically, a somewhat more powerful reading of the Talmudic text, and because when faced with uncertainty on a matter of this type, the general rules that govern what to do in such situations direct one to be strict.[10] Indeed, the stated rule in the general codes is that only carrying that can in some way be considered to be for the sake of the festival day is permissible.[11]

The decisors from the last century inquired about an interesting application of this law: May one carry around the key to one's safe on a festival?[12] In general, one would carry the key on one's person at all times for security reasons. On a festival, one would put all valuables in his safe and lock it, since all commerce is prohibited.[13] Yet, what can one do with the key? One would wish to carry the key so as to make sure that no one steals the contents of the safe. Jewish law, however, does not view this form of carrying as "carrying for the sake of the day," as it does carrying one's wine bottle to lunch or carrying one's prayer book to synagogue. Thus carrying one's key should be prohibited.

Yet in a work written about a century ago, a preeminent modern Jewish law decisor invokes the concept of happiness to allow for leniency. Rabbi Israel Meir Kagan, writing in the *Mishnah Berurah*, gives a fascinating alternative rationale to explain why carrying one's key could be considered permissible:

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7 I have compiled a number of examples where joy is invoked as a principle to resolve Jewish law disputes, but for the purpose of this paper, I beg the reader to accept my contention that these cases are paradigmatic.

8 See *Shulhan Arukh*, *Orah Hayyim* 518.

9 See *Tur* and *Beit Yosef*, *Orah Hayyim* 518.

10 As this is a matter of doubt on a biblical prohibition.

11 *Shulhan Arukh* and glosses of *Rama* to *Orah Hayyim* 518:1.

12 The question must be understood in context—there were no banks and one would keep money under lock and key in a safe in one's home.

13 *Shulhan Arukh*, *Orah Hayyim* 491:1.

> It is permitted also to carry a key to a box [safe] when one's money resides in it if one is afraid to leave it in one's house since one's heart will be distracted and suffer [if one does not have the key], and thus this carrying is considered to be for the happiness of the holiday.[14]

If one holds a considerable quantity of goods in his safe and does not hold the key, he will be unhappy and fearful. If one carries the key, he will be happy and content. The happiness is a direct result not of carrying but of knowing that one need not worry that one's goods will be stolen. This mental satisfaction is sufficient to allow a person to carry the key on a festival. The grounds for carrying the key is not that it prevents one from being robbed, but rather, that it generates joy from one's having a sense of security. That joy tips the scale to resolve the dispute within Jewish law.

However, the *Mishnah Berurah* does insist that, if possible, one should not rely on this leniency:

> But know that there are several decisors who disagree and maintain that carrying is only permissible for the sake of actual food preparation or the performance of a mitzvah or other activities pertaining to the day, and so it would seem to me as well—but not to avoid financial loss. It is appropriate to be strict and conduct oneself in accordance with that view (particularly in an instance where one is able to hand over the valuables or the key to a trustworthy person in one's household, for then it would be forbidden according to all views).[15]

Relying on such a lenient position that lacks strong legal analytical support is tenuous and certainly not ideal; it is tantamount to adopting a leniency *ex post facto*. Since that is the case, it is better to be strict if possible. However, if being strict makes one very unhappy, one may be lenient.

UNHAPPINESS AS A VALUE

Just as Jewish law at times seeks to foster happiness and uses it as a "tiebreaker" to determine what is prohibited and what is permitted, so too Jewish law at times seeks to promote unhappiness. In these rare situations, Jewish law applies a similar paradigm to tip the scales, albeit in reverse. One example should suffice to illustrate this.

First, some background is necessary. Jewish law requires that the husband voluntarily initiate a divorce, and for the last millennium, the law has required that the wife accept it of her own free will. (While there are cases where the genuine free will of the husband is not needed, they are few and far between.)[16] What is one to do in those cases where divorce seems appropriate, but the husband refuses to participate? If one applies force in such a situation (either judicial force or extrajudicial force), the divorce will be invalid, since a coerced divorce is void in Jewish law.[17]

Rabbi Jacob Tam, a grandchild of the preeminent Franco-German commentator Rabbi Solomon (b. Isaac (Rashi)), proposed a solution to this problem. He insisted that the community should conduct itself in a way that induces sadness in the husband in question, so that he will understand that he is better off divorcing his wife than not. Of course, the "force" used here cannot amount to coercion, which is prohibited. On the other hand, if not enough unhappiness is induced, then the man will not see that he will become happy by divorcing his wife.[18]

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14 Kahan, *Mishnah Berurah*, 518:6.

15 Ibid.

16 See Michael J. Broyde, *Marriage, Divorce, and the Abandoned Wife in Jewish Law: A Conceptual Understanding of the Agunah Problems in America* (Hoboken, NJ: KTAV Publishing, 2001).

17 See *Shulhan Arukh*, *Even Ha-Ezer* 154; Broyde, *Marriage, Divorce, and the Abandoned Wife in Jewish Law*, 69.

18 See Rabbi Jacob Tam, *Sefer HaYashar*, *Helek HaTeshuvot* § 24.

Indeed, Jewish law does not permit excommunicating the recalcitrant husband to induce him to divorce his wife, since doing so would be equivalent to coercion.[19] Despite this significant limitation, however, Jewish law does allow a community to refrain from extending favors to or engaging in business with the recalcitrant husband, so as to make his life sufficiently unhappy for him to choose of his own free will to divorce his wife. For example, consider a recent decision of a rabbinical court in Israel:

> The appeal before us, the Supreme Rabbinical Court [of Israel], revolves around a decision of the Regional Bet Din in Jerusalem on 9 *Sivan* 5744. The facts of the case are as follows:
>
> The woman in question has been married to her husband for twenty years, but was childless. For fifteen years they were treated by doctors and through medications. All this was to no avail, until the doctors despaired of successfully treating them. The problem is evidently to be ascribed to the husband, and so has the wife herself argued in his presence and so requests to be divorced from him on the grounds of her legitimate desire for children. The regional Bet Din at the time (9 *Sivan* 5742) ruled that the husband must grant his wife a *get* (a divorce document), but that he could not be coerced to do so. However, the husband rejected the court's decision and did not wish to execute a *get*, despite the fact that they had already separated.
>
> As a result, the wife turned once again to the regional Bet Din to reexamine their decision, in the hopes of finding a way of forcing the husband to divorce her, for she had only a few years left within which to remarry in the reasonable hope of bearing children, since she is already more than forty years of age. The regional Bet Din on 9 *Sivan* 5744 reiterated its decision that the husband could not be compelled to divorce his wife, though he is still obligated to do so.
>
> In the appeal, which was presented before us on 14 *Tevet* 5745, we did not find sufficient cause to compel the husband to divorce his wife. We did, however, try to persuade the man, who is religiously observant, that he follow the proper path and to obey the decision of the court, for it is a mitzvah to heed the words of the Sages who obliged him to divorce his wife and that he has chained his wife needlessly. And we gave the husband an extension of three months within which to grant a *get* to his wife. However, when we saw that three months passed without response, we instituted the separations of Rabbeinu Tam as found in the *Sefer HaYashar* (*Helek HaTeshuvot* §24) which states:
>
> > Decree by force of oath on every Jewish man and woman under your jurisdiction that they not be allowed to speak to him, to host him in their homes, to feed him or give him to drink, to accompany him or to visit him when he is ill. In the event that he refuses to divorce his wife, you may add further restrictions upon him.
> >
> > * * *
> >
> > We added to these strictures (of the sanctions of Rabbeinu Tam), that no *gabbai* [sexton] of any synagogue in the area where the husband resides be allowed to seat him in the synagogue, or call him to the Torah, or ask after his welfare, or grant him any honor, and all people are to distance themselves from him as much as possible until his heart submits and he heeds the voice of those instructing him that he grant his wife a divorce in accordance with the Law of Moses and Israel and thereby free her from her chains.[20]

One can readily see that this line is a hard one to negotiate. Too much pressure amounts to coercion, thus making the divorce void; insufficient pressure leaves the husband still unwilling to divorce his wife. Indeed, a renowned commentary, entitled *Pithei Teshuvah*,[21] cites the view of a prominent decisor of Jewish law[22] who asserts that "today"—i.e., the seventeenth century—sanctions of this type do not induce unhappiness, but rather, a level of force that can only be described

19 *Rama* to *Even Ha-Ezer* 154:21.

20 This decision of the Supreme Rabbinical Court in Israel, written by R. Ovadia Yosef and cosigned by Rabbis Yehuda Waldenberg and Yitzhak Kolitz, was reprinted in R. Ovadia Yosef, *Yabia Omer*, *Even Ha-Ezer* 7:23.

21 *Shulhan Aruhk*, *Even Ha-Ezer* 154:30.

22 Rabbi Shabbetai ben Meir HaCohen, *Gevurat Anashim* 72. Rabbi HaCohen also authored the *Siftei Kohen* [*Shakh*], a commentary on *Shulhan Arukh*.

as judicial coercion. Thus it is improper to give or receive a Jewish divorce if subject to this type of pressure.[23]

Others have argued, however, that this stringent ruling applies to the kind of insular and thoroughly intertwined Jewish community that was the norm in pre-emancipation Eastern Europe. In such a community, withholding favors from an individual would have had a devastating effect on him and might well have been a form of coercion. In the typical Orthodox community in America today, however, where most people earn a living through economic interactions with the world beyond their religious circles, withdrawing favors from an individual would not have nearly the same impact. Hence it would be reasonable to conclude that, in today's circumstances, imposing the sanctions of Rabbeinu Tam in America on a recalcitrant spouse would not constitute improper coercion to participate in a Jewish divorce proceeding.[24]

This is, in fact, what has become the social norm in Orthodox Jewish communities in the United States and Israel. Rabbinical courts order that men who refuse to give their wives a Jewish divorce when it is proper to do so should be made unhappy. Indeed, in the United States, I have been involved in an attempt to formalize this process of inducing unhappiness so as to encourage general cooperation between spouses in the divorce context.[25]

So long as the community's actions stay far afield of what can be described as coercion, the use of Jewish law norms to make a person unhappy—just like the use of Jewish law norms to make a person happy—have a place in Jewish law.

HAPPINESS AS AN INAUTHENTIC GOAL

The unique perspective that the Jewish legal tradition takes on happiness vis-à-vis obligation and duty is based on the recognition that declarations for happiness as the central value often fail to address the fact that duty and obligation do not always produce it, at least in its simplest sense. Consider Maimonides's extension of the obligation not to show any compassion towards a murderer. While the notion of not showing compassion to a murderer seems obvious from a superficial legal standpoint, its comprehensibility from a religious standpoint is not always clear in every practical case. For example, Maimonides writes: "The judges should not say, 'Since this person has already been killed, what advantage is there in killing another person,' and thus be lax in executing him. This is implied by Deuteronomy 19:13: 'Do not allow your eyes to take pity. You shall

23 For an analysis of what level of coercion invalidates a *get* (Jewish divorce), see Michael J. Broyde, "The 1992 New York *Get* Law," *Tradition: A Journal of Jewish Thought* 29, no. 4 (Summer 1995); Chaim Z. Malinowitz and Michael J. Broyde, "The 1992 New York *Get* Law: An Exchange," *Tradition* 31, no. 3 (Spring 1997); as well as letters to the editor in *Tradition* 32, no. 1 (Fall 1997): 99–100, and *Tradition* 32, no. 3 (Spring 1998): 101–09. For a complete statement of my view on the subject, see Michael J. Broyde, *The Pursuit of Justice and Jewish Law: Halakhic Perspectives on the Legal Profession*, 2nd ed. (New York: Yashar Books, 2007).

24 Moreover, none of the commentaries on the *Shulhan Arukh* other than *Pithei Teshuvah* express dissent in response to Rama's acceptance of *harhakot de-Rabbeinu Tam*. In fact, *Arukh Ha-Shulhan* (*Even Ha-Ezer* 154:63), as well as other authorities (*Maharam Mi-Lublin* 1 and 39; *Eliyahu Rabbah* 1–3; R. *Betzalel Ashkenazi* 6 and 10; Chief Rabbi Yitzhak Isaac Halevi Herzog, *Tehukah LeYisrael Al Pi HaTorah* 3:202 and 209), cite Rama's ruling as normative. Rabbi Hagai Izirar writes (*Berurim Behalachot Haraayah* [R. Kook] p. 243) that the *Harhakot de-Rabbeinu Tam* "are accepted as the halakhic norm, and it is well known that Rabbinic Courts implement it."

25 See Rabbinical Council of America (RCA), Convention Resolution, "Sanctions to Be Imposed on One Who Withholds Issuance or Receipt of a *Get*," May 1, 2001, http://www.rabbis.org/news/article.cfm?id=100828.

eliminate innocent bloodshed.'"[26] The act of executing a murderer has a retributive benefit as well as a deterring one. However, Maimonides also considers a fetus that endangers its mother as a person pursuing a colleague with the intention of killing her (*rodef*). One is permitted, and in fact obligated, to kill this person, if doing so is the only way of saving the potential victim. Therefore, Maimonides rules:

> It is a negative commandment not to have mercy on a pursuer. Thus, the Sages decreed that a fetus that is difficult to be born may be cut out of its mother's stomach, whether by poison or by hand, since it is like a pursuer of the mother to kill her.[27]

"To eliminate innocent blood" is neither a retributive nor a deterring principle but rather a preventative one. Yet "innocent" here is figurative, since the fetus has no intention of killing its mother and could also be considered innocent. Moreover, it may very well be the case that the mother would like to risk her life to save the life of her fetus, and that her despair in losing her child would be greater than it would be in dying. However, the choice is not hers; she may not risk her life for the sake of her unborn child, since doing so would be a violation of Jewish law. The point that I believe the Jewish tradition is making in this case is one that is hard for people who hold happiness as a primary virtue to find comforting: Compassion for those who take life is a false compassion; it may make one happy in the simplest sense of the word, but it does not enable a person to be content or praiseworthy in the *ashrei* sense of the word.

In the political realm, the notion of false compassion for a murderer, of trying to make oneself happy by avoiding one's obligation and its accompanying psychological sense of personal dilemma, is captured in the biblical story of King Saul sparing King Agag. From a sense of piety, King Saul transgressed the law by sparing King Agag and some of the Amalekite flock, though he wiped out the entire nation of Amalek. For his sense of piety, and for the feelings of happiness that he derived from his compassion, he lost his legitimacy to rule over Israel and, with it, his capacity for contentment and fulfillment.[28] The last century has witnessed genocide after genocide, yet the world has repeatedly hesitated in responding to them. Frequently, disregard has worn the guise of compassion; yet such compassion is false, since the decision to let genocide continue always produces victims and thereby allows for further oppression. The Jewish tradition, however, is quite clear on this issue—our obligation to fight oppression supersedes our personal sense of piety—we must not show compassion to evildoers, and such compassion—even if it makes one happy—is hardly worthy of praise.

Though Jewish law deals with *jus ad bellum* and *jus in bello* issues in considering the relationship between a Jewish state and neighboring Gentile states, it also has something to say about the obligation of states to respond to oppression and genocide in general. The happiness of one state's citizens must not be totally negated by the necessities of the citizens in another state; yet neither must the means ever be considered without equally considering the moral costs. For example, Maimonides records the law that neither an obligatory nor a permitted war should be initiated

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26 *Mishneh Torah*, *Laws of the Courts and the Penalties Placed under Their Jurisdiction* 20:4.

27 *Mishneh Torah*, *Laws of Murder and Preservation of Life* 1:9. This is far from the full story on abortion in the Jewish tradition, and one should see David Feldman's book on birth control and abortion for more information, but it is a classical text on the "illegality" of false compassion. See David M. Feldman, *Birth Control in Jewish Law: Marital Relations, Contraception, and Abortion as Set Forth in the Classic Texts of Jewish Law* (NY: New York University Press, 1968).

28 1 Sam. 15.

before an opportunity for peace is offered to the other side,[29] and that it is forbidden to lie when making such a peace covenant and even after peace has been made.[30] However, if a peace settlement is not reached, then mercy no longer has a place on the battlefield. Now, of course, one could respond that such commitment may lead to ideological fanaticism, but that would miss the true meaning behind the law. The point of the law is that the offering of peace, conditioned on certain principles, is meant to achieve the results of war, namely, to remove evil; if this cannot be achieved through treaty, it must be achieved through battle. If an army engages in battle in such a way that it increases the potential for evil, either through its own actions or through those of its enemy, then the happiness received by adhering to misplaced principles will actually result in injustice.

Moreover, even in the messianic age, Maimonides does not recognize happiness to be an end goal, but rather, a secondary value that is meant to further another objective. He writes that the prophets and Jewish sages of the Talmud yearned for the messianic era not so that Israel would have dominion over the entire world, or so that it would rule over the Gentiles and be exalted by the nations, or so that each person could eat, drink, and celebrate. Rather, they desired the messianic era so that they would be free to involve themselves in Torah and wisdom without any pressures or disturbances.[31]

Though these principles may be clear in theory, to implement them in practice is a much more complex story. The reason is that, like all social theories, clarity is sometimes achieved at the expense of recognizing the complexity of real life. From mathematically based theories, like game theory, to ideologically based theories, like pacifism, theories presuppose a set of expectations that do not always apply when put into practice. One's opponents may not have the same rational strategy of looking towards the long term. Similarly, pacifism may be hard to reconcile with the imperative not to stand by while one's brother's blood is shed. With respect to the Jewish notion of the tension between happiness and justice that is advocated here, King Saul was easily mistaken, and only the prophet Samuel was able to execute the proper balance without wavering.

A practical example of the difficulties in recognizing a principle in theory as opposed to implementing a principle in practice involves the question of how the international community should respond to the Syrian uprising of 2011.[32] Though it is clear that the Syrian government has committed atrocities against its own people and that, at the time of this writing, international intervention remains imperative, such intervention must take into account more than just the actions of the Syrian government. The international community must consider the fact that there are not clear lines between defectors and civilians; equally, it must consider how intervention would affect the population going forward, what type of political instability would result from too much or too little intervention, and how intervention by the international community would be received both in Syria and in the greater Middle East. Good intentions without proper implementation can cause long-term injustice that may be greater than the short-term good that is realized. The United States has learned this lesson in Afghanistan, both in its decision to arm the mujahideen in their war with Soviet Union and in its more recent wars.

29 *Mishneh Torah*, *Laws of Kings and Their Wars* 6:1.

30 Ibid. 6:3.

31 *Mishneh Torah*, *Laws of Repentance* 9:2; *Laws of Kings and Their Wars* 12:4.

32 See, for example, the *New York Times* page dedicated to the conflict in Syria: "Syria—Uprising and Civil War," http://topics.nytimes.com/top/news/international/countriesandterritories/syria/index.html, last accessed October 14, 2013.

Notwithstanding this caveat, the thrust and approach of the Jewish tradition is clear—there really is an obligation to sacrifice one's temporary contentment for the long-term happiness of moral conduct in the house of the Lord, and there really is an obligation to save others facing dire conditions forced on them by evil oppressors. The Jewish tradition thus looks closely at conflicts, like the one taking place now in Syria, with a thumb on the scales favoring action to protect the lives of the innocent, shorten the reign of evil, and not stand by while innocent blood is shed.

CONCLUSION

This essay has started me down a path of collecting and classifying examples where Jewish law uses concepts of happiness and sadness as part of the calculus to determine what normative Jewish law actually means in practice. Although the totality of the project is only now taking shape, I have collected no fewer than thirty examples from Jewish law where the following question is posed: Given the choices among the possible rulings available for normative Jewish law, should we select those that maximize happiness (or in the rarer case, sadness)? Quite often, the answer is yes. I suspect that this answer is quite typical within Jewish law. Inchoate values such as happiness are rarely directly incorporated into religious law's crucial principles. But happiness is certainly a key factor in determining which of several possible reasonable views ought to be normative.