

ON DIVINE COMMAND MORALITY

Divine Commands, Morality and Jewish Tradition: A Response to Eugene Korn

Michael J. Harris

Abstract: This essay takes issue with elements in Eugene Korn’s article “Moralization in Jewish Law: Genocide, Divine Commands and Rabbinic Reasoning” in the *Sivan* 5766 edition of *The Edah Journal*. The essay argues that the presence of Divine Command Morality (DCM) in Jewish tradition is more complex than Korn and other scholars concede. Neither attempted moral justifications of the biblical commandment to destroy Amalek nor halakhic limitations on the application of the commandment presuppose denying DCM. The essay also argues that the halakhic restrictions on the Amalek commandment are sporadic and controversial, and that Korn is over-optimistic regarding the extent to which traditional sources resolve the moral difficulties of the commandment.

Biography: Dr. Michael Harris is Rabbi of The Hampstead Synagogue, London, Research Fellow in Philosophy at The London School of Jewish Studies and an Adjunct Faculty member at *Yeshivat Ma’ale Gilboa*, Israel. He is the author of *Divine Command Ethics: Jewish and Christian Perspectives*

Reply to Michael J. Harris

Eugene Korn



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Eugene Korn's stimulating essay "Moralization in Jewish Law: Genocide, Divine Commands and Rabbinic Reasoning" in the *Sivan* 5766 issue of *The Edah Journal* provides a philosophical analysis of the assumptions underlying rabbinic treatment of the Torah's commandments to exterminate the Amalekite and Canaanite nations.¹ Korn argues that traditional sources "moralized" these commandments, i.e. interpreted and applied them in such a way as to bring them into line with accepted moral requirements, and that this moralization involved certain theoretical presuppositions. Through moralization, Jewish tradition succeeded in solving what Korn terms "the practical problem"—that Jews might kill innocent people out of obedience to the biblical commandments. Korn goes on to argue that the deeper, "theological/conceptual problem" of how God could issue such egregiously immoral commands was essentially solved by Maimonides's radical halakhic redefinition of the Amalekites and Canaanites.

While much of Korn's argument seems to me convincing and this essay is not intended as a point-for-point rebuttal of his presentation,

there are several key elements in Korn's analysis with which I disagree.² Taken together, the alternative perspectives on these elements that I will try to articulate here amount to a view very different from Korn's concerning the important cluster of issues raised in his article.

In the course of the first part of his article, Korn analyzes the conceptual underpinnings of rabbinic treatment of the commandments to destroy the Amalekites and Canaanites.³ *Inter alia*, Korn discusses the issue of Divine Command Morality (DCM). Following the views of Avi Sagi and Daniel Statman,⁴ he emphasizes that what Sagi and Statman term "strong" DCM—the idea that God's commands determine morality, that "the very existence of moral obligations and moral values depends on God"⁵—is absent from rabbinic tradition not only in the context of the Amalek commandment but from traditional Jewish sources *tout court* (3).

Let us first address this broader claim concerning the absence of strong DCM⁶ in Jewish sources. It seems to me that such a

¹ Korn focuses mostly on the commandment to destroy Amalek and the sources which deal with that commandment. I shall follow his example here.

² References to page numbers in Korn's article are in parentheses in the text.

³ Korn uses the term 'rabbinic' in a broad sense, to refer not only to *Hazal* but to later scholars as well. I shall follow this usage here.

⁴ See Avi Sagi and Daniel Statman, "Divine Command Morality and Jewish Tradition", *Journal of Religious Ethics* 23 (1995), 39-67; Avi Sagi, *Judaism: Between Religion and Morality* (Hebrew) (Israel: Hakibbutz Hameuchad, 1998); idem., "The Punishment of Amalek in Jewish Tradition: Coping with the Moral Problem", *Harvard Theological Review* 87:3 (1994), 323-346.

⁵ This formulation is borrowed from Avi Sagi and Daniel Statman, *Religion and Morality* (Amsterdam-Atlanta: Rodopi, 1995), 11. It is only intended as approximate, as a great deal more can be said about formulations and variants of DCM. For an excellent discussion, see *ibid.*, ch.1.

generalization seriously underestimates the complexity of the issue. A curious feature of contemporary Jewish scholarly debate concerning the attitude of Jewish tradition to DCM is that many writers apparently consider the position of the tradition on this issue to be clear, uncontroversial and capable of brief description—but construe that position in opposite ways.⁷ While some thinkers, e.g. Sagi, Statman, R. Aharon Lichtenstein,⁸ Shubert Spero⁹ and Louis Jacobs¹⁰ think it clear that the sources deny DCM, others—for example, R. Immanuel Jakobovits,¹¹ Isadore Twersky¹² and Marvin Fox¹³—believe that it is plain that Jewish tradition supports DCM. What this suggests, of course, is that there is in fact no simple answer to the question whether Jewish sources support or oppose DCM. If significant Jewish scholars take diametrically opposing answers to be obviously correct, there is reason to suspect that the truth lies somewhere between and is far from straightforward. I have tried to show elsewhere that if a sufficiently sensitive analytical

framework within which to examine the classic texts of Jewish tradition is developed, the picture that emerges from those texts indeed yields a significantly more complex and nuanced stance concerning DCM ethics than most of the contemporary literature is prepared to concede.¹⁴ Very briefly, this is because types of DCM and its denial (usually termed “autonomy”) must be carefully distinguished, both in terms of the kind of

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in the literature is inappropriate.*

relationship (ontic, epistemic, etc.) that is claimed to exist (or not to exist) between God’s command and morality, and in terms of precisely what (God’s unrevealed will or His Torah command) morality is asserted to depend (or not to depend) upon. When traditional Jewish sources are analyzed from this perspective, it clearly emerges that

⁶ For the sake of brevity, I shall henceforth usually refer to strong DCM simply as ‘DCM’.

⁷ Jakobovits’s brevity, for example, in his articulations of support for the idea that DCM is the view of Jewish tradition is striking when compared with Lichtenstein’s equally concise remarks averring that the denial of DCM is the position supported in the tradition. For references see ns. 8 and 11 below.

⁸ See Aharon Lichtenstein, “Does Jewish Tradition Recognize an Ethic Independent of Halakha?” in Marvin Fox, ed., *Modern Jewish Ethics: Theory and Practice* (Columbus: Ohio State University Press, 1975), 62-88; reprinted in Menachem Marc Kellner, ed., *Contemporary Jewish Ethics* (New York: Hebrew Publishing Company, 1978), 102-123. See especially 102-103.

⁹ Shubert Spero, *Morality, Halakha and the Jewish Tradition* (New York: Ktav/Yeshiva University Press, 1983), 69-70.

¹⁰ Louis Jacobs, “The Relationship between Religion and Ethics in Jewish Thought” in Gene Outka and John P. Reeder, eds., *Religion and Morality* (Garden City, N.Y.: Doubleday, 1973), 155-172; reprinted in Kellner, (above, n. 8) 41-57. Cf. Jacobs’s restatement of Socrates’ response to the *Euthyphro* dilemma in Jewish terms: “... a thing is not good because it is in the Torah. It is in the Torah because it is good” (*A Jewish Theology* [London: Darton, Longman and Todd, 1973], 241).

¹¹ Immanuel Jakobovits, “Jewish Views on Abortion” in Fred Rosner and J. David Bleich, eds., *Jewish Bioethics* (New York: Sanhedrin Press, 1979), 118-133.

¹² Twersky writes: “Autonomous morality according to Kant’s ethical theory is morality that is created by man himself; the independence of morality finds expression in the fact that it is not indissolubly linked to divine command. This conception has no counterpart in Judaism: it [Judaism] recognizes only a heteronomous-theonomous conception, which sees in the Creator of the world the source of morality.” (Isadore Twersky, *Introduction to the Mishneh Torah of Maimonides* [Hebrew][Jerusalem: Magnes Press, 1991], 338, n. 237. This passage is part of a supplement added to the Hebrew edition; it does not appear in the English edition of the work. The translation is my own.)

¹³ Marvin Fox, “Maimonides and Aquinas on Natural Law,” *Dinei Yisra’el* 3 (1972), 5-27; idem, *Interpreting Maimonides: Studies in Methodology, Metaphysics and Moral Philosophy* (Chicago: Univ. of Chicago Press, 1990), 202-203, 208. For further discussion of the views on DCM of the thinkers listed here and others including Abraham Joshua Heschel, Yeshayahu Leibowitz and David Hartman, see Michael J. Harris, *Divine Command Ethics: Jewish and Christian Perspectives* [London and New York: RoutledgeCurzon, 2003], 36-49.

¹⁴ See Harris (above, n. 13).

different traditional texts say different things, and therefore that the monochromatic picture usually presented in the literature is inappropriate. It also turns out that some sources which are commonly taken to support, or which appear to support, a particular view on DCM/autonomy cannot truly be understood as endorsing *any* position. At the same time, a number of sources do appear to support even a strong version of DCM.¹⁵ It does appear, though, that the situation changes somewhat over time, with advocacy of strong versions of DCM achieving increasing emphasis the later one finds oneself in the history of classical Jewish texts. Thus support for strong types of DCM is extremely difficult to find in the Bible; it is to be found, though very seldom, in classic rabbinic sources; and it is most pronounced—though it still has many opponents—in post-talmudic rabbinic sources.

What about Korn's more specific claim that DCM is absent from rabbinic discussion concerning the commandment to eradicate the Amalekites? It is clear that the rabbinic treatment contains neither explicit assertion nor open denial of DCM, so we need to probe beneath the surface in order to uncover the tacit assumptions at work. Korn's argument for his claim that the denial of DCM is implicit in traditional sources dealing with the Amalek commandment is that "in attempting to supply justifications for the killing of the Amalekite nation, Jewish tradition presupposed that... 'God commands an action because that action is right' (to paraphrase Plato's *Euthyphro*) and that rabbinic tradition is committed to moral reasoning" (5). In other words, the very attempt to provide moral justifications for the commandment to destroy Amalek involves the denial of DCM, since according to DCM there is no need to offer any moral justification. "Because God said so" constitutes sufficient warrant.

Yet attempts to justify morally the severity of the

treatment meted out to Amalek might quite plausibly rest not on an autonomous morality but rather on a revealed morality that opposes

genocide. Traditional sources may offer moral justifications of the Amalek commandment only because they understand the revealed Torah itself as rejecting genocide, in the light of the Ten Commandments' prohibition on murder and other laws and statements in the Torah which reflect a deep regard for human life. The authors of these sources might well resist the notion that the Amalek commandment requires moral justification because of some revelation-independent moral standard.

Attempts to justify morally the severity of the treatment to Amalek might plausibly rest on a revealed morality that opposes genocide.

It is worth expanding briefly on this important point. Korn assumes that if traditional sources advocated DCM, they would not bother to attempt any moral justification of the Amalek commandment; the mere fact of the commandment's divine source would already constitute sufficient justification. But why should this be so? The rabbis might very well wish to make sense of the Amalek commandment in the context of their understanding of the revealed Torah as a whole. And since they understand the Torah as a whole to oppose the taking of innocent life (and maintain, as advocates of DCM, that it is only because of this opposition that taking innocent life is wrong), they might endeavor to explain the Amalek commandment in a way that is consonant with that understanding. In other words, what lies behind the rabbis' attempted moral justification of the Amalek commandment might very plausibly be not the denial of DCM, but merely the desire to achieve—and to present to the reader with—

¹⁵ These include *Berakhot* 33b, R. Ovadiah of Bertinoro on *Avot* 1:1 and R. Zvi Hirsch Levin, *Pirquei Avot im Perush Lehem Shamayim* (Berlin: D. Friedlander, 1834), 1, n.2. For further discussion see Harris (above, n. 13), ch. 5.

an understanding of the Torah as an internally coherent document that consistently opposes killing the innocent.

Korn holds that not only must attempted moral justification of the Amalek commandment rest on the denial of DCM, but more generally that a morally acceptable religious tradition must be based on this denial:

The DCM argument holds little cogency today. After the Holocaust, the genocide in Rwanda, the terrorist attack on the World Trade Center and repeated suicide bombings in Israel, it is inconceivable that a clear thinking moral person would accept another's claim that a religious command justifies his intentionally killing women or children (4).

It is true that a proponent of DCM is committed to the view that if God commands me to carry out a terrorist attack, then my carrying out such an attack is morally acceptable. But a clear thinking moral person could quite consistently advocate DCM and hold simultaneously that God in fact does not and never would issue such commands (though He could if He wished).

Let us now turn to a later stage in Korn's argument. Korn shows how some halakhic sources placed severe limitations on the applicability of the Amalek commandment, thus rendering it inoperative. He argues that these qualifications were motivated by the dissatisfaction of rabbinic authorities themselves with the utilitarian justifications sometimes offered for the Amalek

commandment in traditional sources (6), and that "it is plausible to assume" that rabbinic authorities restricted the applicability of the commandment "precisely because they sensed the overwhelming moral problems with a literal implementation of the commandment" (7).¹⁶

In the absence of ethical motivation being explicitly articulated, it is difficult to ascribe such motivation to the restrictions.

Korn's claim that there is a causal connection between rabbinic dissatisfaction with utilitarian or "consequentialist" justifications of the Amalek commandment and halakhic limitations on it is an intriguing one, though it seems to me that Korn overstates the extent of traditional opposition to consequentialism.¹⁷ I would like to focus, however, on his apparently less controversial claim that halakhic qualifications of the Amalek commandment are generated by moral unease. (This is a claim which Korn emphasizes particularly in his discussion of Maimonides' interpretation of the Amalek commandment, arguing that Maimonides' reading, generated by moral discomfort, not only rendered the commandment inoperative but solved the theological problem of how God could have commanded it at all). To be sure, the various halakhic approaches that curtail the scope of the Amalek commandment have the *effect* of substantially moralising it. Yet in the absence of any ethical motivation being explicitly articulated, it is difficult confidently to ascribe such *motivation* to the restrictions. Perhaps we

¹⁶ In the sentence quoted, Korn is referring to the injunction to destroy the Canaanites, but it is clear that he would apply the same judgment to the Amalek commandment. Elsewhere in his essay, he does argue explicitly that restrictions on the Amalek commandment are morally motivated, e.g. on p.11, where he writes that this is "undoubtedly" the case.

¹⁷ For example, in the famous dispute between Rabbi Simeon ben Gamaliel and Rabbis Akiva and Tarfon regarding capital punishment (*Makkot* 7a), the fundamental issue at stake appears to be consequentialism vs. deontology. Moreover, the *halakhot* governing war, particularly *milhemet reshut*, seem to be grounded in a consequentialist approach. See Moshe Sokol, "Some Tensions in the Jewish Attitude toward the Taking of Human Life", *The Jewish Law Annual* 7 (1988), 97-113.

should take the restrictive approaches at face value, understanding, for example, sources that confine the applicability of the Amalek commandment to the messianic future as doing so simply for the stated reason that the biblical text alludes to the law being operative only at a future time when Israel is otherwise at peace.¹⁸ And if it is unsafe to ascribe moral motivation to the limitations on the Amalek commandment absent their explicit formulation, it is worth pointing out that it is much more problematic to suggest that involved in the limitations is any denial of DCM. Parallel to the argument presented above in the context of attempted justifications of the Amalek commandment, it can be urged that even if the explicit motivation for the restrictions on the commandment were moral, the morality in question might be revealed morality. The moral basis for restrictions on the scope of the Amalek commandment would presumably be uncomfortable with the idea of

Perhaps the moral reservations are grounded in revelation.

killing innocent people. Yet, as mentioned earlier, precisely that is forbidden in the sixth of the Ten Commandments. Even if the motivation for halakhic limitations on the

Amalek commandment is moral, perhaps the moral reservations that generate the limitations are grounded in revelation.¹⁹

It is instructive to compare one aspect of the halakhic treatment of the rebellious son, the *ben sorer u-moreh*,²⁰ to the restrictions on scope and applicability that are a feature of the halakhic attitude towards the Amalek commandment. The Torah directs that the *ben sorer umoreh* be put to death, even though he has not committed any offense that would usually be considered deserving of the death penalty. Talmudic discussion of the *ben sorer u-moreh* commandment often attempts to limit its effect in practice. To cite a well-known example:

Rabbi Simeon said: “Because he [the *ben sorer u-moreh*] eats a half *mannah* of meat and drinks half a *log* of wine, can his parents take him and have him stoned?! [Obviously not!] Therefore [we are forced to conclude that an actual *ben sorer u-moreh*] has never existed and will never exist. Why, then, is the law written? That you may study it and receive reward [for doing so].²¹

In this passage, the applicability of the *ben sorer u-moreh* commandment is curtailed in the

¹⁸ *Hagabot Maimoniyot* to Maimonides, *Mishneh Torah, Hilkhot Melakhim* 5:5; R. David ben Zimra (Radbaz) ad.loc. rejects this restriction.

¹⁹ Similar considerations apply to Sagi’s analysis of the significance of Maimonides’ conditional reading of the Amalek commandment in *Hilkhot Melakhim* (see below in the text for further discussion of Maimonides’ interpretation). Sagi writes that “Maimonides... restricts textual instructions so as to reconcile them with basic moral assumptions... This attempt at accommodation shows that morality operates as an autonomous factor and, furthermore, points to an inverted relation of dependence, whereby religion depends on morality rather than morality on religion. God’s command, as well as the norms flowing from it, are now reinterpreted in this light.” (“The Punishment of Amalek”, 344-345). Even if Sagi is correct that Maimonides’ limitation on the Amalek commandment in *Hilkhot Melakhim* is based on unstated moral premises, it is quite plausible that these premises are grounded in revelation. Interestingly, Sagi at times lapses into formulations which appear to concede this, for example: “Maimonides’ moral interpretation is in accordance with the spirit of the Torah and its fundamental premises regarding human justice” (344); and “advocates of the moral approach rely not only on their moral intuitions but also on textual sources... the claim that “every man shall die for his own sin,” a prime justification of Maimonides’ rulings, is a biblical verse” (345). Unless Sagi can show that the Torah’s statements about justice merely inform us about some of the contents of an independent morality, there is no reason why such statements cannot be understood in accordance with DCM.

²⁰ Deut. 21:18-21.

²¹ B.T. *Sanhedrin* 71a and parallels. A similar statement is made about the law of the *ir ha-nidabat* (idoltrous city) (Deut. 13:13-19).

most radical way possible: the law is confined entirely to the realm of theory. But this passage does not differ from halakhic approaches to the Amalek commandment merely in respect of the extent of the restriction that it places upon the applicability of a morally troubling biblical law. It differs also in that the moral motivation for the radical restriction on the law is explicitly articulated. The *Sanhedrin* 71a passage is thus very significant, because it demonstrates that rabbinic literature is perfectly able and willing explicitly to formulate the moral grounds of halakhic limitations on Torah laws. This makes it more difficult, in instances such as the Amalek commandment where the restrictions are *not* provided with an explicitly moral basis, to argue convincingly that such restrictions are nevertheless rooted in ethical considerations.

Sagi and Statman write concerning the *Sanhedrin* 71a passage:

[t]his radical interpretation of the Torah is obviously hard to reconcile with DCM. In DCM terms, if God commands the stoning of the stubborn and rebellious son, then this act is morally correct and attempts to mitigate it have no place. The explanations adduced by the Sages reflect their perception of a conflict between justice and the Torah, which they attempt to resolve by resorting to exegesis.²²

But again, even in a passage such as *Sanhedrin*

71a, the explicit moral motivation for the limitation on an ethically difficult Torah law need not necessarily presuppose the denial of DCM. Rabbi Simeon's objection might just as well be grounded in the ethics revealed in the Torah as in an independent morality. Interpretations such as those of R. Simeon might reflect his perception of a conflict between *the concern for justice that he understands to be characteristic of the Torah* and the validity of which is grounded in the Torah, and the law of *ben sorer u-moreh*, in which the Torah appears radically to depart from this concern. And if the denial of DCM cannot safely be said to underpin the moral motivation for restrictions on the applicability of a morally difficult commandment when that motivation is explicit, *a fortiori* it cannot confidently be claimed to inform the limitations on the Amalek commandment, where no express ethical reasoning is articulated.

It is also important to note that even though some halakhic sources, as Korn notes, undoubtedly place limitations on the Amalek commandment, in general the restrictions placed by *halakhah* on the commandment are really relatively few. Sagi concedes that talmudic limitations on the obligation to exterminate Amalek are rare.²³ In fact, not a single clear restriction on the applicability of the Amalek commandment can be found in the entire Talmud.²⁴ Moreover, even some of the halakhic qualifications on the Amalek commandment that do exist are resisted by other halakhists, as noted above.²⁵ The

²² "Divine Command Morality and Jewish Tradition" (above, n. 4), 58.

²³ Sagi, "The Punishment of Amalek" (above, n. 4), 338.

²⁴ This claim is intended to cover the Mishnah and the Babylonian and Palestinian Talmuds. The word "Amalek" appears twice in the Mishnah, in *Megillah* 3:6 and *Qiddushin* 4:14. In the Babylonian Talmud, it appears in the following places (excluding references to the Mishnah): *Berakhot* 58a; *Shabbat* 56b; *Shabbat* 118b; *Yoma* 22b; *Megillah* 31a; *Bava Batra* 21b; *Bava Batra* 46b (as a mnemonic); *Sanhedrin* 20b (four occurrences); *Sanhedrin* 99b; and *Zevahim* 116a (two occurrences). In the Palestinian Talmud, "Amalek" occurs (excluding references to the Mishnah) in *Rosh ha-Shanah* 3:8; *Ta'anit* 4:3; *Megillah* 1:11; *Megillah* 4:2; and *Qiddushin* 4:11. In none of these places is any limitation on the Amalek commandment suggested. In one source not included in the above list, the Talmud states that "the descendants of Haman studied Torah in Benei Beraq" (B.T. *Sanhedrin* 96b; the same teaching is quoted in B.T. *Gittin* 57b). This does appear to curtail the applicability of the Amalek commandment, since it suggests that descendants of Amalek were accepted as converts to Judaism (Haman is traditionally regarded as descended from the Amalekite king Agag) – something that would of course be impossible if the directive to destroy them had been followed. As

situation is not even totally unambiguous regarding Maimonides's treatment of the Amalek commandment in *Hilkhot Melakhim*, of which Korn makes so much. Maimonides, admittedly, moralizes the commandment by making its application conditional on Amalek refusing to make peace. But the moralization is only partial, because, as Korn himself concedes (9 n. 37), the terms of peace are very demanding, involving various forms of subjugation to the Jewish people. (For the sake of argument, let us assume, with Korn, that although he does not explicitly state this in *Hilkhot Melakhim*, Maimonides does not hold that if the terms of peace are rejected, innocent Amalekites, including children, are killed). Furthermore, as Gerald Blidstein points out, Maimonides himself apparently does not consistently adopt this conditional interpretation of the Amalek commandment.²⁶ In his discussion of war against the Amalekites and the seven Canaanite nations in *Sefer ha-Mitsvot*, Maimonides makes no mention of offering terms of peace to these peoples.²⁷ In his analysis of optional war (*milhemet reshut*) in the same work, however, Maimonides deals in detail with offering the terms of peace.²⁸ It thus seems that, in *Sefer ha-Mitsvot*, Maimonides understands the Amalek commandment as unconditional.²⁹

If *halakhab* includes only sporadic and disputed

restrictions on the Amalek commandment, and if even the restrictions that do exist are not undoubtedly morally motivated, it appears that Korn is over-optimistic about the prospects of fully assuaging the moral discomfort that we are likely to feel concerning this *mitsvah* and its treatment in traditional sources. Even though *halakhab*, as Korn notes, has by now neutralized the Amalek commandment in practice, these factors justify our experiencing considerable residual disquiet.

Korn is over-optimistic about assuaging the moral discomfort that we are likely to feel.

A brief glance at traditional biblical exegesis of the Amalek commandment compounds the sense of unease. To be sure, some classical commentators such as Nahmanides and Abravanel attempt moral justifications, as Korn notes. Equally, however, the lack of emphasis by traditional exegetes on the moral difficulties surrounding the Amalek commandment is often striking. A good example is the approach of Rashi, widely considered, of course, to be the traditional Jewish biblical exegete *par excellence*. Let us examine briefly Rashi's commentary on the two main sections in the Torah that refer to

Sagi ("The Punishment of Amalek", 338) himself concedes, though, "this passage, which is basically an *aggadah* (a non-halakhic text), can hardly be viewed as a matching counterpart" to the Talmudic passages which place no restriction on the Amalek commandment and indeed often support its literal interpretation.

²⁵ See n.18.

²⁶ Gerald J. Blidstein, *Political Concepts in Maimonidean Halakha* (Hebrew), (Ramat Gan: Bar Ilan University Press, 1983), 220.

²⁷ Maimonides, *The Commandments*, trans. Charles B. Chavel, vol.1 (London: Soncino, 1967), 200-203 (Positive Commandments 187 and 188).

²⁸ *Ibid.*, 204 (Positive Commandment 190).

²⁹ R. Hayyim Heller, in his edition of Maimonides's *Sefer ha-Mitsvot* (New York, 5706), 82, n. 11, interestingly suggests that Maimonides does not interpret the Amalek commandment conditionally even in ch.6 of *Hilkhot Melakhim*. The phrase in *Hilkhot Melakhim* 6:4 usually translated "who do not make peace" is *she-lo hishlimu*, which can also be rendered "who *did* not make peace." Heller argues that, rather than ruling that the Amalekites are to be offered the terms of peace before any military attack upon them, Maimonides is merely attempting to explain why the Torah is so severe on Amalek and mandates its extermination—i.e., because they did not accept the terms of peace. On Heller's view, Maimonides does not necessarily commit himself to any future restrictions on the Amalek commandment. As Sagi points out, however (*Judaism* [above, n. 4], 223), the plausibility of Heller's novel reading of Maimonides is undermined by the fact that the Torah makes no reference to a historical peace offer to Amalek by the Israelites.

Amalek's conflict with the Jewish people. In his commentary to the passage concerning Amalek in Exodus 17:8-16, Rashi mentions several considerations of a broadly ethical nature. These include the Israelites' lack of gratitude towards God (commentary to verse 8); the necessity of showing respect even to one's disciples (commentary to verse 9);³⁰ Moses' improper lack of enthusiasm in following the divine command, as evidenced by his appointing Joshua to lead the Israelites into battle against the Amalekites instead of leading them himself (commentary to verse 12);³¹ and Moses' empathy with the distress suffered by the warring Israelites (loc. cit.).³² Given the fact that Rashi, despite the characteristic brevity with which he expounds this passage, does not ignore ethical themes and indeed highlights them, one might have expected some reference to the apparently acute moral dilemmas attendant upon the Bible's instructions regarding the treatment of Amalek. Yet no such reference is forthcoming, even implicitly.

A similar analysis can be offered regarding Rashi's commentary on the passage dealing with Amalek in Deuteronomy 25:17-19. Here, once more, Rashi alludes to broadly ethical concerns: the need for honest weights and measures (commentary to verse 17); Amalek's sexual immorality (commentary to verse 18);³³ Amalek's blasphemy (loc. cit.);³⁴ and Amalek's lack of fear of God (loc. cit.).³⁵ And here, not only does Rashi make no mention of the moral problems attendant upon the direct command

to wipe out Amalek in verse 19; on the contrary, his only comment to verse 19 emphasizes the lengths to which the extermination of Amalek is to go:

Man and woman, infant and suckling, ox and lamb, so that Amalek's name is not remembered even through an animal, by [someone] saying: "This animal belonged to the Amalekites."³⁶

Thus, though I entirely sympathize with Korn's attempt to wed traditional Jewish treatment of the injunction to wipe out Amalek as closely as possible to the highest moral standards, it seems to me that this project faces more obstacles than Korn acknowledges, and that further discussion and analysis are required.

I would like to conclude with some broader and more speculative remarks. Korn's over-optimism regarding the extent to which traditional sources resolve the moral difficulties surrounding the Amalek commandment is, it seems to me, part of a wider trend among some contemporary Jewish scholars to emphasize the moral character of Jewish tradition in general.³⁷ It is this strong (and laudable) desire to portray Judaism as an unimpeachably ethical faith that also, I believe, informs the enthusiasm of Korn, Sagi and others for autonomy and their (so I have argued) over-simplistic view of Jewish tradition as almost totally lacking in

³⁰ S.v. *behar lanu*.

³¹ S.v. *vi-yedei mosheb keveidim*.

³² S.v. *even vayasimu tahtav*.

³³ S.v. *asher qarekha ba-derekh*.

³⁴ S.v. *vayezaneiv bekha*.

³⁵ S.v. *ve-lo yarei*.

³⁶ For fuller discussion of traditional Jewish exegesis of the Amalek commandment, see Sagi, "The Punishment of Amalek in Jewish Tradition" (above, n. 4), 325-336; Harris (above, n. 13), 136-143.

³⁷ Leon Roth, in the article which Korn cites at the beginning of his essay, is a precursor of this trend. For traditional Jewish interpreters, he writes, "the Torah is a law of life and kindness and love and decency and pity. This being the guiding principle, whatever appears contrary to it must be explained away. And it *was* explained away... [this] supreme principle is followed consistently throughout" (*Is there a Jewish Philosophy?* (London and Portland, Ore.: Littman Library of Jewish Civilization, 1999), 138, 141; emphasis in original). This seems too sweeping and too sanguine.

support for DCM. For, though I have suggested above that DCM is logically reconcilable with a moral Jewish tradition, Korn and Sagi believe that a moral tradition can be underpinned only by autonomy. The determination of thinkers such as Sagi and Korn to portray Jewish tradition as morally sensitive and pro-autonomy is, in my view, motivated to a significant degree by the political, social and cultural milieu in which modern Orthodox thinkers currently work, and constitutes a response to the regrettable but significant downplaying of broader ethical and

humanitarian motifs within some sectors of the Orthodox world.³⁸ Like all philosophical reflection, theirs is not divorced from the social, cultural and political context in which it occurs.³⁹

Needless to say, the existence of these underlying motives (if indeed the preceding speculations are justified) does not of itself invalidate the views of Korn and Sagi. Nevertheless, I have tried to argue here on other grounds for a perspective different from Korn's on some of the important issues that he raises.⁴⁰

³⁸ Sagi's work *Judaism: Between Religion and Morality*, which strongly insists on the moral nature of Jewish tradition and the absence of DCM from Jewish sources, was published in 1998. It is difficult not to read this work against the background of the ideological struggle within the religious Zionist community in the years prior to its publication (particularly given some of Sagi's disputes in the book with figures on the political right of the religious Zionist community) and against the background of the assassination of Prime Minister Yitzhak Rabin z'l in November 1995 by a person who identified with religious Zionism. Near the end of the work, Sagi remarks briefly but revealingly that "this book is an attempt to direct autonomous moral consciousness anew in the face of a reality in which, sometimes, it is precisely religious commitment that causes the dimming or the eradication of moral sensibility" (352 - my translation).

³⁹ I am grateful to Dr. Tamra Wright for helpful discussion of some of the points in this paragraph.

⁴⁰ My thanks to Professor David-Hillel Ruben and Dr. Daniel Rynhold for their helpful comments on this essay.

Reply to Michael J. Harris

Eugene Korn

I thank Michael Harris for his thoughtful responses to my essay, and for ensuring that it will not be lost in the dust bins of history. I wrote it hoping to stimulate serious discussion about the relationship between ethical reasoning and halakhic imperatives, and how rabbinic thinkers wrestled with the issues surrounding that relationship. R. Harris's response indicates that the essay has partially achieved that objective. R. Harris's fine book, *Divine Command Ethics, Jewish and Christian Perspectives*, should be required reading for anyone wishing to understand the debate fully.

As Harris notes, by rejecting strong or analytic DCM (the theory that divine commands *define* moral concepts and standards, and therefore by definition there is no coherent concept of an immoral commandment), I am in the good company of Avi Sagi, Daniel Statman, Rabbis Aharon Lichtenstein, Shubert Spero and Louis Jacobs—and I would add Sa'adyah Gaon, Maimonides, Nahmanides, all Jewish rationalists, R. Me'ir Abulafia (Ramah), R. Simḥah ha-Kohen of Dvinsk (*Meshekh Hokhmah*), Netsiv, R. Abraham Isaac ha-Kohen Kook and R. Joseph Soloveitchik to that exalted list.

Harris presents three major theses that challenge the claims of my essay.¹

- (1) The non-literal rabbinic interpretations of the commands to destroy the Amalekite and Canaanite nations probably do not rest upon autonomous moral

considerations, but upon a revealed morality, i.e. other legal principles in *halakhab*.

- (2) No explicit ethical justification is present in Jewish sources regarding interpretations of the Amalek commandment, while such ethical justification is present in other cases, specifically *ben sorer u-moreh*. Hence it is unwarranted to assume that ethical considerations were a factor in traditional reinterpretations of the Amalek commandment.
- (3) I (together with Professors Sagi and Statman) suffer from a desire to portray Judaism as an “unimpeachable ethical faith,” a view which is somehow derived from our political, social and cultural milieus. Harris's charge also carries the implication that this influence is not authentic to *halakhab*.

1. DCM and *Mehiyyat Amalek*

The important disagreement between Harris and me is whether the halakhic history of the specific commandments calling for warfare against Amalek and the Canaanite nations reflects the weak or epistemological DCM thesis. I argue that it does not. *Halakhab* rejected the literal interpretation of those

¹ Harris also argues that DCM is found in post-talmudic sources. This is a minor point regarding my essay, as I argued only against the general presence of strong or “analytic” DCM. I agree with A. Sagi that the strong or analytic DCM is absent in pre-modern rabbinic sources. None of the sources cited by Harris imply strong DCM. My major argument was that normative halakhic tradition rejected all DCM in interpreting the specific commands to go to war against the Amalekite and Canaanite peoples.

commandments because the Talmud rendered the *mitsvot* inoperative and later halakhic tradition reconceptualized the obligation to conform to the demand of retributive justice not to kill innocents. Had rabbinic tradition subscribed to the weak DCM theory regarding those commands, it would have left the literal imperatives operative, despite the moral disquiet they caused.

Harris offers an alternative explanation: the halakhic tradition's non-literal turn should be understood as a result of its resolution of incompatible divine commands (i.e. the prohibition of murder and the imperative to destroy Amalek), without any interference from moral considerations.

Had rabbinic tradition subscribed to the weak DCM theory regarding those commands, it would have left the literal imperatives operative.

Yet there is simply no textual evidence for Harris's thesis—and there should be if it were correct. Halakhic discussions are replete with explicit resolutions of conflicting commandments, such as *Pesahim* 120a regarding the conflict between Ex. 12:15 and Deut 16:5 on the number of days one is obligated to eat *matsab*; and *Berakhot* 7a regarding the conflict between Ex. 20:5 and Deut. 24:16 on whether punishment for sin may be applied to the sinner's offspring. Were the commands in question a case of conflict with other commands, the sources should have cited, "Thou shalt not murder" in the Amalek case. Yet nowhere in talmudic and rabbinic discussion do authorities cite that commandment or other revealed halakhic principles in discussing *mitsvat mehiyyat* Amalek or the wars against the Canaanite civilians. The cited *Midrash Tanhuma* 96:3 that quotes Moses' moral argument to God ("Should I now go and attack both those who sinned and those who did not sin?") is more typical of the halakhic discussions around those *mitsvot*. Only the

consideration of moral justice is cited, not any countervailing halakhic principle. Were it an issue of a tension with Harris' "revealed morality," Moses could have easily and effectively cited the legal prohibition against murder. Even R. Abraham Bornstein (*Avnei Nezer*), who cites 2 Chronicles 25:4 "The children shall not die for their fathers," understands that this generic principle has little potency against the repeated and specific imperatives to destroy Amalekite and Canaanite innocents that appear in the *Humasb*. His nineteenth-century contribution is late in the discussion, and I suspect that he could make this argument only because halakhic tradition had already rejected the implementation of killing the innocents of those tribes.

Moreover, there is a good reason why the "Thou shalt not murder" is not cited as a proof text against exterminating Amalekite and Canaanite innocents: As Benjamin Ish-Shalom and Michael Broyde emphasize in their essays in this edition of *Meorot*, it is unclear whether this peacetime imperative applies in the conduct of war—and if it does it surely has different parameters. I note that the halakhic precedent I cited in my article for prohibiting the sacrifice of an innocent life for higher goals (*Yerushalmi, Terumot* 8:10) is in fact a precedent in the context of war.

I stated in my essay that "without moral considerations it is hard to explain why the halakhic tradition opted for the justice principle over the literal reading of the Amalek commandment." This is because the most logical—and the favored halakhic—approach in the instance of contradictory commandments is to accept the generic imperative (e.g. do not murder) and make an exception to the general rule only in the particular circumstances delineated by the more specific conflicting commandment (e.g. destroy all Amalekites). This is illustrated in *halakhab* by the generic prohibition against marrying two sisters (Lev. 18:18), which is superseded only in the specific case of the

imperative of *yibbum* (Deut. 25:5) for a man to marry his sister-in-law whose husband has died childless. The general prohibition stands in all cases other than the one defined by the specific imperative. Yet *halakbab* did not adopt this method or conclude accordingly regarding the Canaanites or Amalek. On the contrary, it concluded that the generic rule against killing innocents overrode the specific commandment to kill civilian Amalekites and Canaanites. Clearly, something more than legal or methodological considerations are at work in this prioritization of commandments.

Religious Jews should strive to see God in all truth.

I sympathize with Harris’ religious impulse to root our moral principles in God and *halakbab*. Surely religious Jews should strive to see God in all truth, and wish to emulate Abraham’s belief in a close connection between the Creator of heaven and earth and the moral axioms we hold dear. Yet it is quite another matter to force moral considerations into a Procrustean bed of exclusively legal analysis when there is no textual or experiential support for it. More nuance is required. We all understand that killing innocent women and children is wrong even before we read Ex. 20:13.

There is a bridge between Harris’ position and the independence of moral truths from revealed law. It is provided by R. Simḥah ha-Kohen of Dvinsk (*Mesbeḥ Hokhma*). He posited that God endowed each person with the capacity to understand moral authority and the fundamental moral principles that became known in halakhic parlance as the seven Noahide commandments (*sheva mitsvot benei noah*).² Hence God implanted in Jews and gentiles alike a general moral capacity to understand that it is wrong to murder, rob, commit sexual immorality etc. as well as the

positive understanding that we should live under a system of just laws—even though we sometimes disobey those standards. Although these are *mitsvot*, it is hard to understand them as formally legislated and explicitly revealed divine commands. There is no indication in the Torah that there was a formal command to Adam or Noah of any Noahide prohibition other than eating the limb of a living animal and possibly homicide. Even the talmudic discussion in *Sanhedrin* 56b that identifies these principles with Gen. 2:16-17 points to a supportive connection (*asmakhta*), not to explicit divine commands from which these prohibitions are derived *ab initio*.

R. Simḥah thus locates our moral axioms in a “revealed morality” that is also “natural” because it emanates epistemologically from our moral reason or intuition. Our moral sense is indirectly sourced in God, but not via formally legislated commands.

We see a similar assumption elsewhere in authoritative rabbinic thought. For Nahmanides, the generic imperative “You shall do what is right and good” (Deut 6:18) demands going “beyond the law” (*lifnim mi-shurat ha-din*). This means that it is up to our moral sense or practical reason to understand what is right and good beyond what is revealed by a specific commandment.

2. Moral Justifications—Explicit and Implicit

Harris argues that we should not ascribe moral motivation to the rabbinic limitations on the Amalek and Canaanite commandments since moral justifications do not appear explicitly in the literature regarding those *mitsvot*. Moreover, he claims that R. Simeon’s argument in *Sanhedrin* 71a regarding the stubborn and rebellious son (*ben sorer u-moreh*) “demonstrates that rabbinic

² *Mesbeḥ Hokhma*, Genesis 7:1. See also Maimonides, *Mishne Torah* Laws of Kings 9:1, where Maimonides states that the seven Noahite commandments are supported by human reason.

literature is perfectly willing and able to formulate the moral grounds of halakhic limitations on Torah laws. This makes it more difficult...to argue convincingly that such restrictions are rooted in ethical considerations.”

Harris is correct that neither the Talmud nor Maimonides explicitly mentions ethical considerations regarding Amalek or the Canaanite nations. Yet rabbinic literature does consider the moral problematics of these *mitsvot* and of killing innocents to be factors in limiting or interpreting those commandments. Moses’ objection in *Midrash Tanhuma* and his subsequent refusal to kill innocents is precisely an articulation of moral concern regarding the injustice that would result from literally interpreting the divine command. Similarly, as stated in note 35 of my essay, R. Me’ir Abolafia argued on explicit moral grounds (“Heaven forbid that God cause evil”) against killing the women and children of an idolatrous city—the very same ethical problem as killing civilian Amalekites or Canaanites. Hence there is ample precedent in rabbinic literature for moral considerations informing halakhic interpretations of these divine commands.

A greater weakness is that Harris reads *Sanhedrin* 71a imprecisely. A careful examination of the text does not substantiate his contention that R. Simeon’s statement cites moral grounds for halakhic interpretation. The *gemara* states, “Because he ate a *tartimar* of meat and drank a half *log* of wine, do his father and mother take him (“*motsi’in oto*”) and have him stoned?”—not “can [sic] his father and mother take him and have him stoned?” as Harris translates it. On a literal level, R. Simeon denies only the causal conjunction of the son’s gluttonous behavior and his parent’s actions to initiate execution. There is no moral “can” (or more correctly “may”) in the statement.

Literally, R. Simeon’s words can be understood to mean, “Parents would never be moved to execute their son merely because he was a glutton. Therefore there never was, nor will there be, a *ben sorer u-moreh*.” The absence of any explicit moral “ought” or “can” has led the noted Orthodox philosopher, David Shatz to recommend to me in private conversation that this psychological interpretation is the correct interpretation of the passage.

R. Simeon denies only the causal conjunction of the son’s gluttonous behavior and his parent’s actions to initiate execution.

Once again, I empathize with Harris’ interpretation. He has done precisely what he accuses me of doing illegitimately: seeing a moral dimension in a halakhic source, because this is the most plausible way to understand the text. Given the immediate context of the discussion in *Sanhedrin*, it is logical that the issue at hand is the justification—moral and legal—of capital punishment for the rebellious son, not whether such a case was ever an empirical reality.³ Yet, like the talmudic text regarding exterminating the Canaanites or Maimonides’ text regarding destroying Amalek and all Canaanites, the moral rationale in *Sanhedrin* remains implicit.

Since these texts do not explicitly state the rationales for their interpretations, we have no apodictic proofs demonstrating with certainty that ethical considerations were a material factor in forming the operative halakhic interpretations of how to behave toward the stubborn and rebellious son, Amalek and the Canaanite nations. Yet I submit that the moral rationale is both the simplest and most plausible hypothesis. It

³ I agree with Harris that R. Simeon objected to the implementation of the law on grounds of justice. I interpret R. Simeon as saying, “There can never be an actual case of *ben sorer u-moreh* because an act of gluttony can never be the difference between guilt and innocence in a capital case. It would contradict retributive justice.” This logical impossibility is what allows R. Simeon to predict with certainty about all future cases. Nevertheless, justice is only in the background and not explicit, as Harris claims.

possesses the maximum explanatory power in light of the normative halakhic conclusions in these cases. It is improbable to ascribe to “mere coincidence” the fact that so many commandments that pose moral problems (e.g. killing all the inhabitants of an idolatrous city, the ordeal of a suspected wife (*sotah*), capital punishment, killing heretics and idolaters, *lex talionis*, and genocide against Amalek and the Canaanites) are the very commands for which Hazal and *poseqim* rejected literal interpretations or practical implementation. And as R. Nahum Rabinovitch has demonstrated, there is no halakhic or spiritual reason to deny a higher ethical realization in the historical unfolding of the halakhic process.⁴

The moral rationale is the simplest and most plausible hypothesis.

Harris cites Rashi as ignoring any ethical considerations when discussing *mehiyat amalek*, and R. Hayyim Heller, who denied Maimonides’ requirement to offer peace before going to war in a *milhemet mitsvah*. But arguments from silence—be it Rashi’s or others—are weak evidence indeed for DCM. Since Rashi quotes the *Sifri* on Deut. 20:10 as limiting peace terms to a *milhemet reshut*, he clearly disagreed with Maimonides on this point. This strengthens my argument, since Maimonides rejected the previously accepted halakhic opinions on offering peace, and, as R. Goren indicates, nearly all halakhic authorities after Maimonides, including Nahmanides, Ra’abad, Abravanel, Meir Abolafia, Netsiv and *Hazon Ish*, adopted Maimonides’ interpretation and rejected Rashi and the *Sifri*. Maimonides’ position has become normative *halakhab* today. Indeed, it is hardly conceivable that a responsible contemporary *poseq* would rule that Jews are permitted to attack women, children, civilians or any person innocent of aggression

against Israel.⁵ This is all to the moral good of the Jewish people and the glory of Torah.

3. A Moral *Halakhab*?

This brings me to Harris’ final point about “unimpeachable ethical faith” and the legitimacy of finding moral impulses at work within the halakhic process. Rashi and Maimonides held diametrically opposed philosophic positions on Torah and *mitsvot*. As Harris indicates in his book (pp. 107, 183-184), Rashi’s commentary on the *mishnah* in *Berakbot* 33b implies that he believed *mitzvot* to be arbitrary edicts (*gezeirot*) without useful purpose that should be obeyed without ascribing philosophic or pragmatic rationales.

Maimonides strongly disagreed and insisted that *mitsvot* had purposes—including ethical purposes: “Every commandment ...exists with a view to communicate a correct opinion or to put an end to an unhealthy opinion, to communicate a rule of justice or to warding off an injustice, to endowing men with a noble moral quality or to warn them against an evil moral quality.”⁶ For Maimonides, the quest for moral purity in divine commands is not a result of outside political events or a naïve faith in the ethics of Torah. It is intrinsic to Torah and the proper observance of *mitsvot*. It is this profound impulse that realizes the purposes of *mitsvot* and ennobles our religious observance. In modern times, R. Abraham Isaac ha-Kohen Kook was one among most Torah authorities who also saw moral purity as a necessary quality of our service to God, announcing that “It is forbidden for religious behavior to compromise a person’s natural moral sensibility. If it does, our fear of heaven (*yirat shamayim*) is no longer pure. This type of supposed ‘fear of heaven’ is incorrect (*pesulah*).”⁷ R. Joseph B.

⁴ “The Way of Torah,” *The Edah Journal*, 3:1 (*Shevat* 5763), found at www.edah.org.

⁵ See Aviezer Ravitsky, “Prohibited Wars in Jewish Religious Law” in this edition of *Meorot* (*Shevat* 5767).

⁶ *The Guide of the Perplexed*, III:31, trans. Shlomo Pines (Chicago: U. of Chicago 1963). Maimonides states in this chapter that people who reject the intellectual and moral reasons for divine commandments (i.e. consider them to be arbitrary decrees) are so compelled by a “sickness of their souls,” and that they are persons of “weak intellects.”

Soloveitchik also maintained that *halakhab* cannot violate the moral law.⁸

There is no doubt that Maimonides, R. Kook and R. Soloveitchik believed it was a timeless truth for God's commandments to possess ethical integrity. Yet R. Harris is correct that ethics holds critical importance for Jews today. Religion is not a self-justifying affair, and we have seen it become coarse in peace and evil in war.⁹ We live in an age when religious zeal has produced murder around the world, and when even some Jews have fallen prey to violence in the name of God.¹⁰ Moreover, sovereignty has bestowed upon the Jewish people the privilege of national responsibility as well as the burden of military power. No longer can war or retaliation remain abstract theological categories; today they are Jewish existential options.

It is the quest for moral purity in the *mitsvot* of peace and war that can redeem the Jewish people from coarseness and unjustified religious violence. Without it, *halakhab* runs the risk of being reduced to a spiritually neutral technical discipline and a morally dangerous commitment.

Thus the "considerable residual moral disquiet" to which R. Harris refers is an essential redemptive experience for all Jews making their way through contemporary challenges.

The moral impulse ennobles our religious observance.

Maimonides, *Avnei Nezer*, Netsiv and R. Goren all understood that it would be a desecration of the Torah for Jews to intentionally kill women, children and innocent parties in the name of God. As Abraham's protest regarding Sodom indicates, the quest for ever-evolving moral purity in religious life, a life that reflects the highest ethical standards as we humans understand them, is not born of contemporary values and culture.¹¹

We need not to be defensive about the moral impulse in the halakhic process. On the contrary, we should stand in awe of its power and rededicate ourselves to continue that sacred tradition.

⁷ *Orot ha-Qodesh* 3:11.

⁸ *Loneley Man of Faith*, *Tradition* 7,2 (1965): 61-62n.

⁹ R. Joseph B. Soloveitchik understood that religious life requires redemption and purging of its immoral tendencies. See "Catharsis," *Tradition* 17,2 (1978): 2-53. For R. Soloveitchik's view that halakhah cannot violate the moral law, see above, n. 48.

¹⁰ See Eugene Korn, "Tselem Elokim and the Dialectic of Jewish Morality," *Tradition* 31,2 (1997): 5-30.

¹¹ Rabinovitch claims this evolution is part of God's plan for us to understand Torah anew in every age of history.