

## “Prohibited Wars” In Jewish Religious Law

Aviezer Ravitsky

**Abstract:** This article argues that for most of Jewish history, Jewish wars were more a matter of theology than politics, but the recovery of Jewish military power in Israel has brought about a new departure in halakhic thought. Jewish law starts from the position that the very act of waging war is prohibited, and thus any war that does not fall into one of the classic categories of obligatory war (*milhemet mitsvah*) or permitted war (*milhemet reshut*) is to be considered a prohibited or unjust war from the vantage point of Jewish law. Considerations of good and evil for rendering a war prohibited are found in halakhic literature, and those considerations dictate that even a halakhically permitted war requires moral justification. Lastly, rabbinic authorization is required before any war may be waged, and such authorization can be found today only for a clearly defensive war.

**Biography:** Aviezer Ravitzky is chairman of the Department of Jewish Thought at Hebrew University. In 2001 he was awarded Israel's most prestigious award, the Israel Prize, for his research in Jewish philosophy. A senior fellow at the Israel Democracy Institute, he is also the author of several books including *Messianism, Zionism and Jewish Religious Radicalism, History and Faith: Studies in Jewish Philosophy* and, most recently, *Religious and Secular Jews in Israel: A Kulturkampf?*



# “Prohibited Wars” In Jewish Religious Law\*

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The Jewish religious tradition distinguished between two types of war: obligatory and permitted. “Obligatory war” (*milhemet mizvah*) encompasses the biblical wars against the seven nations inhabiting the Promised Land, the war against Amaleq, and the Jewish nation’s defensive wars. It is, accordingly, a clearly defined and recognizable class (at least after Maimonides’ codification). Not so the second category, “permitted war” (*milhemet reshut*), which is more open-ended and depends on assessments of changing circumstances. Moreover, the mounting of a permitted war requires a coordinated effort on the part of two governmental institutions: the political authority (the king) initiates the war, but it acquires legitimacy only after being officially affirmed by the spiritual-judicial authority (the Sanhedrin).

Do these two categories exhaust the field, or do they leave room for a third category: an illicit war, neither obligatory nor permitted but prohibited and sinful? The question may be worded differently: what considerations should the Sanhedrin, the high court, take into account in deciding whether to permit or forbid a war? Should the court take account of tactics and strategy? Of theological factors? Of ethical and moral considerations? Should some wars be forbidden *ab initio*, because the enemy is immune from attack, the anticipated losses (on one side or the other) are excessive, or the war’s purposes are illegitimate?

Michael Walzer, the senior theoretician of the

morality of war<sup>1</sup>—has argued in a landmark article that the Jewish religious tradition knows only two categories of war but that “the missing category is the banned or forbidden war.” It is true, Walzer writes, that a notion of prohibited war was suggested by R. Samuel David Luzzatto (1800-1865), but Luzzatto had few heirs within the halakhic community and the prohibition did not catch on. Walzer concludes his article with a call to formulate a distinction between permitted and forbidden wars, between just wars and unjust wars.<sup>2</sup>

I was invited to react to Walzer’s observations at a conference sponsored by the California Ethikon Institute. In doing so, I noted several concepts of forbidden war that had already been developed within the halakhic community,<sup>3</sup> and the present article expands on those points and examines them from a new perspective. In particular, I will try to show how the Jews’ modern recovery of military power on the one hand, and their renewed exposure to the horrors of warfare on the other, brought about a new departure in halakhic thought. The new thinking revived concepts that had lain dormant since the Middle Ages, drawing from them potential notions of forbidden war, and it made use of ideas and statements whose influence had long been curtailed, developing in their light a third category of warfare alongside the permitted and the obligatory. In effect, there has been movement in two opposing directions. It is widely recognized that the modern reentry of the Jews into political and military history reactivated dormant notions of holy war, of inheritance and of conquest.<sup>4</sup> At the same time, that very return to

\* English translation from the original Hebrew by Joel Linsider

<sup>1</sup> See Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 2d ed. (New York: Basic Books, 1992).

<sup>2</sup> Michael Walzer, “War and Peace in the Jewish Tradition,” in Terry Nardin, ed., *The Ethics of War and Peace: Religious and Secular Perspectives* (Princeton: Princeton Univ. Press, 1996), pp. 95-114.

<sup>3</sup> My shorter response was published as “Prohibited War in Jewish Tradition,” in Nardin, *Ethics* (above, n. 2), pp. 115-127.

history generated ideas of forbidden war, emphasized the horror of battle, and made permitted war subject to ethical considerations.<sup>5</sup>

### Scope of the Inquiry

Naturally enough, questions of war and peace occupy relatively little space in the literature of *halakhab* and Jewish religious thought. Exiled from their land and ousted from sovereignty, the Jews for the most part regarded their national wars as hypothetical, associated with the biblical past or messianic future, and Jewish sages were called upon primarily to deal with real-life questions and to provide spiritual guidance. Moreover, many sages consciously relegated Jewish warfare to a point beyond historical reality—to an age of prophet and Redeemer, of priests and *urim ve-tummim*\* of king and Sanhedrin. Correspondingly, there emerged even in antiquity the theological prohibition on military activism during the period of the exile—“the Holy One Blessed Be He adjured Israel not to rebel against the nations of the world”<sup>6</sup>—and, over the ages, many rabbis forbade conquest of the Land of Israel in the current (as distinct from the messianic) age.<sup>7</sup>

But war prohibited for theological or circumstantial reasons is not the subject of this paper. What I want to consider here is the prohibition of war for ethical reasons: not because of circumstances of exile and

submission but because of a determination, involving considerations of good and evil, that the war is unjust rather than just. The distinction, to be sure, is not universally acknowledged, and some distinguished authorities have understood the oath of passivity in exile in moral terms. In the early twentieth century, for example, R. Abraham Isaac

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*The return to history generated ideas of forbidden war and made permitted war subject to ethical considerations*

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Kook wrote that “it is not worthy of Jacob [Israel] to conduct a state in an age when it must engage in bloodshed, when it requires skills of wickedness.” In other words, R. Kook sees the withdrawal from political and military history not merely as decree or oath; it is, rather, a normative moral demand—“until that happy time comes when it will be possible to conduct a state without evil and barbarity.”<sup>8</sup> The founder of the Mizrahi (religious Zionist) movement, R. Isaac Jacob Reines, likewise appears to reject out of hand any distinction between theological factors and ethical factors related to prohibited wars. In his view, the prohibition of warfare during the time of exile reflects the essential opposition between the culture of the sword and the culture of the book.<sup>9</sup> But following that path would make our task too easy. We are interested here not in an idealized withdrawal from the military experience itself, but in the distinctions between one war and another;

<sup>4</sup> This development has been discussed in detail, in both scholarly literature and in journalism, by opponents and proponents alike. The innovative thinking related to “forbidden war,” in contrast, is for the most part out of sight and must be uncovered.

<sup>5</sup> Contrary to the stereotypical expectation, this development did not take place within a single, defined, ideological group and is not necessarily bound up with a particular political viewpoint regarding land and peace.

\* The stones on the high priest’s breastplate, through which God’s will might be ascertained in some circumstances—**translator’s note.**

<sup>6</sup> *Babylonian Talmud, Ketubbot* 111a.

<sup>7</sup> Bahya ben Asher, *Commentary on the Torah* (Jerusalem, 1958), on Gen. 32:6; Isaiah Horowitz, *Shenei Luhot ha-Berit* (Jerusalem, 1963), 3, p. 48. See the appendix to my book, *Messianism, Zionism, and Jewish Religious Radicalism* (Chicago: Univ. of Chicago Press, 1996). See also Samuel Mohilever, *Sefer Shivat Ziyon* (Warsaw, 1900), 1, p. 9.

<sup>8</sup> Abraham Isaac Kook, *Orot* (Jerusalem, 1963), 14; cf. id., *Olat Re’ayah* (Jerusalem, 1962), 1, p. 377.

<sup>9</sup> Isaac Jacob Reines, *Or Hadash al Ziyon* (Vilna, 1902), p. 19b. See Elie Holtzer, *Nationalism and Morality: Conceptions of the Use of Force Within Ideological Streams of Religious Zionists*, doctoral dissertation submitted to the Hebrew University of Jerusalem, 1998, pp. 185-198. Cf. Yosef Eliyahu Henkin, *Sefer Lev Ivera* (New York, 1957), p. 115. See also the extreme prohibitory stance adopted by R. Moses Feinstein in *Iggerot Mosheh* (Benei-Beraq, 1965), *Hoshen Mishpat*, 2, sec. 78: “It is my opinion that

between a war permitted in the real world and a war forbidden.

Let me limit the discussion from another point of view. I will examine not the question of battlefield ethics but the more fundamental question of whether one should go to war at all; not the halakhic limitations on how warfare should be waged (*jus in bello*) but whether a particular war itself is justified (*jus ad bello*).

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*Nations comporting themselves properly are made immune from attack by a Jewish army.*

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Once again, so sharp a distinction will not be universally acknowledged. For example, R. Samuel Edels (Maharsha; seventeenth century) commented as follows on the talmudic requirement that the king consult with the Sanhedrin before going to war: “They take counsel from the Sanhedrin regarding how to wage warfare in accord with the Torah, regarding various aspects of war.”<sup>10</sup> Maharsha thus believes that the king must consult in advance with the Sanhedrin not only on whether to go to war but also—indeed, perhaps solely—on how the war should be waged. Similarly, some have seen the many limitations placed by the *halakhab* on the conduct of war as a deliberate step in the direction of disapproving and preventing war itself.<sup>11</sup> In what follows, however, I will direct my attention to the Jewish prohibition of certain wars for ethical reasons in contemporary, historical times.

warfare, which entails a risk to life, requires a specific command, through *urim ve-tummim* and the Sanhedrin, even in a case of obligatory war (!) such as the war against Amaleq; and this is proven from the fact that David and Solomon, and all the other righteous kings, did not go to war against Amaleq. This is clearly proven, admitting of no disagreement. Only when Israel was attacked by idolaters such as Antiochus the Greek king and needed to be rescued did they go to war during the time of the Second Temple.”

<sup>10</sup> Maharsha, *Hiddushei Halakhot ve-Agaddot* (included in the standard editions of the Babylonian Talmud), *Sanhedrin* 16a. See Yosef Glicksberg, “The Sanhedrin’s Authority Over Making War” (Hebrew), *Torah she-Be’al Peh*, 13 (1971), p. 181.

<sup>11</sup> Yehudah Shaviv, *Bezir Avi’ezer* (Alon Shevut, 1990), p. 114. But see G. Blidstein, “Operations Against a Hostile Civilian Population in Contemporary *Halakhab*” (Hebrew), *Medinah, Mimsbal vi-Yahasim Beinle’umiyim*, 41-42 (1997), pp. 155-169.

<sup>12</sup> Maimonides, *Mishneh Torah, Hilkhot Melakhim* 6:1.

<sup>13</sup> But see Shelomo Goren, *Meishiv Milhamah* (Jerusalem, 1986), 3, p. 259.

## Prohibited Wars

Let me begin with some specific questions: Who is legitimately regarded as an enemy? What are legitimate purposes of a war? What are the limits on “legitimate” killing (such that killing in excess of those limits would void the war *ab initio*)? Can we glean from the literature any defined halakhic prohibitions related to these issues? Naturally, this will be a selective inquiry: contrary to the claim, presented earlier, that the *halakhab* contains no concept of prohibited war, I will attempt to uncover traces of such a concept—but only that. Thereafter, I will consider a broader interpretation of the classical sources, suggesting that halakhic assessments of these issues proceed almost entirely from a fundamental premise of a prohibition on war.

### A. Against Which Enemies May War Be Declared?

According to a widespread halakhic notion, war may be declared only against nations that violate the seven Noahide commandments, that is, nations that fail to fulfill the minimum religious-moral demands, the universal norms that make human beings and human society human (according to the Jewish religion). Nations comporting themselves properly, however—refraining from bloodshed, incest, idolatry, robbery, and so forth—are thereby made immune against attack by a Jewish army.

Maimonides ruled that “war is not to be waged against anyone unless he has first been offered peace; this applies equally to permitted wars and to obligatory wars.”<sup>12</sup> True, Maimonides’ concept of

“peace” encompasses the enemy’s political and social subservience,<sup>13</sup> along with its acceptance of the seven universal commandments. But what of a nation that was already living in accordance with the required religious-moral code, and had not taken it on simply to avoid attack? “In the opinion of our master [Maimonides]...those who already fulfill the seven commandments may not be attacked.”<sup>14</sup> That was the understanding of R. Abraham Isaiah Karelitz (the *Hazon Ish*), the halakhic mentor for the Haredi community in the Land of Israel during the preceding generation. His wording suggests this view applies to any nation living *de facto* in accord with the universal code, and not merely to “resident aliens” who formally submit to that code *de jure* before a Jewish court.<sup>15</sup> Note that according to

the traditional view, idolatry is associated with overall moral degradation. But Maimonides held that Muslims were not idolaters, and the halakhic process that began with the Tosafists (during the twelfth century) and concluded with R. Menahem ha-Me’iri (at the end of the thirteenth century), reached a similar result with respect to Christians.<sup>16</sup> Against whom, therefore, can a Jewish army declare an offensive war?<sup>17</sup>

In fact, the *Hazon Ish*, in developing the concept that nations may be immune from Jewish military action, presented the idea not as an unusual innovation but as the common halakhic opinion widely accepted among medieval Jewish sages.<sup>18</sup> He attributed it not only to Maimonides but also to representatives of competing schools, such as R. Abraham Ibn Da’ud (Ra’abad) and Nahmanides;

<sup>14</sup> Isaiah Karelitz (*Hazon Ish*), *Bei’urim ve-Hiddushim al ha-Rambam* (printed with Maimonides’ *Mishneh Torah*) (Jerusalem, 1957), *Hilkhot Melakhim* 5:1.

<sup>15</sup> Yehudah Amital, “Maimonides on Israel’s Wars” (Hebrew), *Tehumin* 8 (1987), p. 460. Cf. the comments of R. David Isaac Mann, *Be’er Miryam* (Kefar Hasidim, 1984), *Hilkhot Melakhim* 6:5, p. 128: “It is obvious to Maimonides that there can be no peace with transgressors of the seven commandments, there is no peace, says the Lord regarding the wicked...; accordingly, without the seven commandments there is no peace here, and there is no reason to avoid war.” See also R. Samson Raphael Hirsch, who emphasized, in his commentary on Deut. 20:10, that even the seven Canaanite nations would be offered peace “on the condition of giving up idolatry and returning to the seven [Noahide commandments]. The complete annihilation out of the Land ordered in [Deut 20:] 17-17 was only if they refused to accept these terms of peace, and, keeping the polytheistic ways of life wished to assert themselves in the Land.” (S. R. Hirsch, *The Pentateuch – Translation and Commentary*, English version by Isaac Levy (New York: Judaica Press, 1971, Deuteronomy, pp. 391-392. See also Noam Zohar, “Morality and War: A Critique of Bleich’s Oracular Halakha,” in Daniel H. Frank, ed., *Commandment and Community* (Albany: State Univ. of New York Press, 1995), p. 251; J. David Bleich, “Response to Noam Zohar,” in id., p. 263. My article “Prohibited War in Jewish Tradition” (above, n. 3) was written before the Zohar-Bleich debate. See also the comments of R. Yisra’eli in note 17, below; and Maimonides’ observations on gentile sages who observe the seven Noahide commandments “because they are rationally compelling” (*Mishneh Torah, Hilkhot Melakhim* 5:11; cf. *Hilkhot Berakhot* 10:11) and appear on that account to have a place in the world to come. See, further, Jacob Levinger, *Maimonides as Philosopher and Codifier* (Hebrew) (Jerusalem: Mosad Bialik, 1989), p. 23; D. Hanshqe, “On the Unity of Maimonides’ Thought” (Hebrew), *Da’at* 37 (1996), pp. 48-50 (and the bibliography there), though he discusses individuals rather than nations and societies.

<sup>16</sup> Jacob Katz, *Halakha and Kabbalah* (Jerusalem: Magnes Press, 1984), pp. 291-310; Yaakov Blidstein, “The Me’iri’s Attitude Toward Gentiles” (Hebrew), *Ziyyon* 51 (1986), pp. 153-166; Moshe Halbertal, *Between Torah and Wisdom: Rabbi Menachem ha-Me’iri and the Maimonidean Halakhists in Provence* (Hebrew) (Jerusalem: Magnes Press, 2000) (chapter 3 translated into English as “‘Ones Possessed of Religion’: Religious Tolerance in the Teachings of the Me’iri,” *The Edah Journal* 1,1 [2000], found at <http://www.edah.org/backend/JournalArticle/halbertal.pdf>. See also A. I. Kook, *Iggerot Re’ayah* (Jerusalem, 1962), 1, p. 99: “The principle is in accord with the view of the Me’iri, that all nations restrained by decent interpersonal practices are already considered as resident aliens with respect to all human obligations.”

<sup>17</sup> Interestingly, R. Sha’ul Yisra’eli, head of the Merkaz ha-Rav yeshiva, understood Nahmanides to take a similar position: “Nahmanides wrote that idolaters...who transgress the seven commandments may be the targets of warfare....It follows that nowadays, when most civilized nations of the world are not idolaters, and may observe the other Noahide commandments as well, the law of permitted war no longer pertains.” In other words, only defensive warfare may be waged against them. (“Retaliatory Operations in Light of *Halakha*”) (Hebrew), ed. Yehudah Shaviv, *Be-Zomet ha-Torah ve-ba-Medinah*, 3 [1991], p. 279.) See also Joseph Kaspi, *Mishneh Kesef* (Kharkov 1902), 2, p. 293: “God has commanded us to be merciful to all persons of whatever nation...except for the seven [Canaanite] nations, for they are as evil beasts.”

<sup>18</sup> For the Tosafists’ view of the issue, see *Tosafot, Avodah Zarah* 26b, s.v. “*ve-lo*.” See M. Ha-Kohen, *Halakhot ve-Halikhot* (Jerusalem, 1975), pp. 197-198.

indeed, he maintained, the latter two sages eased the terms on which Maimonides conditioned that immunity. While Maimonides afforded protection against Jewish attack only to nations already subject to moral discipline, Ra'abad and Nahmanides extended full immunity even to nations that accept the seven Noahide commandments in fear of the impending war! Moreover, Maimonides required the enemy not only to observe the seven commandments but also to submit to Jewish political authority, but Ra'abad and Nahmanides required only acceptance of the seven commandments, easing the way to immunity. But the ointment contained a fly:

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*Just war is not limited to the battle for rights;  
it extends to the battle for good*

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the *Hazon Ish* may have held that the latter two added a requirement to those imposed by Maimonides, conditioning immunity on the enemy's acceptance of the seven commandments in an official manner, by declaration before a Jewish court. (The *Hazon Ish* words it as "accepting the status of a resident alien."<sup>19</sup>) Maimonides, in contrast, required only disciplined conduct in practice (in the words of the *Hazon Ish*, "those who already fulfill [the] seven commandments may not be warred against"<sup>20</sup> [emphasis supplied]).

Relatedly, R. Kook held the view that even in ancient times, when the sages of the Sanhedrin were called upon to decide whether to allow the king to initiate a permitted war, the decisive factor for them was the extent of the potential enemy's corruption and the moral danger it posed:

The matter was given over to the court to assess the moral condition of the idolaters [against whom the king proposed to declare war], for not all

forms [of idolatry] were the same. But because of our many sins, the details of these matters are not clear to us, owing to our minimal use of these procedures in practice since losing our national sovereignty.<sup>21</sup>

In other words, under the limitation implied by the *Hazon Ish*, an offensive war against a nation restrained by the seven commandments would be a prohibited war; and under R. Kook's limitation, an offensive war against a pagan nation not sunk in moral degradation, though perhaps not prohibited *ab initio*, would be forbidden in practice by the Sanhedrin once the king came to seek its approval.

And so we have an initial assessment of the question of prohibited war. Of course, we should not blur the analytic distinctions between religious discourse of this sort and modern liberal discourse. Just war is not here limited to the battle for rights (such as the rights to life and to liberty); it extends as well to the battle for good (in a monotheistic context). Similarly, immunity from warfare here depends on a person's religious-moral state, not on one's essential human condition, and it is not only the individual who is evaluated as a moral being, but the group or the nation as well.

## **B. For What Purposes May War Be Waged?**

It goes without saying that the *halakhah* permits—indeed, requires—fighting a defensive war, a war “to save Israel from an enemy that is attacking it.”<sup>22</sup> That sort of war does not require the Sanhedrin's approval and all are called upon to fight in it, “even a bridegroom from his chamber and a bride from her wedding canopy.” But what of a war for the conquest of the Land of Israel in contemporary times? And what of an expansionist war intended to “enhance the glory and fame” of a King of Israel? Have any of the halakhic sages developed norms related to prohibited wars in these contexts?

<sup>19</sup> See above, n. 14.

<sup>20</sup> Id. It may be that the *Hazon Ish* himself did not draw all these distinctions, but his comments speak for themselves.

<sup>21</sup> A. I. Kook, *Iggerot Re'ayah* (above, n. 16), 1, p. 140. See also Amital, “Israel's Wars” (above, n. 15), p. 461

<sup>22</sup> Maimonides, *Mishneh Torah, Hilkhot Melakhim* 5:1.

The commandment to conquer the Land of Israel was codified by Nahmanides as a commandment with biblical force binding on all generations,<sup>23</sup> but the nature of that mandated “conquest” is the subject of dispute. Some understand it to include the use of military means, a war of conquest in its simple sense. In our times, R. Zevi Yehudah Kook and his disciples have taken this view.<sup>24</sup>

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*The Land of Israel is to be conquered only by permissible means*

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Others, however, have emphasized that halakhic discourse has long recognized a notion of “conquest” through non-military means, such as development and settlement. In their view, even Nahmanides was speaking not of “a commandment of military conquest but of settling and becoming rooted in the Land.” R. Sha’ul Yisra’eli, for example—a highly authoritative scholar for religious Zionists—writes that the commandment of military conquest “was a one-time [event, limited to] the conquest in the time of Joshua, the subject of an explicit commandment by the master of prophets [Moses]”;<sup>25</sup> since then, however, that commandment has been neither applicable nor binding. This suggests that the biblical account represents not a historical model for all time but an exceptional event, outside the regular course of history.

According to the view that the Jewish nation is not *required* to conquer the Land of Israel by warfare, is it nonetheless *permitted* to do so? R. Nahum Rabinowitz, head of the *besder* yeshiva in Ma’aleh Adumim, is an outstanding proponent of the view that forbids such activity.\* In his opinion, the Land of Israel is to be “conquered” only “by permissible means, and warfare on our part is not permitted unless enemies threaten or attack us” (that is, unless the war is preventive or defensive). Rabinowitz infers from Nahmanides’ remarks that even Joshua’s war of conquest was the result of a flawed state of affairs, an exceptional measure necessitated by Israel’s having sinned in their dejected response to the scouts’ discouraging report on the Land (see Numbers 13-14). Accordingly, nothing in Nahmanides’ writings can provide “an anchor for the view that warfare was permitted for the sake of conquering the Land. Worst of all, such an interpretation tends to treat the shedding of blood lightly. That disregard [for human life] undermines the very basis of society and threatens the entire project of [the State of Israel as] the beginning of the Redemption.”<sup>26</sup> Rabinowitz appears to be speaking here of bloodshed on both sides.

These views, too, are of course subject to dispute.<sup>27</sup> But for that very reason—and because of their author’s rigorous examination of the sources he adduces—they reveal another possible manifestation of “prohibited war” in the Jewish tradition, one that portrays even the biblical command to make war as the consequence of sin.

<sup>23</sup> Nahmanides, *Annotations to Maimonides’ Sefer ha-Mizvot*, published with *Sefer ha-Mizvot* (Tel-Aviv, 1957), commandment 3 (s.v. “*she-bishmit ba-Rambam*”). For a detailed discussion, see Sha’ul Yisra’eli, *Erez Hemdah* (Jerusalem, 1957), sec. 1-2;

Michael Z. Nehorai, “The Land of Israel in the Teachings of Maimonides and Nahmanides” (Hebrew), in Moshe Halamish and Aviezer Ravitzky, eds., *The Land of Israel in Medieval Jewish Thought* (Hebrew) (Jerusalem: Yad Yizhaq Ben-Zvi, 1991), pp. 129-136; Aviezer Ravitzky, *Al Da’at ba-Maqom* (Jerusalem: Keter, 1991), pp. 42-46.

<sup>24</sup> Z. Y. Kook, *Mi-Tokh ha-Torah ha-Go’elet*, ed. H. A. Schwartz (Jerusalem, 1983), p. 123: “Regarding the commandment to conquer the Land of Israel, we bear the obligation, the commandment is issued to us, to enter into a state of war to do so, even if we are killed!” See also Shelomo Aviner, “Taking Possession of the Land and the Ethical Problem” (Hebrew), *Arzi*, 2 (1982), p. 111; Jacob Ariel, “Things as They Are” (Hebrew), *Zefiyah*, 1 (1984), p. 36; Hanan Porat, “The Dispute With R. Amital Regarding the Land of Israel” (Hebrew), *Nequdah*, 56 (1982), pp. 27-28. Cf. Shelomo Yosef Zevin, “War in Light of *Halakhal*” (Hebrew), *Torah she-Be’al Peh* 13 (1971), p. 147; Eliezer Waldenberg, *Ziz Eli’ezer* 3, sec. 9, par. 2.

<sup>25</sup> Sha’ul Yisra’eli, “Reply to a Question” (Hebrew), *Af Sha’al – Mizvab min ha-Torah?* (Jerusalem: Oz ve-Shalom Publications, 1978), p. 4. Cf. id., *Erez Hemdah* (above, n. 23), sec. 1.

\* A *besder* yeshiva is an institution whose students combine yeshiva study with military service—*translator’s note*.

<sup>26</sup> Nahum Rabinowitz, “Nahmanides and Maimonides on the Commandment of Possessing the Land” (Hebrew), *Tehumin*, 5 (1984), p. 184. Cf. Nehorai, “The Land of Israel,” (above, n. 23), pp. 123-137.

<sup>27</sup> See, for example, Ariel, “Things as They Are” (above, n. 24), pp. 174-179.

R. Kook likewise saw the biblical war for the conquest of the Land of Israel as the result of sin (that of the Golden Calf); but for the Israelites' transgression, "the nations dwelling in the Land of Israel would have made peace with Israel...and warfare would not have prevailed. The influence [of good] would have proceeded through ways of peace, as in messianic times...but sin caused that to be delayed by thousands of years."<sup>28</sup> (As early as the fourteenth century, Gersonides had argued that Israel's future acquisition of the Land would take place "in a manner such that there would no longer be war."<sup>29</sup>)

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*A permitted war needs to be morally justified*

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But what of permitted wars waged by the kings of Israel? Does not Maimonides permit, as Walzer stresses, even an aggressive, expansionist war initiated by the king (with the advice and consent of the Sanhedrin), a war intended solely for political purposes, "to enhance [the king's] glory and fame"? Not necessarily, some would respond;<sup>30</sup> one such is R. H. H. Herschensohn, who wrote as follows even while supporting the establishment of the Hebrew Brigades in 1915-1917, during the First World War:

Because an *unjust* war transgresses the prohibitions against pillage, murder,

robbery, and suicide, the terminology used is that of permission in the face of [otherwise applicable] *prohibition*...and because of that concern, it is taught that "They may not wage permitted war except by [authorization of] a court of seventy-one (*Sanhedrin* 20a), that is, a court's determination is needed to *permit* it. (Emphasis supplied)<sup>31</sup>

Or, as R. Aharon Lichtenstein (head of the *besder* yeshiva in Alon Shevut) later argued, in the context of the debate over the war in Lebanon (1982):

A permitted war is not, God forbid, a war that may be initiated arbitrarily or on the basis of pragmatic considerations alone. Initiating such a war entails a moral assessment of the circumstances no less than a political one...it rests as well on value-based criteria not anchored in explicit *halakhot* but required as a matter of conscience.<sup>32</sup>

The war's *raison d'état*, R. Lichtenstein added, is indeed political, but "the reasoning and justification" for the war offered before the Sanhedrin cannot disregard the "moral plane." And as Prof. Gerald Blidstein recently noted, the requirement that even a permitted war be morally justified is consistent with the positive overtones of the term "permission" in the geonic literature."<sup>33</sup>

In fact, R. Kook's comments cited above<sup>34</sup> imply

<sup>28</sup> A. I. Kook, *Orot* (Jerusalem, 1976), p. 14.

<sup>29</sup> Levi ben Gershon (Gersonides), *Commentary on the Torah*, Deut. 7:9.

<sup>30</sup> R. Abraham De Bouton (sixteenth century; author of the *Lehem Mishneh* commentary on Maimonides' *Mishneh Torah*) already limited the concept to deterrent warfare: "so that they fear him and do not attack him." See Efrayim Enber, "War in the Jewish Tradition" (Hebrew), *Medinab, Mimsbal, vi-Yahasim Beinle'umiyim* 26 (1987), p. 3; J. David Bleich, "Preemptive War in Jewish Law," *Tradition* 21, 1 (1983), p. 12. See also Isaac A. Herzog, *Resp. Heikhal Yizchaq* (Jerusalem, 1960), *Orah Hayyim*, sec. 38. Some have emphasized the biblical statement "When you go to war against your enemies" (Deut. 20:1): "That it says 'against your enemies' [implies] that you are not to wage permitted war against nations with which you are at peace, but only against your enemies." (Me'ir Leibush Malbim, *Malbim on the Torah* [Jerusalem, 1957], p. 762; cf. S. R. Hirsch, *Commentary* [above, n. 15], Deut. 20:1.)

<sup>31</sup> *Hayyim* H. Hirschensohn, *Malki ba-Qodesh* (St. Louis, 1909), pp. 93-94.

<sup>32</sup> Aharon Lichtenstein, "Human Morality and Divine Morality" (Hebrew), *Arakhim be-Mivlan Millamah* (Alon Shevut, 1982), p. 18. Cf. id., "Morality of War" (Hebrew), *Tehumin*, 4 (1983), p. 184; Yaakov Blidstein, *Political Concepts in Maimonidean Halakha* (Hebrew) (Ramat-Gan: Bar-Ilan Univ., 1983) (pp. 216-220).

<sup>33</sup> Blidstein, id., p. 220, n. 18. And see the comments of R. David Bonfils (thirteenth century) "It is improper to rob the other nations of their portions; and [the Land of Israel] was given to Israel only because it was in the hands of the Canaanites, who did not themselves merit it. (*Novellae on Tractate Sanhedrin*, ed. Lipschitz [Jerusalem, 1968], p. 91a.)

<sup>34</sup> Above, n. 21.

as much; and the idea appears as well in the remarks of R. Hayyim David Halevy, late Chief Rabbi of Tel-Aviv: “The court would examine in a fundamental way the king’s request [for authority] to go to war, to determine if it were *justified* and what degree of *risk* it entailed, and in accordance with that [assessment] it would [or would not] grant his request.”<sup>35</sup> (Emphasis supplied.)

Moreover, this may be the very reason for requiring that the king obtain the Sanhedrin’s consent before going to war, a requirement that makes waging war the joint endeavor of the political and judicial branches of government. Let me elaborate on this specifically in the context of the radical theory of government developed in the fourteenth century by R. Nissim of Gerona (Ran), a theory that endowed the political sphere with much broader authority than did other halakhic approaches.

R. Nissim greatly expanded the king’s judicial power, allowing him to depart from the law of the Torah when times and social circumstances so required. True, he wrote, only the Torah’s justice represents the ideal law (“the genuine law of truth”; “righteous justice”); but often it is “the king’s justice” that represents realistic law.<sup>36</sup> And true, the Torah’s justice is the eternal, divine justice, the sole mechanism through which Israel will attain spiritual exaltation and supernal bounty; but the king’s justice is effective and dynamic social justice in the here and now, for it is equipped to accommodate itself to changing circumstances and thereby to ensure the welfare of the

people. Consistent with his approach, Ran found it especially necessary to emphasize, even in the context of warfare, the king’s exalted station and the power vested in him “to assemble the people and send them out to wherever he will, and that is one of the attributes of kingship.”<sup>37</sup> But given that view of things, it becomes especially pertinent to ask why the king (“whose power is great”) should be required to consult with the high court (“whose capacity is limited by the law of the Torah”). Why should this unusual requirement be imposed specifically with respect to the issue of going to war? It has been suggested that in the particular context of warfare—which entails the risk of bloodshed—it is essential to make every effort to align realistic justice with ideal justice and to avoid severing political interest and “the need of the hour” from “righteous justice.”<sup>38</sup>

(That effort provides a model to be imitated in other areas as well, in which realistic political law should be brought ever closer to ideal religious law: “Even though the king’s law is closer to reason and to the needs of the hour, and it flows from his exclusive authority, there is a special commandment that the king align his justice with the law of the Torah to the extent possible.”<sup>39</sup>)

This is even more the case under Maimonides’ view, which never accepted a clear separation of powers between the political and spiritual realms. Maimonides demanded that the king himself direct all his actions not only toward the welfare of society but also toward the betterment of the world on the religious and spiritual plain—“to raise up the religion of truth and to fill the world with righteousness, breaking the might of the wicked and fighting the wars of God.”<sup>40</sup> Many have

<sup>35</sup> H. D. Ha-Levy, “Military Service in *Halakha*” (Hebrew), *Torah she-Be`al Peh*, 13 (1971), p. 178.

<sup>36</sup> R. Nissim ben Reuben, *Derashot ha-Ran*, ed. A. L. Feldman (Jerusalem 1977), Discourse 11, pp. 189-199, 201-203. See also Aviezer Ravitzky, *Religion and State in Jewish Philosophy: Models of Unity, Division, Collision, and Subordination* (Jerusalem: The Israel Democracy Institute, 2002), pp. 57-84.

<sup>37</sup> R. Nissim ben Reuben, *Hiddushei ha-Ran* (no publication data), Sanhedrin 20b, p. 201.

<sup>38</sup> Cf. Shimon Federbusch, *Mishpat ha-Melukha be-Yisra’el* (Jerusalem, 1954), p. 199: “The moral strain in the law governing the declaration of war appears first and foremost in the rule denying the right of the king and the military to declare war, for they typically crave victorious combat, and assigning that right exclusively to the spokesman for religion and justice, so it may determine whether the war is justified from the moral point of view.”

<sup>39</sup> Glicksberg, “The Sanhedrin’s Authority” (above, n. 10), p. 186. Cf. R. Abraham Borenstein (*admor* of Sokhachov), *Arnei Nezer* (Jerusalem, 1987), *Orah Hayyim*, sec. 310.

<sup>40</sup> Maimonides, *Mishneh Torah, Hilkhot Melakhim* 4:10. Cf. Rabinowitz, “Nahmanides and Maimonides” (above, n. 26);

interpreted this as opening the door to requiring the king himself, and not just the Sanhedrin, to take account of values and subordinate his practical objectives to them.

### C. Is It Permitted to Declare a War of Unlimited Destruction?

According to one halakhic tradition, it is forbidden to declare a highly destructive war in which unlimited fatalities (enemy or Jewish) can be expected. The statements on the point are terse, but they deserve special attention in the present age of weapons of mass destruction. Moreover, they provide a nice example of how this type of analysis might be conducted within the context of religious literature, for the issue we are examining arose not as a moral or conceptual question but because of the need to interpret an authoritative text. Over time, however, it has gained more far-reaching significance.

The Babylonian Talmud cites a statement by the sage Samuel: “A kingdom that kills up to one in six is not punished.”<sup>41</sup> To whom was the statement referring? According to the interpretation of the *Tosafot* (which differs from that of Rashi), the reference is to the fatalities of a (permitted) war. And who are those fatalities? Some understand them to be Jewish soldiers: “We learn from this that the maximum number of losses that may be taken in a permitted war according to the Torah is one sixth of the entire fighting population.<sup>42</sup> However, others vehemently oppose that interpretation, expressing dismay at the very thought: “God protect us from that opinion...all those who chatter about the

‘[acceptable] level of losses’ are only spoilers in the vineyards [cf. Song of Songs 2:15]. God save us from them and their followers.”<sup>43</sup>

According to Maharsha’s commentary, the statement applies to the number of enemy fatalities (in a permitted war).<sup>44</sup> If the number of enemy fatalities reaches “one in six,” a Jewish king is not punished; but he is punished if the number exceeds that level. Punishment, of course, implies that there was an offense—either because the war was forbidden from the outset, in view of its foreseeable results, or because the war was waged without restraint. And note that even if we are appalled at this sort of quantitative assessment regarding human life, it should be seen as a direct admonition against a war entailing mass destruction of human life. As noted, an admonition of that sort has special meaning today, in the face of available weapons of mass destruction. As R. Moses Sofer (*Hatam Sofer*) put in the nineteenth century: “He [the king] has no authority to wipe out an entire race or type [of humanity].”<sup>45</sup> That is, he may not commit genocide in any form.

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*The halakhah starts from a principled position that the act of waging war as a prohibited act.*

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R. Yehudah Gershuni, a leading contemporary Torah sage, went even further, applying the ban on excessive killing not only to an aggressive permitted war but even to a defensive one! Only in the biblical holy war against the Canaanite nations and against Amaleq, he maintains, was it permitted to kill all the enemy; in any other war, doing so is prohibited.<sup>46</sup> The ruling has obvious implications for nuclear deterrence and even more for the actual use of nuclear weapons.

Amital, “Israel’s Wars” (above, n. 15); Gerald Blidstein, “Holy War in Maimonidean Law,” in Joel L. Kraemer, ed., *Perspectives on Maimonides* (New York: Oxford Univ. Press, 1991), pp. 209-220.

<sup>41</sup> Babylonian Talmud, Shevu’ot 35b.

<sup>42</sup> R. Shelmoh Goren, *Meishiv Milhamah* (above, n. 13), 1, p. 14; 3, p. 354.

<sup>43</sup> R. Nahum Rabinowitz, “Nahmanides and Maimonides” (above, n. 26), p. 184.

<sup>44</sup> Maharsha (above, n. 10), Sanhedrin 16a. See also Naftali Zevi Yehudah Berlin, *Ha’ameq Davar* (Commentary on the Torah) (Jerusalem, 1984), Gen. 9:5; Deut. 20:8.

<sup>45</sup> Moses Sofer, *Hatam Sofer* (Vienna, 1865), 1, p. 208. See also Shaviv, *Bezir Avi’ezer* (above, n. 11), p. 102; Yosef Ahituv, “The Wars of Israel and the Sanctity of Life” (Hebrew) in Yeshiyahu Gafni and Aviezer Ravitzky, eds., *Sanctity of Life and Martyrdom* (Hebrew) (Jerusalem: Merkaz Zalman Shazar, 1992), p. 263.

<sup>46</sup> Yehuda Gershuni, “On Power and On War” (Hebrew), *Te’humin*, 4 (1983), p. 59. The *Hazon Ish* likewise understands the

Let me note one reservation. The preceding discussion rests on the following premises: if a punishment is specified, there must be an offence; if there is an offence, there must be a categorical prohibition; and if there is a categorical prohibition, the threat of the prohibited act must itself be prohibited as well (for otherwise, the threat would be seen as empty). But there exist exceptional, morally ambiguous circumstances in which these logical moves become problematic or at least cease to be self-evident. We have seen as much in contemporary inquiries into the ethics of nuclear deterrence: “The threat of something disproportionate is not always a disproportionate threat” (Paul Ramsey);<sup>47</sup> “Nuclear weapons explode the theory of just war. They are the first of mankind’s technological innovations that are simply not encompassable within the familiar moral world.” (Michael Walzer).<sup>48</sup>

### Prohibition on War as Point of Departure

The modern Jewish situation (since the establishment of the “Jewish Brigades Group during the Second World War”) and the State of Israel’s wars have given rise to a more general and systematic outlook regarding war and its limitations. According to this view, the *halakhab* starts from a principled position that regards the very act of waging war as a prohibited act. “For every war entails concern about being killed and about killing...and both of these concerns are tied to biblical [i.e., not merely rabbinic] prohibitions.”<sup>49</sup> Accordingly, specific religious authorization is needed before any war at all may be waged, and this

sort of authorization can be found today, as noted earlier, only with respect to a clearly defensive war. This point of view can account in an interesting manner for the development of only two categories of war (obligatory and permitted) within the Jewish tradition even though a third category, prohibited war, seems needed. It suggests that the prohibition is the norm, the “default option,” the starting point for the entire inquiry. Obligatory and permitted wars constitute two exceptions drawn against that prohibitory background.

R. Yehudah Shaviv states it as follows:

The people of Israel know of three types of war: *prohibited* war, *permitted* war, and *obligatory* war. The *halakhab* speaks of the latter two types but has no need to speak of the first, for any war that does not fall in one of the second two categories is *necessarily prohibited*. The prohibition is that of spilling blood; for if the Torah forbids an individual to spill an individual’s blood, how much more so is the community forbidden to spill a community’s blood. (Emphasis added).<sup>50</sup>

Other contemporary rabbis have written explicitly about the matter.<sup>51</sup> Like their predecessors mentioned earlier, they can straightforwardly respond to the question Walzer poses in his article, that is, “...who, at this late date, could issue the prohibitions [against warfare]?...God...is not known to have announced any specific (or general) prohibitions”<sup>51a</sup>

Moreover, there is an important sense in which halakhic inquiry into these issues can be expected to lean more toward prohibition than do many

talmudic statement to be speaking of punishment for one who kills more than one-sixth of the enemy. (*Yoreh De`ab*, sec. 157, par. 4.)

<sup>47</sup> Paul Ramsey, *The Just War: Force and Political Responsibility* (New York: Scribner, 1968), p. 303.

<sup>48</sup> Walzer, *Just and Unjust War* (above, n. 1), p. 282.

<sup>49</sup> R. Yehudah Amital, “Israel’s Wars” (above, n. 15), p. 460.

<sup>50</sup> Shaviv, *Bezir Avi’ezer* (above, n. 11), p. 85.

<sup>51</sup> Zevin, “War in Light of *Halakhab*” (above, n. 24), p. 10. In truth, Rabbi H. H. Hirschensohn was the first to speak in these terms. In anticipation of the establishment of the Hebrew Brigades during the First World War, he developed the idea that “the wording ‘permitted’ [war] is used to remove a particular war from the rubric of prohibition, lest we think that because warfare in itself entails murder of others and risk to oneself, it is never permitted... Because an unjust war entails [transgression of] the prohibitions against pillage, murder, robbery, and suicide, the terminology used is that of permission in the face of otherwise applicable prohibition.” *Malki ba-Qodesh* (above, n. 31), 1, p. 92.

contemporary philosophical analyses. Modern liberal thought regards human beings as autonomous with respect to their bodies and their lives. Accordingly, it is likely to regard the participants' freely-arrived-at decision to go to war as dispositive of the issue. Indeed, some have argued from this perspective that if warfare is waged through the free choice of the participants on both sides (such as knights in a joust or mercenaries), and the participants are free to end the conflict at any time of their choice, it should not be seen as criminal or unjust. Walzer writes:

Some wars are not hell...We take [the choice of young men who voluntarily fight] as a sign that what they are choosing cannot be awful, even if it looks that way to us...their subsequent fate, even if it is very painful, cannot be called unjust...Given that freedom [of choice on the soldiers' part], they might have fought very bloody battles and the spectacle would not lead us to say that war was a crime...they died of their own free will...What is important here is the extent to which war (as a profession) or combat (at this or that moment in time) is a personal choice that the soldier makes on his own and for essentially private reasons.<sup>52</sup>

This harsh stance is controversial even in the secular liberal context: Does the willingness of people to be killed make the killing permissible? Do people who fight of their own free will really "die of their own free will," or might they be fighting out of a conviction that they will survive and prevail? But in the religious-halakhic context, the stance is simply impossible, for religious thought does not consider one to be the master of one's body and life. It follows that human autonomy does not extend so far as to permit a person to freely choose to submit to danger or forfeit life. Can a freely-entered-into agreement purge

the cosmic sin of shedding blood? ("No expiation can be made for the land for the blood that is shed therein" [Num. 35:33].) It follows that even war "games" or attacks on mercenaries, despite the participants' having freely chosen to engage in warfare, are to be considered a physical and moral abomination.

And yet, surprisingly enough, we find R. Sha'ul Yisra'eli grounding the entire notion of legitimate war in a concept of human (non-Jewish) autonomy over one's body. In his view, the halakhic authorization to wage war draws its force from international conventions that contemplate warfare:

There is *general* agreement in the world that war is one of the ways through which conflicts among nations may be resolved. Only in our time are there efforts to have law recognized as unlawful, but the time is not yet ripe and nations are unwilling to assume that sort of mutual obligation. Accordingly, international convention can be regarded as the basis for considering war to be *one of the lawful means*. (original emphasis)<sup>53</sup>

But once it is granted that war would be prohibited in the absence of international consent, how can that consent possibly permit it? Can universal agreement to violate a prohibition against spilling blood nullify the prohibition? It is at this point in

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*Authorization can be found today only with respect to a clearly defensive war.*

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the argument that R. Yisra'eli introduces the concept of the non-Jew's dominion over his life and his body. The Jew partakes of the divine realm on high and accordingly lacks dominion over his life and body. Not so the gentile, the Noahide, who exists entirely in this world and therefore has full autonomy over his life and death. "It follows

<sup>52</sup> Walzer, *Just and Unjust War* (above, n. 1), pp. 25-28.

<sup>53</sup> Sha'ul Yisra'eli, *Amud ha-Yemini* (Tel-Aviv, 1966), p. 77.

from all this that a Noahide's waiver of the prohibition against bloodshed will be effective," and, accordingly, so will be the agreement of Noahides to permit making war. Yosef Ahituv has trenchantly criticized this use of a metaphysical (and meta-halakhic) distinction between "Israel" and "human," between Jew and gentile.<sup>54</sup> But our interest here is limited to the use that has been made of the concept of autonomy in grounding the concept of legitimate war.

The modern theoretician of war demands the personal consent of each individual at each moment the war is waged. R. Yisra'eli, in contrast, requires only the nations' general consent—a consent that may be inferred, in his opinion, from the very fact that they are accustomed to waging wars. He thus draws an analogy between the situation within a particular state, where national agreement is dispositive and the consent of each individual need not be obtained, and the situation among states, where international agreement determines matters and, once again, there is no need for each individual to consent: "just as the applicable internal law of the state is determined by agreement, so is the applicable law among nations determined by agreement."

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*International agreements declare that war is permitted only against an aggressor.*

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Does this international consent really exist? Have all nations undertaken in advance to use warfare as a means of resolving conflict? I don't think so. On the contrary; international

agreements declare that war is permitted only against an aggressor, that is, against one attempting to resolve a conflict through warfare. The unfaithfulness of many nations to this agreement cannot transform their acts into "one of the lawful means" and afford them *de jure* legitimacy any more than the existence of numerous thieves—people unfaithful to the agreement prohibiting theft—can afford *de jure* legitimacy to theft. But the claim regarding the universality of war can be reformulated by reference to the principle of self-defense: warfare is not rendered permissible by the prevalence of forbidden acts of war themselves; it is rendered permissible by the destructive consequences of violence if we sit on our hands and do not defend against it. As R. A. I. Kook wrote, "It would have been absolutely impossible, at a time when the nation of Israel's neighbors were all predatory coyotes, for only Israel to have refrained from making war; for in that event, they all would have gathered and, God forbid, would have wiped out Israel's remnant."<sup>55</sup> Either way, we may conclude that if international practice with respect to such matters should someday change, the halakhic authorization for permitted war would expire of itself, with no need for new religious legislation.<sup>56</sup>

### **The Interpretive Challenge: Between Jews and Christians**

Because of the historical reality of exile, Jewish sources dealing with war concentrate more on historiosophic, theological, and anthropological issues and less on concrete ethical guidance for wartime. Jews showed interested in what the phenomenon of war meant, wondered about the factors that led people to take up the sword, and

<sup>54</sup> Ahituv, "The Wars of Israel" (above, n. 45), p. 269. See also A. I. Kook, *Da'at Koben* (Jerusalem, 1993), sec. 199, p. 383.

<sup>55</sup> A. I. Kook, *Iggerot Re'ayab* (above, n. 16), 1, p. 140. Cf. id., *Ma'amrei ha-Re'ayab* (Jerusalem, 1984), p. 508. On the halakhic plane as well, R. Kook understood the authorization to spill blood during warfare as a *bora'at sha'ab* (a temporary, emergency departure from otherwise applicable halakhic norms) (*Mishpat Koben* [Jerusalem, 1966], pp. 153-154). Accordingly, all the views presented in this section draw heavily on him. R. David Frankel (nineteenth century; commentator on the Talmud of the Land of Israel and author of *Qorban ha-Edah*) hinged the law of war on the halakhic requirement to protect a person pursued by an attacker: if the Torah commanded us to rescue an individual victim from a pursuer, thereby necessarily authorizing the killing of the pursuer, how much more so must it be said to authorize the steps needed to rescue a community. (*Sheyyarei Qorban al Talmud Yerushalmi*, Sotah 8:10.) See also S. Arieli, *Mishpat ha-Millhamah* (Jerusalem, 1972), p. 13.

<sup>56</sup> R. Yisra'eli himself drew this conclusion.

asked whether war represented humanity's nature or its fall. They dealt less with the political and practical questions related to warfare itself.

As Walzer points out in his article, did not Jews—rabbis as well as laity—in fact experience war throughout the exile? Naturally enough, there are some interesting exceptions to the foregoing statement. Let me present a few of them. The Jews of Spain, for example, enlisted in aid of the conquering Muslims and served them as a guard force. Later, some of them bore arms and defended their towns. R. Samuel Ha-Nagid was a general in the Kingdom of Granada, a warrior and officer who set down his military experience in song and verse. In northern Europe, some Ashkenazi rabbis report on mighty battles waged by persecuted Jews against the crusaders. R. Solomon ben R. Samson vividly described the army of the Mainz community, who “wore armor and bore weaponry, old and young alike”<sup>57</sup> and rose up against their enemies. R. El'azar ha-Roqeah tells of “an incident in which a large force besieged the city of Worms on the Sabbath, and we permitted all the Jews to take up their arms.”<sup>58</sup> He depicted the Jewish heroes as feudal knights, clad in iron armor. Even if we question the factual accuracy of the accounts, we must give weight to the Jew's self-consciousness and self-image as warrior.

So, too, Sefardi and Ashkenazi sages alike occasionally make laudatory statements about the Hasmoneans and their military

accomplishments. R. Abraham Ibn Ezra, for example, writes of “that mighty king, Judah the Hasmonean, who triumphed over the Greeks though at the outset he had neither wealth nor horses.”<sup>59</sup> Similar statements appear in the writings of R. Abraham Ibn Da'ud in Spain<sup>60</sup> and R. Eliezer of Belgensi in Germany.<sup>61</sup> Prof. Hayyim Hillel Ben-Sasson's research uncovered an abundance of such illuminating data.<sup>62</sup>

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*For most of Jewish history, Jewish wars were more a matter of theology than of politics.*

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Still, these are the exceptions. For most of Jewish history, it was only gentile wars that constituted actual historical reality. Jewish wars were more a matter of theology than of politics. They were waged in sacred writings, set in the distant past; or as birth pangs of the Messiah, set in the distant future. When a Jew waged concrete war, it was against his evil impulse, not against an actual historical enemy. Peace was similarly viewed through a utopian lens, illuminated by the vision of the end of days; it, too, was considered primarily under the rubric of theology.

It is no wonder, then, that post-biblical Jewish sources tend openly to spiritualize biblical texts that speak of war and the sword.<sup>63</sup> The biblical “my sword and my bow” (Gen. 48:22; Ps. 44:7) become, in Aramaic translation, “my prayer and my plea.”<sup>64</sup> Isaiah's references to “a mighty man of war” and “those who bring war to the gates” pertain not to armed men in the simple sense but to “those who engage in the argumentative warfare of studying Torah.”<sup>65</sup> The hero's sword is understood to mean his Torah;<sup>66</sup> biblical generals

<sup>57</sup> A. M. Haberman, ed., *Gezeirot Ashkenaz ve-Zorfat* (Jerusalem, 1990), pp. 30, 97.

<sup>58</sup> El'azar ha-Roqeah, *Sefer ha-Roqeah* (Jerusalem, 1960), *Hilkhot Erwin*, sec. 196, 85.

<sup>59</sup> Commentary on Zech. 9:9-16.

<sup>60</sup> Abraham Ibn Da'ud, *Divrei Malkhei Bayit Sheini* (Mantua, 1514), p. 62.

<sup>61</sup> Commentary on Haggai 2:7-9.

<sup>62</sup> Hayyim H. Ben-Sasson, “The Uniqueness of the Jewish Nation as Seen in the Twelfth Century” (Hebrew), *Peraqim*, 2 (Jerusalem, 1969), pp. 166-168; 177; 214-216.

<sup>63</sup> The following observations are based on the discussion in my book, *Al Da'at ha-Maqom* (above, n. 23), pp. 21-22.

<sup>64</sup> Onqelos on Gen. 48:22; *Midrash Tanhuma, Be-Shalah*, par. 9. Cf. *Mekhilta de-Rabbi Yishma'el*, 14:10; *Babylonian Talmud, Bava Batra* 123a.

<sup>65</sup> *Babylonian Talmud, Hagigah* 14a; *Megillah* 15b.

<sup>66</sup> *Midrash Tebillim* 45:4.

become sages and heads of the Sanhedrin;<sup>67</sup> “weapons are the righteous,” and even “David’s heroes” are manifestations of the King of Israel’s mighty spirit “when he is studying in a yeshiva.”<sup>68</sup>

This spiritualized internalization of the sources dealing with warfare and might is very widespread in aggadic (as distinct from halakhic) *midrash*.<sup>69</sup> It took on new forms in the Middle Ages, when Jewish philosophers interpreted the scriptural verses as referring to the inner battle among the forces within the soul,<sup>70</sup> while kabbalists read the texts as speaking of divine attributes.<sup>71</sup>

An instructive contrasting parallel may be drawn between these phenomena in Jewish literature and the spiritualized interpretation of scripture developed by Christians. Christianity began with a gospel of *pacifism*. That is the simple meaning of various New Testament statements, most notably the Sermon on the Mount; and early Christians saw themselves in that light and were so portrayed by others.<sup>72</sup> Later, after Christianity had become the Roman Empire’s official religion, it developed the doctrine of the “*just war*.” Augustine, the leading exponent of the idea, relied on statements of the prophets taken literally, but he had to interpret New Testament statements

non-literally.<sup>73</sup> He, too, did so through spiritualization and internalization; but he applied that technique not to verses that spoke of war but to those that spoke of pacifism. All of these verses were interpreted to refer to a person’s inner life, to the depths of one’s spirit, and not to historical reality.<sup>74</sup> That is the response of a religion that had only recently mounted the political stage and acquired power and dominion, in contrast to a religion that had been removed from that stage for many generations

A third phase in the Christian doctrine of war developed in the Middle Ages, during the Crusades; it involved the transition from “*just war*” to “*holy war*.”<sup>75</sup> Here, too, we can observe a degree of contrasting parallelism between Christian and Jewish literature. Jewish memory begins with “holy war” against the idolatrous Canaanite nations. Later, however, the *Mishnah* (*Yadayim* 4:4), and Maimonides following its lead, effectively made the ancient Israelite holy war irrelevant to both the present and the future,<sup>76</sup> and even the historical memory as shaped by the sages has Joshua himself sending dispatches to the Canaanites, offering them the option of making peace. As a practical matter, then, “obligatory war” exists only in a case of “saving Israel from an enemy,” that is, a defensive war; and defensive war corresponds to the “*just war*” of the European literature, not any longer to the “holy war.”

<sup>67</sup> *Yalqut Shim`oni* 2, 141.

<sup>68</sup> *Babylonian Talmud, Mo`ed Qatan* 16b. See Shelomo Goren, “Might in Jewish Teachings” (Hebrew) *Maḥanayim* 120 (1969), pp. 7-13; Reuven Kimelman, “Nonviolence in the Talmud,” *Judaism* 17 (1968), pp. 316-334; D. S. Shapiro, “The Jewish Attitude Towards Peace and War,” in L. Jung, ed., *Israel of Tomorrow* (New York, 1946), pp. 220 ff.

<sup>69</sup> See Goren, id.

<sup>70</sup> See, e.g., Jacob Antoly, *Malamed ha-Talmidim* (Lik, 1866), pp. 22b, 31b, 85b; Moses Ibn Tibbon, *Peirush Shir ha-Shirim* (Lik, 1874), p. 14b.

<sup>71</sup> See, e.g., Joseph Gikatilla, *Sha`arei Orab, She`arim* 3-4 (interpreting the divine name “*Zeva’ot*”).

<sup>72</sup> Geoffrey F. Nuttall, *Christian Pacifism in History* (Oxford: Blackwell, 1958); John Ferguson, *War and Peace in the World’s Religions* (London: Sheldon Press, 1977), pp. 101-122.

<sup>73</sup> L. B. Walters, *Five Classical Just-War Theories* (Hartford CT, 1971); J. Bryan Hehir, “The Just-War Ethic and Catholic Theology,” in Thomas A. Shannon, ed., *War or Peace* (Maryknoll NY: Orbis Books, 1980), pp. 3-15.

<sup>74</sup> Frederick H. Russell, *The Just War in the Middle Ages* (Cambridge; New York: Cambridge Univ. Press, 1975), pp. 16-39; Walters, *Just-War Theories* (above, n. 74), pp. 61-62; Nuttall, *Christian Pacifism* (above, n. 72), p. 106.

<sup>75</sup> On the revival of the holy war idea among seventeenth- and eighteenth-century Protestant believers, see Michael Walzer, *The Revolution of the Saints: A Study in the Origins of Radical Politics* (London: Weidenfeld and Nicolson, 1966), pp. 270ff.; John Hick, “Christian Doctrines in the Light of Religious Pluralism,” *International Religious Foundation Newsletters*, 3 (1988).

<sup>76</sup> *Mishnah, Yadayim* 4:4; Maimonides, *Sefer ha-Mizvot*, pos. 187. See Ha-Kohen, *Halakhot ve-Halikhot* (above, n. 18), pp. 180-203. For an elaboration of this point, see Eugene Korn, “Moralization in Jewish Law: Genocide, Divine Commands and Rabbinic Reasoning,” *The Edah Journal, Sivan* 5766 at [www.edah.org/backend/JournalArticle/KORN\\_5\\_2.pdf-ed](http://www.edah.org/backend/JournalArticle/KORN_5_2.pdf-ed).

Finally, does the Jewish religious literature allow for a human reaction that might forbid, on moral grounds, even a divinely commanded war? Walzer directs our attention to the religious obligation to obey such a command even if it runs contrary to human notions of morality. He cites the Talmudic account in which King Saul raises a moral argument to justify his failure to obey the divine command to wipe out Amaleq: “even if the adults sinned, in what way did the children sin?”<sup>77</sup> God’s response is “do not be excessively righteous.” Human moral qualms are here afforded no legitimacy whatsoever.

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*The Mishnah and Maimonides made the holy war irrelevant to the present and the future.*

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But that is not the entire picture. In many other midrashic stories about war, the sages interpreted scriptural texts in ways that enhanced the status of a human protest against war and granted it legitimacy *vis à vis* the divine command. Indeed, they went so far as to endow one such protest with enduring authority as a fundamental principle.

Let me cite two examples associated in the *midrashim* with two ideal figures: Moses and the Messiah. The story associated with Moses appears in various versions; here is the late, expansive version in *Midrash Tanhuma* 96:3:

“One finds that the Holy One Blessed Be He revoked his decree for the sake of peace.” When? In saying to Moses: “When you shall besiege a city a long time...” [Deut. 20:19], the Holy One Blessed Be He told Moses to destroy them....But Moses did not do so, saying, rather: Should I now go and attack both those who sinned and those who did not sin? Instead, I shall go to them offering

peace.... [But] when [Moses] saw that the enemy did not come offering peace, he attacked him. Said the Holy One Blessed Be He: I said “you shall utterly destroy them” [Deut. 20:16], but you did not do so; by your life, as you said, I shall do, as is written: “When you draw near to a city to fight against it, then proclaim peace unto it” [Deut. 20:10].

Moses, like Saul after him, pressed an autonomous moral claim against the heavenly command. (Compare Moses’ “Should I now go and attack both those who sinned and those who did not sin” with Saul’s “Even if the adults sinned, in what way did the children sin?”) But Moses’ protest was acknowledged on high,<sup>78</sup> and, in its wake, the *halakhab* was determined for all time:

“When you draw near to a city to fight against it, then proclaim peace unto it.”

A similar point is made in *Midrash Tehillim* 120 with respect to the Messiah:

“I am all peace; but when I speak, they are for war” [Ps. 120:7]. What is the meaning of “I am all peace”? The Holy One Blessed Be He said to the Messiah, “You shall break them with a rod of iron” [Ps. 2:9]. The Messiah said: “Master of the Universe, no; in peace will I start to speak with the gentiles.” It therefore says, ““I am all peace; but when I speak, they are for war”

These *midrashim* vindicate the stance of the autonomous human conscience, as if to suggest an undefined space for a human response barring a divinely ordered war. It is no surprise that R. Isaac Aramah, a fifteenth-century Spanish sage, later argued that the Torah’s commandment to first call out in peace means more than a formal call for the enemy to surrender. According to Aramah, the command instructs Israel to turn to the enemy

<sup>77</sup> *Babylonian Talmud, Yoma* 22b.

<sup>78</sup> The difference between the stories, of course, rests on Amaleq’s demonic image and the command to wipe him out. It may also involve the difference between Saul’s midrashic image and those of Moses and the Messiah. The latter could not be told “Do not be excessively wicked,” as Saul was told after killing the priests of Nob (see *Babylonian Talmud*, id.) and therefore could not be brushed off, as Saul was, with the statement “Do not be excessively righteous.”

with “placating and pleading words, in the most pleasing way possible, to turn their hearts around...*for that is what is required by the human idea of peace, and the divine idea will confirm it*” (emphasis added).<sup>79</sup> It is as if the Holy One

was prepared from the outset to welcome a human initiative to forbid war, anticipating that the initiative would become the basis for a leading concept of “prohibited war” in *halakhab*—i.e., any war not preceded by efforts at peace.

<sup>79</sup> Isaac Aramah, *Aqedat Yizhaq* (Israel, 1974), sha`ar 81, p. 105.