Moralization in Jewish Law: Genocide, Divine Commands, and Rabbinic Reasoning

Eugene Korn

Abstract: This essay argues that rabbinic tradition understood the moral problematics of the commandments to destroy the Amalekite and Canaanite nations. It contends that Jewish tradition rejected divine command morality (divine commands define morality) and ultimately utilitarian reasoning for intentionally killing innocent parties. The Talmud did not consider utilitarian explanations for the problematic commandments to be valid moral justifications, thus rendering the commandments inoperative. Maimonides attempted to solve the moral problem by changing the definition of Amalekites and Canaanites from an ethnic to a behavioral category, making the commands more consistent with retributive justice. Maimonides' interpretation became normative, and can be viewed a paradigm for how Jewish tradition can resolve tensions between religious commands and moral standards.

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> "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?'" *Midrash Tanhuma* 96:3

In a remarkable philosophic essay entitled, "Moralization and Demoralization in Jewish Ethics,"[1] Leon Roth called attention to how emending Jewish texts can denude them of their moral dimension. The clash between sacred texts and moral reasoning occurs also in classic rabbinic thought, and it is instructive to analyze the opposite dynamic at work, i.e. the moralization of biblical commands through skillful legal application and innovative rabbinic interpretation. This essay examines one such case—perhaps the paradigm case—to determine what presuppositions and methods informed the rabbinic tradition.

The problematics of the biblical imperatives for the Jewish people to destroy the Amalekite and Canaanite nations are well known. The Bible's brutal commands shock our moral sensibilities[2]:

> "Remember what Amalek did to you on your journey, after you left Egypt—how, undeterred by fear of God, he surprised you on the march, when you were famished and weary, and cut down all the stragglers in the rear. Therefore, when the Lord your God grants you safety from your enemies around you, in the land that the Lord gives you as a heritage, blot out the memory of Amalek from under heaven. Do not forget! (Deut. 25:17-19)

> Samuel said to Saul, "I am the one the Lord sent to anoint you king over His people Israel. Therefore, listen to the Lord's command!...Now go attack Amalek, and proscribe all that belongs to him. Spare no one, but kill alike men and women, infants and sucklings, oxen and sheep, camels and assess! (I Samuel 15:1,3)

> In the towns of the latter peoples, however, which the Lord your God gives you as a heritage, you shall not let a soul remain alive. No, you must proscribe them —the Hittites and the Amorites, the Canaanites and the Perizzites, the Hivites and the Jebusites—as the Lord your God has commanded you. (Deut. 20:16-17)

> When…the Lord your God delivers them to you and you defeat them, you must utterly doom them to destruction: grant them no terms and give them no quarter. (Deut 7:1-2)

These biblical imperatives were encoded into normative Jewish law. Maimonides, arguably the most formidable legal authority in Jewish history, ruled in his legal code: "It is a commandment to destroy the seven (Canaanite) nations….If one of them comes into your hands and you do not kill him, you have violated a negative commandment, as it says, 'No soul shall remain alive.'…So (also) is the commandment to destroy all trace of Amalek."[3] The imperatives to exterminate the entire Amalekite and Canaanite populations

[1] *JUDAISM*, II:4 (Fall 1962), 291-302 and reprinted in *Is There a Jewish Philosophy?* (Littman: London, 1999) 128-143.
[2] Translations from JPS Hebrew-English *Tanakh,* Jewish Publication Society (Philadelphia 1999)
[3] *Mishneh Torah, Hilkhot Melakhim* 5:4-5

present two distinct moral difficulties: (1) genocide—the extermination of an entire ethnic group, and (2) the intentional killing of civilians, including women, children and infants

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Rabbis and philosophers concluded that God who established the covenant with Abraham was bound by the requirements of justice.

Faced with a hard conflict between a canonical text and moral obligation, a religious tradition can respond along a number of different lines of logical argumentation:

A. The Kierkegaardian Argument—acknowledge the contradiction between religion and morality, and insist (either out of resignation or in Tertullianic[4] glee) that God's command trumps the demands of morality.

B. The Divine Command Morality (DCM) Argument—maintain that there can be no real contradiction between morality and God's commands literally construed. God sets the correct moral standard, either analytically because moral concepts and norms are defined by divine authority, or epistemologically because only God knows the ultimate reasons or relevant moral factors to make true moral judgments, which remain inscrutable to human beings whose moral understanding is limited.

C. The Heretical Argument—acknowledge the irresolvable contradiction and conclude that the moral standard overrules the religious imperative

D. The Casuistic Argument—adduce extenuating factors or engage in moral reasoning to justify the command despite its *prima facia* moral incorrectness

We shall soon encounter other strategies employed by Jewish tradition, such as invoking a higher order legal/theological principle to override the commandment, postponing action on the textual command indefinitely, and allegorizing the commandment. Yet the invocation of these strategies emerge as the result of rabbinic tradition's posture toward the above four arguments.

Avi Sagi has demonstrated that arguments A and B are absent in rabbinic tradition regarding the imperative to kill the Amalekites.[5] More generally, while the stronger analytic claim of DCM theory—that divine commands *define* morality and ethical concepts—has numerous antecedents in Christian and Islamic thought, it is absent in classic Jewish tradition. It first appears explicitly in Jewish writing only in the twentieth century.[6] Evidently traditional rabbis and Jewish philosophers concluded from Genesis 18:25 ("Shall the Judge of all the earth not act justly?") that the God who established a sacred covenant with Abraham was bound by the requirements of justice, even as humans understand them.

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[4] The Church Father Tertullian celebrated irrationality as a religious ideal in his famous proclamation, "*Credo quia absurdum est.*" ("I believe because it is absurd.") Although Tertullian was referring to belief in logical contradiction, he no doubt would also have reveled in asserting the primacy of a divine command over the conflicting demand of a rational moral law.

[5] "The Punishment of Amalek in Jewish Tradition: Coping with the Moral Problem," *Harvard Theological Review* 87,3 (1994): 323-346

[6] See A. Sagi and D. Statman, "Dependency of Ethics on Religion in Jewish Tradition," Between Religion and Ethics, (Hebrew) (Ramat Gan, Israel: Bar-Ilan University, 1993), 116-144, translated as "Divine Command Morality and the Jewish Tradition" in Journal of Religious Ethics 23 (1995): 49-68. Sagi and Statman term the analytic connection, "strong dependence"; the epistemological connection, "weak dependence." The analytic thesis appears explicitly for the first time in the writings of R. Kalonymus Shapiro, who lived through the Holocaust. This late break with Jewish tradition suggests the possibility of some conceptual assimilation with Christian and Moslem theology, or, as Sagi and Statman put it, the thesis "is a foreign shoot that cannot grow in the vineyard of Israel." (140)

This is what distinguished Abraham's God from previous idolatrous conceptions. Hence, classical Jewish commentators never understood the binding of Isaac (Genesis 22) as a conflict of *mitsvah* and morality. Rabbinic sources portray Abraham's dilemma as one between obedience and paternal love, not, *à la* Kierkegaard, as one between religion and ethics or between the divine promise of a glorious future and God's message to destroy that future by killing Isaac. That is, Jewish tradition resisted interpreting divine commands as conflicting with ethical imperatives, and conceding that theological imperatives supersede a purportedly conflicting moral law.[7]

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. Of course, I can claim that *my* religious imperatives justify *my* killing innocent persons, but someone else's religious imperatives do not justify similar behavior. Yet I pay a heavy logical price for doing so: Such a claim puts an end to my participation in rational moral argumentation.[8]

Norman Lamm has suggested that not even Hebrew Scriptures support DCM, since Deuteronomy itself offers ostensibly justifying reasons for killing the Amalekite nation.[9] ("He surprised you on the march, when you were famished and weary, and cut down all the stragglers in the rear.")[10] We can only speculate whether it was the close reading of this passage or the Jewish commitment to moral discourse that prevented rabbinic tradition from entertaining DCM, but the critical point is that rabbinic tradition never considered the divine command to destroy all Amalekites to be a sufficient justifying reason.[11]

Rabbinic tradition never considered the divine command to destroy all Amalekites to be a sufficient justifying reason.

If rabbinic tradition rejected DCM, it also could not countenance option C, The Heretical Argument. Indeed, as its name implies, no religious tradition can use this argument and retain its theological coherence or moral authority. We are thus left with the casuistic argumentation of option D, and this is precisely how Jewish tradition attempted to resolve the problem of the *mitsvah* to destroy the Amalekite people. "Attempted" because, I shall soon argue that it could not succeed in resolving the problem through this strategy.

As Sagi demonstrates, most of rabbinic tradition employed utilitarian-type moral arguments to justify the obliteration of the Amalekites: The Amalekites fought an unjust war by unjust means, hence their destruction was necessary as a

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[7] See Eugene Korn, "*Tzelem Elokim* and the Dialectic of Jewish Morality," *Tradition* 31, 2 (Spring 1997), 5-30, and Joseph B. Soloveitchik, "The Lonely Man of Faith," *Tradition*, 7,2, (Summer 1965) 61-62, fn..

[8] This is because the essential characteristic of moral reasons—indeed all logically adequate reasons—is their universal nature: If something constitutes a valid reason for me, it must also be a valid reason for all similar persons in similar situations. Claims of divine revelation such as, 'God has commanded me to do X,' are neither empirical nor open to rational determination. They are private, or at most communal, faith claims and as such one cannot rationally distinguish between false and true claims to commandedness. This explains why the invocation of revelatory claims often heralds the breakdown of rational discourse. In reasoned discourse among believers of different faiths, therefore, ultimately all divine command claims must be relegated to the same logical category—either all are admissible as valid reasons or none are.

[9] "Amalek and the Seven Nations: A Case of Law vs. Morality," yet unpublished paper delivered at The Orthodox Forum of Yeshiva University, March 14, 2004. Paper resides with its author.

[10] Deut. 20:18 also gives the reason for destroying the Canaanite nations: "Lest they lead you into doing all the abhorrent things that they have done for their gods and you stand guilty before the Lord your God."

[11] I am grateful to Professor Louis Newman for pointing out to me that the Bible's supplying reasons for the commandment does not necessarily imply that the absence of those reasons would void the commandment. This is logically true, yet the absence of evidence for DCM in Jewish tradition indicates that the onus of proof belongs on those who advocate DCM as an acceptable Jewish theory, not those who reject it.

deterrent against others doing the same.[12] Amalek is evil in his essence and his nation is the arch-enemy of God, the preserver of the universe's moral order; hence the Amalekites must be destroyed to preserve morality in the cosmos.[13] Killing all Amalekites is necessary to prevent future Amalekite destruction of the Jewish people, as shown by the case of Haman, the Persian descendant of Amalek.[14] Obeying the command to destroy Amalek teaches people to obey God's commands generally, thus preventing them from making autonomous decisions that would result in violence and murder in other contexts.[15] Amalek represents commitment to physical power, warfare and violence by the sword; for the sake of justice and peace, therefore, all Amalekites must be destroyed.[16]

The non-quantifiability of human life precludes utilitarian trade-offs of one innocent life for another.

In attempting to supply justifications for the killing the Amalekite nation, Jewish tradition presupposed that divine imperatives must rest on moral grounds or that "God commands an action because that action is right" (to paraphrase Plato's *Euthyphro),* and that rabbinic tradition is committed to moral reasoning. Notwithstanding the importance of these logical points, there is no denying that all these casuistic arguments fail. *Halakhah* prohibits intentionally taking an innocent life to save another person. Normative talmudic opinion indicates that

one is obligated to die rather than to murder another in this situation. Murder is one of only three prohibitions that one may not transgress in order to save his own life—a type of halakhic Categorical Imperative.[17] Further still, Jewish law prefers that many people submit to death rather than acting as an indirect causal agent or being complicit in the killing of one innocent person.[18] The moral/legal principle is, "Do not set aside one (innocent) life even to save many (innocent) lives." The foundation for this anti-utilitarian ethic is the axiom that human life is created in the image of God and therefore possesses indeterminate or perhaps infinite value. The non-quantifiability of human life precludes utilitarian trade-offs of one innocent life for another and explains why consequentialist moral justifications for sacrificing innocents are almost never found in Jewish legal discussion.

There is one instance of utilitarian reasoning in halakhic discussion regarding sacrificing the life of an innocent non-threatening person to save another person or persons. This revolves around the tragic case described in *Terumot* that poses the existential choice between handing over a specified innocent person for death or allowing the entire city to be killed.[19] One body of rabbinic opinion, which I term "the infinite value school," maintains that even to save many people, one may not hand over the innocent individual to murderers—even though he is fated to die soon in any event.[20] The other opinion—"the indeterminate value school"—rules that one is permitted to hand over the specified person in order to save the lives of

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[12] Isaac Abravanel, Commentary on Deut. 25:17.

[13] Nahmanides, Commentary on Ex. 17:16.

[14] This deterministic reasoning contains another theological problem for Jewish tradition. It comes perilously close to the heresy of denying free will to Amalekite individuals.

[15] *Yoma* 22b. This example teaches indicates a utilitarian reason (i.e. prevention of future violence and murder) for the commandment. Under this interpretation, divine commandments may be necessary as pedagogical instruments rather than justifying moral reasons.

[16] Samson Raphael Hirsch, *In the Annual Cycle* (Hebrew) (B'nai Brak: *Netsaḥ,* 1966) vol 2, pp. 190-193.

[17] *Sanhedrin* 74a; Maimonides, *Mishneh Torah, Hilkhot Yesodei ha-Torah,* 5:1.

[18] *Yerushalmi, Terumot* 8:10 and Maimonides, *Hilkhot Yesodei ha-Torah,* 5:5; cf. *Tosefta, Terumot* 7:20.

[19] See previous note.

[20] Maimonides (*ibid),* David Ben Shmuel of Lvov (*Taz,* commentary on *Shulhan Arukh, Yoreh De`ah* 157:1) and Yoel Sirkes (*Baḥ, ad loc)* follow the talmudic opinion of Resh Lakish.

[21] Menahem ha-Meiri (*Beit Ha-Beḥirah* on *Sanhedrin* 72b), Jacob Jeḥiel Weinberg and others follow the talmudic opinion of R.Yoḥanan. I am indebted to David Shatz for pointing out to me the "indeterminate school."

others.[21] I use the terms "infinite value" and "indeterminate value" because the debate can be expressed mathematically: If the value of the life of the innocent person in question is represented by the positive value X and the value of the other lives by the positive value Y, the first school maintains that $X=X+Y$, while the second maintains that $X<X+Y$. Only X=infinity satisfies the first equation.

It is crucial to recognize that this entire debate and license to hand over another is restricted to the situation *in extremis* where the innocent is fated to die under all circumstances. It thus has little import for moral argumentation regarding killing a non-threatening Amalekite or a Canaanite non-combatant, whose survivability is not in doubt. Nor is the law of preemptively killing a pursuer (*rodef*) relevant. The case of *rodef* is morally different, since the pursuer presents a clear and immediate threat and is thus not innocent. The case of the "pursuer" is also a legally distinct, since the *halakhah* allows killing the *rodef* only as a last resort, while the imperative regarding an Amalekite requires killing him as the first option.

Much later in history, moral philosophers exposed the incorrectness of purely utilitarian ethics by demonstrating that no amount of good can justify arbitrarily killing an innocent person.[22] This is the essence of the concept of retributive justice. Intentionally killing an innocent person is not just punishment, but unjustifiable aggression. Nor can any utilitarian rationalization to ward off future evil justify the intentional mass killing of infants or harmless civilians. This is not an abstract truth for philosophers only, but a harsh lesson of recent history. The extermination of millions in the ovens of Auschwitz was a radical evil teaching us that no behavior could ever be sufficiently horrible to justify intentionally killing a million babies.

Similarly, there can be no moral justification for the intentional mass killing of civilians for political or religious objectives. To deny this is to obliterate the distinction between just and unjust wars and to concede that terrorism is morally correct. The imperative—whether divine or human—to commit genocide against all Amalekites suffers from the same moral defect. All rationalizations for it are fallacious. There is good reason to assume that traditional rabbinic authorities understood full well that these arguments could never justify the genocidal commandments, for rabbinic tradition refused to rest with these utilitarian justifications. It dealt effectively with the practical problem of acting on the imperative via the normative talmudic ruling of R. Joshua that "Sennacherib co-mingled the nations (that he vanquished)."[23] The Talmud used this principle to conclude that after the Assyrian king's conquest, it became impossible to determine who was a member of the Canaanite nations.

Rabbinic tradition refused to rest with these utilitarian justifications.

Logically, this should apply to the Amalekite nation as well, since it is unlikely that Sennacherib failed to apply this policy to the Amalekites he vanquished. Indeed, many medieval and modern rabbinic authorities subsume Amalek under R. Joshua's principle.[24] Hence, due to lack of certain genealogical identification it became impossible in principle for any Jew to fulfill the *mitsvah* to exterminate these peoples. This is consistent with other instances of the rabbinic strategy to render some Biblical laws inoperative or barely implementable, such as the execution of the rebellious son (Deut. 21:18-21; *Sanhedrin* 71a), capital punishment (*Mishnah Makkot* 1:10), and the destruction of an idolatrous city (Deut 13:13-16; *Sanhedrin* 71a). There is another rabbinic tradition that all fulfillment of the command to kill the Amalekites is deferred until the messianic era.[25]

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[22] See, for instance, C. Ewing, *The Morality of Punishment* (London: K. Paul, Trench, Trubner and Co, 1929) and J.D. Mabbott, "Punishment" in *Mind*, Vol. 48, no. 190 (April 1939): 152-167.
[23] *Mishnah Yadayim* 4:4; *Berakhot* 28a
[24] See Elimelech (Elliot) Horowitz, "From the Generation of Moses to the Generation of the Messiah: Jews against Amalek and his Descendents," (Hebrew), *Zion* 64 (5759/1999): 425-454.
[25] See commentary of David ben Zimra (Radbaz) on Maimonides, *Mishneh Torah*, *Hilkhot Melakhim*, 5:5.

The effect of these interpretations is to render the mitsvot inoperative, and thus avoid any immoral behavior that would result from acting in accordance with their literal meaning.

There is no reason to believe that R. Joshua invented a historical fiction, since it was the actual practice of ancient conquerors to intermingle their conquered peoples to lessen the possibility of organized rebellion. What is remarkable is the legal power that the talmudic tradition gave to this brute historical fact.

To understand the unusual nature of the talmudic ruling, consider the following scenario: The Israeli Army is marching through the Sinai desert led by General Yigal Yadin, who is also an accomplished archeologist. During encampment, Yadin discovers documents buried in the sand that indicate that a clan living in the area is unmistakably descendent from the biblical Canaanites. Yadin takes the document to the world's leading historians and anthropologists, who unanimously conclude that the documents are authentic and accurate. In other words, all scientific opinion corroborates the claim that these specific persons are Canaanite descendants. Are religious Jews obligated to act on the basis of the overwhelming empirical data and kill these Canaanites? Probably not, for R. Joshua's talmudic principle would trump the scientific evidence and the genocidal commandment would remain inapplicable.[26] This means that the principle functions neither as a historical observation nor an empirical claim, but as a non-falsifiable legal rule. A permanent principle with legal force to override the fulfillment of a divine commandment is rare in Jewish legal tradition. It is plausible to assume that rabbinic authorities elevated this opinion to a categorical definitional principle precisely because they sensed the overwhelming moral problems with a literal implement of the commandment.

Hazal were not philosophers, but teachers whose ultimate concern was promoting correct action in accordance with how they understood sacred Torah texts. They succeeded in foreclosing the possibility of Jews committing genocide or killing

innocents because of the divine commandment, but they left untouched the theological/conceptual problem: How could God command something immoral—even theoretically? Since "The Judge of the earth must act justly," how could God have ever have issued an immoral command to intentionally kill infants, minors and women or destroy an entire nation?

It is in the Mishneh Torah *that Maimonides made the conceptual breakthrough.*

The theological issue was left to later authorities of more philosophic bent. It lingered until the twelfth century when Maimonides devised an elegant solution. In *The Guide of the Perplexed*, he explicitly ruled out extending the imperative to tribes other than Amalek[27], but it is in the *Mishneh Torah* that he made the conceptual breakthrough. As the greatest Jewish philosophic intellect in history, Maimonides adopted a radical interpretation of the sacred text and the resultant Jewish law. His first move was to boldly interpret Deuteronomy 20 contrary to its plain meaning and the accepted opinion of his time. Verses 10-15 read:

> When you approach a city to attack it, you shall offer it terms of peace. If it responds peaceably and lets you in, all the people there shall serve you in labor. If it does not surrender to you, but does battle with you, you shall lay siege to it; and when the Lord your God delivers it into your hand, you shall put all the males to the sword. However you make take as booty the women, the children, the livestock, and everything in the town—all its spoil—and enjoy the use of the spoil of your enemy. Thus you shall do to all cities that lie very far from you, towns that do not belong to the nations hereabout.

Verse 16 goes on to contrast the above "remote" wars with the objectives and rules of engagement for the war against the Canaanite nations:

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[26] I have found no discussion in rabbinic literature—which is famous for analyzing all theoretical options— that countenances the theoretical nullification of R. Joshua's principle.
[27] III:50

In the towns of the latter peoples, however, which the Lord your God gives you as a heritage, you shall not let a soul remain alive.

Prior to Maimonides, normative halakhic tradition understood the call for peace (v. 10) to apply only to wars against the "cities that lie far from you"[28]—i.e. the plain sense of the text. However Maimonides interpreted the requirement of calling for peace to apply to *all* wars that Jews fight—including the wars against the Canaanite and Amalekite peoples.[29] Hence for Maimonides war was never a first option or a divine preference.[30] War is always a necessary evil to be accepted only when the enemy refused peace or did not accept the fundamental laws of social order (the prohibitions against murder, stealing, sexual wildness, cruelty, idolatry, and blasphemy as not tolerating worship of God, as well as the positive injunction to live under a system of courts and laws), known as "the seven Noahide commandments" in rabbinic parlance.

Maimonides used this non-standard reading to form the basis of his next startling claim: Should any Canaanites or Amalekites accept peace and the laws of social order, one is forbidden to kill them.[31] Perplexed by this ruling that is in stark contrast to the biblical imperative, the commentaries infer that Maimonides must have reasoned that should a Canaanite or an Amalekite accept peace and the laws of civilization, he is no longer in the legal category of a Canaanite or an Amalekite.[32] In other words, Maimonides has transformed the category from a genealogical/ethnic one to a behavioral one. It is important to note that Maimonides' non-

standard reading of Deuteronomy 20 and the laws flowing from it became normative after his ruling.[33]

Maimonides never stated the reason for advocating this conceptual transformation, but it is plausible that he was responding to the theological/moral problem. Maimonides was undoubtedly aware of the text of *Midrash Tanḥuma* 96:3 cited above that argues against killing non-sinning Amorites on moral grounds.

Maimonides transformed the category from an ethnic one to a behavioral one.

The *midrash* concludes that Moses refused to kill the innocent Amorites, at which point God then followed Moses' lead.[34] Maimonides transformed this insight into codified *halakhah,* creating an interpretation that enabled him to understand the divine commandment closer to the conceptual requirements of justice and God's requirement to adhere to just standards. To be fully congruent with our understanding of justice, the behavioral criterion would have to be applied to individual Canaanites and Amalekites, not to nations or collectivities. Maimonides did not do this explicitly in the cases of Canaanites or Amalekites, but did so implicitly when he prohibited waging war against any individuals—rather than nations—in his formulation of *Hilkhot Melakhim* 6:1: "One may not wage war against *any individual in the world* until one (first) offers him peace, whether in a discretionary war or in an obligatory war." (emphasis mine—E. K.). He also rejected the idea

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[28] See Rashi, and Sifri *ad loc.*

[29] *Mishneh Torah,* Laws of Kings, 6:1 and commentary of Abraham Botan (*Leḥem Mishneh*) *ad loc.*

[30] This means that for Maimonides, there is no concept of "holy war," i.e. war as a religious ideal. This is true even of an "obligatory war" (*Milḥemet Mitsvah*).

[31] *Mishneh Torah*, *Hilkhot Melakhim* 6:4.

[32] Commentary of Josef Karo (*Kesef Mishnah*), *ad loc.*

[33] See Naḥmanides *ad loc.*, Abraham Ben David (Ravad) *ad loc.* and Isaiah Karelitz (*Ḥazon Ish*), *Bei'urim ve-Ḥiddushim al ha-Rambam*, *Hilkhot Melakhim* 5:1. See also, Aviezer Ravitsky, "Prohibited Wars in Jewish Tradition," in *The Ethics of War and Peace*, Terry Nardin ed. (Princeton U. 1998), pp 115-127. The contemporary Shlomo Goren claims in his compendium of *responsa* on war, *Meshiv Milḥamah* p.153, that nearly all early authorities (*Rishonim*) maintain this Maimonidean position.

[34] "Said the Holy One, Blessed Be He, I said, 'You must proscribe them [Deut. 20:16], but you did not do so; by your life, as you said I shall do, as it is written, 'When you approach a city to attack it, you shall offer it terms of peace'" [Deut 20:10]. I thank Aviezer Ravitsky for pointing this out.

of collective punishment except for idolators.[35]

Moreover, he implied the individual criterion in reference to Amalek in *The Guide of the Perplexed* 3:41, where, after using the biblical language of the "Amalekite nation," he undercuts collective punishment by stressing that action against Amalek is akin to due legal punishment for "a wicked man," that it must be "according to his individual wickedness" (Deut 25:2), and that Amalek is killed by the sword because "Amalek hastened to the sword." These are all allusions to retributive justice in which punishment must be appropriate for individual behavior. If so, the commandment would seem to apply only to informed adult individuals who bear legal responsibility for their behavioral decisions, and only to those informed adults who by principle promote violence and undermine the foundations of civilized society. Ultimately rabbinic tradition extended the reasoning of Maimonides and explicitly asserted the criterion of individual behavior, even for Canaanites.[36] In other words, action on the commandment would constitute just punishment for threatening individuals, and the only objects of the ostensibly genocidal divine command would be individual aggressors committed to violently destroying the moral order of society.

Rather than resort to casuistic reasoning to qualify the case or render it inoperative, Maimonides solved the problem conceptually, by redefining the commandment to make it more consistent with the demands of moral reasoning.[37] Evidently he realized that it is not a specific application of genocide that is wrong, it is the very concept itself. No amount of casuistry could succeed in bringing the commandment into line with the demands of morality or the halakhic "justice principle," i.e. "We do not punish the sons for the sins of the fathers."[38]

It is not a specific application of genocide that is wrong; it is the very concept itself.

One might argue that the tradition's solution is exclusively legal because the halakhic system and Maimonides simply opted for this halakhic principle to supersede the literal interpretation of the biblical command. This begs the question, since the more logical approach would have been to apply the justice principle generically, but suspend it in the instance of an explicit contrary commandment that is limited to a particular situation, e.g. the genocide command toward Amalek. Without moral considerations, it is hard to explain why Jewish tradition opted for the justice principle over the literal reading of the Amalekite command.

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[35] Even though Deut. 13:13-16 mandates the destruction of all inhabitants of an idolatrous city, Maimonides ruled that non-idolators of those cities must not be killed. (*Hilkhot Avodah Zarah* 4:6) In this ruling he follows the prior tradition anchored in *Midrash Tana`im* to Deut. (pp. 67, 69, Hoffman edition) and *Mishnah Sanhedrin* 9:1, which require testimony and proof of individual guilt before execution. Maimonides did rule, however, that the wives and children of idolatrous men be killed. Importantly R. Meir Abulafia (Ramah) argued strenuously against this latter ruling. He insisted that no action could rightfully be taken against women and children—and for explicitly moral reasons: "Heaven forbid that God cause evil." For a fuller discussion on collective punishment and this legal specific disagreement, see Moshe Halbertal, *Interpretative Revolutions in the Making,* (Hebrew) (Jerusalem: Magnes, 1997) Chapter 6.

[36] Following Maimonides' interpretation of the commandment of war against the Canaanites, Naftali Zvi Yehudah Berliner (Netziv) took this logical step and restricted the object of the Biblical mandate to kill the Canaanite nations to individual Canaanite combatants who pursued war against the Jewish people. See *Ha`ameq Davar*, Deut 7:2. Professor Lawrence Kaplan has directed my attention to the following statement, indicating that according to Rabbi Joseph Soloveitchik, Maimonides believed that the imperative to destroy Amalek could not include innocent civilians: "In a subsequent interview, Rabbi Soloveitchik elaborated on his view that a nation could be transformed into Amalek in a metaphysical or halakhic sense. The status of Amalek would not, according to the Rav, create halakhic obligations concerning innocent offspring and spouses because Maimonides clearly limits actions against Amalek to unrepentant elements who have refused to make peace with Israel." Stanley Boylan, "A Halakhic Perspective on the Holocaust" in *Theological and Halakhic Reflections on the Holocaust,* B. Rosenberg and F. Heuman eds., (Hoboken: Rabbinical Council of America, 1992), 212, note 3.

[37] It is important to note that Maimonides stipulates specific peace terms in the same chapter, i.e. servitude, humiliation and taxation, that appear inconsistent with contemporary just war norms.

[38] Derived from 2 Chronicles 25:4, "Fathers shall not die for their children, nor shall children die for fathers, but every man shall die for his own sin." See Abraham Bornstein, *Avnei Netser, Oraḥ Ḥayyim* 2:508

Maimonides' strengthens support for this supposition in his next law, where he insists that the commandment always meant what he says it means, and that Jews followed this interpretation when trying to fulfill the commandment from the time of Joshua's first war with the Canaanites onward. Though this claim lacks historical confirmation, it was conceptually necessary for Maimonides' moral and theological theories.

Jewish tradition solved both the practical moral problem as well as the philosophic problem.

One might try to resolve the problem of immoral commandments by positing a theory of moral evolution: The commandments were moral in the biblical era, but due to human moral progress we now realize them to be immoral. The evolution of moral standards over history is a thesis for which there is much empirical evidence and one that is consistent with a traditional rabbinic understanding of the way revelation functions in history.[39] In the context of Jewish philosophy and *halakhah*, there is no logical bar to Jews accepting that God gave the Torah and commandments in such a way for their values to progressively unfold. This may be why the biblically permitted or mandated institutions of polygamy, indentured servitude, and harsh punishments for heretics were practiced in early Jewish history, but have fallen into principled disuse today. Indeed, for any revelation to be comprehensible and appreciated by human beings throughout all cultures and periods of history, some type of embedded value evolution seems necessary.

Maimonides clearly accepted a theory of theological progress that entails moral progress[40], but that thesis could not help him with the problem at hand. If the moral progress thesis claims that there is an eternal objective moral

standard (e.g. not killing innocents) always known to God but understood by human beings only after the evolution of a higher moral consciousness, then the problem remains, since God would seem to have commanded something He knew to be immoral even in the biblical era. If the thesis means that God, too, has an evolving moral consciousness, then God's knowledge and being undergo change, which opens up a host of theological problems for Maimonides' conception of God, to which time and change do not apply.[41]

The result is that Jewish tradition has now solved both the practical moral problem as well as the philosophic problem—in other words, totally neutralized the commandment to commit genocide. If so, what is the purpose of the commandment? In fact neither Jewish tradition nor Maimonides needed these commandments to mandate the destruction of those committed to warfare or not willing to abide by the fundamental norms of civilized society. This is known from elsewhere in Jewish law.[42] Even on a strictly heuristic level, our analysis has thus far stripped the Amalekite commandment of any value. It neither adds nor detracts from the corpus of Jewish law or ethics.

This consideration may have disturbed traditional rabbinic commentators who were committed to finding meaning in every letter of sacred texts. Some medieval thinkers and later Hasidic teachers translated the literal meaning of the imperative into metaphor and explained the Amalekite commandment as referring to the obliteration of each person's evil impulses.[43] The war against Amalek thus became every person's internal psychological and moral struggle with himself.

Perhaps the same concern vexed the famed Lithuanian talmudic tradition beginning with R. Elijah ben Shlomo Zalman, (the Ga'on of Vilna)

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[39] See Nahum Rabinovitch, "The Way of Torah" (translation), *The Edah Journal* (3:1) 2003 at www.edah.org
[40] For theological progress see, *Guide of the Perplexed* III:32. His commitment to messianic history entails moral progress. See *Mishneh Torah*, *Hilkhot Melakhim* 11:4 and 12:5, and *Guide* III:11.
[41] *Mishneh Torah*, *Hilkhot Teshuvah* 5:5; *Guide,* I:68 and II:1.
[42] See *Mishneh Torah*, *Hilkhot Melakhim* 8:10
[43] This medieval interpretation is cited (disapprovingly) by medieval talmudic authorities and rationalists. See Gershom Scholem, *Major Trends in Jewish Mysticism* (Jerusalem: Schocken, 1941) 340-41, and Sagi, HTR, 334-336, for specific references.

and carried forward by the Brisker Soloveitchik rabbinic dynasty.[44] R. Moses Soloveitchik (1876-1941) asserted that the Amalekite nation never assimilated beyond recognition. Apparently without taking into account Maimonides' restriction (*Guide* III:50) of the commandment to the actual tribe of Amalek,[45] he took his cue from Maimonides' non-biological understanding of the category in the *Mishneh Torah*, where Maimonides fails to list Amalek as one of the tribes whose traces were lost.[46] Speaking during the Nazi era, R. Soloveitchik insisted that Amalek is a prototype for any person attempting to exterminate the Jewish people and that the commandment to physically destroy such persons is still binding. His son, R. Joseph Soloveitchik (1903-1993), applied it to Arabs trying to destroy Israel in the 1950's.[47]

The correct moral response to radical evil is itself harshly radical.

Instead of reducing the category to a nullity, they extended it to all individuals who exhibit this immoral behavior. Importantly, the latter's interpretation minimized the potential for individual immoral interpretation and action by restricting the operative imperative to the Jewish community as a collective.[48]

The command to annihilate Amalek reflects the biblical insistence that radical evil exists in human experience and that people protecting the civilized order are obligated to destroy that threat without compromise. It maintains that the correct moral response to radical evil is itself harshly radical—that short of a fundamental moral transformation by persons committed to such evil, one may offer neither quarter nor forgiveness. The moral imperative demands the rejection of any agreement toward co-existence, for ultimately coexistence is impossible. If not conquered totally, absolute evil will surely destroy the moral and social foundations of human civilization.

Of course, any literal implementation of the imperative to destroy without limit individuals considered to be evil incarnate strikes fear in the hearts of morally sober persons. Although the potential misuse of this commandment does not logically exclude a valid application, the potential for horrific misapplication is overwhelming. During the Crusades, Pope Urban II considered Moslem conquerors of Jerusalem to be Amalek. In medieval times Jews considered Christians to be Amalekites, and most recently Jews have applied the Amalekite designation to the Palestinian people as well as to Jewish leftists, Zionists and Israeli officials who advocate ceding land to Palestinians.[49] This is not mere rhetoric, but license for religiously motivated persons to kill.

Undoubtedly this violent potential is what led talmudic authorities, medieval thinkers and contemporary rabbis to try to protect the moral integrity of Jews by barring them from acting on the simple meaning of the divine commandments to exterminate the Amalekite and the Canaanite nations—or any innocent person no matter what his genealogy.

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[44] For the claim that the Ga'on of Vilna maintained this line of reasoning, see Horowitz, (above, n. 23), 428.

[45] For an excellent analysis of this restriction, see Josef Stern, "Maimonides on Amalek, Self-Corrective Mechanisms, and the War against Idolatry" in *Judaism and Modernity: The Religious Philosophy of David Hartman* (Burlington, VT: Ashgate, 2004) 364-366. Maimonides also alludes to the restriction when he catalogues the commandment in *Book of the Commandments*, Positive Commandment 188.

[46] *Hilkhot Melakhim*, 5:4. Evidently, R. Soloveitchik separated 5:5 from 5:4, since 5:5 reads, "Similarly the command to destroy Amalek….."

[47] Rav Joseph B. Soloveitchik, "*Kol Dodi Dofeq*" in *Theological and Halakhic Reflections on the Holocaust*, *op. cit.*, 98. Translation by Lawrence Kaplan.

[48] See note 36 for elaboration of Rabbi Joseph Soloveitchik's view.

[49] See Horowitz (above, n. 23), 446-454.