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# The Ethics of War and Peace

RELIGIOUS AND SECULAR  
PERSPECTIVES

*Edited by Terry Nardin*

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## War and Peace in the Jewish Tradition

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THERE IS NO JEWISH theory of war and peace, and until modern times, there were no theories produced by individual Jews. Discussions of war and peace indeed find a place, though a very limited one, within the Jewish tradition. One might even say that there is an ongoing argument, and I will try to describe its central features in this chapter. But the argument is at best tangential to, and often at cross-purposes with, the topics proposed for this volume. Jewish writers argued almost entirely among themselves, in the peculiar circumstances of exile, without reference to any actually existing international society with its practices and codes.

It might be better to say that the only references are to the international society of the biblical period, but even these are highly indirect. For the text from which the arguments begin is Deuteronomy 20, written (so we are told by contemporary scholars) in the seventh century in a literary/religious genre that requires the pretense of Mosaic authorship. Hence the wars immediately referred to were fought, if they ever actually were fought, some five centuries earlier; the wars proposed, as it were, for the future had been fought some two or three centuries earlier; and it is impossible to say what impact King Josiah's wars, fought presumably in the lifetime of the Deuteronomist, had on the writing of his text. Present-mindedness is at no point a feature of Jewish writing about war. The crucial categories are rabbinic, but they are drawn from biblical experience and never adapted to the experience of the rabbis themselves. They are meant to explain the wars of Joshua and David. We have to guess at rabbinic attitudes toward, say, the Hasmonean wars or the wars fought by the Persians or the Romans.

In fact, Persian and Roman warfare does not figure in the tradition at all. That non-Jews fought wars, against the Jews and against one another, was a presupposition of the rabbis, the background but never the focus of their own arguments. Prophetic accounts of Assyrian or Babylonian imperialism are never picked up or developed in rabbinic legal discourse, and the crusading warfare of Muslims and Christians, despite its horrifying consequences for Jewish life in the diaspora, is rarely made the subject of critical reflection (it figures in dirges and laments, not in treatises or responsa). The concerns of the rabbis are particularist in the strong sense: they write

about the wars that the Jews should or should not, can or cannot, will or will not fight and about the internal decision-making process and rules of conduct relevant to those wars.

But a Jewish war was, for almost two thousand years, a mythical beast. There are no examples; none of the rabbis after Akiba (who may have participated in the Bar Kochba revolt) had any experience of warring. This is one of the meanings of exile: Jews are the victims, not the agents, of war. And without a state or an army, they are also not the theorists of war. It might be worthwhile to try to imagine what a full-scale theory of war would look like written from the perspective of the victims, but nothing in Jewish literature comes near to this. What does exist is fragmentary and undeveloped—so much so that any account has to be a construction rather than an analysis. Since the establishment of the state of Israel, there have been a number of constructive efforts, but nothing on a large scale. This much has changed: whereas before 1948, the argument's typical form was that of the commentary—the Jewish version of an “academic” discussion—it now takes a form that resembles that of the legal response; that is, the argument now takes a practical form.

So, the literature that I shall be reporting on and explaining is extremely limited in its “real life” references, highly particularistic, and theoretically undeveloped. It is an interesting outcome of their exile that Jewish writers, religious and secular, played an important part in working out the idea of oppression but virtually no part at all in working out the idea of aggression. Their attention was focused on justice in domestic society, where they had an uncertain and subordinate place, not on justice in international society, where they had no place at all.

#### CONCEPTIONS

The Hebrew word for peace, *shalom*, derives from a root that indicates completion, wholeness, or perfection. As the derivation suggests, peace is not the normal state of the world in this historical age. In its fullest sense, it describes the achievement of the messiah (who must fight wars for the sake of this ultimate peace). It is obviously, then, a desirable and much-desired condition. The paean to peace is a fairly common literary genre, though peace among individuals figures more largely in it than political peace; prophetic visions of an end to war among nations, swords beaten into plowshares, are cited in rabbinic writings but not elaborated. *Shalom* also has a more local and immediate meaning, “not-war,” as in the biblical command to “proclaim peace”—that is, to offer one's enemy the opportunity to surrender without fighting. Both surrender and victory bring peace, but this is a temporary condition, also associated with the idea of “rest,” as

in passages like, “And the land rested from war” (Josh: 11:23). One of the longer periods of rest was the reign of Solomon, whose name means peace and who was responsible for the building of the temple, called a “house of rest.” David was not allowed to build the temple because he was “a man of war and hast shed blood” (1 Chron. 28:3). But the temple, once built, survived many years of unrest and war. Only the messiah, last of the Davidic line, can bring a permanent peace.

War, *milkhama*, seems always to have the local and immediate meaning, not-peace; it is a generalized term for “battles.” There is no articulated conception of a state of war (like that described, say, by Thomas Hobbes and later political realists). But international society looks in most Jewish writing from the prophets onward very much like a state of war, where violence is the norm and fighting is continuous, or at least endemic. After the destruction of the temple, when Israel no longer figures as a member of international society, the sense of danger, of living always under the threat of violence, colors most Jewish perceptions of the gentile world. The idea that all the nations are hostile to Israel even plays a certain justifying role in arguments (entirely academic) about the legitimacy of preventive attacks. But this experience of generalized and prevailing hostility—conceptualized as *eivah*, enmity, and often given as a reason for prudential behavior—doesn't take on theoretical form, as in the contemporary idea of a “cold war.”

The Jewish account of types or categories of war deals only with Jewish wars. So far as the rabbis are concerned, it is a theoretical, and in no sense a practical, typology. It is also an incomplete typology, for it has only two categories where three seem necessary. The first category includes all wars commanded by God; the list is very short, drawn from the biblical accounts of the conquest of the land, though it is subject to some modest rabbinic expansion for the sake of the subsequent defense of the land. The second category includes all “permitted” wars, and seems to be a concession to Israel's kings, since the only examples are the expansionist wars of David. These are the wars that disqualified David from temple-building, but they are permitted to him as king. If he fights, he cannot build, but there is no religious ban on fighting.

The missing third category is the banned or forbidden war. It cannot be the case that all wars not required are permitted, for it is fairly clear that there were wars of which the rabbis disapproved. But the disapproval is usually explained with reference to conditions of various sorts imposed on the permitted wars, not with reference to wars that are never permitted. Two kinds of warfare seem indeed to be ruled out by at least some Jewish writers, though without any generalizing argument. The first of these is the war of religious conversion, against which Maimonides may well be

writing when he says that “no coercion to accept the Torah and the Commandments is practiced on those who are unwilling to do so.”<sup>1</sup> His immediate reference is probably to non-Jewish residents of a Jewish state, not to foreign nations, but the general rule would seem to cover both. What are his sources? I do not know of any explicit rabbinic rejection of the forced conversion of the Idumeans by the Hasmonean king John Hyrcanus—a useful test case.

The second possibly prohibited war is what we might call the war for civilization or against barbarism—in Jewish writings, against idolatry, commonly understood to include all sorts of moral as well as spiritual “abominations.” The biblical text on which the relevant discussion is centered is Genesis 34, which describes the campaign of the sons of Jacob against Shechem after the rape of Dinah. This campaign has much else to disrecommend it, but what is of interest here is whether the Shechemites were liable to attack by virtue of their idolatrous culture (even without regard to Dinah’s rape). Nachmanides says flatly that “it was not the responsibility of Jacob and his sons to bring them to justice,”<sup>2</sup> and a number of major writers agree with him. There is probably a larger number of writers, including Maimonides (see the section on intention, below), who disagree. In any case, there is no theoretical follow-up to this discussion, and in no classical text are wars of conversion or wars against idolatry identified as forbidden wars.

So the rabbis work with only the two categories, commanded (*mitzvah*) and permitted (*reshut*, also translated as “optional” or “discretionary”). We might best think of these two with reference to monarchic politics, which is the assumed background of most rabbinic writing on military matters. In 1 Samuel 9:19–20, the elders of Israel ask Samuel for a king to “go out before us and fight our battles.” The battles that need to be fought are against Midianite and Philistine invaders in defense of “the land of Israel,” hence, in rabbinic terms, commanded wars. The “battles of the Lord” (to conquer the land) were the first commanded wars, and the elders’ battles (to defend it) were the second. But the rabbis were tough-minded about politics: a king who fights “our battles” will also fight his own—in order, as Maimonides wrote, “to extend the borders of Israel and to enhance his greatness and prestige.”<sup>3</sup> These battles are permitted: *his* battles, the price we pay for ours. The rabbis seem to believe that an Israelite king cannot be denied, as a matter either of principle or of prudence, the right to fight for reasons of state and dynasty. They attend instead to the legal conditions constraining the king’s decision to go to war. Much of what they say is probably best read as an effort to make his battles, in practice, very difficult to begin or sustain.<sup>4</sup> But they do not prohibit them, or any set of them, and so the more standard dichotomy of just and unjust wars makes no appearance in their arguments.

#### ATTITUDES

The realism of the rabbis leads to an acceptance of the normality of war . . . in these days, before the messianic age. But the acceptance is grim. There is no value attached to war or to warriors in rabbinic literature; biblical passages that seem to celebrate military prowess are systematically reinterpreted to prove that “the mighty (*giborim*, also heroes) are none other than [those who are] strong in Torah.”<sup>5</sup> Until the appearance of Jewish Nietzscheans in the early years of this century, no one wrote in praise of war. It was probably regarded as a gentile activity “in these days.” At the same time, there is no critique of war comparable to the critique of capital punishment, where some of the rabbis are clearly abolitionists. And, although medieval Jews practiced passive resistance, *faute de mieux*, there was no defense of pacifism or nonviolence. The standard view was summed up in the talmudic maxim: “If someone comes to kill you, kill him first” (Sanhedrin 72a). Most of the rabbis assume that this means: you are permitted/enjoined to kill him only if there is no other way to stop him from killing you. But there is little desire to require risk-taking from the innocent victims of attack. This argument about self-defense carries over, as in other traditions, to arguments about defensive (and preemptive and preventive) war—and obviously works against any commitment to nonviolence.

The tradition is abolitionist only with reference to the messianic age. It has to be said that the messiah himself is often described as a warrior-king (though in some versions of the messianic story, God does all the fighting). There really are evil kingdoms in the story, which have to be forcefully overcome. But the messianic war is the classic case of a “war to end all wars,” and it is, of course, necessarily successful: if the messiah does not win, he is not the messiah. His victory brings a genuine peace, which is also the perfection of the social world.

#### GROUND

Here and now, there are indeed grounds for war, though discussion among the rabbis, as I have already said, is focused mostly on procedural issues—the conditions that must be met before the king can actually fight. The immediate ground of a commanded war is the divine command, recorded in the Bible, to conquer the land. The same command is understood early on to include wars to defend the land, and it seems to be extended as well to defensive wars generally (which only means that if a Jewish kingdom were to be established outside the land, its wars of self-defense would also be “commanded”). I do not know of any explicit attempt to include the Maccabean or the Bar Kochba revolt in the category of commanded

wars, but they would seem to fall well within the reach of the extended command. It does not follow, however, that every (Jewish) war of national liberation is religiously sanctioned. For the tradition clearly recognizes that God can grant (and at specific times has granted) legitimate power over the land of Israel to foreign emperors. Wars of preemption and prevention are even more problematic: although they are in principle defensive, they seem to be subject to all the conditions attached to permitted wars.

In the absence of a developed conception of prohibited wars, there is no limit to the grounds of permissibility. So far as the king's wars are concerned, any ground will serve, including, as we have seen, the glory of the royal name. Some rabbinic commentators were obviously made uncomfortable by such possibilities, and tried to avoid them by a radical reduction of all permitted wars to a single type. Since the nations of the world were assumed to be permanently hostile to Israel and forever plotting acts of aggression, any war against them, whatever its reasons in the king's mind, served in fact the purposes of prevention: "to diminish the heathen so that they do not come up against them [the Israelites]."<sup>6</sup> This reductiveness is all-inclusive, justifying all imaginable wars. At the same time, it suggests that any writer who holds that there might be nations not forever preparing to attack Israel could criticize (some of) the king's wars. Without the reductiveness, however, Maimonides' wars of expansion and prestige regain their independent standing—legitimate if all the conditions are met.

The clearest statement on preventive and preemptive attacks, and the only one I have found that attempts to distinguish between them, comes from the fourteenth-century sage Menachem Me'iri, who describes two kinds of permitted war: when the Israelites fight "against their enemies because they fear lest [their enemies] attack and when it is known by them that the enemies are preparing themselves [for an attack]."<sup>7</sup> The distinction does not seem to make a practical difference, but it follows from this account, as David Bleich has argued, that "absent clear aggressive design" (or, at least, a plausible fear that such a design exists), no military attack is permitted.<sup>8</sup> On the other hand, Me'iri does not claim here to exhaust the category of permitted war. If the "enemy" cannot be attacked on the assumption that he is preparing an attack of his own, he can be attacked for simpler and grosser reasons, "to extend the borders . . .," and so on.

Ruling out these latter wars requires a more drastic move, giving up not only the assumption of universal hostility and the idea of "diminishing the heathens" but also the acceptance of monarchic ambition. The crucial text here comes from the hand of an eighteenth-century Italian rabbi, Samuel David Luzzatto, in a commentary on Deuteronomy 20:10–11. Luzzatto is

working his way out of the commanded/permitted dichotomy, toward something like just/unjust.

The text does not specify the cause for a permitted war or [say] whether Israel may wage war without cause, merely to despoil and take booty, or to expand our domain. [But] it seems to me that in the beginning of this section [20:1], in saying "When thou goest forth to battle against thine enemy," Scripture is determining that we may make war only against our enemies. The term "enemy" refers only to one who wrongs us; hence Scripture is speaking only of an invader who enters our domain in order to take our land and despoil us. Then we are to wage war against him—offering peace first.<sup>9</sup>

The repetition of the word "only" (three times) suggests that Luzzatto knows what he is doing, even if he seems to commit himself, imprudently, to fighting only against an invasion-in-progress. I cannot say, however, that he has had many followers within the *halakhic* community. Secular Jews commonly assume that the "Jewish tradition" allows only defensive wars, but the evidence for this is scant.

The more common rabbinic strategy is to retain the broad category of permitted war but to make the wars that fall within this category very difficult to fight. Before they can be fought, the king must meet a set of legal requirements. First, he must get the approval of the Sanhedrin, and he must consult the *urim* and *thumim*—two conditions that are literally impossible to meet in these latter days (and that were already impossible in talmudic times) since the Sanhedrin can no longer be convened and the priestly breastplate through which or on which the *urim* and *thumim* delivered their oracles is long lost. (The function of these two is disputed. Presumably, the Sanhedrin debates the legal issues and the *urim* and *thumim* foretell success or failure.) Then the king's officers must proclaim the exemptions from military service listed in Deuteronomy 20:5–8, sending home soldiers who have recently built a house or planted a vineyard or betrothed a wife as well as all those who are "fearful and faint-hearted." By the time the early rabbinic commentators finished expanding on this list, the king could count only on his mercenaries: effectively, there can be no conscription for permitted wars.<sup>10</sup> Finally, these royal wars can be fought only after the commanded wars, conquering and securing the land, have been won (God's battles and our battles come before *his*). All in all, permitted wars are only barely permitted; they are not, however, positively ruled out—probably because the Deuteronomic text seems to countenance territorial expansion—that is, military campaigns, against "cities which are very far off from thee" (20:15). Luzzatto deals with these cities by ignoring them, exercising the sovereign right of any commentator to choose his passages. But they seem to loom large in rabbinic consciousness.

## RESISTANCE

It is a commonplace of rabbinic thought that illegal commands of the king should be resisted—or at least disobeyed. “If the master’s orders conflict with the servant’s,” says Maimonides, answering a rhetorical question in the Talmud, “the master’s take precedence. And it goes without saying that if a king ordered [the] violation of God’s commandments, he is not to be obeyed.”<sup>11</sup> This is the minimalist position; the talmudic texts seem to require active “protest” against the king, though it is not clear exactly what this means, and there is, as usual, no explicit doctrinal elaboration of the duty involved. Interestingly, the cases, all of them biblical, are each connected to war or civil war: Saul’s command to massacre the priests of Nob (in the course of his pursuit of David’s rebel band), David’s command to send Uriah to his death (in the campaign against Ammon), Joab’s killing of Abner and Amasa (in different cases of civil war and rebellion).<sup>12</sup> Discussing the first two of these cases, the thirteenth-century commentator David Kimchi alludes also to what we now call the “superior orders defense”—and seems to acknowledge its possible legal, though not its moral, force:

Even though it is always the case that “there is no agency for wrong-doing” . . . the case of Uriah is different: the text calls David the killer. Similarly with Saul, who ordered the massacre of the Nob priests—it is as though he killed them. Now it is true that in such a situation one should not execute the king’s orders . . . but since not everyone is aware of this or knows how to construe [the relevant texts], punishment falls on the king.<sup>13</sup>

The Talmud also reports a philosophically (or theologically) more interesting discussion of disobedience of the immoral commands of God himself, once again in the context of a military campaign. The biblical starting point is Saul’s war against the Amalekites, in which, say the rabbis, expanding on what is reported in 1 Samuel 15, the king refuses the divine command to slaughter the enemy, man, woman, and child (Yoma 22b). “If the adults have sinned,” he asks God, “what is the sin of the children?” The rabbinic inventors of this story seem to have a clear sense of the rights of the innocent in war. But they must take God as they find him in the biblical text, even if, as the reply they put in God’s mouth suggests, they take him with a touch of irony: “A heavenly voice came forth and said to him [Saul]: ‘Do not be excessively righteous!’” There is no irony with kings, however, and no similar compromise. The story continues by reporting that when Saul ordered the killing of the priests of Nob, a heavenly voice came forth and said to him: “Do not be excessively wicked!” The servants of the king, who refused the order, are not charged with too much righteousness.

Challenging God may be excessive (unwise? imprudent? presumptuous? self-righteous?); challenging kings is not. No doubt, a certain aura of di-

vinity attaches to the person of an anointed king, as David says when he lets pass an opportunity to kill Saul; the king’s words, however, are human words, not divine commands. They can be refused. But the king himself, presumably because of his anointment, can only be challenged and overthrown with prophetic support. That seems to be the biblical doctrine, and the doctrine of the rabbis too, though they are not greatly interested in such matters. The gentile kings under whose rule they live must be disobeyed, exactly like Jewish kings, if they command violations of God’s law (thus the stories in the book of Daniel), but there is no question of overthrowing them. Indeed, the focus of rabbinic literature, as of popular religious writing throughout the Middle Ages, is on martyrdom, not resistance or rebellion.

Modern Zionist writers have sought to reverse this order of interests, celebrating the Maccabean revolt, for example, as a legitimate and heroic military struggle against a foreign ruler.<sup>14</sup> The rabbis are surprisingly reluctant to offer a similar endorsement, even in their own terms: they would presumably describe the struggle as a commanded war (to defend the land and oppose idolatry within it). But they are more concerned to stress God’s miraculous intervention (see, for example, the prayer *al ha’nisim*) than to describe the fight itself, more ready to celebrate Hannah and her seven martyred sons than the military heroes of the revolt.

Had the revolt been a “commanded” war, as Zionists would certainly argue (in their terms: just and necessary), everyone would have been obliged to fight: in commanded wars, the Talmud declares, “all go forth, even a bridegroom from his chamber and a bride from her canopy” (Sotah 44b). But none of the rabbis seems to have questioned the formal announcement of the biblical exemptions reported in 1 Maccabees 3:56 (did they know this text or have access to other historical accounts of the revolt?), even though rabbinic doctrine holds that individuals are to be sent home only in permitted (optional) wars.

It is important to recognize that those who return home from such a war are not protesting the war; they just have more important things to do (or they are cowards). What is involved here is nothing like the early modern Protestant idea of conscientious objection. Such an idea might have been developed out of the Deuteronomic exemptions had Jewish commentators been forced, over many years, to face the urgencies of military service. Instead, they merely expand upon the exemptions so as to make it very difficult, as we have seen, for the king to fight his “permitted” wars. Presumably, they would not have wanted to make difficulties for the Maccabees, but there is no engagement at all with such particular questions.

Two expansions of the list of individuals not bound to fight in permitted wars are of special interest. First, people engaged in religiously commanded activities are not required to give up those activities in order to

join what will be, after all, a secular struggle. This is the source, or one of the sources, of the exemption of yeshiva students in Israel today (though this exemption can only be claimed by non-Zionists, who do not regard the defense of the present-day state as a "commanded" war). A more radical exemption is suggested by a singular, and until very recently unrepeated, interpretation of the biblical phrase "fearful and faint-hearted." It is a maxim of rabbinic interpretation that doublings of this sort must carry more than one message—since no word in the bible is superfluous. Hence Rabbi Akiba is quoted as saying that whereas "fearful" refers to the coward, "faint-hearted" must rather mean "soft-hearted" and refer to the compassionate. He goes on to argue that even a soldier who is a "hero among heroes, powerful among the most powerful, but who at the same time is merciful—let him return" (*Tosefta*, *Sotah* 7:14). This passage has been seized upon by modern commentators (particularly in the United States during the Vietnam War) as a possible foundation for a Jewish form of conscientious objection, though not, obviously, one focused on particular wars.<sup>15</sup> The effort suggests what might be done with the available texts, but it does not connect with anything actually done in the past.

Since commanded/permited does not translate into just/unjust, there is nothing in the Jewish tradition that requires, or even that provides a vocabulary for, a moral investigation of particular Jewish wars. And since for almost two thousand years there were no wars that demanded investigation, and no political arena within which the investigation would be a relevant activity, questions of protest, objection, and opposition arise only marginally and indirectly with reference to the conduct of war, and not at all with reference to its overall character. There is no parallel in Jewish thought to the extensive Catholic discussions about whether individual soldiers should participate in wars they take to be unjust. (Whether they should participate in gentile wars was a question more frequently discussed, but, given the conditions of exile, what the rabbis have to say is self-censored and highly sensitive to the political needs of the communities they represent—not useful, then, for any sort of theory construction.)

#### INTENTION

Given the latitudinous ground on which permitted wars may be fought, one would not expect intention to be a central issue in Jewish discussions. It is certainly central to the tradition as a whole, playing its expected part in criminal and civil law, and figuring in what are, from a philosophical standpoint, very interesting discussions of prayer and the fulfillment of religious commands. But no one seems to have taken up the intentions of kings and warriors—except for Maimonides in one very strong, but also very odd, statement in his treatise on the Book of Kings. The statement is

odd because its parallels are more easily found, as Gerald Blidstein has argued, "in the literature of crusade and *jihad* than . . . in the Talmud."<sup>16</sup> Maimonides seems to allow only commanded wars (though he has an expansive sense of that category, apparently including within it the war against idolatry—and the immediately following section of his treatise contains the more traditional, also rather expansive, account of permitted wars that I have already quoted). Indeed, only in commanded wars can a singular moral or religious intention be required. The king's "sole aim and thought," says Maimonides, "should be to uplift the true religion, to fill the world with righteousness, to break the arm of the wicked and to fight the battles of the Lord." His warriors are similarly enjoined: they should know that they are "fighting for the oneness of God."<sup>17</sup>

Perhaps Maimonides' purpose here is to rule out wars fought by the king for personal or dynastic reasons (despite his apparent permissiveness later on) and to admonish warriors who think only of plunder and booty. The only legitimate reason for fighting is religious: the elimination of idolatry from the world. I suppose that this can plausibly be described as one of the reasons (in the biblical text, the justifying reason) for the original conquest of the land: were it not for their "abominations," the Canaanites would never have been dispossessed. But the later wars to defend the land—what the elders of Israel called "our battles"—clearly had another reason: they were in no sense religious crusades, and there would have been no need and, presumably, no desire to fight them had Midianites and Philistines remained at home, worshiping their gods as they pleased. Nor were David's wars of expansion crusades: his subject peoples in the north and east were not, so far as we know, denied their idols. So Maimonides can hardly be describing these latter wars. His most likely purpose is to describe the intentions of the future king-messiah and the soldiers who join him. No contemporary wars would come under his purview. Even if he is borrowing from Muslim writers here, it would never have occurred to him that the *jihad* was a commanded war (but did he secretly admire the spirit with which it was fought?). In any case, by stressing the religious motives of the messiah, he is arguing against any kind of Jewish (national) triumphalism. The messiah will not fight so "that Israel might exercise dominion over the world, or rule over the heathens."<sup>18</sup> Intentions that may (or may not) be acceptable in the permitted wars of pre-messianic kings are clearly unacceptable in the days to come.

This is probably the best place to say a word about non-Jewish wars, like the *jihad* to which I have just referred. These are obviously not commanded wars; whether any of them are permitted is a matter of dispute among the rabbis. According to the Talmud (*Sanhedrin* 59a and Rashi's comment), wars of conquest against Jews and non-Jews alike are simply lawless, fought without authority or right—though these wars may none-

theless play a part in God's world-historical design. Even when they do, however, Jewish writers have nothing good to say about them. The rabbis acknowledge God's sovereignty but criticize the intentions of his gentile agents. The argument begins in the work of the prophet Isaiah, who recognizes God's hand in the wars of the Assyrians. The Assyrian king is "the rod of [God's] anger," sent into battle and charged to administer divine punishment.

Howbeit he meaneth not so;  
Neither does his heart think so;  
But it is in his heart to destroy  
And cut off nations not a few.

(Isa. 10:7)

So God's purposes are achieved, but the Assyrian king gets no credit for what he does, since his reasons are his own, aggressive and brutal. A post-biblical version of the same argument can be found in the talmudic tractate *Avodah Zara* (1a and b), where Roman and Persian imperialists claim before the heavenly court that their conquests brought peace to the world and freed Israel for the study of Torah. God replies, "All that you have done, you have only done to satisfy your desires"—and goes on to list the economic and political benefits they derived from their wars. But these examples should not be taken to suggest that the rabbis held some doctrine according to which wars could never rightly be fought for the sake of such benefits. Israelite kings fought for similar reasons, without embarrassment or (explicit) condemnation.

#### CONDUCT

Perhaps the surest sign of good intentions in war is restraint in its conduct. In the Jewish tradition, the moral necessity of restraint seems to have been widely assumed, but it is not so easy to find clear arguments. The rabbis labor, of course, under the burden of the biblical command to exterminate the Amalekites and the seven Canaanite nations. They cannot explicitly repudiate the command (though King Saul is allowed, as we have seen, to challenge it), but they do succeed first in limiting it and then in permanently bracketing it, so that it has no present or future application. The limiting argument, drawing on biblical texts and midrashic elaborations, is that these peoples are to be killed only if they persist in their abominations, not as a punishment for past behavior. If they abandon idolatry, they must be allowed to live in the land alongside the Israelites (they cannot be forced to adopt the religion of Israel). Nachmanides says flatly that many Canaanites did abandon their idols, and that is why, as the Bible makes clear, they survived in the land—still there, in fact, in the time of Solomon.<sup>19</sup>

The bracketing argument is probably best understood as a precaution against the messianic future, when Israel would come again into the land. Would it be bound to slaughter the inhabitants? No, says Maimonides, drawing on a text from the Mishna (*Yada'im* 4:4)—written, to be sure, with a different, though not unrelated, purpose: "Sennacharib came and put all the nations in confusion." Hence it is no longer possible to identify Amalekites or Canaanites, and so although in principle they are still subject to the ban (*herem*), in practice the ban is ineffective. I take this to mean that Maimonides, and presumably many of his predecessors, were not ready to countenance wars of extermination. But, again, he does not say that; nor do they.<sup>20</sup>

There is an alternative strategy to this uneasy engagement with the biblical text: to ignore entirely the commanded wars against the Amalekites and the seven nations of Canaan. And this may be the more direct path to a general argument for military restraint. The Alexandrian philosopher Philo, who is the first Jewish writer to make the general argument, addresses himself only to the biblical passages dealing with what the rabbis called permitted wars—though he writes without reference to, and presumably without knowledge of, the commanded/permitted dichotomy. Deuteronomy 20:13–14 holds that when a city has been conquered, "thou shalt smite every male thereof with the edge of the sword: But the women, and all the little ones, and the cattle, and all that is in the city, even all the spoil thereof, shalt thou take unto thyself." Philo's first interpretive move is to separate the women and children (all the commentators agree that "little ones" includes male children, up to arms-bearing age, despite the previous sentence) from the "spoil" or legitimate booty of war. He says simply that they must be spared. And then he gives the crucial reason:

When [the Jewish nation] takes up arms, it distinguishes between those whose life is one of hostility and the reverse. For to breathe slaughter against all, even those who have done very little or nothing amiss, shows what I should call a savage and brutal soul.<sup>21</sup>

I doubt that this argument played much of a part in the great anti-Roman revolts of 68 and 132 C.E. But when the Jewish nation next "took up arms," in the 1930s and 1940s, Philo's distinction was incorporated into the official doctrine of the armed forces. The Zionist political leaders and publicists who defended *tobar ha'neshek*, purity of arms, claimed to be drawing upon the ethical teachings of the Jewish tradition as a whole. But when they argued that the use of force was only "pure" if it was directed specifically and exclusively against armed enemies, it was Philo, too hellenistic and too philosophical to play much of a part in the tradition, whose work they were echoing. The rabbis themselves have no such (explicit) doctrine. Why is it that we think them committed to humanitarian re-

straint? Why were the modern theorists of "purity of arms" so sure that theirs was the natural, with-the-grain reading of the tradition?

In fact, the tradition is rather thin, for the usual reason: there were no Jewish soldiers who needed to know what they could and could not do in battle. The law against murder would no doubt rule out direct attacks upon civilians, but the issue does not seem to have arisen (after the biblical period) until very recent times. Indirect attacks and unintended or incidental civilian deaths figure even less in the tradition. The only extended discussion by a major figure comes from the hand of Judah Loew of Prague, writing in the sixteenth century about the biblical encounter of Jacob and Esau (*Gur Aryeh* on Gen. 32:18).<sup>22</sup>

The argument begins from another rabbinic interpretation of a biblical doubling: "Then Jacob was greatly afraid and distressed."—R. Judah ben R. Ilai said: Are not fear and distress identical? The meaning, however, is that [Jacob] was afraid lest he should be slain and distressed lest he should slay [others].<sup>23</sup> Loew takes Jacob's concern to be with the men accompanying Esau, since Esau himself was assumed to be an enemy whose obvious intention was to kill Jacob (so it would be lawful to "kill him first"). But perhaps Esau's men had been coerced to join his forces; perhaps they had no intention of participating in the attack. Loew concludes that Jacob would not be acting unlawfully to kill them in either case since, by accompanying Esau, they had taken on the guilt of his enterprise. Nonetheless, he is respectful of Jacob's scruples, and the whole passage suggests that it would indeed be a sin to kill innocent people, even in the course of a legitimate military engagement. The suggestion remains only that, however; it is not yet a developed argument, and it stands in the literature more as the resolution of a biblical difficulty than as a firm declaration of military policy. I am inclined, then, to accept with only minor reservations Bleich's claim that "there exists no discussion in classical rabbinic sources that takes cognizance of the likelihood of causing civilian casualties in the course of hostilities legitimately undertaken as posing a halakhic or moral problem."<sup>24</sup>

And yet the rabbis did deal fairly extensively with the law of sieges, in which this issue arises in paradigmatic form, and they seem to have written, if not with an explicit recognition of "a halakhic or moral problem," at least with the fate of the besieged civilians very much in mind. They may have won their reputation here, for their argument, picked up by Grotius, survived as the radical alternative to the standard version of international siege law.<sup>25</sup>

This is Maimonides' summary (based on a second-century teaching recorded in the *Sifre* to Numbers): "On besieging a city in order to seize it, we must not surround it on all four sides but only on three sides—thus

leaving a path of escape for whomever wishes to flee to save his life."<sup>26</sup> Of course, a city surrounded on only three sides is not in fact surrounded. If people can leave, then the food supply inside the city can be stretched out, perhaps indefinitely; or other people can enter, bringing supplies and reinforcements. It is hard to see how the city could ever be taken given this rule, which seems clearly designed for the sake of the inhabitants, not of the army outside, though this is ostensibly a Jewish army. Nachmanides, writing a century after Maimonides, strengthened the rule and added a reason: "We are to learn to deal kindly with our enemy."<sup>27</sup> It is enemy civilians who are treated kindly here, for the ordinary or four-sided siege is a war against civilians. The radicalism of the Jewish law is that it pretty much abolishes siege warfare. But there is no acknowledgment of this, and other legal discussions (see Nachmanides on Deut. 20:19–20) assume the legitimacy of the siege and evince little concern with its impact on the civilian population.

Maimonides also proposes a general rule against the sorts of violence that commonly follow upon a successful siege: anyone "who smashes household goods, tears clothes, demolishes a building, stops up a spring, or destroys articles of food . . . transgresses the command *Thou shalt not destroy*."<sup>28</sup> This sort of thing the tradition is fairly clear about, and the clarity may help, again, to account for its reputation. What is missing is any analysis of underlying principles (like Philo's distinction between individuals whose life is one of hostility and all others) and any casuistic applications. These discussions have no cases—even the biblical cases are largely unmentioned. What, for example, would Maimonides have said about the prophet Elisha's call for an all-out war against Moab (2 Kings 3:19): "And ye shall smite every fenced city . . . and shall fell every good tree, and stop all wells of water, and mar every good piece of land with stones"? This sounds like an easy case, except that Elisha's advice could not easily be denounced. And how would besieged civilians fare when really hard choices had to be made, when the capture of the city was held to be militarily urgent or necessary?

Debate about such questions in contemporary Israel has not yet produced a major theoretical statement. A number of rabbis have criticized the official "purity of arms" doctrine, writing as if it were an alien ideology (secular, Kantian, absolutist) and demanding a relaxation of its ban on the killing of enemy civilians.<sup>29</sup> The critics do not argue that enemy lives are worth less than Jewish lives, for at least with regard to protection against murder, the tradition is basically egalitarian. Their argument seems to follow instead from a deep suspicion, learned in the centuries of exile and probably better remembered among religious than secular Jews, about the extent of the enmity of the others. Nor is the enmity—this is the concrete

fear that goes with the generalized suspicion—reliably confined to soldiers; civilians, too, wait and plan to do us harm.

But if this argument has traditionalist roots, it is also very close to all the (secular, anti-Kantian, permissive) arguments that have been worked out in every contemporary nation whose soldiers have fought antiguerrilla or counterinsurgency wars. The guerrilla is hidden among the people, who thus become complicitous in his struggle; or he hides himself and is thus responsible for the civilian deaths we cause when we try to find and attack him. Anyway, war is hell: “For that is the nature of war,” wrote Rabbi Shaul Yisraeli after the Kibiyeh incident in 1954, “that in it the innocent are destroyed with the wicked.”<sup>30</sup> There exist both secular and religious responses to these arguments, but none of them seems to me specifically or in any strong sense Jewish. The resources of the tradition have not yet been fully mobilized and brought to bear in this (highly politicized) debate.

#### EXTREMITY

Jewish discussions about overriding the law or setting it aside in wartime emergencies have focused on religious rather than moral law—sabbath observance above all. The first arguments took place during the Maccabean revolt when Jewish soldiers, attacked on the sabbath and refusing to fight, were massacred by their enemies (1 Macc. 2:32–38). Subsequently, a general decision was made to pursue the military struggle without regard to the sabbath laws. Josephus reports further debates and a similar decision some two centuries later during the Roman war. The rabbis endorsed these decisions, without any specific reference to them, on the grounds of “saving lives.” The law was given, they argued, so that we might live by it, not die by it (Sanhedrin 74a). But to this general rule, they made three exceptions: Jews were to accept death rather than violate the laws against idolatry, murder, and incest. If noncombatant immunity rests on the second of these, then it would appear to be safe against emergency. Soldiers cannot deliberately take aim at and kill innocent people to save themselves or even to save the community as a whole. This would at least seem to be the Jewish position, though I do not think it has ever been stated with explicit reference to a military crisis.

All other prohibitions are probably subject to suspension in wartime emergencies: the rules against surrounding a city on four sides, for example, or cutting down fruit trees, or destroying property, can be overridden for the sake of “saving lives” (the Jewish version, perhaps, of military necessity). These prohibitions apply to both commanded and permitted wars, but they apply differently. Commanded wars must be fought even if

it is known in advance that the prohibitions will have to be violated in their course, whereas permitted wars are permitted only if it is reasonable to assume that violations will not be necessary. The halakhic principle here is that one should avoid deliberately putting oneself in a position where it will be necessary (and permissible) to break the law. This is the only link that I know of in the Jewish tradition between *ius ad bellum* and *ius in bello*: in the case of permitted wars, one must think about how the fighting will be conducted before one can rightly begin it. But once the fighting has actually begun, there is no link at all. The rule about “saving lives” operates whatever the grounds of the war, and murder (now that it has become impossible to identify Canaanites and Amalekites) is everywhere and always ruled out.

#### CONCLUDING NOTE

The clearest need in the tradition that I have been examining is to find some way to a comprehensive and unambiguous account of legitimate and illegitimate, just and unjust, warring. Would a category of “prohibited” wars open the way? Such a category would be symmetrical with “commanded” and “permitted,” but who, at this late date, could issue the prohibitions? Commanded wars are specifically commanded by God, at least in the original cases, but he is not known to have announced any specific (or general) prohibitions. Nor, however, is he known to have commanded defensive wars; there is no record of such a command in the biblical texts. So, in principle, there could be prohibited wars of aggression in the same style as the commanded wars of defense—derived through interpretation and *s'vara* (common sense, reasonableness). And commands and prohibitions of this sort might also plausibly be “given” to Jews and Gentiles alike, in contrast to the original command, given to Israel alone. But would these divine commands and prohibitions be, in any sense, authentically *divine*? I cannot answer that question. Perhaps it is better to argue that after the original command, no longer operative, these matters are “not in heaven”—everything else is human work, though still carried on within a religious/legal tradition.

The category of “permitted” wars is well worth preserving, since it answers to certain difficulties in the just/unjust schema. Some just wars seem almost to be “commanded,” that is, the goods at stake (the survival of the political community, say) seem urgently in need of defense. *They should be defended*, unless the defense is utterly hopeless, in which case the principle of “saving lives” might justify appeasement or submission. But some just wars are clearly “optional.” They can rightly be fought, in response to some small-scale aggression, say, but political compromise, even if its

terms are unjust, is also a permitted choice. Or, similarly, in the case of preemption: it is obviously permitted, though it may be imprudent, to wait for the enemy attack.

The hardest questions arise in the case of third parties in wars of aggression: they would be justified in coming to the rescue of the victim nation, but are they "commanded" to do that? International law recognizes a right of neutrality, a right that, for obvious reasons, makes many just war theorists uneasy. The issue is not taken up in classical Jewish texts—though individuals in analogous cases in domestic society are not permitted to "stand by the blood of [their] neighbor" (Lev. 19:16).<sup>31</sup> Might states have rights that individuals do not? A theory with three, rather than only two, possibilities at least facilitates the arguments that this question requires. So, once the category of prohibited wars is recognized and elaborated, it would be useful to divide the remaining wars into two kinds: those where the moral assumption is that they *should* be fought, and those where such an assumption is either weak or nonexistent (they *can* be fought). (It also seems plausible to suggest that exemptions from combat make more sense in wars of the second kind than in wars of the first kind.) Permitted wars are the king's wars in the sense that they depend upon a political decision, and so we ought to take an interest, as the rabbis did, in the complexities of the decision-making process.

A similar argument can be made with regard to the conduct of war, where there exists an urgent need to elaborate a full account of noncombatant immunity—a concept frequently intimated in the tradition, but nowhere developed—and to repudiate the moral nihilism of "War is hell." And in both these cases, with reference to the conduct and the classification of war, it is time to work the argument through and refine it out of a much larger number of examples than the Bible offers. After all, the Jewish encounter with war, in one form or another, reaches far across time and space: the Hasmonean wars, the Roman wars, the Crusades, the Christian conquest of Spain, the two world wars, and the Arab-Israeli wars. If the tradition is to serve contemporary uses, it must address itself to the full range of Jewish experience.<sup>32</sup>

#### NOTES

1. Maimonides, *Mishneh Torah: Book of Judges*, trans. Abraham M. Hershman (New Haven, CT: Yale University Press, 1949), Kings 8:10.
2. Nachmanides, *Commentary on the Torah: Genesis*, trans. Charles B. Chavel (New York: Shilo, 1971), 419 (Gen. 34:13).
3. Maimonides, *Book of Judges*, Kings 5:1.
4. So argues Donniel Hartman, "The Morality of War in Judaism," *S'vara* 2, 1 (1991), 20–24.

5. *The Fathers According to Rabbi Nathan*, trans. Judah Goldin (New York: Schocken, 1974), 101.
6. See the argument on Maimonides, Kings 5:1, in *Lehem Mishneh*, a commentary on Maimonides' *Mishneh Torah*, untranslated; it is quoted in David Bleich, "Pre-emptive War in Jewish Law," *Tradition* 21, 1 (Spring 1983), 8–9.
7. *Bet ha-Behirah*, Sotah 43a. *Bet ha-Behirah* is a commentary on the Talmud, quoted in Bleich, "Pre-emptive War," 11–12.
8. Bleich, "Pre-emptive War," 12.
9. Luzzatto's biblical commentaries are not translated; Menachem Lorberbaum brought this text to my attention.
10. For a theoretically sophisticated account of the exemptions, see Geoffrey B. Levey, "Judaism and the Obligation to Die for the State," *AJS Review* (Journal of the Association of Jewish Studies) 12 (1987), 175–203.
11. Maimonides, *Book of Judges*, Kings 3:9.
12. I follow here the argument of Moshe Greenberg, "Rabbinic Reflections on Defying Illegal Orders: Amasa, Abner, and Joab," *Judaism* 19, 1 (Winter 1970), 30–37.
13. Kimchi, commentary on 2 Sam. 12:9, quoted in Greenberg, "Rabbinic Reflections," 35–36.
14. Anita Shapira, *Land and Power: The Zionist Resort to Force 1881–1948* (New York: Oxford University Press, 1992), 14 and passim.
15. For example, Samuel Korff, "A Responsum on Questions of Conscience," Rabbinical Court of Justice, Boston 1970 (mimeo).
16. Gerald Blidstein, "Holy War in Maimonidean Law," in Joel Kraemer, ed., *Perspectives on Maimonides* (Oxford: Oxford University Press, 1991), 209–20.
17. Maimonides, *Book of Judges*, Kings 3:10.
18. Maimonides, *Book of Judges*, Kings 12:4.
19. Nachmanides, *Commentary on the Torah: Deuteronomy*, trans. Charles B. Chavel (New York: Shilo, 1976), 238–41 (Deut. 20:10).
20. Maimonides, *The Commandments*, trans. Charles B. Chavel (London: Soncino, 1967), 200–201 (Positive Commandment 187).
21. *Philo*, Loeb Classical Library (London: Heinemann, 1940), vol. 8, "The Special Laws," 4.225.
22. This text was brought to my attention by Noam Zohar. The *Gur Aryeh* has never been translated into English.
23. Loew, *Midrash Rabah: Genesis*, trans. H. Freedman (London: Soncino, 1983), 2: 702 (Gen. 76:2).
24. Bleich, "Pre-emptive War," 19.
25. Hugo Grotius, *The Law of War and Peace*, trans. Francis Kelsey (Indianapolis: Bobbs-Merrill, 1963), bk. 3, ch. 9, sec. 14 (pp. 739–40).
26. Maimonides, *Book of Judges*, Kings 6:7.
27. Quoted in Maimonides, *The Commandments*, app. 1 to the Positive Commandments, 263.
28. Maimonides, *Book of Judges*, Kings 6:10.
29. See, for example, the responsum of Shimon Weiser, "The Purity of Arms—An Exchange of Letters," in David Hardan, ed., *The Moral and Existential Dilemmas of the Israeli Soldier* (Jerusalem: World Zionist Organization, 1985), 84–88.

30. Shaul Yisraeli, "The Kibiyeh Incident in Halakhic Light," *Torah and State*, vols. 5–6 (Tel Aviv, 1954), in Hebrew. But see also "After Kibiyeh," in Yeshayahu Leibowitz, *Judaism, Human Values, and the Jewish State* (Cambridge, MA: Harvard University Press, 1992), 185–90.

31. See the symposium on the talmudic discussion of this passage (Sanhedrin 73a) in *S'vara* 1, 1 (1990), 51–73.

32. I wish to express my thanks to Noam Zohar, who provided advice and support at every stage in the writing of this chapter.

## CHAPTER 6

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### Prohibited Wars in the Jewish Tradition

*Aviezer Ravitzky*

MICHAEL WALZER'S CHAPTER presents a comprehensive picture of the status of war, its limitations, and its manner of conduct, as reflected in central trends of the Jewish tradition. The chapter clearly explains the implications of the unique situation that has generated most of the relevant rabbinic literature—namely, a situation of exile (*galut*), in the absence of a sovereign Jewish state, in which Jewish communities had no political or military impact on international society. But Walzer's discussion also reveals possibilities immanent in the classical religious sources—even if what these sources have to say on the subject is partial and fragmented—for developing a contemporary Jewish ethic of war.

The sources in question, however, are in the nature of things quite diverse. They have been composed by representatives of many schools, both of *halakhab* and of Jewish thought, spanning the centuries from ancient times to the modern period and the contemporary State of Israel. Any generalization regarding these sources would therefore be open to criticism and unable to encompass all the manifold alternatives developed over the generations. This is all the more true when one is dealing with so crucial an issue as that posed in Walzer's discussion: just and unjust wars.

#### TYPES OF PROHIBITED WARS

According to Walzer, Jewish religious tradition has not developed a concept of prohibited war. It distinguishes, indeed, between an "obligatory war" and an "optional war," imposing many restrictions upon the latter, but "it has only two categories [of war] where three seem necessary. . . . The missing third category is the banned or forbidden war." True, Walzer points out, Samuel David Luzzatto in the eighteenth century proposed such a view, but he did not have "many followers within the *halakhic* community." Walzer concludes by suggesting the need to formulate a clear halakhic distinction between permitted and prohibited wars, between legitimate and illegitimate warfare.