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## Defining and Defending Borders; Just and Legal Wars in Jewish Thought and Practice

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## DEFINING AND DEFENDING BORDERS; JUST AND LEGAL WARS IN JEWISH THOUGHT AND PRACTICE

Mark Goldfeder\*

*The renewal of Jewish sovereignty in 1948 presented Jewish tradition with fundamental questions. Absent national borders usually intrinsic to identity, the people had long ago turned inward toward their Law. The Diaspora-based rabbinic literature seemed to almost oppose the use of force; warfare in the text was marginalized, Biblical references to heroism reinterpreted as allegorical expressions of valor in the 'battles of the study hall.' Some saw the re-establishment of the state as a return to "real" Judaism, a chance to re-hinge national identity on borders instead of bookmarks. Halacha had no place on the battlefield. Others, however, felt that approaching war through the ethical prism of the sages was not only possible but imperative, if those who wish to fight God's wars are to remain above temptation, exercise restraint, and retain a purity of arms in the face of challenging dilemmas and unforgivable demands. This paper asks whether or not a modern army can define and live within the borders of Israel's longtime ideological homeland and surrogate refuge, i.e. inside her 'four cubits of Law,' even as it seeks to defend her re-established physical borders in the realities of war, and under both international pressure and international legal norms.*

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## I. INTRODUCTION

The renewal of Jewish sovereignty in 1948 presented Jewish tradition with both grave historical challenges and unprecedented opportunities. Having wandered in exile since their crushing defeat at the hands of the Roman Empire, it had been literally millennia since the Jewish people had a state to call their own. Amidst the euphoria of a Biblical homecoming, however, was the realization by the People of the Book that there was in fact a great lacuna in the text.

Judaism in practice is a normative system based on a sanctified canon that is read and understood in conjunction with an authoritative legal tradition of interpretation. Unlike many secular systems, Jewish law does not set its boundaries at merely determining what is legal or illegal. Jewish law also aims to regulate that which is ethical.<sup>1</sup> Throughout the generations and throughout the Diaspora, Jewish people across time and space have turned to the Law for comfort and guidance in every single aspect of their lives. Indeed, in the absence of national borders (which are usually intrinsically bound up with the issue of national identity) the Jewish people actually turned inward toward their Law, and began speaking of it in terms of a safely enclosed *home* in which they, and God, could live: “[s]ince the day that the Holy Temple was destroyed, the Holy One blessed be He, has nothing in His world except the four cubits (*ed. the small, enclosed area*) of *Halachah* (‘the law’).”<sup>2</sup>

The vitality of a corpus of law, however, depends upon its regular implementation and its being subject to an ongoing process of deliberation, debate and development. While some of the classic works of Jewish law — most notably the *Talmud* and Maimonides’ (1135-1204) legal works — do include some scattered references and a few brief guidelines about war, having lacked an independent polity for so very long (and coming from a history characterized by their own inability to defend themselves against the violence directed at them by the cultures in which they have lived), it became abundantly clear in the early days of the Zionist victory that Jewish law had never fully developed its own laws of *state*, with an accompanying code

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<sup>1</sup> See generally David Feldman, *The Structure of Jewish Law*, in CONTEMPORARY JEWISH ETHICS 21-36 (Menham Marc Kellner ed., 1978).

<sup>2</sup> BABYLONIAN TALMUD, BERAKOTH 8a. Four cubits is the minimum size in Jewish Law that connotes an area deemed habitable for a person. See, for example, BABYLONIAN TALMUD, SUKKAH 3a, where a home smaller than four by four cubits is exempt from the commandments of *mezuzah* and *ma’akah*.

of military ethics.

It is not surprising that the quest to find and revive a corpus of “traditional” Jewish military values began for many with an attempted retreat to safer hallowed grounds. Some leaders simply looked to extend and translate Judaism’s highly developed moral and ethical code for the *individual* onto a national and military scale. They suggested that discussions of permissible or impermissible or just or unjust wars and their conduct begin with the laws relating to the saving of life and the right to self-defense.

“A source often cited in this approach is a [Biblical] law commonly referred to as ‘the pursuer’ law (*‘din rodef’*), which prescribes the right to use lethal force in self-defense or in defense of a third party.”<sup>3</sup> The significance of turning to this law for guidance is that it applies criminal law to establish military norms of behavior, working off of the assumption that war does not constitute an independent normative category. Obviously less radical than relating to war as something entirely new and different, what this does from a perspective of internal Jewish legal thought is simply extend and analytically transfer a legal deliberation that had already been in motion for generations, without requiring that much innovative legal creativity. The Talmud<sup>4</sup> rules that a person is permitted to kill a pursuer in order to save his or her own life, and while there is some dispute as to whether Jewish law mandates or merely permits this, nearly all authorities agree that such conduct is at the very least allowed.<sup>5</sup> The laws of pursuit are equally applicable to a group of individuals or a nation as they are to a single person, and so when viewed from this angle military action becomes, from a Jewish legal standpoint, permissible and just (if not obligatory), at least when it is defensive in nature.<sup>6</sup>

The problem with using the pursuer rationale is that if we analyze war and battlefield ethics as simply extensions of that rule, they will also necessarily carry along all of its many restrictions. Leaving aside the massive issue of what constitutes defensive warfare, even

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<sup>3</sup> Arye Edrei, *Divine Spirit and Power: Rabbi Shlomo Goren and the Military Ethic of the Israel Defense Force*, 7 THEORETICAL INQUIRIES L. 253, 273 (2006).

<sup>4</sup> BABYLONIAN TALMUD, SANHEDRIN 74a-b.

<sup>5</sup> Michael Broyde, *Just Wars, Just Battles and Just Conduct in Jewish Law: Jewish Law Is Not a Suicide Pact!*, in WAR AND PEACE IN THE JEWISH TRADITION 1, 10 (Lawrence Schiffman & Joel B. Woloelsky eds., 2007).

<sup>6</sup> See Rabbi Shaul Yisraeli, *The Qibya Incident in the Light of Halakhah [Jewish law]*, 5 HA-TORAH VEHA-MEDINAH 71-113 (1953-54).

when self-defense is mandatory Jewish law does not permit one to a) kill an innocent third party in order to save a life, b) compel a person to risk his or her life to save the life of another, c) kill the pursuer after his or her evil act is already accomplished as a form of punishment, or d) use more force than is absolutely minimally needed. “[T]he application of the rules of this type of ‘armed conflict’ would resemble an activity by a police force rather than an activity by an army. Only the most genteel of modern armies can function in accordance with these rules.”<sup>7</sup> War, if it is to exist as a just and morally sanctioned event, must allow for some forms of killing other than those which are allowed through the rationale of self-defense, and so influential thinkers set out to prove that there does exist a more nuanced approach to war within the Jewish legal framework, one that sees war as a legitimate category in and of itself.

The Bible contains a number of famous references and ideas about war, which when looked at together reflect the tension between an ideal vision of the utopian “End of Days,”<sup>8</sup> and the recognition of the realities of the human existence.<sup>9</sup> Despite the centrality of the prophetic yearning for world peace, there is a clear understanding in the Bible that war is sometimes an unavoidable necessity and in fact a religious experience. King David, for instance, saw G-d as being the One who prepared him for war and who accompanied him into battle: [A psalm] of David: Blessed be the Lord my Rock, who trains my hands for war, and my fingers for battle.<sup>10</sup>

Yet the permit to wage even legitimate wars stood in ongoing tension not only with the vision of universal peace, but also with the fear that the state would become morally corrupt through the unbridled use of, and exaggerated reliance on, force. Despite the fact that David’s wars were all considered just, he was not considered suitable for building the Lord’s Temple, a proverbial “House of Peace.”

But the word of the Lord came to me saying “You have shed much blood and have waged great wars.

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<sup>7</sup> Broyde, *supra* note 5, at 17-18.

<sup>8</sup> *Isaiah* 2:2-4: “And it shall come to pass in the end of days . . . they shall forge their swords into ploughshares, and their spears into pruning-knives: nation shall not lift up sword against nation, neither shall they learn war any more.”

<sup>9</sup> *Deuteronomy* 20:1-3: “when you go out to battle against your enemies . . . do not be afraid of them; for the Lord your God is with you, who brought you up from the land of Egypt.”

<sup>10</sup> Edrei, *supra* note 3, at 263 (quoting *Psalms* 144:1).

You shall not build a house to my name, because you have shed much blood before me on earth.”<sup>11</sup>

War in the Bible was not *necessarily* a bad or evil thing, but as the text reflects, it has always needed limits and it does affect a real and permanent change in those who engage in it.

The approach to war in Jewish law underwent significant change during the post-biblical phase. The Diaspora-based rabbinic literature seemed to almost oppose the use of force, perhaps reflecting an attempt to make the powerlessness the rabbis undoubtedly felt somehow more bearable. Their historical reality led the Jews to believe that force is an instrument utilized by violent and wicked people; the rabbis marginalized the warfare in their tradition, reinterpreting the Biblical references to heroism as allegorical expressions of valor in the ‘battles of the study hall.’ Thus David, the “mighty man of valor, and a man of war”<sup>12</sup> becomes in the Talmud: “‘A brave fighter’ - in that he knows what to respond; a ‘man of war’ - in that he knows how to give and take in the war of Torah.’”<sup>13</sup>

With the rise of the State of Israel, there were those who felt that it was time to disassociate entirely from the culture of Diaspora-developed Jewish law and return to a straighter reading of the Book. David Ben-Gurion (1886-1973), Israel’s first Prime Minister, himself wrote that, “The Bible was great before there was *Midrash* [rabbinic homiletical and exegetical literature] — it does not depend on *Midrash*, and it should be understood on its own without the help of *Midrash*.”<sup>14</sup> Ben Gurion saw the establishment of the Jewish state “not as the continuation of life in Warsaw, Odessa, and Crakow, but as an essentially new beginning, although a beginning intertwined with a distant past, the past of Joshua ben Nun, David, Uzziah, and the early Hasmoneans.”<sup>15</sup> He viewed the right of the Jewish people to fight for their freedom as the pinnacle of the return to the Bible and “real” Ju-

<sup>11</sup> 1 *Chronicles* 22:8. See also 7 NACHMANIDES, THE TORAH: WITH RAMBAN’S COMMENTARY 582-85 (Rabbu Nosson Scherman & Rabbi Meir Ziotowitz eds., 2008).

<sup>12</sup> 1 *Samuel* 16:18.

<sup>13</sup> BABYLONIAN TALMUD, SANHEDRIN 93b.

<sup>14</sup> David Ben-Gurion, *Hatanakh Zoreah Be’or Atzmo* [The Bible Shines by its Own Light], in IYUNIM BETANAKH [STUDIES IN THE BIBLE] 46 (1970) (Hebrew); see also Edrei, *supra* note 3, at 268.

<sup>15</sup> Cited in Anita Shapiro, *Ben Gurion Vehatanakh: Yetzirato Shel Narativ Histori* [Ben Gurion and the Bible, A Creation of Historical Narrative], 14 ALPAYIM 207, 223 (1997) (Hebrew); see Edrei, *supra* note 3, at 268. The above mentioned individuals were among those who first established ancient Israel’s borders.

daism, a chance to re-hinge national identity on borders and not bookmarks.

Rabbi Shlomo Goren (1917-1994), the first Chief Rabbi of the Israel Defense Forces (IDF) and later the Chief Rabbi of Israel, argued to the contrary. He believed that “a return to the Bible through the ethical world of the Rabbinical Sages was” indeed a realistic possibility “and would effectively confer to the State and the armed forces a more valuable ethical code by which to conduct wars.”<sup>16</sup> He also believed that such a return was religiously imperative. If Judaism really had laws of war (a fact which, as a believer in the all-encompassing nature of the system, he was sure of), then they were just as binding as all other Jewish law.

In response to Ben-Gurion, Goren noted that the Talmudic literature was not simply inventing new strains of thought; the Bible itself had already expressed deep reservations about man’s military power and had noted the supremacy of spiritual restraint.<sup>17</sup> The Sages were just picking up and building on these themes. Borders, in Rabbi Goren’s thought, are not only physical; religious, moral, and ideological lines must be drawn in the sand if those who wish to fight God’s wars are to remain above temptation, to exercise restraint and retain a purity of arms in the face of the most challenging moral dilemmas and unforgivable demands of war. The parameters of war-time conduct must be set, and set religiously, well in advance and grounded in the Law.

Nevertheless, Goren did admit that:

[T]hese verses cannot cloud the glorification of the attribute of heroism which the Prophets themselves and Jewish history connect to the heroes of Israel who learned the art of war. . . . Even the humanitarian view of Judaism regarding the essence of heroism does not negate the physical heroism that is accepted as a value in our worldview, but rather establishes an order of priorities. . . . As we see in *Avot De-Rabbi Nathan* [a rabbinic work], “Who is the mightiest of the mighty? — One who controls his inclination, as it

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<sup>16</sup> Edrei, *supra* note 3, at 269.

<sup>17</sup> *Jeremiah* 9:22-23 (“Never boast, if thou art wise, of thy wisdom, if thou art strong, of thy strength, if thou art rich, of thy riches; boast is none worth having, save that insight which gives knowledge of me.”); *see also Psalms* 33:16.



says: 'Forbearance is better than might.' ” We learn that this definition does not attempt to negate physical heroism, but to define the mightiest of the mighty. From here, we learn that there are two levels of heroism. The lower level is physical heroism, and the higher level is spiritual heroism.<sup>18</sup>

Goren claimed that since the concept of moral heroism was already an important and developed motif within the Bible itself, “the innovation of the Sages was not in the creation of a new category of spiritual heroism, but in establishing this form of heroism as the dominant [one.]”<sup>19</sup> The creation of an appropriate balance between power and spirit, he argued, is a much truer return to Jewish values and culture than simply ignoring the later expositions. Physical power is a necessary element of survival, but it must be controlled and harnessed by the spirit. Thus the very rabbinic wisdom that Ben-Gurion criticized as being “irrelevant at the time of the renewal of Jewish sovereignty became, in Rabbi Goren’s hands, a reason to praise the tradition that sought to deeply implant an ethic to guide the use of force.”<sup>20</sup>

It also became a reason to begin the legal resurrection. Well aware that by this time, due to their long years of studied neglect, the Jewish laws of war would be buried under centuries of Diasporic dust, Rabbi Goren and his colleagues were forced to go back to the very roots of the religion, a process which in many ways resembled a theological archaeological dig. Utilizing a broader and significantly different variety of sources than traditional rabbinic decision makers were wont to rely on, they combed through apocryphal literature and the works of Josephus Flavius amongst others, looking for clues as to what it meant to build and run a Jewish army. Hence;

[I]t was necessary to gather, select and organize, like the sheaves of wheat brought to the threshing floor, the shards of laws, customs, and practices that existed in the ancient armies of Israel — to resurrect them from the recesses of distant memory, from beneath the ruins of the Kings of Israel, and to collect them from

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<sup>18</sup> Shlomo Goren, *Hagevurah Bemishnat Hayahadut* [*Heroism in the Teachings of Judaism*], 120 MAHANAYIM 7, 9, 11 (1969) (Hebrew), *quoted in* Edrei, *supra* note 3, at 280-81.

<sup>19</sup> Edrei, *supra* note 3, at 281.

<sup>20</sup> *Id.* at 279.

the holy books. . . . We built practices brick by brick, establishing a firm foundation for a system of authoritative Jewish legal rulings based on the Torah of Israel.<sup>21</sup>

The remainder of this paper will focus on the background legalities of some of those practices and rulings, specifically in relation to the borders that the Law sets on questions of *jus ad bellum* and *jus in bello*, and the ways in which they have been recently called up from the reserves.<sup>22</sup>

## II. THE LETTER AND THE SPIRIT OF THE LAW

In categorizing wars, the Talmud<sup>23</sup> delimits two categories of

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<sup>21</sup> I-IV SHLOMO GOREN, MESHIV MILHAMA: SHE'ELOT U-TESHUVOT BE-INYENE TSAVA MILHAMAH U-VITAHON [RESPONSE TO WAR: RESPONSE ON MATTERS OF THE MILITARY, WAR, AND SECURITY] 10 (1983-1992) (Hebrew); *see also* Edrei, *supra* note 3, at n.38.

<sup>22</sup> *See* Michael J. Broyde, *Fighting the War and the Peace: Battlefield Ethics, Peace Talks, Treaties, and Pacifism in the Jewish Tradition*, in WAR AND ITS DISCONTENTS: PACIFISM AND QUIETISM IN THE ABRAHAMIC TRADITIONS 1-2 (J. Patout Burns ed., 1996); *see generally* Edrei, *supra* note 3 (suggesting the approach of Rabbi Goren to military and war law is not the only one in the Jewish tradition – indeed, it is just one of five views advanced by mainstream Jewish law authorities); *see* Michael J. Broyde, *Only the Good Die Young?*, MEOROT 6:1 SHEVAT 5767 (2006), available at [www.edah.org/backend/JournalArticle/Conversation%20-%20Final.pdf](http://www.edah.org/backend/JournalArticle/Conversation%20-%20Final.pdf) (providing in grand outline, the five basic views about the substance of the Jewish law of war as articulated by the halakhic authorities of the last generation. The first is the view of R. Elazar Menachem Shach, the great leader of the Ponovezh Yeshiva for decades. He believed that there are no unique rules of how to fight a war, and that war law simply consists of the general rules of self-defense writ large. In his view, there is no priestly blessing in war time now, as there are no modern day wars conducted consistent with Jewish law because — at the minimum — there is no *urim veTumim*, but more generally because these rules are limited to messianic times. The second is the view of R. Shaul Yisraeli, which is that *halakhah* has no *unique* rules of war, and that it accepts secular law norms as valid. Rabbi Yisraeli asserts that like many areas of *halakhah*, this, too, is governed only by the obligation to obey international law norms — much like the “law of the land” or *dina de-malkhuta dina* — writ large. International law certainly does not require a priestly blessing. The third is the one that we focused on here: the view of R. Shlomo Goren, that *halakhah* has indigenous rules for waging war that, although covered by layers of dust from generations of disuse, are present and need to be fleshed out. This model has a priestly blessing. The fourth is the view of R. Ovadia Yosef, who acknowledges that there are indigenous rules of war within *halakhah*, but thinks that they are not rules for the individual, not the state. As such, they are not related to the State of Israel, but govern Jewish soldiers in any army, Israel or France. In this model, the priestly blessing is, at the very least, not necessary. The fifth view is that of the Satmar Rebbe, R. Joel Teitelbaum, that the fighting of Jewish wars is prohibited by rabbinic decree after the ‘three Talmudic oaths,’ until the coming of the Messiah. *See* DAVID BIALE, POWER IN JEWISH HISTORY 39-40 (1986) (suggesting that a priestly blessing over a sin is not needed).

<sup>23</sup> BABYLONIAN TALAMUD, SOTAH 44b.

permissible wars: Obligatory and Authorized. Logic would dictate (and Jewish law accepts) that a specifically divinely mandated conflict, such as an Obligatory war, has certain ethical rules not found in any other type of military engagement.<sup>24</sup> As such, many of the restrictions placed on the conduct of war in Jewish thought are limited only to Authorized, rather than to Obligatory wars. It is therefore important to determine which category of war a particular type of conduct would fall into.

According to the Talmud, the simple distinction is as follows: Obligatory wars are those wars started in direct fulfillment of a specific biblical commandment (such as the obligation to destroy the seven nations or the tribe of Amalek in biblical times) while Authorized wars are wars that are undertaken to increase territory or to diminish the “heathens so that [they] [shall] not march.”<sup>25</sup> Maimonides, in his codification of the law, writes that:

The king must first wage only Obligatory wars. What is an Obligatory war? It is a war against the seven nations, the war against Amalek, and a war to deliver Israel from an enemy who has attacked them. Then he may wage Authorized wars, which is a war against others in order to enlarge the borders of Israel and to increase his greatness and prestige.<sup>26</sup>

Seeing as he is perhaps the most important figure (not to mention decisor) in the last two thousand years to deal with the subject of starting Jewish wars, Maimonides’ understanding of the Talmud and his own subsequent conception of the categories are the necessary starting points for developing a theory of Jewish *jus ad bellum*. But before we examine the exact lines drawn between Obligatory and merely Authorized wars, it is important to answer a much more basic question: Under what license does the Jewish tradition permit non-obligatory war at all, with all of the resultant deaths and bloody carnage that such battles will surely entail?

Michael Walzer has famously come to the conclusion that

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<sup>24</sup> See generally RABBI ELIEZER BERKOVITS, NOT IN HEAVEN: THE NATURE AND FUNCTION OF HALAKHA (1983) (discussing the role of the Divine in Jewish law).

<sup>25</sup> BABYLONIAN TALAMUD, SOTAH 44b.

<sup>26</sup> MAIMONIDES, MISHNEH TORAH, *Hilkhot Melakhim* 5:1; see also The Wars of Israel According to the Rambam, THE ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH, <http://vbm-torah.org/archive/halak66/29halak.htm> (last visited May 2, 2014) (defining Mandatory and Optional war).

Authorized wars in the Jewish tradition are fundamentally *improper*, and are merely tolerated by the legal system as an evil that cannot be abolished.<sup>27</sup> Others, like Noam Zohar propose that Authorized (as opposed to Obligatory) wars are those wars whose moral license is clearly just and valid, but whose fundamental obligation is not present.<sup>28</sup> For example, when the military costs of the war are high enough (at least in terms of the expected casualties) it is sometimes morally permissible to decline to engage in fighting.<sup>29</sup> Rabbi Eliezer Waldenber (1915-2006) offered a third explanation in his suggestion that that these wars fall under the rubric of the many positive commandments in Jewish law (*mitzvot*) that are not necessarily mandatory, but are nevertheless authorized as being good deeds. As such, even when it comes to Authorized wars: “such wars have to be with the goal and intent to elevate true faith and to fill the world with righteousness, to break the strength of those who do evil, and to fight the battles of God.”<sup>30</sup>

Returning to Maimonides’ technical categorical definitions, commentaries both ancient and modern have struggled with pinpointing the exact practical lines that classify when a war is Obligatory, Authorized or prohibited.<sup>31</sup> Essentially though, classic Jewish legal theory would tell us that there are three basic and distinct categories to contend with in the starting of a Jewish battle.<sup>32</sup> Defending the people of Israel and the nation’s borders from forceful attack by an aggressive neighbor would be considered an Obligatory war; fighting ‘offensive’ wars against ‘belligerent’ neighbors (variously defined) would be an Authorized war; and protecting individuals through the use of the ‘pursuer’ rationale would be permissible but not a “war” in the technical legal sense.<sup>33</sup> Killings that take place in wars that are not permissible under Jewish law, would, according to Jewish law, be

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<sup>27</sup> Michael Walzer, *War and Peace in the Jewish Tradition*, in *THE ETHICS OF WAR AND PEACE: RELIGIOUS AND SECULAR PERSPECTIVES* 95, 111-12 (Terry Nardin ed., 1996).

<sup>28</sup> Noam Zohar, *Can a War be Morally ‘Optional’?*, 4 J. POL. PHIL. 237, 238 (1996).

<sup>29</sup> See Broyde, *supra* note 5, at 16 (indicating that the author feels that this explanation is deeply incomplete).

<sup>30</sup> *Id.* at 13.

<sup>31</sup> *Id.* at 14-15 (Judah ben Solomon al-Harizi’s translation of Maimonides’ ‘Commentary on the *Mishnah*’ *Sotah*, 8:7. Rabbi Joseph Kapach in his translation of the same. Rabbi Abraham diBaton, *Lechem Mishna*, ad loc. Rabbi Abraham Isaiah Karelitz’s explanation in *Chazon Ish*, Mo’ed 114:2. Rabbi Yehiel Mikhel Epstein’s explanation in his *Arukh ha-Shulhan he-Atid*).

<sup>32</sup> *Id.* at 16.

<sup>33</sup> *Id.*

classified as murder.<sup>34</sup>

Thus far we have been able to stand on relatively firm legal ground. The minor debates in definition are part and parcel of the give and take in Jewish Law. The discussion does not end here though. Most would agree that being forcefully attacked by an enemy is grounds enough to go to war, and so any of Israel's defensive wars are morally covered in terms of *jus ad bellum*. The question in reality then shifts over to the category of Authorized war.

The Talmud recounts that in addition to the abovementioned required state of affairs to be in existence, there are three additional ritual requirements that must be met in order for an Authorized war to be (rightly) permitted to commence. The first and foremost is the presence of an accepted king or ruler of Israel.<sup>35</sup> The second requirement is the consent of the Great Sanhedrin (the High Court in Ancient Israel, composed of seventy-one elders),<sup>36</sup> and the third is consultation with the *Urim VeTumim*, a mystical and holy ornament that was worn with the High Priest's breastplate and was used to seek prophetic answers.<sup>37</sup> This ancient check and balance system, requiring the consent of the executive, judicial, and religious branches of leadership, cannot be so easily dispensed with. If we are to have an acceptable theory of Jewish *jus ad bellum* with all of its limits on the autonomous use of power, then all of these criteria must somehow be met, even in the modern day era. At face value this might seem problematic.

The first requirement is perhaps the easiest to meet. Nachmanides<sup>38</sup> is very clear that an official 'king' is not actually needed, per say. The decision to go to war can be made by "a king, judge, or whoever exercises jurisdiction over the people." Historically speaking, after the destruction of the Temple, the Jews began their exilic existence in Babylonia, where there was no official position of Jewish royalty. Instead, the legal authorities established that "the exilarchs in Babylonia stand in place of the king."<sup>39</sup> To apply this nowadays and find a logical concurrence between the Babylonian exilarch and the modern government of Israel, we can turn to the

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<sup>34</sup> Broyde, *supra* note 5, at 16.

<sup>35</sup> BABYLONIAN TALMUD, SANHEDRIN 20b.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 16a.

<sup>38</sup> Add. to MAIMONIDES, BOOK OF COMMANDMENTS, *positive commandment* 4.

<sup>39</sup> MAIMONIDES, MISHNEH TORAH, *Sanhedrin* 4:13.

Talmudic authorities who already noted during the middle ages that the Jewish law doctrine which states that “the law of the land is the law” would not apply to a Jewish government.<sup>40</sup> Instead, a Jewish State would be “governed by the king’s law, which applies to all forms of Jewish government as they continue to develop over the course of time.”<sup>41</sup> As this pertains specifically to a modern Israel, Rabbi Abraham Isaac Kook (1865-1935), the first Chief Rabbi of the British Mandate for Palestine, points to the Talmudic passage which states that “the king’s law applies at all times and in every generation to the leaders of the time in their respective countries.”<sup>42</sup> Rabbi Kook notes that the royal prerogative governs the nation, and that “king’s law-making prerogatives revert to the nation as a whole” and that the king’s law applies to the government where they have flexibility to maintain order because the government is responsible for “the totality of the needs of the people at any time for the general security.”<sup>43</sup>

Using these standards, the government of Israel has the authority to rule the Jewish people under king’s law. Thus, in an emergency situation, the Knesset is vested with the exact same powers and authority that King David himself would have been granted.

In regard to the requirement to seek the consent and approval of the Great Sanhedrin, the recently deceased Rabbi Yehudah Gershuni<sup>44</sup> advanced the thesis that the approval of the High Court is only a requirement if the monarch finds it necessary to compel the populace to go to war against their will, and to conscript soldiers involuntarily. When the nation agrees to go to battle, the approval of the Sanhedrin is not necessary.

The comments of at least one influential early exegete seem to support this view. *Meiri*,<sup>45</sup> in his explanation of the relevant Talmudic passage,<sup>46</sup> notes that the approval of the Sanhedrin is required in order to compel the populace to go out to battle, and that no approval

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<sup>40</sup> Michael J. Broyde & Steven H. Resnicoff, *Jewish Law and Modern Business Structures: The Corporate Paradigm*, 43 WAYNE L. REV 1685, 1696 (1997).

<sup>41</sup> MENACHEM ELON, *JEWISH LAW: HISTORY, SOURCES, PRINCIPLES* 59 (1994). The book cites for its authority on this point the Responsa 12 *Basis'alei ha -Tosafot* 58 (ed. Agus). The editors note that *Ran* (1320-1380) and *Rashba* (1235-1310) follow this view that the king’s law applies to the Jewish government.

<sup>42</sup> *Id.* at 58-59.

<sup>43</sup> *Id.* at 59 (citing 144 RABBI A. KOOK, *MISHPAT KOHEN* 337-38 (1937)).

<sup>44</sup> *XLL Torah she-be-al Peh*, 150f (5731); see also *Einayim la-Mishpat* (commenting on BABYLONIAN TALMUD, SANHEDRIN 16a).

<sup>45</sup> *Beit HaBechira* (commenting on BABYLONIAN TALMUD, SANHEDRIN, 16a).

<sup>46</sup> BABYLONIAN TALMUD, SANHEDRIN 16a.

is necessary for popularly supported wars. In a similar vein, Rabbi Kook claimed that in a democratic era, the government, which expresses the will of the people, replaces the need for the approval of the High Court.<sup>47</sup>

The last ritual requirement, consultation with the *Urim VeTumim*, is undoubtedly the most difficult to deal with; whether or not the *Urim VeTumim* existed during the time of the Second Temple is a matter of scholarly debate, but no one questions the fact that by the end of that era the *Urim VeTumim* had certainly gone missing. When approaching this problem though, it is important to note that in his legal discussions about the declaration of an Authorized war,<sup>48</sup> Maimonides does not list the requirement of asking the *Urim VeTumim* at all. Rabbi Yechiel Michael Epstein<sup>49</sup> suggests that, although biblically mandated, consultation with the *Urim veTumim* is perhaps not a *necessary* condition of war; although it constitutes a *mitzvah* and is required by virtue of the biblical command, failure to engage in prior consultation does not actually affect the legitimacy of the war itself.<sup>50</sup>

Another interesting example of an ancient military ritual law with modern resonance involves the ‘Priestly Blessings.’ When most people think about the term ‘Priestly Blessings,’ they imagine it to be referring to the blessings that God prescribed for Aaron and his descendants to bless Israel with. Described in Numbers 6:24-27,<sup>51</sup> those Priestly Blessings, with their distinctive ritual chanting and melodies accompanying the symbolic raising of the hands, are still performed to this day, only now in the synagogue and not in the Temple.

But unlike the ‘regular’ Priestly Blessings, which are only recited in a time of joy,<sup>52</sup> there is another set of blessings that the Priest is commanded to give to the Jewish people, specifically the Jewish

<sup>47</sup> RABBI A. KOOK, RESPONSA MISHPAT COHEN 144 (1993). See also Rabbi Shaul Israeli, *Amud ha-Yemini*, no. 14 and no. 16, chap. 5, sees. 6-7. Cf., *Amud ha-Yemini*, no. 16, chap. 5, sec. 24.6.

<sup>48</sup> MAIMONIDES, MISHNEH TORAH, *Laws of the Sanhedrin* 5:1.

<sup>49</sup> *Id.* at 74:7.

<sup>50</sup> See also LEOR HAHALAKHAH 12; *Einayim La-Mishpat* (commenting on BABYLONIAN TALMUD, SANHEDRIN 16a).

<sup>51</sup> Numbers 6:24-27: “The Lord said to Moses, Tell Aaron and his sons, Thus shall you bless the people of Israel. Say to them: The Lord bless you and protect you! The Lord deal kindly and graciously with you! The Lord bestow His favor upon you and grant you peace! Thus they shall link My name with the people of Israel, and I will bless them.”

<sup>52</sup> REMA, SHULCHAN ARUCH, *Orach Chaim* 128.

army, right before they go to war. Deuteronomy 20 describes the process as follows:

When the hour of battle draws near, the high priest will take his stand there in front of the ranks, and say to the people, Listen, Israel; as you join battle to-day with your enemies, there must be no faint hearts among you, no flinching, no yielding, no trembling here. The Lord your God is here in the midst of you, and will fight on your side against your adversaries, to deliver you in the hour of peril.<sup>53</sup>

While the strict requirements for the Priest Anointed for War are certainly not followed today,<sup>54</sup> the essence of the practice, and the Blessing, has survived, in spirit if not in letter. In general, while the idea of a military chaplain, i.e. someone to serve the army soldier's physical and spiritual needs, is a relatively new concept,<sup>55</sup> the Priest Anointed for War is often seen as the first prototype. Indeed, according to the United States Office of the Chief of Chaplains:<sup>56</sup>

The Chaplaincy of the United States Army has its spiritual roots deep in the pages of the Old Testament, and prototypes for its institutional and organizational structure in the British military forces. The tradition of a specially appointed clergyman accompanying soldiers into battle dates from the Pentateuch, Deuteronomy 20:2-4: "And it shall be when ye are come nigh unto the battle, that the priest shall approach and speak unto the people." His message was to contain words of spiritual comfort for those soon to jeopardize their lives in combat, and patriotic sentiments suited to elevate morale.<sup>57</sup>

The Israel Defense Force's Military Rabbinate then, it's religious

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<sup>53</sup> Deuteronomy 20:2-4.

<sup>54</sup> BABYLONIAN TALAMUD, SOTAH 42a (describing how the Priest in question needs to be specifically appointed, which, according to the Netzin (Sefer Meromei Sadeh) means appointed by the King; see also TOSAFOT, BABYLONIAN TALMUD, Yoma 12b.

<sup>55</sup> Chaplains, in THE OXFORD DICTIONARY OF THE JEWISH RELIGION (R.J. Zwi Werblowsky & Geoffrey Wigoder eds., 1997).

<sup>56</sup> PARKER C. THOMPSON, THE UNITED STATES ARMY CHAPLAINCY – FROM ITS EUROPEAN ANTECEDENTS TO 1791 (1978).

<sup>57</sup> *Id.* at xi.



chaplaincy, would in itself be a direct spiritual descendant of the Priest Anointed for War. But it is not only a surface comparison. What made the Priest Anointed for War so special was not that he offered sacrifices or conducted rituals; his charisma came from the fact that he actually went out to battle with his troops. The Israeli Army, unlike many other modern armies, trains its religion chaplains as soldiers, and many serve in combat units. This idea of priestly solidarity (represented in the verse's description of 'v' *nihgash hakohen*- and the Priest shall approach the people' is not lost on the people of Israel; in 1967, after the Six Day War and the recapturing of Jerusalem, the lead article in *Amudim*, the newspaper of the New Aliyah (later the Progressive) Party, declared that:

Everyone who reads the newspapers today, everyone who listens today to the radio . . . is witness to the powerful eruption of faith in the Rock of Israel and its Redeemer . . . Rabbi Shelomo Goren, the "anointed [priest] of battle" who went before his armies in the conquest of the city of Gaza, who burst into the Ancient City [of Jerusalem] with a Torah scroll in his hand . . . [and] announced the good news of the redemption of the Land of Israel with a blast of the shofar . . . And none of the enemy could stand against them (the Israel Defense Forces). All of their enemies [God] put in their hand . . ."<sup>58</sup>

Indeed, in their pep talks to the IDF forces right before they go into battle, designed, in the words of retired military Rabbi Lieutenant Shmuel Kaufman to 'boost the spirit of the soldiers,'<sup>59</sup> the military chaplains sometimes even read the speech of Priest Anointed for War, and sound the shofar,<sup>60</sup> much as the Priests were commanded to in the Battle of Jericho, amongst others.<sup>61</sup>

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<sup>58</sup> *Amudim* 256 (June 1967), quoted in Reuven Firestone, *Judaism on Violence and Reconiliation: an Examination of Key Sources*, 7-8, [http://www.usc.edu/schools/college/crcc/private/cmje/issues/more\\_issues/more\\_issues/JUDAISM\\_ON\\_VIOLENCE\\_AND\\_RECONCILIATION\\_TEXTS.pdf](http://www.usc.edu/schools/college/crcc/private/cmje/issues/more_issues/more_issues/JUDAISM_ON_VIOLENCE_AND_RECONCILIATION_TEXTS.pdf) (last visited May 2, 2014).

<sup>59</sup> *The Rise of Israel's Military Rabbis*, BBC NEWS (Sept. 8, 2009, 10:33), <http://news.bbc.co.uk/2/hi/programmes/newsnight/8243737.stm>.

<sup>60</sup> *Numbers* 10:9 ("When your country goes out to war, to repel hostile attack, the trumpets must give a wailing sound, appealing to the Lord your God to save you from the power of your enemies.").

<sup>61</sup> *Joshua* 6:4-5.

And on the seventh day do as follows. The priests will be carrying seven

It is worthwhile to note that while it is indeed possible according to some to satisfy all of the ritual criteria for the Authorized war, there are those who would label all of the State of Israel's wars thus far defensive and Obligatory, without need of those particular justifications. As mentioned above, however, how we classify a war under Jewish law in the *jus ad bellum* stage will have important implications when it comes to the ethical considerations of *jus in bellum*.<sup>62</sup>

Ethically speaking, nearly all of the preliminary requirements for fighting a permissible war are designed to *limit* such wars, and to remove non-combatants, civilians and others who do not wish to fight from the battlefield. The tripartite requirement of the King, Sanhedrin, and *Urim VeTumim*, for instance, renders warfare genuinely difficult to start under Jewish law. In regard to the remaining duties, two basic texts form Jewish law's understanding of what else society must do before a battle may be morally fought. The Bible states that:

When thou dost lay siege to a city, first of all thou

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trumpets, such as are used at jubilee time, and marching with these in front of the ark that bears witness of my covenant. On this day you will go round the city seven times, to the sound of the trumpets the priests are carrying. And when the trumpets blow a long blast that rises and falls, the whole people, on hearing it, must raise a loud cry; at that cry, the walls of the city will fall down flat, and each man will go in to the assault at the place where he is posted.

It is not only in the military chaplaincy that the "other" Priestly Blessing has survived; in synagogues around the world, in Israel, and in the Diaspora, many Jewish congregations of all denominations gather together for prayer, and add in a special blessing for the Israel Defense Forces. The prayer asks God to bless and protect the members of Israel's army. It reads, in full:

He Who blessed our forefathers Abraham, Isaac and Jacob -- may He bless the fighters of the Israel Defense Forces, who stand guard over our land and the cities of our God, from the border of the Lebanon to the desert of Egypt, and from the Great Sea unto the approach of the Aravah, on the land, in the air, and on the sea.

May the Almighty cause the enemies who rise up against us to be struck down before them. May the Holy One, Blessed is He, preserve and rescue our fighters from every trouble and distress and from every plague and illness, and may He send blessing and success in their every endeavor.

May He lead our enemies under our soldiers' sway and may He grant them salvation and crown them with victory. And may there be fulfilled for them the verse: For it is the Lord your God, Who goes with you to battle your enemies for you to save you.

And there it is, the second modern-day incarnation of the "other" Priestly Blessing.

<sup>62</sup> Broyde, *supra* note 22, at 4 (detailing limitations of violence under the 'pursuer' rationale, which have already been dealt with above).

shalt offer terms of peace. 11 If these are accepted, and the gates opened to thee, the lives of all the citizens shall be spared, and they shall become thy subjects, paying thee tribute. 12 But if they refuse to listen, and offer battle, go forward to the assault<sup>63</sup>

The Bible clearly sets out the obligation to seek peace as a prelude to any military activity. “Although unstated in the text, it is apparent that while one need not engage in negotiations over the legitimacy of one’s goals, one must explain what one is seeking through this military action and what military goals are (and are not) sought. Before this seeking of peace, battle is prohibited.”<sup>64</sup> This procedural requirement is quite significant: it prevents the immediate escalation of hostilities and allows both sides to rationally plan the cost of war and the virtues of peace, to genuinely seek it without requiring them to compromise their goals in order to achieve it. Rabbi Shlomo Yitzchaki (1014-1105), in his famous commentary on the Bible,<sup>65</sup> “indicates that the obligation to seek peace prior to the firing of the first shot is limited to Authorized wars,”<sup>66</sup> while Maimonides disagrees and requires that peace be sought even in an Obligatory situation.<sup>67</sup>

The obligation to seek peace as explained above applies specifically before battle between armies, where no civilian population is involved or threatened at all. Jewish law requires an additional series of overtures for peace and surrender in situations where the military activity involves attacking populated cities. Maimonides states that:

Joshua, before he entered the land of Israel, sent three letters to its inhabitants. The first one said that those who wish to flee [the oncoming army] should flee. The second one said that those that wish to make peace should make peace. The third letter said that those that want to fight a war should prepare to fight a war.<sup>68</sup>

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<sup>63</sup> Deuteronomy 20:10-12.

<sup>64</sup> Broyde, *supra* note 5, at 22; *see, e.g., Numbers* 21:21-24 (describing the Jewish people’s clear promise to limit their goals in return for a peaceful passage through the lands belonging to Sichon and the Amorites).

<sup>65</sup> RASHI, BABYLONIA TALAMUD, *ad locum*.

<sup>66</sup> Broyde, *supra* note 5, at 19.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 20.

Nor was the general obligation to simply warn the inhabitants enough to fulfill the moral obligation; Maimonides codifies a number of other specific rules of military ethics based on Talmudic sources culled from Biblical texts. When one surrounds a city to lay siege to it, for instance, it is prohibited to surround it from all four sides; one must leave a place for all those who wish to flee and save their lives. Nahmanides elaborates, saying that:

God commanded us that when we lay siege to a city that we leave one of the sides without a siege so as to give them a place to flee to. It is from this commandment that we learn to deal with compassion even with our enemies even at time of war; in addition, by giving our enemies a place to flee to, they will not charge at us with as much force.<sup>69</sup>

Nahmanides believes that this obligation is so basic as to require that it be counted as one of the 613 basic biblical commandments in Jewish law. Unlike Maimonides, however, he limits it, to Authorized and not Obligatory wars.<sup>70</sup>

Rabbi Michael Broyde, a Professor of Law at Emory University, argues that this approach also solves another difficult problem according to Jewish law, i.e. the role of the ‘innocent’ civilian in military combat. Broyde states:

Since the Jewish tradition accepts that civilians (and soldiers who are surrendering) are always entitled to flee from the scene of the battle, it would logically follow that all who remain voluntarily are classified as combatants, since the opportunity to leave is continuously present . . . those who remain are not so innocent.<sup>71</sup>

Jewish law though does *not* allow for civilians to be used as pawns in a siege; if non-combatants wish to flee they must be allowed to do so.

Going back to the Bible, it is clear that Jewish tradition is very much in favor of compassion and humanitarian assistance, even in wartime. Scripture states that after losing a battle Hadad, King of Syria, sought refuge with the victor, Ahab, King of Israel; his advis-

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<sup>69</sup> *Id.* at 21.

<sup>70</sup> *Id.*

<sup>71</sup> Broyde, *supra* note 5, at 22.

ers had counseled him that the Israelite kings were *malkhei hesed* (merciful kings).<sup>72</sup> As one medieval rabbi put it, “it is fitting for us, the holy seed, to act [with compassion] in all matters, even towards our idolatrous enemies.”<sup>73</sup>

One particularly interesting Biblically mandated ethic is related in Deuteronomy 20:19. The verse states that:

When you shall besiege a city a long time, in making war against it to take it, you shall not destroy the trees thereof by forcing an ax against them: for you may eat of them, and you shall not cut them down (for the tree of the field is man’s life) to employ them in the siege.

Rabbi Norman Solomon points out that, “in its biblical context this is a counsel of prudence rather than a principle of conservation.”<sup>74</sup> The tradition, however, saw it as much more. Philo of Alexandria, writing early in the first century,<sup>75</sup> extended the prohibition against axing fruit-bearing trees to include the vandalizing of the environs of a besieged city: “Indeed, so great a love for justice does the law instill in those who live under its constitution that it does not even permit the fertile soil of a hostile city to be outraged by devastation or by cutting down trees to destroy the fruits.” Josephus similarly expands this to include the incineration of the enemy’s country and the killing of beasts employed in labor if there is no direct military advantage to be gained.<sup>76</sup>

Nachmanides<sup>77</sup> writes that the removal of all trees is permissible if needed for the building of fortifications; it is only when done specifically to induce suffering that it is forbidden. According to *Sefer HaKhinukh*,<sup>78</sup> the prohibition was meant “to teach us to love the good and the purposeful and to cleave to it so that the good will cleave to us and we will distance ourselves from anything evil and

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<sup>72</sup> 1 Kings 20:30-32.

<sup>73</sup> Norman Solomon, *Judaism and the Ethics of War*, in 87 INTERNATIONAL REVIEW OF THE RED CROSS 295, 299 (2005).

<sup>74</sup> *Id.* at 300.

<sup>75</sup> *Id.* at 299.

<sup>76</sup> FLAVIUS JOSEPHUS, THE WARS OF THE JEWS (William Whiston trans., Ernest Rhys ed., 1915).

<sup>77</sup> Broyde, *supra* note 5, at 24.

<sup>78</sup> Reuven Kimelman, *Warfare and its Restrictions in Judaism* at 5, [https://www.bc.edu/dam/files/research\\_sites/cjl/texts/current/forums/Isr-Hez/kimelman\\_war.htm](https://www.bc.edu/dam/files/research_sites/cjl/texts/current/forums/Isr-Hez/kimelman_war.htm) (last visited May 2, 2014).

destructive.”<sup>79</sup>

Maimonides records that it is prohibited to remove fruit trees so as to induce suffering, famine, and unnecessary waste in the enemy’s camp<sup>80</sup>, and in his *Book of Commandments* he explicitly links this prohibition to the deliberate intent to expose the enemy to undue suffering.<sup>81</sup> He then takes the next step in extending the prohibition to categorically forbid all wanton destruction: “Also, one who smashes household goods, tears clothes, demolishes a building, stops up a spring, or destroys articles of food with destructive intent, transgresses the command ‘You shall not destroy . . .’”<sup>82</sup> Although the purpose of an army at war is to win, both Philo and the rabbinic tradition rejected the claim of military necessity as an excuse for military excess. Simply put, everything need be in proportion, neatly ideologically bordered.<sup>83</sup>

If a city under siege sues for peace it is to be granted; peace, albeit with sacrifices, is infinitely preferable to the horrors of war. But, as Philo says, if the offer isn’t real, and “if the adversaries persist in their rashness to the point of madness, they [the besiegers] must proceed to the attack invigorated by enthusiasm and having in the justice of their cause an invincible ally.”<sup>84</sup> Arguably, excessive concern with moral niceties can be morally counterproductive. For example, “[w]hen moral compunction appears as timidity and moral fastidiousness as squeamishness they invite aggression. To ensure that moral preparedness be perceived from a position of strength, it must be coupled with military preparedness.”<sup>85</sup> Foreshadowing Rabbi Goren’s attempt to synthesize and harmonize force and spirit, Philo writes that “all this shows clearly that the Jewish nation is ready for agreement and friendship with all like-minded nations whose intentions are peaceful, yet it is not of the contemptible kind which sur-

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<sup>79</sup> *Id.* at 3 (stating that Philo grounds his argument for the immunity of noncombatants themselves in this biblical prohibition the compelling logic of this argument is spelled out by the 16th-century Safedean exegete, Rabbi Moshe Alshikh who, “after mentioning the prohibition against the wanton destruction of trees, notes that ‘all the more so it is fitting that he have mercy on his children and on his creatures.’”).

<sup>80</sup> MAIMONIDES, MISHNEH TORAH, *Laws of Kings* 6:8.

<sup>81</sup> RABBI CHARLES B. CHAVEL, *BOOK OF COMMANDMENTS, Negative Commandment 57*.

<sup>82</sup> MAIMONIDES, MISHNEH TORAH, *Laws of Kings* 6:10.

<sup>83</sup> BABYLONIAN TALMUD, SANHEDRIN 74a (stating in part that the ‘law of the pursuer’ carries with it similar limitations of proportionality).

<sup>84</sup> Kimelman, *supra* note 78.

<sup>85</sup> *Id.*

renders through cowardice to wrongful aggression.”<sup>86</sup>

### III. IN ACTION

How does all of the above play out in the modern day context of Jewish war?

During the 1982 *Sh’lom haGalil* (Peace for the Galilee) military campaign into Lebanon, the Israel Defense Forces sent a message to the soldiers regarding how they should conduct themselves during the war.<sup>87</sup>

The message included the following excerpts:

- It is forbidden to fire unless fired upon.
- It is forbidden, without any exception, to take booty from any source.
- Do not harm, do not disturb, the peaceful civilian population.
- Treat women with respect; they are not to be molested.
- You are not to disturb any cultural center, any antiquities, museums, art galleries, churches, mosques or sacred places.
- Every war arouses in people lust, hate, contempt for life, and feelings of vengeance against the enemy. Despite these perfectly natural emotions and sentiments, you must remember that you are a human being.
- Though you are fighting a vicious enemy that has resorted to terror against innocent people . . . you are not to engage in any vengeful act against your enemy if you take him prisoner.
- Whatever you do will reflect upon the people of Israel. Any act of desecration, taking of booty or desecration of holy places, mistreating your enemy, will reflect badly upon the army.
- Above all, you must remember to value the Jewish tradition that, even in times of war, you remember that man to man – *k’adam l’adam hu* – you are a human

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<sup>86</sup> *Id.*

<sup>87</sup> Billy Dreskin, *Jewish Law and the Concepts of War*, available at [http://dreskin.us/Judaism\\_War.RabbiBillyDreskin.pdf](http://dreskin.us/Judaism_War.RabbiBillyDreskin.pdf) (last visited May 2, 2014).

being.<sup>88</sup>

“The Spirit of the IDF,” is the latest incarnation of the ethical code of the Israeli Defense forces, and states that it draws its values and basic principles from four sources, namely: “the tradition of the IDF and its military heritage as the Israel Defense Forces; the tradition of the State of Israel, its democratic principles, laws and institutions; the tradition of the Jewish People throughout their history; universal moral values based on the value and dignity of human life.”<sup>89</sup> Explicit among those values are the values of human dignity.<sup>90</sup> As such, “the IDF and its soldiers are obligated to protect human dignity. Every human being is of value regardless of his or her origin, religion, nationality, gender, status or position.”<sup>91</sup> Perhaps the most famous value is the “purity of arms” doctrine which states:

The IDF servicemen and women will use their weapons and force only for the purpose of their mission, only to the necessary extent and will maintain their humanity even during combat. IDF soldiers will not use their weapons and force to harm human beings who are not combatants or prisoners of war, and will do all in their power to avoid causing harm to their lives, bodies, dignity and property.<sup>92</sup>

Almost a direct descendant of Joshua’s military letters of warning is the Israel Defense Force’s policy of making public announcements and private phone calls, sending public radio transmissions, and finally distributing thousands of leaflets to the citizen populations of the nations it is at war with, warning them of impending attacks and the areas to stay away from for their own safety.<sup>93</sup> Echo-

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<sup>88</sup> *Id.*

<sup>89</sup> *Israel Defense Forces: Ruach Tzahal- Code of Ethics*, available at [http://www.jewishvirtuallibrary.org/jsource/Society\\_&\\_Culture/IDF\\_ethics.html](http://www.jewishvirtuallibrary.org/jsource/Society_&_Culture/IDF_ethics.html) (last visited May 2, 2014).

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> Israeli Ministry of Foreign Affairs, Leaflets distributed to citizens of southern Lebanon, available at <http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Terrorism+from+Lebanon-+Hizbullah/IDF+drops+leaflets+to+warn+Lebanese+civilians+19-Jul-2006.htm> (last visited May 2, 2014); see also Jewish Virtual Library, Examples of IDF warnings to Gaza civilians, available at <http://www.jewishvirtuallibrary.org/jsource/Peace/warnings.html> (last visited May 2, 2014).



ing the tradition of both exercising personal restraint and forbidding the destruction of trees, Israel's *Manual on the Laws of War in the Battlefield*<sup>94</sup> prescribes the taking of a prisoner's personal effects<sup>95</sup> and prohibits attacking targets essential to the continued survival of the civilian population.<sup>96</sup>

#### IV. CONCLUSION

It would seem then that the military ethic which Rabbi Goren and his colleagues sought to infuse into the Israel Defense Forces has indeed filtered through, despite the innovative nature of a Jewish military ethic in the first place and the difficulties of reviving a long dormant exegetical process. Easily recognizable in the army's code are the elements of religious thought and ethical consideration that both rabbis and generals can be proud of. Hopefully the Bible's prophecies of peace, when "tanks shall be beaten into tractors,"<sup>97</sup> and the world shall know war no more, will come true speedily in our days. Until that time though, the Israel Defense Forces as they stand, the modern day Jewish army, can and does sincerely attempt to find the balance between the force and the spirit, to model heroism both of the body and the soul, and to rigidly define and live within the borders of Israel's ideological homeland, inside her 'four cubits of Law,' even as it defends her physical borders in the realities of war.

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<sup>94</sup> *Laws of War in the Battlefield, Manual*, Military Advocate General Headquarters, Military School (1998), available at [http://www.icrc.org/customary-ihl/eng/docs/v2\\_cou\\_il](http://www.icrc.org/customary-ihl/eng/docs/v2_cou_il) (last visited May 2, 2014).

<sup>95</sup> *Id.* at § 50.

<sup>96</sup> *Id.* at § 1.

<sup>97</sup> Reverend Joseph Lowery, Benediction, 44th Presidential Inauguration (Jan. 20, 2009), available at <http://socialmode.com/2009/01/20/president-obamas-inauguration-speech-transcript-and-benediction-transcript/> (last visited May 2, 2014).