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Milkhemet Mitzvah and *Milkhemet Reshut*:
An Analysis of Moral-Religious Challenges Facing the Israeli Defense Forces

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Abstract:

The following provides a survey of the Jewish traditional discourse on Commanded War (*milkhemet mitzvah*) and Discretionary War (*milkhemet reshut*) to establish a framework for analyzing the religious and moral implications of war as they relate to the modern Jewish state. I begin by laying the foundation of Jewish war discourse and illustrating the rabbinic understandings of *milkhemet mitzvah* and *milkhemet reshut* as well as discussing the implications of defensive and preventive war as they are characterized by the rabbis of the Talmud and expanded by the *poskim* (*halakhic* authorities). The subsequent chapter begins with a discussion on the pre-state development of a Jewish national ethos that evolved from a defensive posture to an offensive one. The chapter continues to illustrate the ideology of the Religious Zionists along with the practical *halakhic* and moral-religious implications of combat in a Jewish and democratic state. The conclusion provides a summary of the moral-religious challenges of war in a Jewish and democratic state and provides questions and modern implications in light of new national security threats facing the Israeli military.

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“The first office of justice is to keep one man from doing harm to another, unless provoked by wrong.”

-Cicero

Introduction

Jewish tradition posits a reluctant acceptance that war is an endemic reality for a nation intent on achieving its political objectives, and early generations of rabbis understood that war was an endemic reality in the political landscape of the world they inhabited. The patriarchs of the Hebrew Bible were known to rally their soldiers in response to attacks on their families[1] and to protect their lives.[2] Although there is military imagery in the Hebrew Bible (henceforth "Bible"), and Jewish tradition includes many stories detailing the combat records of characters such as Joshua and King David, the Bible does not glorify war as a policy for national defense. It also does not advocate pacifism. Despite the militant imagery in the Torah, the rabbis of the Talmud assert that strength is measured by intellectual prowess, not physical might, and yet, the rabbis do not neglect biblical allusions to war. Instead, they establish the rabbinic paradigm of a legitimate war under prescribed circumstances.

The rabbis of the Talmudic period agree that there are two categories of legitimate wars that a king of Israel may be authorized to wage. These two categories, *milkhemet mitzvah* (Commanded War) and *milkhemet reshut* (Discretionary War), are illustrated by the combat records of Joshua and King David, respectively. The Talmud argues that the wars of Joshua are considered "commanded" because they were fought against the Seven Nations and Amalek, historic enemies of Israel and idolatrous occupiers of the Promised Land. Because Joshua's wars were fought against these adversaries specifically and were intended to reclaim the land promised to their ancestors, the rabbis agree that these wars were justified and could be considered obligatory. Conversely, the wars of King David were not fought to conquer the land

[1] Genesis 14:14-15.
[2] Gen. 33. See also Rashi commentary to Gen. 32:8.

of Israel and displace the enemies therein, but fought under the banner of a unified Israel to expand the boundaries of David's kingdom and elevate his name; as such, the rabbis characterize David's wars as "Discretionary Wars." In the 12th century, Maimonides' Mishneh Torah expanded the purview of *milkhemet mitzvah* (Commanded War) to incorporate defensive wars fought against enemies of the Jewish people. Maimonides' argument is based on the reason that at the "present time" the "Seven Nations" and "Amalek" no longer exist and thus do not present an existential threat to the Jewish people. However, the Jewish people face the reality that other nations present threats to their safety and survival, especially in the absence of a sovereign Jewish state. Accordingly, Maimonides' expansion of *milkhemet mitzvah*, war to defend against enemies of Israel, illustrates profound modern implications that retain relevance even today, especially since the modern founding of the State of Israel in 1948.

The Jewish traditional sources that describe the moral, ethical, and practical conduct for war were codified in the absence of a sovereign Jewish state. However, in the 19th and 20th centuries, the nascent Zionist movement embraced a national ethos that desired a secure and prosperous Jewish future in the Promised Land. This new movement revived centuries-old questions about autonomy, self-defense, and national survival as the hope of a politically sovereign Jewish state became a reality for the Jewish people. Prior to the establishment of the State of Israel, the Talmudic, rabbinic, and halakhic discussions about the Jewish views of war were exclusively theoretical because there was neither a unified Israel nor a king to lead them in battle. However, after years of skirmishes in Mandatory Palestine culminating with the War of Independence in 1948, the leadership of the new Jewish state accepted war as both necessary for self-defense and imperative to actualizing its political objectives. With the establishment of a sovereign Jewish state that demonstrated it was not immune from or afraid of war, a subsequent

revival of Jewish traditional war discourse reinterpreted a practical, moral, and ethical guide to conducting war grounded in Jewish values.

Within this debate, opposing religious schools of thought responded both favorably and unfavorably to the independent Jewish state. In response to the establishment of Israel, which marked a new period of political sovereignty in Jewish history, the ultra-Orthodox *haredim* rejected the legitimacy of the state, arguing that the establishment of a Jewish state separate from a messianic-eschatological plan was an inherent violation of the Three Oaths[3] which God adjourned to the Israelites. In the Three Oaths, God commanded the Israelites not to return forcefully to the Land of Israel, not to rebel against the nations of the world, and that the other nations would not oppress Israel. Through fighting a war against enemy nations to forcefully conquer the Holy Land would be a violation of the all three oaths. Because of this, the *haredim* did not see this moment as a period of redemption and return to the Promised Land, but the political realization of the secular Zionists ideology. Meanwhile, the Religious Zionists, who embraced both Orthodoxy and Zionism, interpreted their duty to the fledgling Jewish state as one that would incorporate the study of Torah and observance of halakha with the defense of the Promised Land to hasten the arrival of the Messiah. Within the Religious Zionist movement there was a right- and left-wing that opposed, to varying degrees, the concept of the use of force. Whereas the right-wing Religious Zionists embraced military action to defend the borders of Israel, citing the halakha of Nahmanides,[4] the left-wing Religious Zionists were much more hesitant to resort to war for this purpose, citing the halakha of Maimonides.[5] This distinction presented significant moral-religious implications for Religious Zionists, who understood that

[3] The Three Oaths can be found in *Shir HaShirim Rabbah* commenting on Shir HaShirim (Song of Songs) 2:7, 3:5, and 8:4.
[4] See Nahmanides comment to Deut. 11:24 asserting that wars of conquest are positive commandments
[5] Deut. 17:15; Yad Melakhim 1:1

their study of Torah and adherence to halakha was equally as important as their defense of the Jewish state. The Religious Zionists in the Israeli Defense Forces (IDF) played an integral role in the revival and reinterpretation of military halakha both practically and morally, and as the threats facing the Jewish state intensified during its history, armed conflict became more complicated to address morally and ethically. As such, many in the Religious Zionist camp were integrally involved in the development of new halakha pertaining to to practical and ethical aspects of war. Most significantly, military leaders in the IDF and modern ethicists sought to further establish practical, moral, and ethical guidelines to balance the national defense needs of Israel with its foundational Jewish values.

The reinterpretation of military doctrine attempted to address the practical and moral component of national defense. Grounded in Jewish values and an understanding of the unpleasant realities and significant national security threats facing the Jewish state, leaders in both the civilian and military spheres sought to establish an ethical guide for soldiers derived from Jewish tradition. The Spirit of the IDF (*Ruach Tzahal*) was one of the first attempts to codify a uniform ethical code that would be incumbent on all soldiers regardless of their level of religious observance. Although many of the values espoused in Ruach Tzahal derive from Jewish tradition, some notable aspects depart from the Jewish traditional discourse on war; specifically, the biblical exemptions for Discretionary Wars.[6] This deviance from biblical tradition presents significant moral and religious challenges and further illustrates the tension experienced by those committed to defending a state that is both Jewish and democratic. Reconciling Jewish traditional texts regarding war, use of force, and combat, with the implications for national defense in realpolitik presents a challenging reality that demonstrates the ever-present tension between ensuring national security and upholding Jewish values. Most significantly, as the

[6] Deuteronomy 20:19-20.

modern phenomena of terrorism and counterinsurgency present more prominent threats to Israel, combat in such engagements becaomes more morally and ethically ambiguous combat, therefore presenting a constant threat to the integrity of the moral and ethical code. Such types of unconventional war abide by neither universal morals nor Jewish ethics.

The topic of this paper seeks to further analyze the moral and ethical considerations for the conduct of war through a distinctly Jewish lens. Achieving independence as a Jewish state in modernity initiated the revival of centuries-old rabbinic discussions about the permissibility, morality, and ethical conduct of war in attempts to reconcile Jewish traditional values with the political reality of upholding and defending a sovereign state. As the national security threats facing the State of Israel become more complex, catastrophic, and violent, the tension between upholding the Jewish values upon which Israel was founded and the necessity to protect the state and its citizens becomes all the more complicated. On a personal note, this topic is of particular interest to me because as a rabbi, I am responsible to be learned in the moral and ethical considerations surrounding war according to Jewish tradition, and as a Navy chaplain, I will be responsible for employing that knowledge to advise and guide my commanding officers and peers in the moral and ethical conduct of war.

Chapter 1:
The Jewish Traditional Discourse: *Milkhemet Mitzvah* and *Milkhemet Reshut*

Early Rabbinic Discourse

Judaism, according to the early generations of theologians and rabbis, presented a reluctant acceptance that war was an endemic reality of the political landscape in the world. This understanding was even shared by the patriarchs Abraham and Jacob when Abraham rallied his soldiers to wage a strategic military campaign to rescue his nephew Lot,[7] and Jacob surrounded himself with an army of hundreds before reuniting with his estranged brother Esau.[8] Despite the presence of such stories in the Hebrew Bible, the rabbis of the Rabbinic period maintained that there was no value in war or fighting because "the mighty are none other than those who are strong in Torah."[9] The Torah does not glorify war and even goes so far as to mention that the instruments of war are incompatible with the worship of God and Temple rite.[10] However, the Torah does not promote pacifism as a means of national defense, and therefore permits the Jewish nation to engage in war under specific circumstances.

The rabbis did not ignore the biblical stories and imagery pertaining to the moral and practical conduct of war; rather, they promoted the religious paradigm that war and the use of force can be considered only under certain circumstances. Despite their attempts to temper the militancy found in the Torah, they could not ignore that there was a Jewish view of war that could be further interpreted. The prescriptions for war present in the Torah primarily address war in the context of national defense[11] and the realization of political sovereignty for the ancient

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[7] Genesis 14:14-15.
[8] Gen. 33. See also Rashi commentary to Gen. 32:8.
[9] Judah Goldin (trans.), *The Fathers According to Rabbi Nathan*. Yale University Press, 1955, 101. See also BT *Sanhedrin* 93b; Mishnah *Avot* 4:1.
[10] Exodus 20:22; Leviticus 26:6.
[11] Lev. 19:16.

Israelite community.[12] The biblical understanding, later reinforced by the rabbis and *poskim* (halakhic authorities), is that, in the presence of a sovereign Jewish nation, war is a justifiable method to achieve political objectives. For example, the Torah permits the king to wage war on behalf of his people, and the presence of a king of Israel indicates not only a unified Israel above which he resides, but the obligation to maintain a secure and sovereign nation and use force, if needed, in order to do so. This archetypal theme is illustrated in the Book of Deuteronomy through descriptions of the Seven Nations and Amalek,[13] as it is written:

> "When the Lord your God brings you to the land that you are about to enter and possess, and He dislodges many nations before you—the Hittites, Girgashites, Amorites, Canaanites, Perizzites, Hivites, and Jebusites, seven nations much larger than you—and the Lord your God delivers them to you and you defeat them, you must doom them to destruction: grant them no terms and give them no quarter."[14]

The Seven Nations presented an imminent and legitimate threat to the safety and sovereignty of the Jewish nation during the biblical period, thus commanding the use of force to ensure the safety of the nation: "You must proscribe[15] them, the Hittites and the Amorites, the Canaanites and the Perizzites, the Hivites and the Jebusites, as Adonai your God has commanded you."[16] Despite the land being promised to the Israelites by God, they were still commanded to conquer the land and displace the enemies who resided there because not only did they occupy the Promised Land, so too did they practice idolatry therein. The Talmud extends this to apply to *milkhemet mitzvah* to achieve political sovereignty. The Torah permits the king to wage wars against these two archetypal adversaries because of their historic hostility to the Israelites. Therefore according to the Talmud, when enemies, such as the Seven Nations and Amalek,

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[12] Deuteronomy 26:1.
[13] Deut. 25:19.
[14] Deut. 7:1-2.
[15] The Hebrew verb *ḥarem* is translated as "proscribe" can also be translated as to utterly destroy, dedicate for destruction, exterminate.
[16] Deut. 20:17.

present a substantial military threat to the Jewish nation with intent to displace or destroy them, the Jewish nation's response with equal force is considered justified. This paradigm illustrated in Deuteronomy demonstrates circumstances that, albeit archetypal, provided the basis for a biblical commandment to engage in designated wars, which challenged the rabbis. They possessed no practical military knowledge, had not lived in a sovereign state of Israel, and had mostly embraced nonviolence.[17]

During the Second Temple period, the Jewish people lived across a wide geographical area and lost both their political and religious centers. This geo-political reality intensified the decentralization of the Jewish religious rite that was previously connected to the Temple in Jerusalem and was exacerbated after its destruction. Without a religious and political center in Jerusalem and little hope that there would be a unified political entity in the land of Israel, the discourse regarding "war" became largely theoretical during the Rabbinic period. The rabbis were detached from the practical, moral, and religious questions that came about from war in realpolitik. The context of their discussions on the subject was in the absence of sovereign political power and a decentralized religious rite. Despite this, conversations about the parameters and conduct of war continued from the middle ages to modernity and demonstrated the rabbis' understanding that war was a necessary evil. The rabbis of the Talmud developed two categories through which the permissibility of war and combat could be characterized: *milkhemet mitzvah* (Commanded War) and *milkhemet reshut* (Discretionary War). These categories arose from the implicit expectation that war would be necessary for the Jewish people to achieve political autonomy, and the criteria for distinguishing between commanded and Discretionary Wars were established based upon the combat records of Joshua and David.

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[17] Reuven Kimelman, "*Non-violence in the Talmud*," *Judaism* 17, no. 3 (1968), 329.

Milkhemet Mitzvah: Commanded War

The rabbis of the Talmud understood that engaging in *milkhemet mitzvah*, Commanded War, for the sake of protecting and preserving the Jewish people was obligatory to maintain political sovereignty. The Talmud suggests that Joshua's wars were examples of *milkhemet mitzvah* because they were fought "to conquer Eretz Yisrael,"[18] and in order for Joshua to do so, he had to eliminate the nation's enemies, even with force, in order to fulfill the commandment to conquer the land of Israel and realize the promise God made to Abraham.[19] As the aforementioned archetypes of Amalek and the Seven Nations were understood to be historic enemies of Israel and occupiers in the Promised Land, the rabbis asserted that wars to conquer the land could be considered obligatory against historic enemies of Israel.[20]

While the criteria for a war to be considered *milkhemet mitzvah* was established with the two historic enemies of Israel in mind, the Seven Nations and Amalek ceased to exist after the biblical period, and as such were no longer threats to the Jewish people. The rabbis discussed the continued relevance of fighting wars against enemies that no longer threatened the Jewish people in the Mishnah:

> "But are the Ammonites and Moabites still in their own territory? Sanheriv, the king of Assyria, has long since come up and mingled all the nations, as it is said: 'In that I have removed the bounds of the peoples, and have robbed their treasures, and have brought down as one might the inhabitants (Is. 10:1).' Rabban Gamaliel said to him: the verse says, 'But afterward I will bring back the captivity of the children of Ammon (Jer. 49:6),' they have already returned. Rabbi Joshua said to him: [another] verse says, 'I will return the captivity of my people Israel and Judah' (Jer. 30:3). Yet they have not yet returned. So they permitted him to enter the assembly."[21]

[18] BT *Sotah* 44b.
[19] Gen. 12:2.
[20] Deut. 7:1-2.
[21] Mishnah *Yadayim* 4:4.

The argument of the rabbis essentially rendered war against the Seven Nations moot because, after the biblical era, they were no longer in existence to pose a threat to the Jewish people upon their entrance to the land. Additionally, the Amalekites were nonexistent after the biblical era despite Amalek being used as a rhetorical device to illustrate "a symbol of irrational hatred and evil rather than the name of an actual people."[22] Although the seven Canaanite Nations were no longer relevant, the criteria for Amalek, understood as a rhetorical device by citing them as historical enemies of the Jewish people, could have modern implications as it relates to the broader "enemies of Israel," contributing to Maimonides' third category of Commanded War that he expounds upon in the Mishneh Torah.

In *Hilkhot Melakhim Umilchemoteihem*, Maimonides (Moses ben Maimon, d. 1204) affirms the obligation of war against the Seven Nations and Amalek;[23] however, he rejects the Talmudic dictum asserting that Joshua's wars of conquest were commanded. This is based on the idea that during the time of Joshua, he was commanded to fight not to conquer the Land, but to eradicate the Seven Nations and Amalek for practicing idolatry in the Land:

> "And that is that He commanded us to kill the seven nations that dwelled in the Land of Canaan and to destroy them, since they are the root of idolatry and its first base. And that is His, may He be exalted, saying, "you must surely annihilate them" (Deuteronomy 20:17). And He explained to us in many verses that the reason for this is so that we do not learn from their heresy. And many verses come to hint about this - meaning their killing - to strengthen it; and the war against them is a commanded war."[24]

According to Maimonides, the biblical source text in question in the above excerpt affirms that Joshua's wars were commanded because they were fought to annihilate the idolaters in the Land of Israel. Still, it may be the case that Maimonides affirmed Joshua's initial wars to conquer the

[22]"Preventive War," Reform Responsa for the Twenty-First Century, vol. 2 (New York: CCAR, 2010), no. 5762.8, pp. 365–79.
[23] Yad *Melakhim* 5:4-5, from Deut. 20:17.
[24] *Sefer HaMitzvot* 187.

Land could be considered commanded because he maintained that the appointment of a king over Israel as a positive commandment.[25] Maimonides believed that once the king was appointed over the people, it would precipitate the arrival of the Messiah, at which point a war of conquest in the Promised Land would be considered obligatory. Maimonides asserted that in the absence of a king presiding over a unified Israel subsequently ushering in the Messianic Age, wars of conquest, even for the purpose of settling the Holy Land, may not be considered Commanded Wars. Instead, Maimonides said that Discretionary War could be waged to settle the Promised Land, but they would be subject to the exemptions and laws governing the conduct of *milkhemet reshut*.

Whereas Maimonides tempered the authority of the Talmud which asserted wars of conquest, like those of Joshua, were to be considered commanded, other commentators such as Nahmanides (Rabbi Moses ben Nahman, 1194-1270) argued that wars fought to conquer the Promised Land were not only necessary but a positive commandment. Nahmaindes' opinion of the aforementioned Deuteronomy text interpreted the verse as a positive commandment to conquer the Promised Land. In his commentary to the Torah, he wrote:

> "In the opinion of our Rabbis they constitute two assurances: [First,] that whatever place in the land of Shinar and the land of Assyria and elsewhere they want to conquer, shall be theirs; and that all the commandments are applicable there, because they all are [part of] the Land of Israel [as Scripture says], "from the wilderness and Lebanon etc. even unto the Back Sea shall be your border," meaning that you are obligated to conquer it and to extirpate the peoples from it, just as he said here, "and you shall dispossess nations greater and mightier than yourselves," And to uproot the idols and their appurtenance, as he mentioned above. And [secondly] he assured them that there shall no man be able to stand against you. Whether in the land mentioned or in every place whereon the sole of your foot shall tread."[26]

[25] Yad *Melakhim* 1:1. See also Deut. 17:15.
[26] Ramban commentary to Deut. 11:24. See also *Sifre Devarim Eikev* 51.

Nahmanides' opinion provided a more radical and expansive interpretation regarding wars of conquest than Maimonides because he asserts that it is a positive commandment to settle the Promised Land and displace those who were previously there. Further, he argues that once the Promised Land is conquered, then the king may pursue further wars of expansion and conquest. This debate regarding the obligation to wage wars to conquer the Promised Land in the absence of the Messiah and a king over a unified Israel would continue to the modern-day and have profound religious and halakhic implications which will be examined in the following chapter. Still, the debate regarding the status of wars of conquest illustrates a point of disagreement between Maimonides and Nahmanides who held fundamentally different opinions regarding the obligation to wage wars of conquest or territorial expansion even to settle the Promised Land. Ultimately, Maimonides presented a more moderate opinion regarding these types of wars and their characterization as *milkhemet mitzvah*, whereas Nahmanides provided a more radical approach to *milkhemet mitzvah* pertaining to the settlement of the land of Israel.

Although Maimonides rejected the Talmudic interpretation that wars of conquest were considered obligatory, he does expand the Talmudic category of *milkhemet mitzvah* to include defensive wars fought to "assuage Israel of a persecutor."[27] Maimonides' expanded definition of *milkhemet mitzvah* characterized defensive wars to protect the Jewish people as commanded in accordance with the commandment to "not stand by the blood of your neighbor"[28] and the understanding that defensive wars should be fought to protect the Jewish people from further loss of life. The foundational understanding for self-defense and defense of others, from which Maimonides draws, stems from the Talmudic understanding of the concept of *pikuach nefesh*, the

[27] *Yad Melakhim* 5:1.
[28] Lev. 19:16.

preservation of life. The Talmud elevates *pikuach nefesh* so much so that one may break Shabbat in order to save the life of his neighbor:

> "Just as this priest, about whom there is uncertainty whether there is substance to his words of testimony or whether there is no substance to his words, is taken from the Temple service in order to save a life, and Temple service overrides Shabbat, so too, *a fortiori*, saving a life overrides Shabbat."[29]

When applied to the question about the conduct of war and the use of lethal force, just as Shabbat may be broken to save a life, so too can force be used, under certain circumstances, to preserve life. One case that supports this statement is the *rodef*[30] defense which posits that a pursuer who presents an imminent and lethal threat against a victim may be met with equal action to protect and preserve the life of the victim. The *rodef* defense is most commonly associated with the laws of self-defense rather than conventional war,[31] but the foundational principle that use of force may be used defensively is still applicable to the justification for fighting defensive wars. Put simply, Judaism posits that the only case in which one may take a life is in self-defense or the defense of others.

The emphasis on pikuach nefesh can be interpreted as one of the foundational principles in justifying defensive wars, and it reinforces the Talmudic precedent for fighting defensive wars. In tractate *Eruvin*, the rabbis discuss:

> "With regard to gentiles, who besieged Jewish towns, they may not go out to fight against them with their weapons, nor may they desecrate Shabbat in any other way due to them, but rather they must wait until after Shabbat. In what case is this said? Where the gentiles came and besieged the town with regard to monetary matters. However, if they came with regard to lives, they may go out against them with their weapons, and they may desecrate Shabbat due to them."[32]

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[29] BT *Yoma* 85b.
[30] BT *Berakhot* 58a, BT *Sanhedrin* 72a.
[31] Michael Broyde, "Fighting the War and the Peace: Battlefield Ethics, Peace Talks, Treaties, and Pacifism in the Jewish Tradition," (1998), 6.
[32] BT *Eruvin* 45a

The Gemara addresses the specific issue of breaking Shabbat to defend a village against marauders intent on harming the Jewish residents. This *sugya* (passage of Talmud) understands a defensive war as one fought to preserve the lives of the Jewish people; that is, in cases where if they do not bear arms, the gentile nations would destroy them. The *sugya* presents two instances where the gentiles besiege a Jewish town. If their intent is "monetary matters," (*isukei mamon*, literally, matters of wealth, defined in the Talmud as "banditry"), the Jewish townspeople may not take up weapons and desecrate Shabbat. However, if the gentiles' intent is *nefashot* (taking their lives), the Jewish people have an obligation to arm themselves and defend their town. Modern scholars such as Rabbi Elliot Dorff note that this tractate establishes a type of war outside of the aforementioned categories of *milkhemet mitzvah* and *milkhemet reshut*, writing, "This passage establishes a justification for engaging in a category of war not mentioned in Deuteronomy 20 or in the Talmudic analysis of obligatory and Discretionary Wars."[33] Others such as Rabbi J. David Bleich argue that the individual right to self-defense may not be expanded to justify waging a war, even if the justification is defensive because a war would almost certainly end with more loss of life.[34] Although defensive wars are discussed in the Talmud they are not classified explicitly under the rabbinic paradigm of Commanded War and Discretionary War. However, the Talmud ultimately concludes that wars fought for the purpose of self- or communal defense of the Jewish nation may be characterized as *milkhemet mitzvah* if fought with the intention to preserve and protect Jewish life.

In the middle ages, both the Mishneh Torah and Shulchan Arukh expanded the parameters of self-defense put forward in the Talmud and rendered it permissible to desecrate the Sabbath in instances of both communal and self-defense. We read in Maimonides' *Code*:

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[33] Eliott Dorff, *S'vara: A Journal of Law, Philosophy, and Judaism 2,* no. 1 (1991), 25.
[34] J. David Bleich, *Contemporary Halakhic Problems*, Vol 3. part 2, ch. 11 (KTAV Publishing House, Inc., 1977).

> "If foreigners besieged Israelite towns, if they came for monetary reasons, it is not permitted to desecrate the Sabbath on their account and we do not make war against them [on the Sabbath]. In a city near the border, however, even if they came only for straw or hay, we sally forth against them with weapons and desecrate the Sabbath because of them. In any location, if they came with the intention of taking lives, or if they established the lines for war, or if they simply besieged us, we sally forth against them with weapons and desecrate the Sabbath because of them. It is a commandment incumbent on all Israelites who can go out and come to the aid of their fellow Jews caught in a siege and to save them from the hand of foreigners on the Sabbath, and it is forbidden to wait until the Sabbath is over. And when they save their brothers, they may return with their weapons to their residences on the Sabbath. [This permission is given] so that they will not be deterred [from aiding fellow Jews] in the future."[35]

Maimonides initially agrees with the *Eruvin* text regarding the justifiability of going to war for monetary matters; however, he deviates from the Talmud by broadening the parameters for breaking Shabbat to defend a town. Maimonides asserts that even if the foreigners come for "straw and hay" it is incumbent on the Jewish townspeople to "sally forth against them with weapons and desecrate the Shabbat." Further, he writes that if the foreigners come with the intent to take lives, establish grounds for war, or if they attack the town, the grounds for self-defense would be met and the Jews could break the Sabbath laws and bear weapons. The tacit understanding here is that if foreigners come with weapons or demonstrate aggressive force, their intention is assumed to be hostile. Rabbi Joseph Karo expands this understanding in the Shulchan Arukh and goes as far as to permit lethal force against banditry:

> "There is an opinion that in our times, even when the foreigners come only for monetary gain, we sally forth against them on the Sabbath, for if the Jews let the non-Jews despoil and plunder their possessions, they will kill the Jews."[36]

This excerpt from the Shulchan Arukh illustrates a notable departure from the initial *Eruvin* text that prohibited meeting banditry with the use of force. Whereas the Talmud prohibits the use of

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[35] Yad *Shabbat* 2:23.
[36] Shulchan Arukh*, Orah Hayyim,* 329:6.

force in such cases, Joseph Karo maintained that it was acceptable and permitted. The case for the preservation of life and national defense as the justification for waging war is the basis for the criterion of Commanded War according to Jewish tradition. As Michael Walzer notes, "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."[37] Although the expansion of defensive wars was not found in the initial characterization of *milkhemet mitzvah* according to the rabbis, the *poskim* asserted that defensive wars must be fought to preserve the lives of the Jewish people and the necessity for communal self-defense did stem from Talmudic precedent.

Milkhemet Reshut: Discretionary War

The second category, *milkhemet reshut*, Discretionary War, was contextualized by the combat record of King David, who presided over a unified Israel, and because of the unification of Israel, it was understood that the positive commandment to conquer the land of Israel was fulfilled. This, according to Maimonides, permitted the king to pursue Discretionary Wars "which are those wars he conducts against the other nations in order to enlarge the borders of Israel, and increase his renown and reputation."[38] Despite his military career, David's wars were not endorsed by the rabbis because they maintained that his wars of expansion were not compatible with Jewish tradition. This was based on the biblical idea that weapons of war were incompatible with Temple worship:

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[37] Michael Walzer, *Commanded and Permitted Wars*, in. Law, Politics, and Morality in Judaism (Princeton, 2006), 154.
[38] Yad *Melakhim* 5:1.

> "David said to Solomon, "My son, I wanted to build a House for the name of the Lord my God. But the word of the Lord came to me, saying, 'You have shed much blood and fought great battles; you shall not build a House for My name, for you have shed much blood on the earth in My sight."[39]

The Bible here understands David's actions as incompatible with Temple worship because he is a man of war and this, so it seems, is antithetical to the purity that is required in order to be worthy of building the Temple of the God of the Hebrews. This theme will impact the paradigmatic discussion regarding "war" in the Jewish tradition. Thus, the Talmudic rabbis and the *poskim* go to great lengths to discourage waging unnecessary war by instituting various laws that regulated the king's conduct of Discretionary War.

Whereas a king does not need permission to wage a Commanded War in which all are obligated to fight, including the "bride from her *chuppah* and the groom from his room,"[40] he must request permission from the Sanhedrin to wage a Discretionary War:

> "And the king may bring the nation out to an optional war, i.e., a war that was not mandated by the Torah and is not a war of defense, only on the basis of a court of seventy-one judges."[41]

After receiving approval from the Sanhedrin, the king must first offer peace to his adversary:

> "War is not conducted against anyone in the world until they are first offered peace (and refuse it), whether this is a Discretionary War or a War of Mitzvot, as it says, "when you come close to the city to fight with it, you shall call to it to make peace."[42]

Maimonides echoed Jewish tradition in that before waging war, either Commanded or Discretionary, the king must first offer peace. When the king first offers peace, the adversary must accept the terms of peace and agree to abide by the Seven Laws of Noah,[43] and if they

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[39] I Chronicles 22:8-9. See also, Ex. 20:22.
[40] Mishnah *Sotah* 8:7.
[41] Mishnah *Sanhedrin* 1:5. See also Mishnah *Sanhedrin* 2:4.
[42] Deut. 20:10, Yad *Melakhim* 6:1.
[43] Gen. 9:9. See also BT *Sanhedrin* 56a; Tosefta *Avodah Zara* 8:4; and *Bereshit Rabbah* 34:8.

accept, the king must honor the agreement; however, if the terms of peace and the Noahide laws are rejected, the king may proceed with his war. Another law that was implemented to weaken the incentive for war were biblical exemptions from war for soldiers who met certain criteria, such as, one who has built a home in which he has not yet lived, one who planted a vineyard and not yet harvested, and one who is engaged but not yet married.[44] No such exemptions are given during Commanded War because in such engagements all are obligated to fight.[45] The biblical exemptions for Discretionary War may be understood to weaken the king's army thus discouraging him from waging war with depleted ranks. These considerations comprise the requirements for the king to fulfill and the considerations made before waging war and are designed to not only weaken his fighting force but remove the incentive for declaring unnecessary wars. Should he persist and meet the criteria, there are other established laws governing the conduct of war that are designed to hinder the king's ability to wage a strategic and effective war.[46]

If the king successfully fulfills the prerequisites for Discretionary War and pursues them regardless, other *poskim* instituted laws regarding the conduct of Discretionary War under which the king would be subject. Maimonides presented various laws and regulations for the conduct of Discretionary War that further restricted the king's ability to fight. A prominent example is framed in the context of siege warfare, where Maimonides proposed laws designed to implore a moral and ethical component that would govern the conduct of war and provide a hawkish king with strategic disadvantages. He argues that when one is besieging a city with the intent to conquer, "we must not surround it on all four sides but only on three sides, thus leaving a path of

[44] Deut. 20:5-8.
[45] Yad *Melakhim* 7:1-4 from Mishnah *Sotah* 8:1*ff.*
[46] Yad *Melakhim* 6:7.

escape for whoever wishes to flee to save his life."[47] By leaving one side of the city open, there would be little strategic advantage for the invading force because the occupants of the city would have the option to either continue living under an ineffective blockade or escape the siege altogether. In either case, the invading force would be forbidden to establish a blockade on all four walls of the city which provided a significant strategic disadvantage for the king's army.

Apart from the strategic implications, there were other laws that governed the conduct against the adversaries in such cases. Nahmanides emphasized the arguments of Maimonides in the case of a siege by adding laws that dictated the treatment of the city occupants, asserting that "we are to learn to deal kindly with our enemy."[48] The principle, in theory, is to promote the preservation of life and by allowing those who wish to escape the opportunity, their lives will be saved. However, a city that is surrounded on three sides with an escape route for residents can not be considered as a city under strict military occupation. Therefore fighting a Discretionary War through siege warfare would provide no strategic advantage to the king thus discouraging him from war. In spite of this, Maimonides proposed a law that prohibited the violence associated with siege warfare and argued that "anyone who smashes household goods, tears clothes, demolishes a building, stops up a spring, or destroys articles of food…transgress the command Thou shalt not destroy."[49] This concept is known in Jewish tradition as *bal tashchit* and is predicated on biblical commandment prohibiting needless destruction[50] and expanded in the Talmud to prohibit wasteful action in warfare and beyond.[51] The restrictions placed on the king before going to war, the depleted fighting force due to biblical exemptions, and the

[47] Yad *Melakhim* 6:7.
[48] Quoted in Maimonides, *The Commandments*, app. 1 to the Positive Commandments, 263. This addition also elicits biblical sources, namely the idea that human life is sacred even if in the case of our enemies (Gen. 4:10, Midrash Tanchuma Buber to Ex. 15:1).
[49] Yad *Melakhim* 6:10
[50] Deut. 20:19-20.
[51] BT *Shabbat* 67b, BT *Hullin* 7b, BT *Kiddushin* 32a.

regulations the king must follow during *milkhemet reshut* are designed to discourage the king from waging unnecessary war. Most significantly, the category of *milkhemet reshut* has come to encompass all wars not considered commanded, that is, wars against the approved enemies of Israel and wars to defend the Jewish people against an aggressor; however, there is a third type of war raised in the Talmud that was not codified by the rabbis as either Discretionary or Commanded but remains a topic of conversation in Jewish war discourse.

The third type of war referred to in the Talmud is preventive war and is neither characterized as *reshut* nor *mitzvah*. The challenge discussed in the Talmud considers the status of preventive or preemptive war (or military action) and the viability of its status as either Commanded or Discretionary. The Talmud reads:

> "When they disagree, it is with regard to preventive wars that are waged to reduce the gentiles so that they will not come and wage war against them."[52]

The essential question is the status of a preventive war waged against an enemy who, despite not presenting an imminent threat to the Jewish people, may one day threaten national security. In the subsequent *sugya*, the argument about the intention of self-defense is raised by the rabbis. The minority opinion was that of Rabbi Yehuda, who advocated that preventive war under the auspices of self-defense should be considered Commanded based on the aforementioned positive commandment to meet force with force in the context of self or communal defense as detailed in tractate *Eruvin*. Rabbi Yehuda argued that Preventive Wars for defensive purposes may be considered Commanded because they serve the purpose of a *mitzvah*. Therefore, the minority opinion in this case, according to Rabbi Yehuda, argued that by engaging in a Preventive War or preemptive action, a viable future threat to the Jewish nation could be eliminated by present

[52] BT *Sotah* 44b.

military action and would be considered Commanded if for the sake of self or communal defense.

The majority opinion was held by the rabbis who were uncomfortable with the prospect of the king's unbridled ability to wage wars in the present against future adversaries may present temptations for territorial ambition or unnecessary war while allegeding communal defense. Still, without the threat of imminent violence, the rabbis ruled that Preventive and Preemptive War must be considered Discretionary. The argument against Rabbi Yehuda from the Sages was based on the idea that just because a nation *could* become hostile to the Jewish people, does not mean that the nation is *presently* hostile and therefore the war could not be considered in the interest of national defense because there would be no imminent danger. Because the foundational criterion for use of force in the context of self or communal defense is the presence of an imminent and lethal threat, the Sages, who held the majority opinion, could not justify characterizing Preventive or Preemptive War as *milkhemet mitzvah* because the adversaries in question do not pose a present and imminent threat to the Jewish people.

Rabbi Yehuda attempted to reconcile this disagreement by offering a solution that would establish a third category of wars to encompass Preventive War that fall on the spectrum between wars that a king must fight and wars that a king may fight. The result of this disagreement in the Talmud prompted the third category to not be considered Commanded and therefore the soldiers fighting in Preventive War would be subject to the biblical military exemptions. Additionally, Preventive War could not be considered explicitly Discretionary because there is historical precedence demonstrating gentile nations growing hostile towards the Jewish nation thereby incorporating qualities of Defensive War. Ultimately, the Sages do not include Preventive wars as a separate category and consider it *milkhemet reshut*; despite this, there were circumstances

where Preventive war could be morally justifiable. In such cases, Preventive War would have to be for the promotion of national defense. This would qualify a Preventive War as an, at least, morally justifiable model of national defense in accordance with the *halakha* of Maimonides who considered Defensive War obligatory.

Maimonides would suggest that in this case, the Preventive War would be considered obligatory if it would ultimately preserve life. Similarly, there is a halakhic precedent mandating waging such wars if it would alleviate or eliminate loss of life:

> "Whenever a person can save another person's life, but he fails to do so, he transgresses a negative commandment, (Lev. 19:16) "Do not stand idly by while your brother's blood is at stake."[53]

This understanding raises the question regarding Preventive War as a method to temper future conflict and loss of life on a larger scale. Ultimately the discussion surrounding Preventive and Preemptive War and military action remains unresolved according to Talmudic tradition; however, the modern strategic and military implications of conducting Preventive and Preemptive War transcend the rabbinic literature and remain relevant in modernity. The overall conclusion regarding Preventive and Preemptive War that can be drawn from Jewish tradition stems from the intention inherent in such engagements; namely, that they are conducted with the intent to preserve and protect Jewish life and alleviate the potential for future military conflict.

The coming of modernity posed a new practical reality for centuries-old questions about Jewish autonomy, self-defense, and national survival. Jewish war discourse before modernity was largely theoretical but the questions and discussions surrounding the practical, ethical, and moral implications of Jewish national defense became more prominent as the prospect of Jewish political autonomy became a reality. Some scholars such as Michael Walzer and Aviezer

[53] Yad *Rotzeach* 1:14. See also Shulchan Arukh *Choshen Mishpat* 426:1.

Ravitsky note that the rabbinic war discourse is incomplete and advocate for an established third category of "prohibited wars" that can distinguish the rabbinic binary[54] because they point out that according to Jewish tradition, all wars are "permitted" under the rabbinic classification of either Commanded War or Discretionary War. Because there is no established category of "prohibited war," the Jewish traditional sources remain as *milkhemet mitzvah* and *milkhemet reshut*. The Jewish traditional discourse is limited to these two categories of war. The discourse was largely theoretical before the establishment of a modern and independent Jewish state. The religious implications of a Jewish State with a standing Jewish army elicit would mean that not only the State but the soldiers who protect it would potentially be subject to the moral and ethical parameters put forth by the Jewish textual tradition and subsequent halakhic authorities. In other words, so long as the understanding of the concept that the State of Israel is a Jewish and democratic state is understood as an entity that upholds "Jewish" values, those values are to be taken and learned from the Jewish halakhic tradition. Most significantly, the inadequacies of the Jewish textual tradition were illuminated and reinterpreted to account for a new national ethos that arose as a result of the Zionist movement of the 19th and 20th centuries and emphasized Jewish self-preservation, national survival, and military might as foundational characteristics of a national defense policy.

The first two categories of *milkhemet mitzvah* were challenging to the rabbis because although they had to honor the biblical commandments, they also had to reconcile the moral and ethical considerations when engaging in war. Additionally, these categories became irrelevant after the biblical period because the seven Canaanite Nations and Amalek no longer occupied the Promised Land and therefore no longer posed a threat to the Jewish people; however, Maimondes' third category which detailed wars for the protection of the Jewish nation retained

[54] Aviezer Ravitsky, *Prohibited Wars in Jewish Religious Law*, (Meorot 6, 2006), 6-17.

its relevance as other enemies of the Jewish people persisted. The rabbis of the Talmud understood, at that time, the Amalekites and Seven Nations no longer posed a significant threat to the Jewish people and therefore waging war against nonexistent nations further demonstrated the theoretical, and often practically irrelevant, nature of the discourse. Maimonides' third characterization of *milkhemet mitzvah*, war to defend against enemies of Israel, illustrates profound modern implications that retain relevance, especially since the modern founding of the State of Israel in 1948. Most significantly, this revival of Jewish war discourse in the context of Jewish political sovereignty posed new questions about the moral, ethical, and religious implications of a Jewish and democratic state.

Chapter 2:
Moral-Religious Implications in a Jewish and Democratic State

A Jewish National Ethos

The Jewish traditional sources that described the moral, ethical, and practical conduct for war were written in the absence of a political sovereign state for the Jewish people. The modern understanding of a nation-state that came about after the French Revolution, which promoted the idea that a state and nation were interwoven was not viable for the Jewish people because of their status as a nation without sovereignty or even land. The development of a national ethos sought to unify the Jewish people and address the balance between the preservation of Jewish identity and the survival of the Jewish people. However, the preservation of Jewish life became more complicated when portions of European Jewry realized the morbid reality of European society: that their hosts were not prepared or willing to accept Jewish assimilation. In the 19th and 20th centuries, the nascent Zionist movement fostered a small but motivated contingency of young Jews who embraced a national identity that separated from their past and embraced a secure and prosperous Jewish future in the land of Israel. After the establishment of the State of Israel, the Jewish traditional view of combat and use of force became much more relevant. Most significantly, the new political reality of the Jewish people brought forward complicated questions about the ethical conduct of war, the moral-religious implications, and the obligation of the Jewish State.

The Zionist movement's adoption of a national ethos was accompanied by the understanding that military force was a symbol of power and a tool to actualize their political objectives. Many prominant early Zionist thinkers were cognizant of the fact that war was an endemic reality in the modern world. Theodor Herzl's (1860-1904) view of Zionism reflected a

society guided by Enlightenment values that would reflect the intellectual and cultural trends of the time. Although Herzl was not militaristic, he understood that it was incumbent on a modern state to protect its citizenry, and wrote:

> "The Jewish state is conceived as a neutral one. It will therefore require only a professional army, equipped, of course, with every requisite of modern warfare, to preserve order internally and externally."[55]

Others such as Ahad Ha'am (1856-1927) promoted a Zionism that focused more on the spiritual and cultural aspects of the Jewish people and less on sovereign political power. He argued that Zionism that sought to establish political sovereignty in the land of Israel would result in constant power struggles with the neighboring lands:

> "Such a puny state, being tossed about like a ball between its powerful neighbours, and maintaining its existence only by diplomatic shifts and continual truckling to the favored by fortune," would not be able to give us a feeling of national glory; and the national culture, in which we might have sought and found our glory, would not be implanted in our state and would not be the principle of its life."[56]

Because of this, he rejected both political Zionism and the militarism associated with national-political movements because he disagreed with the images of power in favor of living by moral and ethical principles.[57] Ahad Ha'am maintained that the "chosenness" of the Jewish people was predicated on their living by ethical values, not projecting strength. He believed that the Diaspora weakened the conscience and spiritual proclivity of the Jewish people. To Ahad Ha'am, Palestine represented more of a spiritual revival that should be built up slowly based on the visions of the prophets; this, he argued, would be a genuinely Jewish state, not the modern nation-state promoted by Herzl.[58] By contrast, Micah Yosef Berdichevsky (1865-1921) rejected

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[55] Theodor Herzl, *The Jewish State*, 147.
[56] Shlomo Avineri, *The Making of Modern Zionism: the Intellectual Origins of the Jewish State*, 198.
[57] Ahad Ha'am, "Shinui ha-arakhinn" (A Change in Values), in his *Al Parashat Derakhim*, 2:71-73.
[58] Ha'am, Ahad (1897), translated by Leon Simon, 1912, "The Jewish State and Jewish Problem", *Jewish Virtual Library*, Jewish Publication Society of America.

Ahad Ha'am's "spiritual Zionism" and promoted a new nationalism that did not shy from projecting power. In his writing, Berdichevsky embraced periods of Jewish national unity and military might in the land of Israel such as the Maccabean revolt, Masada, and the Zealots.[59] The historical moments that depicted the military might of the Jews and national sovereignty were adopted as powerful myths into the ethos of the developing national identity in the Yishuv (the Jewish residents of pre-state Israel) because of their desire to cultivate the image of a new Jew.

The romanticism of power in the Yishuv was a tangible separation from this mentality that not only rejected Jewish religious orthodoxy, but it sought to establish the ethos of a new Jew, liberated from the shtetl and motivated to cultivate and defend his own land. Although both immigrants of the First (1882-1903) and Second (1904-1914) Aliyah came to Palestine to escape pogroms, the members of the Second Aliyah were particularly influenced by socialism and activism; they more easily embraced the image of the "new Jew." This image was predicated on embracing the use of force and rejecting the rationalization of weakness that was ingrained in the Jewish ethos for generations prior, despite their desire for emancipation. The immigrants of the Second Aliyah embraced the use of strength and projecting power which paralleled their socialist and activist proclivities by refusing to accept the reality of their predecessors. This reality accepted that state-sponsored pogroms such as those in Kishinev (1903) and Kiev (1905) were an endemic reality for the modern Jew. For many, immigrating to Palestine would provide the promise of peaceful existence absent the threat of pogroms and free to cultivate the land promised to their ancestors. Still, in the Yishuv there was simultaneously a desire to avoid militant nationalism and the understanding that they may be called upon to defend their community which led to the adoption of what historian Anita Shapira calls, the defensive ethos.[60]

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[59] Anita Shapira, *Land and Power: The Zionist Resort to Force* (Stanford University Press, 1999), 20.
[60] Anita Shapira, *Land and Power*, 83.

The defensive ethos emerged amongst the immigrants of the First and Second Aliyah who, upon immigration to the land, still embraced a rejection of the use of force because they viewed the concept as inherently non-Jewish.[61] Instead of adopting an aggressive imperialistic mentality and employing the use of force as a means to expand their land, many in the early Yishuv still abstained from demonstrations of deliberate and offensive military might. Still, they understood that they were not alone in the land and, if need be, they would defend their villages from invading peoples. The immigrants of the First and Second Aliyah came to Palestine with grand expectations; however, many of their expectations were not fulfilled by the reality of the land and the conditions therein. Not only were they struck by the barren deserts and inhospitable climate, but there were also mixed emotions about the future of the relationship between the Arab inhabitants. The opinions of the Jewish immigrants ranged from apathetic to hostile and many looked toward the national promise of Zionism to guide their decision-making in a way that would best secure a Jewish future in Palestine. Writer Yosef Haim Brenner (1881-1921) wrote:

> "Who can imagine the pain of the unfortunate intelligent Jew who comes here, desirous of a different life, more wholesome, filled with physical labor, the fragrance of the fields, and who, after a few days, realizes that his dream was false, that the land already belongs to Arab Christians, that our farmers are but farmers in the abstract, and that there is no hope here for our people."[62]

The defensive ethos sought to address the Arab inhabitants in a way that ultimately strived to promote peaceful coexistence and cooperative cultivation of the land of Israel.[63] However, the defensive ethos failed to effectively address the reality of the political landscape in Palestine, namely, the rising tension between the Jewish and Arab populations and, as Shapira concludes,

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[61] Shapira, *Land and Power*, 354.
[62] Shapira, *Land and Power*, 54.
[63] *Ibid*., 357.

"No confrontation and no compromises was the concrete conclusion drawn from the defensive ethos."[64]

In the late 1930s, after the Arab revolt in Palestine, an offensive ethos was adopted because the trauma caused by the riots undermined the credibility of an ethical defensive ethos with guiding values. During this time, the tensions between the Jewish and Arab populations were quickly intensifying and heading for an inevitable collision. The Arab conflict increased tensions and the younger generations of Jews in Palestine saw this as a fateful moment in Jewish history, there would be a moment where they had no choice but to use force and establish a secure existence in their land. Unlike their parents, those who were born in Palestine considered the land as both their birthright and birthplace. Although they neither loved nor hated the Arab people, they viewed the violence precipitated by the Arab revolt as an attack on their community and homeland and subsequently felt that it was their responsibility to defend their homes. The younger generations in Palestine saw this as a fateful moment in Jewish history where the anticipation of armed confrontation became more intensified. Whereas their fathers had the ideas of power, valor, and courage, they did not have the experience or action to make them a reality so they inculcated among their sons the spirit of humanistic values and opposition to militarism, but not an aversion to weapons. The younger generation who came of age in Palestine viewed themselves as both fighters and workers who would proudly defend the land they cultivated if needed:

> "A new type of Jew came into being, one for whom the use of weapons was natural. Yet to a certain extent the old Jewish mentality, with all its ambivalence toward the use of force, was still alive…that mentality did not prevent the army[65] from acting in accordance with state interests, nor did it curb political leaders in the decision-making when this involved the use of force…it did make it easier for

[64] Shapira, 356.
[65] The reference to the 'army' in this quote is referring to the resistance forces in pre-state Israel, not the official Israeli Defense Forces which were founded after the War of Independence.

> the leaders to arrive at moderate decisions that were at odds with the wishes of the militants."[66]

After the establishment of the State of Israel, the romanticism of military might, a characteristic of the early Zionist movement, was overshadowed by a new attitude that understood the use of force as a tool used by "a political movement seriously intent on realizing its objectives."[67] When Israel was established, one of the inherent responsibilities of the modern state was ensuring national defense. This shifted the discussion from a philosophical context to one that had profound moral-religious implications for a Jewish and democratic state. This is the culmination of a national ethos, one that internalized aspects of both the offensive and defensive ethos and illustrated by its citizens living with the tension that although peace was preferable to war, the use of force was morally justifiable.

The embrace of the tension between an offensive and defensive national ethos manifested itself after the War of Independence where many in the secular Zionist movements simultaneously understood the importance of national defense and use of force when necessary. Before 1948, many of those in the Yishuv embraced the image of a fighter who balanced the needs of his community and the needs of his nation, and after the War of Independence, the image was even more prominent in the fledgling Jewish state. The balance between the fighter and farmer that defined many of those raised in the Yishuv foreshadowed a similar tension that was embraced by the right-wing Religious Zionists.[68] Similar to the secular Zionists, the Religious Zionists understood and embraced the notion of strong national defense; however, they viewed their role in the fledgling Jewish state as Divinely commanded to settle *and* defend the land that God promised them. Unlike the secular Zionists who embraced their role as fighter and

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[66] Anita Shapira, *Land and Power*, 370.
[67] Shapira, *Land and Power*, 286.
[68] I will be discussing the right-wing Religious Zionists unless otherwise stated.

farmer, the Religious Zionists embraced the study of Torah, halakhic observance, and military service as their religious duty commanded by God. Because of their embrace of both scroll and sword, the Religious Zionists were a primary force in raising questions and attempting to reconcile the practical halakhic and moral-religious implications of a Jewish state with a standing army.

Religious Implications

After Israel declared its independence, there emerged two opposing religious schools of thought that responded to the establishment of the state. The right-wing of the Religious Zionist movement justified and supported Zionism in accordance with Jewish law (*halakha*), and the ultra-Orthodox *haredim* opposed the secular establishment of a Jewish state. In 1948, when the independent Jewish state was established and the Israeli Defense Forces (IDF) was founded, there were messianic undertones that accompanied, what many saw, as a modern-day miracle. Subsequently, this presented significant moral-religious implications for Religious Zionists, who understood that their study of Torah and adherence to halakha was equally as important as their defense of the Jewish state. Most significantly, the establishment of the State of Israel was accompanied by a revival of discussions about Jewish law and military service, the ethical and moral conduct of war, and the moral obligations of a standing Jewish army.

The Religious Zionists justified Zionism in accordance with halakha and maintained that Zionism was part of a Divine plan to hasten the arrival of the Messiah. Religious Zionists believed that the Land of Israel was promised to their ancestors and it was their obligation to settle, cultivate, and, if need be, defend the land in accordance with Jewish tradition:

> "Zionism was not merely a political movement by secular Jews. It was actually a tool of God to promote His divine scheme, and to initiate the return of the Jews to their homeland – the land He promised to Abraham, Isaac, and Jacob. God wants the children of Israel to return to their home in order to establish a Jewish sovereign state in which Jews could live according to the laws of Torah and halakha, and commit the Mitzvot of Eretz Israel (these are religious commandments which can be performed only in the Land of Israel). Moreover, to cultivate the Land of Israel was a Mitzvah by itself, and it should be carried out. Therefore, settling Israel is an obligation of the religious Jews, and helping Zionism is actually following God's will."[69]

For the Religious Zionists, settlement of the Land of Israel was congruent with the observation of the biblical commandments and the study of Torah because they adhered to the halakha of Nahmanides which considered wars of conquest in the Promised Land a positive commandment.[70] The Religious Zionists embraced Nahmanides' more radical interpretation of the text to provide biblical and halakhic justification of their religious and military ambitions. Rabbi Abraham Isaac Kook (1865-1935), is considered by many to be the father of Religious Zionism in the land of Israel. In his writings he illustrates an attempt to synthesis the centrality of the Promised Land in religious tradition to a radical reinterpretation of the political and practical aspects of Zionism.[71] Rav Kook's philosophy provided a comprehensive synthesis of religious Judaism and modern Zionism and taught that the source of Jewish progress and creativity is inextricably linked to the Land of Israel:

> "Jewish original creativity, whether in the realm of ideas or in the arena of daily life and action, is impossible except in Eretz Israel. . . .A Jew cannot be as devoted and true to his own ideas, sentiments, and imagination in the Diaspora as he can in Eretz Israel. Revelations of the Holy, of whatever degree, are relatively pure in Eretz Israel; outside it, they are mixed with dross and much impurity."[72]

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[69] David Samson, and Tzvi Fishman, "*Torat Eretz Yisrael,*" (*Jerusalem: Torat Eretz Yisrael Publications*, 1991).
[70] Deut. 11:24.
[71] Shlomo Avineri, *The Making of Modern Zionism: The Intellectual Origins of the Jewish State*, (Hachette UK, 2017), 309.
[72] Rabbi Abraham Isaac Kook, *The Land of Israel*, in, Arthur Hertzberg, *The Zionist Idea*, (New York, 1969), 409.

Rav Kook maintained that the role of Religious Zionism was congruent with establishing a Jewish State guided by Jewish values and Torah. Further, the Religious Zionists maintained that religious Judaism could operate within Zionism, which was a largely secular movement; however, despite its secularity, the Religious Zionists were sanguine that their secular neighbors would eventually adopt and embrace Jewish law and Torah with the hopes of bringing *geulah*, redemption.

The spirit of secular Zionism in the Yishuv challenged Rav Kook and other Religious Zionist thinkers because of the alarming secularity of the *chalutzim* (pioneers in the *kibbutz* [agricultural community] movement). These secular Zionists simultaneously felt a deep connection to the Land of Israel but rejected the laws of Torah and the establishment of a religious state. Instead, they sought to establish a state based on conquering the land through labor rather than halakha. "The pioneers coming to Palestine, Rav Kook maintains, are indeed highly hostile to the Jewish religious tradition and are motivated, according to their own understanding, by secular ideological considerations which are basically alien to the religious structures of Judaism."[73] However, Rav Kook believed in the inherent divinity within the intentions of human beings and maintained that these secular Zionists, despite their open rejection of halakha and Jewish tradition, were drawn to the Land of Israel because of a Divine spark that could eventually cooperate in the process of redemption.

> "Many of the adherents of the present national revival maintain that they are secularists. If a Jewish secular nationalism were really imaginable, then we would, indeed, be in danger of falling so low as to be beyond redemption. But what Jewish secular nationalists want they do not themselves know: the spirit of Israel is so closely linked to the spirit of God that a Jewish nationalist, no matter how secularist his intention may be, is, despite himself, imbued with the divine spirit even against his own will. An individual can sever the tie that binds him to the source of life, but the House of Israel as a whole cannot. All of its most

[73] Shlomo Avineri, *The Making of Modern Zionism*, (UK, 2017), 316.

> cherished possessions—its land, language, history, and customs—are vessels of the spirit of the Lord."[74]

Rav Kook describes the settlement of the land of Israel, regardless of the religious observance of the *chalutzim*, as a step towards redemption, and the role of the Religious Zionists is to accelerate this process. The Religious Zionist movement was combined both political and religious aspirations for the fledgling Jewish state and embraced the importance of Jewish law in the land that God promised to the Jewish people. However, there was significant opposition to the Religious Zionist movement by religious Jews who were vehemently opposed to the establishment of a Jewish state and argued that the secularity of the Zionist movement and the independence of Israel was contrary to Jewish tradition.

The ultra-Orthodox *haredim* viewed the establishment of a sovereign Jewish state in the land of Israel *before* the days of the Messiah as religiously forbidden in accordance with Jewish tradition. The foundation of their beliefs derive from the Talmudic text denoting the Three Oaths:[75]

> "One, so that the Jews should not ascend to Eretz Yisrael as a wall, but little by little. And another one, that the Holy One, Blessed be He, adjured the Jews that they should not rebel against the rule of the nations of the world. And the last one is that the Holy One, Blessed be He, adjured the nations of the world that they should not subjugate the Jews excessively."[76]

In this passage, the rabbis explain that returning to the Promised Land from Babyon absent messianic redemption would prolong the exile and the rebuilding of the Temple. The violation of these Talmudic precepts ran contrary to the establishment of the Jewish state in the absence of the Messiah whether or not the founding of the state was religious or secular. In other words, the *haredim* were opposed to both the claims of the Religious and secular Zionists. The *haredim*

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[74] Abraham Isaac Kook, *"Lights for Rebirth,"* in Arthur Hertzberg, *The Zionist Idea*, (New York, 1969), 430.
[75] The Three Oaths can be found in *Shir HaShirim Rabbah* commenting on Shir HaShirim (Song of Songs) 2:7, 3:5, and 8:4.
[76] BT *Ketubot* 111a.

opposed both secular and Religious Zionism because of a combination of its rejection of Torah, its violation of the Three Oaths as written in the Talmud, and the unauthorized settlement of the land of Israel.[77] Rabbi Elchonon Wasserman (1875-1940), an opponent to Zionism, explained:

> "The nationalist concept of the Jewish people as an ethnic or nationalistic entity has no place among us and it's nothing but a foreign implant into Judaism; it is nothing but idolatry. And its younger sister, "religious nationalism," is idol worship that combines Hashem's name and heresy together."[78]

Most significantly, the *haredim* viewed Zionism as incompatible with Jewish law and tradition and rejected the establishment of the modern state of Israel.

The Religious Zionists affirmed their obligation, as a positive commandment, to settle the land and to establish and defend a sovereign Jewish state in hopes that it would hasten the arrival of the Messiah. They understood the importance of defending the land until the arrival of the Messiah, and, contrary to the *haredim* who rejected the establishment of the state as blasphemous and antithetical to Jewish tradition, the Religious Zionists viewed this as a pretext to revive rabbinic conversations about the moral and ethical conduct of war. Both the Religious Zionists and the *haredim* approached the question about Jewish military might differently. Although the establishment of the State of Israel did not accompany the coming of the Messiah, the Religious Zionists understood that their settlement and defense of the land in congruence with Jewish law and Torah would hasten the Messiah's arrival, thus necessitating the reinterpretation of Jewish war discourse. The *haredim* rejected the secular motives to establish a Jewish state because they view Jewish military action and use of force as a means to re-establish sovereignty in Israel as antithetical to their interpretation of Jewish tradition. The *haredim* also understood exile as a Divine punishment and only the arrival of the Messiah could usher in their return to the Holy

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[77] Yaakov Shapiro, *The Empty Wagon: Zionism's Journey from Identity Crisis to Identity Theft*, (2018), 314-219.
[78] Elchonon Wasserman, "Eretz Yisrael," (*Kovetz Maamarim*, vol. 1), p. 166.

Land.[79] Ultimately because of their embrace of Zionism, the Religious Zionists, as Zionists, participated in the project of nation-building and everything that it entails, including the aspects of the use of force, building an army for national defense, and answering the call to arms when needed. Thus they sought to reconcile and reinterpret Jewish tradition to address the practical questions of the new political reality for the Jewish people. The immediate challenge for Religious Zionist rabbis and military leaders was "the Diaspora-based rabbinic literature seemed to oppose the use of force, reinterpreting the biblical references to military heroism as allegorical expressions of valor in the study of Torah."[80] Although there was a Jewish traditional approach to war and rabbinic discussions surrounding the use of force, many Religious Zionists sought to reinterpret the tradition to establish a modern corpus of Jewish halakha, chief among them was the first Chief Rabbi of the IDF Military Rabbinate and halakhic scholar, Rabbi Shlomo Goren.

Rabbi Goren served as both a rabbi and military officer and was a pioneer in the field of *hilkhot tzavah u-milchama* ([religious] laws relating to military and war) which sought to not only establish an ethical code inspired by Jewish tradition, but also to propose halakha that would answer the practical questions about religious military service. What separated Goren's writing from that of his contemporaries was the fact that he did most of his writing while on active duty, giving him a unique and practical approach to the halakhic needs of the Religious Zionist soldiers.[81]" Goren's motivation to write a code of military law and ethics for the Jewish army, and not just for the individual Jewish soldier, was thus based on his Zionist perspective that there is no significance to a Jewish state unless it is guided by Jewish tradition."[82]

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[79] Stuart Cohen, *The Re-Discovery of Orthodox Jewish Laws*, 5. See also, Aviezer Ravitzky, *Messianism, Zionism and Jewish Religious Radicalism*, (Chicago, 1996), 40-78, 211-233.
[80] Arye Edrei, *Divine Spirit and Physical Power: Rabbi Shlomo Goren and the Military Ethic of the Israel Defense Forces*, (Theoretical Inquiries in Law 7, no. 1, 2005), 255.
[81] Stuart Cohen, *The Re-Discovery of Orthodox Jewish Laws*, 6.
[82] Arye Edrei *Divine Spirit and Physical Power: Rabbi Shlomo Goren and the Military Ethic of the Israel Defense Forces*, (Theoretical Inquiries in Law 7, no. 1, 2005), 275)

Accordingly, he understood that the IDF should adhere to ethical and moral guidelines that emphasize the preservation of human life and dignity and that wars must be fought in accordance both with Jewish law and morality.

In order to begin developing a new corpus of Jewish law and halakhic rulings, Rabbi Goren addressed both the practical questions of daily life and the larger questions about the moral and ethical responsibility of the IDF:

> "What, if anything, did the canonical sources have to say about the justice of warfare in general and about the ethics of specific applications of force in particular? Under which circumstances do the dictates of national security override the generally paramount religious commandment to avoid both endangering one's own life and taking that of another? Do military instructions to the general public, when declared to be "emergency decrees", possess any standing in Jewish law?"[83]

Rabbi Goren's quest for the development of a new corpus of halakha was met with opposition from both the secular Zionists and *haredim*. The secular Zionists were not interested in the development of new halakha because, as secular Jews, the adherence to Jewish law was irrelevant to their way of life. The *haredi* community was troubled by the advocacy for use of force, even in the defense of the Jewish state, and took stances against the Religious Zionists who advocated for use of proportional and necessary force. Rabbi Goren disagreed with the stance of the *haredi* community and asserted and, as Arye Edrei noted:

> "The first approach inherently opposed the use of force, claiming that it is forbidden for Jews to utilize power in our times, in the absence of the institutions of Jewish sovereignty such as the monarchy, the Temple, and the Sanhedrin. The essence of this debate hinges on the legitimacy of the basic claim of Zionism, the right of the Jewish people to take an active role in history prior to the final messianic redemption. The second approach approved of the use of force, but claimed that the standards for the proper conduct of war are to be found in military doctrine and in international law, not in halakhah…The third position to which Rabbi Goren responded in his deliberations was that taken by rabbis who derived military standards of conduct from the Jewish laws that relate to the saving of life and the right to self-defense. A source often cited in this approach is

[83] Stuart Cohen, *The Re-Discovery of Orthodox Jewish Laws*, 3.

> a law commonly referred to as "the pursuer" law ("*rodef*"), which prescribes the right to use lethal force in self-defense or in defense of a third party."[84]

Rabbi Goren opposed these positions of the haredim, and as a Zionist, military officer, and rabbi, he maintained that although peace should be pursued first, use of force was a necessary method to ensure the security of the Jewish state. Goren understood the halakhic justification for use of force as it related to the rodef (the pursuer); however, he maintained that the rodef defense should be understood in the context of criminal law, not military conflict. Rather, he advocated for the laws pertaining to the conduct of war and soldiers to be seen as a corpus of literature separate from criminal law. Because of this, he believed that war should be characterized in its own distinct category rather than incorporated into the corpus of criminal law.

As a religious man and rabbi, he understood the right of the Jewish people to undertake an active role in shaping their existence in the settlement of the Land of Israel and the development of new and relevant halakha. "Thus, he held that Jewish law, not international law, must serve as the source for a code of military conduct for the Israel Defense Forces."[85] Rabbi Goren's approach to developing a new corpus of Jewish law ultimately sought to establish a practical halakhic guide for the orthodox soldiers and a moral and ethical guide grounded in Jewish values to be embodied by all soldiers. He believed in the coexistence of Jewish traditional sources, the Zionist dream, and the needs of the state and he advocated for practical halakha that could answer the questions that arose from both spheres:

> "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, "Who is the mightiest of the mighty? — One who controls his inclination, as it 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.

[84] Arye Edrei, *Divine Spirit and Physical Power*, 270.
[85] Edrei, 271.

> From here, we learn that there are two levels of heroism. The lower level is physical heroism, and the higher level is spiritual heroism."[86]

Rabbi Goren's conclusion here denotes a reinterpretation of the Sages as developing the motif of heroism as dominant through a combination of both physical and spiritual strength. Whereas the Sages maintained that images of strength and heroism were associated with the study of Torah and not military might in the context of force, Shlomo Goren argued that Jewish tradition teaches that moral heroism and military might were not mutually exclusive. He maintained that both the use of force and moral heroism can and should coexist especially in the context of a Jewish state and, more significantly, they can be grounded in Jewish values.

Other influential rabbis of the Religious Zionist movement agreed with Shlomo Goren's assertion and many contributed to the development of a new corpus of halakha; however, most of the interpretations were focused on the practical aspects of the military rather than a broader moral-ethical code of conduct for soldiers in the IDF. Some notable examples of early publications that focused, albeit briefly, on the moral and ethical conduct of war were found soon after the War of Independence. In 1949, an American-born rabbi and student of Rav Kook, Rabbi Alter David Regensberg, published "Mishpat ha-Tzava be-Yisrael (The religious law of the army in Israel)." His book was a small collection of primarily practical halakha for soldiers in the army; however, the significance of this publication lay with two small chapters, "The Conduct of War" and "Laws Respective Captives," both briefly discussed the ethical implications of war and the conduct with regard to captives. Another example was in 1954, Rabbi Shaul Yisraeli (1909-1995), an ardent Religious Zionist, published "The Qibya Incident[87] in the Light of

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[86] Shlomo Goren, *Hagevurah Bemishnat Hayahadut* [*Heroism in the Teachings of Judaism*] in Arye Edrei, *Divine Spirit and Physical Power: Rabbi Shlomo Goren and the Military Ethic of the Israel Defense Forces.*

[87] After the signing of the 1949 Armistice Agreements, there were border disputes between the newly established Israel and Jordan. Between June 1949 and October 1954, there were many incidents of attacks on Israeli civilians being perpetuated by individuals crossing the border illegally from Jordan. Israel accused Jordan of violating the 1949 Armistice Agreement which led to the killing of at least 124 Israelis and wounding hundreds. On October 13, 1953, Jordainina terrorists threw a grenade into a home

halakha" in response to the 1953 IDF operation that killed over 60 Palestinians in the village of Qibya. Rabbi Yisraeli briefly touched on the discussion of jus ad bellum and jus in bello (the moral right to initiate war and the conduct while at war, respectively), but mostly discussed topics such as the holiness of Jerusalem and the reconvening of the Sanhedrin. Stuart Cohen responds, "These were exceptions…even after the Six-Day War most rabbinic writings on military matters paid very little attention to issues of intrinsic ethical import, such as the halakhic status of subject populations."[88] However, the most significant early publications regarding the moral and ethical code was published by Rabbi Goren in his, "Meishiv Milchamah" in which he included three sizable volumes of responsa literature that was exclusively dedicated to the military, national security, and moral and ethical conduct of war.

Between 1948 and the mid-1980s, the military conflict in which the IDF was involved was largely conventional and were representative of target air and armored campaigns in the major wars (1956, the Sinai Campaign, 1967, the Six-Day War, 1969–70, the War of Attrition, and 1973, the Yom Kippur War). Apart from the one volume of Rabbi Goren's halakha and other short chapters composed by Religious Zionist leaders such as Rabbis Yisraeli and Regensburg, and others most of the subsequent works focused on the practical aspects of serving as a religious soldier in the IDF such as concerns about Sabbath observance, dietary laws, and prayer occupied most of the Religious Zionist discourse. The subject matter put forth by Rabbi Goren and his contemporaries sought to establish a balance between practical military halakha and the authority to resort to use of force. A third category of military conduct, however, did not fully come about until the 1980s because, as armed conflict evolved and new unconventional threats arose in the

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in Tiryat Yehud, killing a woman and her two children. Israel initiated a reprisal operation, "Operation Shoshana (in honor of the woman and her two children who were recently killed)," on the small Jordaninan border town of Qibya where roughly 60 Jordanian civilians were killed and over 50 homes destroyed.

[88] Stuart Cohen, The Quest for a Corpus of Jewish Military Ethics in Modern Israel, (2007), 37.

modern theater of war, questions about ethical conduct and moral responsibility became more prominent.

Religious Zionist Dissent

Many in the Religious Zionist movement adhered to the traditional halakhic observance and mandated military service to settle and defend the Promised Land until the arrival of the Messiah. However, there was a small but influential contingency of left-wing Religious Zionist movement who did not adhere to the right-wing's halakhic justification of war even in the context of defending a Jewish state. The left-wing Religious Zionists movement was founded in the late 20th century as a response to the right-wing Religious Zionists, many of whom felt that the right-wing moved too far to the right. One of the leaders of the left-wing Religious Zionists, and the founder of their political party, Meimad, was Rabbi Yehuda Amital (1924-2010), who, like his right-wing counterparts believed that military service and Torah study could live in harmony and was credited to be one of the founders of the header yeshiva[89] movement. Rabbi Amital was by no means a pacifist and understood the value of having a Jewish army in defense of a Jewish state was essential if the Jewish people wanted to be accepted into the international community as a sovereign political power and during Yom Ha'Atzmaut (Israeli Independence Day) in 1983, he said:

> "The fact that a Jewish regime now governs almost half of the world's Jews is a clear step towards the Redemption. That Jews can be killed in a war in which they are fighting in a Jewish army, rather than at the mercy of anti-Semitic thugs, is something worthy of recognition, as it shows our rise to the status of a sovereign people in its own land."[90]

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[89] *Header Yeshivot* were Talmudic academies which allowed Religious Zionist soldiers to fulfill both the obligation of study and military service.
[90] Yehuda Amital, *Israel's Independence in the Face of Adversity*, 1983.

Rabbi Amital believed in the importance of a strong defense force that was unafraid and able to defend their country. He was somewhat aligned with the right-wing in his talks of the importance of national defense and the coexistence of Torah and military service; however, he differed from the right-wing on a fundamental level with the question of wars of conquest. The right-wing Religious Zionists adhered to the Nahmanidean assertion that conquering the Promised Land was not only a positive commandment but would hasten the coming of the Messiah. In other words, the right-wing believed that their "wars of conquest" would allow them to secure and protect the land before the Messiah's arrival. The left-wing Religious Zionists disagreed strongly with this contention and maintained that in accordance with Maimonides' halakha, wars of conquest, even to conquer and settle the Promised Land, were prohibited under the Maimonidean prescriptions for *milkhemet mitzvah*, Commanded War. The left-wing religious Zionists vehemently disagreed with the position of their right-wing counterparts when it came to wars of conquest because of their fundamental understanding that wars of conquest were to be considered discretionary. Therefore, they viewed the wars and armed conflicts that arose to settle new territory and expand the boundaries of Israel as Discretionary War.

Others, such as Yeshayahu Leibowitz, were not representative of the left-wing religious Zionists but rather approached their dissent right-wing militancy from an intellectual-philosophical perspective. Unlike Rabbi Amital who represented the left-wing of the Religious Zionist movement, Leibowitz not party to any religious movement. Although Leibowitz was born into a Religious Zionist family, he was a scientist-turned-intellectual who commented and critiqued the use of religious language and dicta to achieve secular political goals. Leibowitz disagreed with the opinions and actions of the right-wing Religious Zionists in Israel because he viewed their hawkish ambitions as antithetical to Jewish values and halakhic

observance. Leibowitz viewed the independent Jewish state as one that should be free from the inherent messianic elements of Judaism and the true purpose of the Jewish state was to free the Jewish people from being subject to gentile governments.[91] He maintained that although Israel was a Jewish state, it should fulfill humanistic needs and political purposes rather than religious or halakhic obligations. He held a very secular view of Zionism and argued that the role of the Jewish state should be secular, i.e., provide only a pragmatic solution to the desire for Jewish political sovereignty. His Zionism was Herzelian by nature and his Judaism was strictly halakhic. He strived to keep apart the state and religion for the sake of keeping the Jewish religion purely monotheistic and not, in his view, of servitude of the State. To Leibowitz, this manifested itself in a "redemptive theology" which "redeems the concept of redemption itself from the grip of the false messianism of religious and secular Zionists alike."[92] Therefore he vehemently disagreed with the position of the right-wing Religious Zionists in their opinion of not only the role of the Jewish state but their synthesis of military action and Torah study One of the most notable examples of Leibowitz's halakhic disagreement was after the Six-Day War in 1967 where the IDF not only defeated their enemies in six days, but conquered significant territory doubling Israel's borders.

The right-wing Religious Zionists viewed the IDF victory in 1967 as nothing short of a modern-day miracle and an affirmation of their obligation to conquer and settle the Promised Land and this was solidified with the reunification of Jerusalem for the first time in modern Jewish history. Despite the miraculous victory and the messianic-eschatological implications that were lingering in the minds of many observant Jews in Israel, members of the left-wing

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[91] Daniel Rynhold, "Yeshayahu Leibowitz", *The Stanford Encyclopedia of Philosophy* (Spring 2019 Edition), Edward N. Zalta (ed.), accessed 3/8/22. <https://plato.stanford.edu/archives/spr2019/entries/leibowitz-yeshayahu/>.
[92] Haim Rechnitzer, "Redemptive Theology in the Thought of Yeshayahu Leibowitz", 138.

Religious Zionists and Orthodox community were vehemently against the immense territorial acquisition that resulted after the Israeli victory. For the right-wing Religious Zionists, they viewed the Six-Day War as *milkhemet mitzvah*, a war of conquest to expand Israel's borders and hasten the arrival of the Messiah. Others who rejected the right-wing Religious Zionists' interpretation of wars of conquest as mitzvah, such as Yeshayahu Leibowitz, this war was nothing more than a Discretionary War for the sake of territorial expansion and that confusing the secular motives with religious obligation was not conducive to his view of the Jewish state. Following the Six-Day War and the messianic ferver that rippled through the right-wing Religious Zionists, he noted that:

> "The basis for all Jewish belief occurs in 'the present time', in a necessarily un-redeemed state. When messianic hopes and visions erode the observance of Torah and Mitzvot, and the mythological past and utopian futures collapse into the present tense, Judaism is in danger."[93]

He argued that if 1967 was to be considered *milkhemet mitzvah*, a Commanded War, then the purpose of the war should have been to not only conquer the land but to rebuild the Third Temple, and stopping short of that would void the redemptive qualities that the right-wing attributed to the war. Further, Leibowitz maintained that Israel and the IDF was first and foremost a secular solution to a secular problem, not a religious movement that sought to restore the Temple rite. Even more radical was his assertion that ascribing religious meaning and messianic undertones to an otherwise secular political and military endeavor was nothing short of idolatrous. The left-wing Religious Zionist dissent most notably according to Leibowitz but shared by others such as Rabbi Amital illustrated a hesitancy to ascribe profound religious implications to historical and political events and, as Leibowitz noted with regard to the purpose

[93] Haim Rechnitzer, "Redemptive Theology in the Thought of Yeshayahu Leibowitz", 143.

of the Jewish state and redemption therein, “The first thing that has to be done is to free Religion from its despises status as a concubine of the secular government.”[94]

Moral-Religious Implications

The tenor of military halakha changed after the 1982 Lebanon War[95] and shifted from more conventional warfare with distinct enemies to a continuous state of heightened emergency manifesting itself in terrorism and other types of quick and violent engagements in non-permissive environments. The new wars in which the IDF fought brought forth complicated questions about the use of force and the ethical and moral obligation of the IDF soldiers in a way that was challenging for many within the Religious Zionist community because there were few biblical and rabbinic sources that directed the moral and ethical conduct such conflict. Many Religious Zionist soldiers in positions of junior leadership, such as noncommissioned (NCO) and junior officers, were faced with incidents of high-intensity combat with little to no senior leadership to advise their action during these engagements. Accordingly, military rabbis, philosophers, and leaders asserted that there needed to be a moral and ethical guide by which their junior leadership could conduct themselves in these situations. These guides would have to be separate and distinct from the practical halakha that defined the military rabbinate of the decades prior and still be conducive to and dictated by Jewish values.

Whereas *hilkhot tzavah u-milchamah* answered practical questions primarily about concerns regarding religious soldiers, *dinei tzavah u-milchamah* (Laws regarding the military and war) departed from the practical halakha and attempted to address many questions regarding

[94] Haim Rechnitzer, "Redemptive Theology in the Thought of Yeshayahu Leibowitz", 154.
[95] Officially named *Milkhemet Shalom Hagalil*, Operation Peace for Galilee, 1982-1990

ius ad bellum (the conduct of war). Drawing from the third category of *milkhemet mitzvah* put forth by Maimonides denoting the obligation to "deliver Israel from the hands of an oppressor,"[96] the IDF and its junior leadership, were faced with complicated questions about their role in the national defense of the state. Practical and strategic questions were raised about issues such as the halakhic permissibility of launching a preemptive strike or preventative operations both to deter future aggression and the conception of ius ad bellum in relationship to the targeted killing of persons suspected of perpetrating terror.[97] These questions synthesized military strategy with halakhic permissibility because of "their coincidence with the current emphasis in IDF military operations on counterinsurgency missions."[98] These questions presented a response to both the reality of threats that the IDF faced and the understanding that not only were the IDF soldiers faced with challenging and life-threatening situations, so too did the military leadership begin to understand that, much like other modern militaries experiencing similar threats, but unconventional war also blurred the lines between combatants and civilians as well as proper and moral conduct for the soldiers therein.

What IDF leadership found in the realm of counterinsurgency was that small units led by NCOs and other junior officers were faced with conducting operations in isolated environments against unknown enemies. In such situations, "the senior officer is more of a manager and coordinator than commander. Real operational 'command' in the sense of leading troops, has devolved downwards, through the battalion and company commanders to the NCOs. More often than not, it is these men who are confronted with the most difficult operational decisions."[99] This

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[96] Yad Melakhim 5:1.
[97] Stuart Cohen, *The Re-Discovery of Orthodox Jewish Laws,* 16. See also: Aaron Eizental, "Deterrence A Torah Perspective, The Harel Book, 247-268 [Hebrew]; Moshe Ush- pizai, "Preemptive War-Discretionary or Mandatory?" Techumin, 4, (1983) 90-96 [Hebrew]; J. David Bleich, "Preemptive War in Jewish Law," Tradition, 21 (1983) 1-39; and Avidan, Declaration on the Mount, 31-35.
[98] Stuart Cohen, *The Re-Discovery of Orthodox Jewish Laws,* 22.
[99] Michael Dewar, *the British Army in Northern Ireland*, (London, 1985), 177-178.

reality became clear after the First Intifada in 1987 and solidified after the Second Intifada where the IDF quickly understood that not only had modern warfare changed so too did their enemies. The lines between combatants and noncombatants blurred and the rules of engagement became all the more crucial in light of the new threat of terrorism. There was a tangible need for a practical code of military ethics that soldiers could refer to when faced with these high-stress and violent confrontations. Accordingly, the IDF General Staff put forward an initial, and later revised IDF Code of Ethics (*Ruach Tzahal*) to provide an ethical guide to all Israeli soldiers that was sensitive to Jewish values and the promotion of purity of arms.

The Ruach Tzahal emphasized moral and ethical guidelines under which all IDF soldiers were bound. They were drawn from the IDF's tradition and heritage and infused with democratic and humanistic laws and values congruent with the Jewish values that inspired many to fight for the state of Israel. The IDF Code of Ethics was based on three fundamental values and had ten additional values. The three fundamental values include, "(1) defense of the state, its citizens and residents, (2) patriotism and loyalty to state, and (3) human dignity."[100] The fundamental values illustrated in Ruach Tzahal incorporate principles that are derived from Jewish tradition and necessary for the function of a modern military. The first fundamental value which details the importance of the defense of the state, citizen, and residents can be understood in the Jewish context of pikuach nefesh, the preservation of life and the understanding that life is not only sacred but must be protected, with force if necessary. It is important to note that first and foremost Ruach Tzahal mentions defense of these entities, and parallel to the name, Israeli Defense Forces, the primary mission of the Israeli army is to defend the state and those therein. The Jewish value of pikuach nefesh allows those who are acting in the defense of themselves or

[100] Israeli Defense Forces, "Ruach Tzahal," Accessed March 8, 2022. https://www.idf.il/en/minisites/israel-defense-forces/.

others to use force to protect and preserve life; accordingly, the embodiment of this value in the context of a military's code of ethics draws from both Jewish tradition and military necessity, namely, the protection of the State and citizens therein. The second fundamental value asserting patriotism and loyalty to the state is necessary and proper for any standing army in a modern state because it should be incumbent on soldiers who are fighting for their country to demonstrate patriotism for and love of the land they are sworn to defend. From the perspective of Jewish values, this value reminds the soldiers of the inherent connection between defense of the land and the modern state, a bond between land and people that elicits biblical imagery. The third and final fundamental value emphasizes the importance of human dignity and is based on the fundamental Jewish values illustrating the inherent holiness of human life as written at the beginning of the Torah when God created human beings in His image.[101] Most significantly, the concept of a politically sovereign Jewish and democratic state with a standing army is understood as an entity that upholds Jewish values and moral uprightness in its behavior so as to be a light unto the nations. These three fundamental values elicit values inherent in Jewish tradition and present them to the soldiers who are responsible for the protection of the state and defense of the citizens and residents therein and by virtue of the political reality of an independent Jewish state, the moral and ethical guidelines for its defense must be guided by Jewish traditional values.

There are also ten additional values written in Ruach Tzahal that further draw from not only Jewish tradition but western culture as they relate to the moral and ethical conduct of Israel's soldiers. They are: "human life, purity of arms, personal example, responsibility, comradeship, professionalism, discipline, loyalty and representativeness, and reliability and

[101] Gen. 1:1-2:3; Deut. 33:1-34:12.

trustworthiness, perseverance in mission, and dedication to the pursuit of victory."[102] Most of these additional values draw from the overall theme in Jewish tradition of bal tashchit. As discussed in the previous chapter, bal tashchit is the biblical commandment not to destroy and the Talmudic interpretation extending the obligation to prohibit wasteless and needless destruction when waging war.[103] The values of human life, purity of arms, and personal responsibility echo the concept of bal tashchit because it places the responsibility on each soldier to act with integrity when carrying out his orders and ensure that when force is used, it is proportional, necessary, and does not cause unnecessary destruction[104] or loss of human life. Most significantly, the values enumerated in Ruach Tzahal are designed to address matters of moral conduct during combat engagement in an effort to guide all IDF soldiers to act with a uniform and ethical intention with the foundational context of Jewish tradition. Still, there are aspects of Jewish war discourse that are not included within the Spirit of the IDF and there are values included that align more with t modern military necessity rather than Jewish law.

There are values and principles mentioned in Ruach Tzahal that are tangentially related to Jewish tradition but align more with the needs of a military fighting force in a modern political state, and some values within Jewish tradition that are noticeably absent. Within the ten additional values written in Ruach Tzahal, the values of discipline, loyalty and representativeness, and reliability and trustworthiness, perseverance in mission, and dedication to

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[102] Ruach Tzahal, https://www.jewishvirtuallibrary.org/ruach-tzahal-idf-code-of-ethics

[103] Deut. 20:19-20. See also; BT *Shabbat* 67b. See also, BT *Hullin* 7b and BT *Kiddushin* 32a.

[104] This particular concept was controversial during the 1982 First Lebanon War when the IDF, in response to the heavy Israeli military and civilian casualties inflicted by the PLO, launched an invasion on Beirut and subjected the city to continuous siege targeting buildings, highways, and other infrastructure. Many critics of this assault cited the failure of the IDF to act discriminately with their assault because of its targeting not only military sites and personnel but also city centers. Regardless of the initial intention to protect Israel's borders and deter the PLO from further attacks on civilians, there were questions raised about the moral and ethical implications with regard to the more aggressive policies employed by the IDF and its leadership. Ultimately, this tension presented a *halakhic* issue about the permissibility of this strategy in Jewish tradition. According to the analysis of Jewish wars, the *Ruach Tzahal*, and the moral and ethical responsibility of the Jewish state and army, this strategy provided an, at best, ambiguous answer to the *halakhic* permissibility, and, at worst, a violation of the Jewish law *bal tashchit*.

the pursuit of victory align more with the fundamental needs of having an operational military. The importance of discipline, loyalty, reliability, and dedication to the mission are all staples of an effective fighting force. Although the fundamental values and the initial ten values are linked to Jewish tradition and halakha, some of the other additional values speak to combat readiness, dependability, and readiness, all of which are necessary for soldiers to operate effectively and within the boundaries of modern military necessity and culture.

The most prominent example of values that are absent from Ruach Tzahal and the modern IDF altogether, are the biblical exemptions for soldiers fighting in Discretionary War.[105] There are no exemptions for war detailed in the Ruach Tzahal nor are the biblical exemptions for Discretionary War considered prior to or during combat. The biblical exemptions for war are present in the Torah and discussed in rabbinic and halakhic literature, and their notable absence in the Spirit of the IDF raises profound questions as to the religious implications of a Jewish standing army. Primarily, if there is no mention of the exemptions halakhically required during *milkhemet reshut*, then *all* wars fought by the IDF must, by default, be considered *milkhemet mitzvah*. Accordingly, if all wars waged by the State of Israel are to be considered commanded and not discretionary then not only are all obligated to fight, but this presents profound moral-religious questions about the ethical conduct and moral restraint needed in combat. Further, this raises another question about the types of Commanded War, specifically in relation to the Maimonides-Nahmanides controversy about the status of wars of conquest. Whereas Maimonides does not agree that wars of conquest, even in the Holy Land, are considered *mitzvah*, Nahmanides does. This concept has been the source of much modern controversy particularly amongst the right-wing and left-wing Religious Zionists where the former understands this tension as a means to accomplish both its political and religious needs. The

[105] See page 22.

tacit assumption that in the absence of the biblical exemptions for Discretionary War in the current Ruach Tzahal, contributes to the political and religious agenda of the Religious Zionists, and has led to critique amongst Israeli scholars of military ethics:

> "The more religious the army becomes, the greater the danger that legal decisions requiring evacuation of Jewish settlements in the territories will not be implemented due to rabinically-sanctioned insubordination—or even worse. The implication is that in practice, the sovereign freedom of citizens in a democracy to make decisions about crucial issues, via their representatives, is already curtailed at the outset, due to the fear of being confronted with a schism of unparalleled proportions.[106]

The challenge therein hearkens back to the original founding principles of the state of Israel: a state that is both Jewish and democratic. Accordingly, in a democratic state the military is meant to defend its borders and protect its citizens, not pursue religious mandates. The aspects of Jewish halakhic tradition that are notably absent from Ruach Tzahal initiate profound moral-religious questions about the overall intention of the IDF and, this tension illustrates the two founding principles of the Jewish state, one that is both Jewish and democratic:

> "The supremacy of the state ("mamlachtiyut") must be the highest order. The preferences of individuals must not be allowed to take control of the public military sphere. This space includes physical components (military bases), symbolic elements (ceremonies), disciplinary dimensions (orders and hierarchies), educational components (an ethical code and an educational system), and, of course, questions of ethos and meaning."[107]

The criticism from the left-wing Religious Zionists and secular scholars alike demonstrate the ambiguity and muddiness of the Spirit of the IDF when contextualized against Jewish traditional war discourse. Still, balancing both the aspects and responsibilities of a Jewish and democratic state present an ever-present tension in the IDF and secular society alike. Most significantly, the implications of a Jewish and democratic state are accompanied by the challenging reality that

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[106] Mordechai Kremnitzer, "The IDF: Army of the People or Army of God?," *Israel Democracy Institute,* Sept. 14 2014.
[107] Yedidya Stern, "Is There A Place for God in the Israeli Army?", *Israel Democracy Institute*, Nov. 9, 2014.

balances the intention to abide by moral and ethical standards put forth by Jewish tradition and fulfill the obligation to protect and defend the citizens of the state.

Conclusion:

Tensions, Challenges, and Questions

The moral-religious implications and ethical considerations that occupied many of the conversations about military strategy and conduct of war changed dramatically in the late 1980s when a new type of national threat faced the state of Israel. After the First Intifada (1987) the IDF and Israeli society were faced with the new threat of terrorism that indiscriminately targeted military personnel and civilians alike. IDF engagements shifted from conventional warfare against states and designated armies to violent and high-intensity confrontations in urban areas that targeted civilians, infrastructure, and the Israeli army on the homefront. A new challenge that faced the IDF and the foundational Jewish values that guided its ethical and moral code arose in the face of terrorism. Additionally, the guiding values of the democratic state were challenged and questions were posed regarding the proper way to address terrorist threats that represented both the obligation to defend its citizenry and the Jewish values upon which the state was founded.

Terrorism is a different category of combat because it is designed to inflict catastrophic destruction and loss of life regardless of combatant status. "Terrorism" can be defined as, the use of lethal violence or threats to intimidate or coerce a civilian population or government(s), with the goal of furthering political, social, or ideological objectives. The core characteristics of terrorist activity are fundamentally different than conventional warfare, that is, state vs. state, because those, directly and indirectly, involved in terror activity are both agent and victim, and the combat zone where terrorism occurs blurs the lines between the battlefield and civilian centers.[108] Therefore, conventional military strategy is less effective against engaging acts of

[108] Asa Kasher and Amos Yadlin "Military ethics of fighting terror: an Israeli perspective," 42.

terrorism becasue the attacks are primarily conducted in densely populated areas and target civilians and military personnel alike. Responding to and mitigating terrorism threats thus requires immense precision and strategic intent, and it also presents new and challenging types of moral and ethical questions and tensions. Those who engage in terrorist activity are not a party to the same "social contract" as their victims and do not abide by codes such as Ruach Tzahal which govern the moral and ethical conduct of war and combat engagements. These aspects of terrorism were considered by the IDF leadership in conjunction with Israeli scholars and philosophers to establish a blueprint for moving forward ethically and morally in the face of an inherently unethical and immoral type of combat.

In the early 2000s, Asa Kasher cooperated with military strategist and Major General (Res.) Amos Yadlin to develop moral and ethical guidelines for the IDF in response to terrororism, counterinsurgency, and otherwise unconventional warfare that was becoming a more prominent threat to IDF soldiers and Israeli society. Kasher and Yadlin published "Fighting Terror: A View from Israel" which, they argued, was an extension of Michael Walzer's "Just War Doctrine"[109] and established principles based on military ethics as they related to the new threats faced by the IDF. They defined an act of terror as:

> "An act, carried out by individuals or organizations, not on the behalf of any state, for the purpose of killing or otherwise injuring persons, insofar as they are members of a particular population, in order to instill fear among the members of that population (terrorize them), so as to cause them to change the nature of the related regime or of the related government or of policies implemented by related institutions, whether for political or ideological (inclluding religious) reasons."[110]

[109] Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, (New York: 1977).
[110] Asa Kasher and Amos Yadlin "Military ethics of fighting terror: an Israeli perspective, *Journal of Military Ethics* 4, no. 1 (2005), 42.

The assertion here is that terrorism is a fundamentally different category of warfare that can inflict catastrophic destruction and loss of life and because of this it cannot be engaged with conventional and familiar military intervention. The new principles of fighting terror presented more complicated and arguably morally ambiguous implications for the soldiers who were actively involved in these engagements because of the ambiguity with regard to the rules of engagement and the proximity to civilian areas during acts of terrorism.

To address this ambiguity, Asa Kasher published "The Principle of Distinction" in the early 2000s in an attempt to clarify the role of the military in combating terrorism and ethically ground the response in Jewish tradition. He argued that the inherent distinction between combatants and non-combatants was essential to both a western country's understanding of the just war doctrine and Jewish values that affirm the preservation of human life. In its essence, the Principle of Distinction provides a basis for ethical and moral engagement when fighting terrorism and it posits that military action may always be undertaken against combatants and never against civilians. This document is "of moral significance but it is not morally optimal"[111] because it attempted to establish a method by which moral and ethical components could meet and combat an inherently immoral method of war.

The idea that despite the immorality of terrorism, there can be a moral response that is based on the preservation of life and prohibition of needless destruction are both rooted in the Jewish values of pikuach nefesh and *bal taschit*, both of which were previously discussed.[112] Kasher asserts that:

> "It would be 'contrary to the laws of humanity' to employ 'arms which uselessly aggravate the suffering of disabled men,' combatants who have been disabled in

[111] Kasher, *the Principle of Distinction*, 154.
[112] See pages 17 and 24.

> order, 'to weaken the military forces of the enemy,' which is 'the only legitimate object which States should endeavor to accomplish during war.'"[113]

Kasher raises the challenge that faced the IDF when engaging with terrorism and notes that acts of terror are inherently immoral; despite this, the IDF still has a moral duty to be cognizant of the lives and safety of noncombatants and civilians and a ethical code to maintain when engaged in military action. The ultimate goal of such a doctrine is to develop a working practice that addresses the modern threats and is within the bounds of moral and ethical guidance, and Kasher maintains;

> "new distinctions, conceptions, and norms have been introduced within those principles or underlying them, but the moral attitude and the practical approach of the classical doctrine have, so we believe, been kept intact."[114]

Although killing another person is only morally justified in an act of self defense[115] or used as a last resort against the threat, pursuing a population with intent to kill or seriously injure or otherwise disrupt their way of life, i.e. to terrorize them, can harldy be considered a defensive last resort. Therefore, acts of terror are never morally justified. This foundational understanding Kasher maintains throughout this piece asserts that despite the inherent immorality of terrorism, the IDF has a obligation to address the threats in a moral and ethical way. Because of the realities of the political landscape and national defense in Israel, the military response should be conducted with the utmost care and with coherent moral and ethical standards.

The threats of terrorism to the Jewish state inherently challenge the values upon which the IDF and Israel were founded because terrorism is an entirely different concept not bound by moral and ethical strictures. This new threat more deeply and profoundly illuminates the balance between the Jewish and democratic values that drove the founding of Israel because, in the face

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[113] Asa Kasher, *the Principle of Distinction* (Tel Aviv, 2007), 153.
[114] Asa Kasher and Amos Yadlin "Military ethics of fighting terror: an Israeli perspective, *Journal of Military Ethics* 4, no. 1 (2005), 46.
[115] The *rodef* defense

of terrorism, therein lay an inherent moral and ethical ambiguity. The balance between the needs of national defense and upholding Jewish values is most prominent when combating terrorism because, as Kasher points out, "from the point of view of Military Ethics, a terrorist is a terrorist is a terrorist."[116] The tension here pints to the moral obligation of the IDF to avoid the slippery slope and waging unrestrained war under the aupices of "fighting terrorism." Kasher's Principle of Distinction and views on fighting terror provides a tangible baseline for moral and ethical conduct when fighting in unconventional warfare to address this tension. When the defending its citizens against terrorism, Kasher emphasizes the importance of upholding the principles of self-defense duty and and military necessity.[117] Both are necessary and proper and correspond with attempts to reconcile moral and ethical duty dictated by both Ruach Tzahal and Jewish tradition. Most significantly, by maintaining the duty of self- and communal defense and military necessity provides a moral standard by which the IDF be held accountable in its fight against terrorism. The reinterpretation of moral and ethical conduct in response to fighting terrorism and counterinsurgency raises important questions about the efficacy of the Jewish traditional discourse in relation to such a complex and immoral type of combat.

Terrorism challenges the binary of Commanded War and Discretionary War because fighting terrorism presents the IDF and the modern Jewish State with an entirely different style of war that is neither subject to the moral, ethical, or conventional understanding of combat nor explicitly mentioned in the Jewish traditional sources. The Jewish traditional discourse authorizes the use of force against imminent and lethal threats and in the defense of a state and its people; however, Jewish tradition also asserts that preventive or preemptive strikes may be authorized if there is a credible future threat. Herein lies the challenges when combating

[116] Asa Kasher and Amos Yadlin "Military ethics of fighting terror: an Israeli perspective," 44.
[117] Asa Kasher and Amos Yadlin "Military ethics of fighting terror: an Israeli perspective," 45.

terrorism through a lens of Jewish values: to what extent does Jewish tradition permit the use of preventive strikes to combat terrorists who are not actively engaged in terror? There can be an argument made that such preventive or preemptive strikes can be justified in accordance with Jewish tradition under the auspices of a Defensive War, but this does not address the ambiguity regarding imminent danger.

This ambiguity is most clearly illustrated by the controversy surrounding the IDF's strategy of targeted killings as a method of preventive action to eliminate terrorists before they can carry out their acts of violence:

> "Targeted killing is a lethal and irreversible counter-terrorism measure. Its use is governed by vague legal norms and controlled by security-oriented decision-making processes."[118]

In such cases, the IDF maintains that target killings are the result of actionable intelligence that leads them to known terrorists who present credible future threats to the security of the Jewish state. However, a known terrorist training in a camp in Gaza *before* executing his act of terrorism challenges the Jewish traditional idea of immindent danger because although he is a known terrorist, training to carry out an act of terror, he doesn't provide an immediate threat to the Jewish state. The principle of military necessity in a case such as this is also brought into question:

> "In order to adequately apply the principle of military necessity to the context of terrorism, it should be interpreted to include a requirement of responding to an imminent threat. In traditional warfare, any combatant is a legitimate military target, and killing such a combatant is considered to meet the test of military necessity. As explained above, members of terror organizations are not combatants, and therefore targeting such individuals will not always fulfill the military necessity requirement. For example, targeting a terror organization member who performs religious duties, serves as a cook, or even collects general

[118] Shiri Krebs, "Don't Ask Don't Tell Secrecy, Security, and Oversight of Targeted Killing Operations," *Israel Democracy Institute,* (Jerusalem, 2015), 1.

> information, cannot be justified as fulfilling a "concrete, direct and definite" military necessity."[119]

The prospect of targeted killing as a method of counterterrorism does present challenges to not only the military necessity and the IDF's obligation to national defense, so too does it challenge the Jewish traditional discourse regarding preventive and preemptive military action. If such military actions are qualified with actionable intelligence that demonstrate that there are credible terrorist threats, preventive and preemptive attacks would not only be justified but congruent with the Jewish traditional sources which permit such strikes to be conducted in the presence of an imminent or future threat. Still, the restraint demonstrated through the fulfillment of the criteria listed above, namely above, "concrete, direct, and definite," must be met in order to uphold the moral and ethical obligations that the IDF has to the state and its values. Although Jewish tradition posits that preventive and preemptive strikes are permitted under defensive circumstances, there is notable ambiguity about the role of the IDF in combating such threats. Ultimately the use of preventive and preemptive tactics such as targeted killing of known terrorists is a matter of military necessity to combat the political reality of the Jewish state. This tension illustrates the delicate balance that faces the Jewish and democratic state because although the action may be ambiguous according to Jewish tradition, it is necessary for the national defense of a modern state.

The challenging reality of securing a modern Jewish state calls for the understanding that the leaders and military officers must live in the tension that balances Jewish values with the needs of the state. The tension between reconciling Jewish traditional discourse regarding war and the use of force are illustrated in the implications for national defense and the obligation of the state in realpolitik. The more complex and morally ambiguous the threats facing Israel are,

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[119] Shiri Krebs, "Don't Ask Don't Tell Secrecy, Security, and Oversight of Targeted Killing Operations," 26.

the more that the needs of the national defense of the state create tension with the principles of Jewish values. This does not mean that Jewish values are abandoned in the face of terrorism and counterinsurgency as illustrated by the many examples of resources and documents designed to guide the moral and ethical conduct of the IDF. The IDF and its leadership are still beholden to Ruach Tzahal sustaining their obligation to maintain and demonstrate moral and ethical fortitude. Still, the reality of conventional war, terrorism, counterinsurgency, and other forms of armed conflict demand effective and strategic military action for the ultimate purpose of self and communal defense. The marriage between Jewish traditional sources and the needs of a modern state mean that although the IDF embraced many Jewish values derived from the Jewish traditional discourse, they must protect their citizens. Although, the path toward peace may present moral and ethical ambiguity in ways that may, at times, depart from Jewish values, the ultimate intention of defense of self and others is inextricably linked to Jewish tradition and the moral and ethical characteristics derived from Jewish values prescribed to the IDF serve as the foundation to guide its moral and ethical conduct.

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