

Does Purity have a Place on the Battlefield?

Tohar haNeshek's Place in Jewish Text and
Tradition

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Israel was founded in order to realize the Zionist ideal of a Jewish, sovereign and democratic state; it continues striving to embody these goals. These three aspirations intersect in the paragraph of the *Ruach Tzahal* – “the Spirit of the IDF” (the Israeli armed forces’ code of ethics) called *Tohar HaNeshek* (Purity of Arms.) *Tohar HaNeshek* states:

“The soldier shall make use of his weaponry and power only for the fulfillment of the mission and solely to the extent required; he will maintain his humanity even in combat. The soldier shall not employ his weaponry and power in order to harm non-combatants or prisoners of war, and shall do all he can to avoid harming their lives, body, honor and property.” (Israel Defense Forces, 2006)

The text is a mere two sentences long, but its implications are far reaching, with direct impact on Israel’s survival—both in terms of its ability to defend itself physically and in its ability to defend itself morally on the world stage. The doctrine is crucial to Israel’s sovereignty: without a standing army, the State of Israel could not maintain its self-determination. It is also crucial to the state’s democratic status: without guiding moral principles for its Army, the State of Israel would cease to be democratic. The *Ruach Tzahal* claims to draw upon both Jewish and universal moral tradition in its doctrine. This thesis seeks to probe the Jewish character of Israel’s *Tohar HaNeshek* doctrine. Does the principle of showing restraint in battle, especially not harming non-combatants have roots in Jewish text and tradition? Is there such a Jewish value as “purity of arms?” We seek to answer that question by studying the multi-vocal conversation that is Jewish legal text and then analyzing the extent to which a true purity of arms has been sought and achieved from the beginning of modern Jewish settlement in the Land of Israel through today.

Throughout time, as the central narrative of the Jewish people transitioned back and forth, from that of a wandering, land-less people to that of a mighty kingdom, and back again

through diaspora to modern Statehood, the way Jewish Law relates to warfare has fluctuated. It is sometimes practical and applicable and other times theoretical, aspirational and even fantastical. The Jewish Bible is a multi-vocal document that simultaneously idealizes peace and the holiness of human life but also contains accounts of brutal, genocidal war as commanded by God. Rabbinic writers of Talmudic and Medieval eras analyzed and codified the biblical literature about warfare, tempering down the scope of war for their own time and laying ideological roots of what later became *Tohar haNeshek*.

Whether or not the conception of *Tohar haNeshek* is rooted in Jewish thought is irrelevant if the Jewish State's armed forces do not abide by it. Throughout time the application of *Tohar haNeshek* has also changed. In the early idealistically motivated days of settlement in Israel, *Tohar haNeshek*'s predecessor: the policy of *havlagah* or "restraint" ruled the day. But terrorism was around even then of both sides of the conflict and there are accounts of Jews not governed by *Havlagah* in the confusing battlefields of even the *Yishuv* era Middle East. Today's reality of asymmetric warfare poses challenges to *Tohar haNeshek* and requires adaptation and new, creative methods. In addition to being the army of the Jewish State, the IDF has called itself the army of the Jewish People. Its most aspirational doctrine, *Ruach Tzahal*, at the heart of which lies *Tohar haNeshek*, claims to be guided by Jewish principles; that it employs Jewish teachings and laws to govern its decisions during combat. But is "Purity of Arms" a Jewish value?

Chapter 1: Bible

The Lord is a Man of war –Exodus 15:3

The concept of *Tohar haNeshek* implies that humanity must always be present in warfare. It calls for a protocol for maintaining humanity in combat. In asking, “is *Tohar haNeshek* based in Jewish Tradition or is it modern concept?” we can begin by looking to the Bible for texts relating to war, holy war and humanity’s place on the battlefield. In biblical texts, we will largely see examples of warfare that are ruthless and total—leaving little room for the consideration of individuals’ humanity. The biblical concept of *herem*—God’s commanded destruction of all living beings during warfare—goes against the modern idea of *Tohar haNeshek*. There is not often distinction between combatants and noncombatants or between necessary killing for self-defense and blanket elimination. Biblical war falls under the category of what would be considered genocide by today’s standards. In his book, *Holy War in Judaism*, Reuven Firestone begins the topic:

The Hebrew bible is full of stories, references and commands through which God sanctions mass violence against the enemies of Israel. Heroes such as Joshua, Gideon, Saul, David, and even Moses lead Israel into wars that devastate Israel’s enemies in response to God’s command. The People of Israel are sometimes referred to as ‘armies of God’ (Ex.7:4, 12:41) and Israelite warriors as ‘armies of the living God’ (1 Sam. 17:26). God gives advice to the warriors and provides strategy in some cases. In others, God even engages in the fray himself. This is classic ‘holy war’—that is, war that is holy because it is sanctioned or even commanded by God.¹

¹ Firestone, Reuven. *Holy War in Judaism: The Fall and Rise of a Controversial Idea*. New York, NY: Oxford, 2012. (p. 17)

However, this does not preclude the concept of *Tohar haNeshek* from being in line with Jewish textual tradition—on the contrary. James G. Williams writes that Biblical texts portrays “a certain ambiguity in the relation of the God of Israel to violence.” (12)² We will see some mitigating, moderate texts emphasizing the humanity of God’s creations, and the desire to maintain it even in war scenarios. We will also consider how much the biblical wartime texts can be considered relevant, applicable examples for the modern Israeli Army. In later chapters we will see how our Rabbinic Sages parsed out these examples for making laws, serving as a moderating force and then finally how different groups in modern Israel have related to them and implemented them in wartime policy.

Biblical warfare largely stems from the notion that Israel is a chosen people, granted a holy land. Israel is charged with cleansing this land of idolatry and therefore the idolatrous nations residing there.³ This concept has implications for modern Israeli society as well. However, so does the universalistic strain of biblical text. Genesis begins from a universal point of view. In *Torah*, as opposed to other contemporaneous origin stories, the world is created nonviolently. For example, in Mesopotamian mythology the world comes about when the God Marduk defeats and slays the goddess, Tiamat. In the Hebrew Bible, the creation of the world is missing the standard battle-scene. Genesis 5 shows the creation of man in the likeness of God, and then Adam’s children in his own likeness.⁴ The center of creation is humanity and man’s connection to the Divine, a strain that runs throughout Jewish belief and practice.

The first act of violence occurs early on in the biblical narrative. Cain and Abel’s tale is a human story about rivalry. After the murder, God places a mark on Cain, both singling him out as a murderer and promising to avenge others who might harm him. This mark serves to mitigate the

² Williams, James G. *The Bible, Violence and the Sacred* (Harper Collins, 1991), 6-70.

³ Firestone, Reuven. Holy War in Judaism: The Fall and Rise of a Controversial Idea. New York, NY: Oxford, 2012. (p. 22)

⁴ Williams, pp. 25-35

existence of rivalry from which the first act of violence stemmed by ending the blood shed with Cain through the act of protection. The story proposes restraint rather than violence, as Abel is the clear moral victor, unlike the parallel Roman origin story of Romulus and Remus which takes the side of the brother who commits murder and then founds the city of Rome. These mythical texts side with the murderer, assuming that communal survival takes precedence and the order of society cannot be risked to condemn the taker of life. On the other hand, there are textual parallels wherein Cain's character would have been sacrificed as an act of retribution. When Oedipus realizes his crime, he blinds himself as a sacrifice. In the Gerasene Demoniac tale of Mark 5, the outcast must live among tombs, "always crying out and bruising himself with stones. (5:5) This is another way of protecting the community. The Cain and Abel tale recognizes the inherent humanity of all, even the murderer, not putting the communal needs first.

The mark placed by God on Cain protects him from this cycle of vengeance and retribution.⁵ Genesis 4:15 states that Cain will be avenged sevenfold should he be harmed—thereby placing the protection of the murderer above the protection of the victim. This shows the biblical text coming out strongly against blood vengeance and the use of deadly force where it is not necessary for self-defense. "The Priestly story of beginnings, acutely sensitive to the human predicament of rivalry and violence, tries to replace Cain and Abel with Seth, who perpetuates the divine likeness in humankind. But the basic thrust of the biblical texts is not to let us ignore Cain and Abel, even while asking us to think in terms of a nonviolent social order." (Williams, 30) Genesis 4:10 poetically recounts that the blood of Abel "cried out from the earth." Williams interpreted this as conveying the message that human life is sacred and therefore reserved for God alone. (34)

Eventually, the universalism of Genesis must wrestle with the particularism introduced in Abraham's covenant and centralized in later chapters of the Hebrew bible. When God's special relationship with Abraham is sparked, he is promised in Genesis 12 that "all the families of the earth

⁵ Williams, p. 36

shall bless themselves by you.” With chosenness, comes both special privileges and special responsibilities. Abraham’s people must be held to a higher moral code if they are to be a source of blessing, but at the same time, placing them apart from other peoples can be problematic in terms of respecting the equal humanity of their enemies. Israel is described in language likening it to a king, and referred to it as God’s first-born child who would never be disowned despite merit. (Ex 4:22-23, Hos 11, Jer 31:18-20) As Eisen puts it, “The most serious difficulty here from an ethical standpoint is that Israel’s special status encourages a chauvinism that runs the risk of inspiring intolerance and violence against outsiders.”⁶ (20) This differentiation creates a framework for rivalry and war. It is based upon the notion of scarcity—if Israel is blessed above all others, then there must not be enough divine favor to go around. This competition could lead to war, violence and losing sight of the humanity of all involved. Jeremy Cott writes, “When one believes oneself to be elected, one tends to want to do away with everyone who is not.”⁷ Regina Schwartz takes it a step further. She writes that identity is bound up in possessing those things that are in short supply, like land and wealth. When a sense of importance is based on scarcity, identity itself is a limited resource. This can often lead to violence and subjugation.⁸

In addition to the centrality of Israel as the Chosen People and the violence and warfare possibly implicated in attaining and maintaining this role, some scholars maintain that war is a central aspect of Israel’s biblical identity. Although the creation story of the world as portrayed in the Hebrew bible is one of peace and universalism, the birth story of Israel, as portrayed in Exodus is something entirely different. The battle between Israel and Egypt is one of scarcity and competition—an *us or*

⁶ Eisen, Robert. The Peace and Violence of Judaism. New York, NY: Oxford University Press. 2011 (p. 19)

⁷ Cott, Jeremy. “The Biblical Problem of Election,” *JES* 21 (Spring 1984). P. 204.

⁸ Schwartz, Regina. *The Curse of Cain: The Violent Legacy of Monotheism*. Chicago, University of Chicago Press: 1997

them survival story. The Hebrew Bible and the God it portrays have long been criticized as violent, bloody and vengeful, especially in comparison with Christian Scriptures. Schwartz writes that even though parts of the Hebrew Bible portray God as “infinitely giving” it is the image of a God who is violent and rejecting of outsiders that has held sway in Western culture. She blames these biblical texts and their role in society today as contributing to contemporary nationalistic violence.⁹ “War was not just a feature of Israel's experience, or even of its religion. Ancient Israel as the people of God was a military camp, and its God was a warrior. War was at the heart of Israel's religion and thus of its identity.” (3) ¹⁰

Schwally contends that war was a means of worship in and of itself for the ancient Israelites. “For ancient Israel war is a continuous, highly expanded sacrifice. The cult was not simply an important feature of warfare or a set of rituals attending it; rather, warfare was an important feature of the cult.” Like every other nation of antiquity, Israel’s God participated in war and was worshipped as a warrior. Unlike the other nations of antiquity, Israel put faith first and minimized the human participation necessary.¹¹ Some scholars refer to the Ancient Israelites as a war confederation with God placed at the head of this union, the guarantor of social order. ¹² Henning Fredrickson, writing in 1945, describes two different ways that God acts as a warrior in the Hebrew Bible. In one scenario, God is the commander of armies, either leading human warriors or cosmic forces to come to Israel’s aid in battles against foreign armies. In the second scenario, God acts as a “solitary warrior” fighting the supernatural forces of chaos and enemy nations alike.¹³

⁹ Schwartz: 1997

¹⁰ Ollenburger, Ben. “Gerhard von Rad’s Theory of Holy War,” in Gerhard von Rad, *Holy War in Ancient Israel* (Grand Rapids: Eerdmans, 1991), 1-33

¹¹ Schwally, Friedrich. Holy War in Ancient Israel. 1901

¹² Weber, Max. Ancient Judaism. 1919

¹³ Ollenburger, p. 11-12

Firestone defines Holy War as wars that are “sanctioned or even commanded by God.” These wars have a straightforward formula: when the people are obedient, their wars succeed and when they disobey, the wars fail.¹⁴ This is different from *Jihad*, the technical term used in Islam for wars used to convert infidels.¹⁵ The Hebrew Bible discusses two codes of war: wars commanded by God against a specific enemy and wars commanded by a human authority for self-serving purposes. What the Bible avoids codifying, and that comes later in Jewish tradition, are wars of self-defense and forbidden types of war.¹⁶

One type of war discussed in the Hebrew Bible is war commanded by God. Later deemed *milkhevet mitzvah*, the prevalent sources for this type of commanded, total war are found in Deuteronomy.¹⁷ God commands the destruction of the seven nations of people who inhabited the land of Canaan,¹⁸ as well as the nation of Amalek, “wherever they might dwell.”¹⁹ The destruction of the seven nations served to purify the promised Land of Israel for inhabitation by the Israelites so they would not learn the ways of idolatry²⁰, while the war against Amalek was revenge for their insidious attacks during Israel’s flight from Egypt in Exodus 17.

This Biblical type of “commanded” warfare is brutal and total and seen as nothing short of a religious duty. It was justified because it was commanded directly by God and rather than pursuing

¹⁴ Firestone, p. 18

¹⁵ Ollenburger, p. 5-6

¹⁶ Afterman, Adam & Gedaliah. “Judaism.” *Religion, War and Ethics: a Sourcebook of Textual Traditions*. Ed. Reichberg, Gregory M. & Syse, Henrik. New York: Cambridge University, 2014. (p. 11)

¹⁷ *Mishnah Sotah* 8:7

¹⁸ Deuteronomy 20:17

¹⁹ Exodus 17:8-16 & Deuteronomy 25:17-19

²⁰ Deuteronomy 20:18

goals like territorial expansion, glorification of rulers, or even protecting the safety of the nation, like the second category of warfare, these types of wars had the core of the religion hanging in the balance. They were portrayed as protecting the Israelites' monotheistic practices from idolatry²¹—whereas the second type of warfare was fought for earthly matters, this type of war was fought directly for God. In regards to the nearby cities that the seven nations inhabit during the Canaanite conquest, God instructs Israelite warriors to “save alive nothing that breathes.”²² King Saul failed to comply with this type of annihilation against the Amalekites, which Afterman points out, was not part of the time's conventional warfare. Saul spared only the Amalekite king and the livestock. For this, God punished him by removing him from the throne in favor of David.²³

This type of warfare stands in opposition to the spirit behind *Tohar haNeshek*, however even the Bible itself casts doubt on whether or not genocidal annihilations were ever really completely carried out at the hands of the Israelites.²⁴ I Kings 9:20-21 reads, “All the people who were left of the Amorites, the Hittites, the Perizzites, the Hivites, and the Jebusites, who were not of the people of Israel—their descendants who were left after them in the land, whom the people of Israel were unable to devote to destruction—these Solomon drafted to be slaves, and so they are to this day.” The statement is corroborated in 2 Chronicles 8:7-8. This implies that the extreme rhetoric with which God commanded them to kill every living thing among the seven tribes was not carried out literally in biblical narrative. The actual description of biblical warfare does not match the description of biblical warfare. The Bible introduces a theory of Holy War, conceptualized as total warfare or genocide. However, as we read in Chronicles and Kings, this theory does not match biblical narrative. As will be discussed later, the Rabbis further ruled these commanded wars against specific peoples from the Bible

²¹ Afterman & Gedaliah, p. 12

²² Deuteronomy 20:16

²³ 1 Samuel 15

²⁴ Afterman & Gedaliah, p. 11

to be null and void in later times, because the tribes and the Amalekites could no longer be identified.

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The second category of war found in the Hebrew Bible describes wars initiated by a different source than God and therefore binds the Israelite fighters to a different code of conduct. These are wars initiated by a political entity rather than by God and they are against bodies other than the Seven Nations or Amalek. As previously stated, and as we will extrapolate on later, rules regarding divinely commanded warfare are largely thought to be irrelevant in modern times according to Jewish law. Therefore, it is this second type of warfare, *milkhemet hareshut*²⁶—wars that are “permitted” and initiated by a political entity, that have more important implications for modern Israel. “Permitted wars” were generally initiated by the Kings of Israel in order to expand their borders, increase their glory or to protect against invaders.²⁷

In this code of warfare, as opposed to the heavily contradictory *milkhevot mitzvah*—biblically commanded wars—we begin to see the early formation of a Purity of Arms of sorts. *Tohar haNeshek* states that soldiers should exercise some sort of restraint in warfare, utilize a different set of standards toward combatants and non-combatants and ultimately “maintain their humanity” in battle. These values can be traced to traditions originating in Deuteronomy 20. This section of Torah is part of Moses’ long, final oration to his people. He must instruct them on the proper way to wage war before they enter the Land of Israel without him, in order to conquer it from the Canaanites. It is “among the most detailed biblical discussions on norms of warfare” and, like *Tohar haNeshek*, lays out principles of proper conduct in war befitting one of God’s people.²⁸

²⁵ *Mishna Yadayim* 4:4

²⁶ *Mishnah Sotah* 8:7 a war fought by the king/government for reasons of state

²⁷ *Mishnah Sanhedrin* 1:5

²⁸ Afterman & Gedaliah, p. 12

Deuteronomy 20 begins with an assurance that God will be present along with the Israelite fighters in battle. It then describes those who should be exempt from participation in battle at a given time including the cowardly as well as men who have unfinished business in the form of un-harvested vineyards, un-dedicated new homes and un-consummated marriages. The second part of Moses' words are most applicable to *Tohar haNeshek*, as they lay out terms of engagement that soften and limit the type of war described against the Amalekites and Seven nations in the same oration.

When you draw near to a city to fight against it, offer terms of peace to it. And if it responds to you peaceably and it opens to you, then all the people who are found in it shall do forced labor for you and shall serve you. (Deut 20:10-11)

You shall put all its males to the sword, but the women and the little ones, the livestock, and everything else in the city, all its spoil, you shall take as plunder for yourselves. (Deut 20:13-14)

When you besiege a city for a long time, making war against it in order to take it, you shall not destroy its trees by wielding an axe against them. You may eat from them, but you shall not cut them down. Are the trees in the field human, that they should be besieged by you? (Deut 20:19)

While the measures to be taken against the nearby tribes (the Seven Nations) outlined here are harsh, here this passage lays out some mitigating terms for farther away enemies. It first limits the force used in general, as peace is the preferable outcome and must be offered first. If it is rejected, it secondly limits the use of force against non-combatants (women, children, animals and even plants). The focus on not destroying fruit trees emphasizes the need to avoid harming innocent bystanders. "The fighters are forbidden to destroy them, as they are defenseless in the face of the attacking force."²⁹ On Deuteronomy 20:19, Rashi comments that the offer of peace must last for 2-3 days and that trees cannot be destroyed or starved. This sentiment is especially reminiscent of *Tohar haNeshek*, which states that soldiers may only make use of their weapons to the extent required in order to fulfill the

²⁹ Afterman & Gedaliah, p. 12

mission. Just as IDF forces are instructed to take careful measures to avoid harming non-combatants and their property, Moses instructed the Israelites to do the same, going so far as to speak specifically about fruit trees. However, in Moses' time it was customary to loot and plunder possessions and take slaves, which is no longer accepted and is outlawed by the IDF.

The wars fought in the Hebrew Bible seem to demonstrate the opposite of *Tohar haNeshek* with their totalitarian and blood-thirsty nature. In many instances Israelite warriors go out of their way to harm non-combatants as defined in Biblical times as women, children and property. The central principal of *Tohar haNeshek*, that a soldier should maintain humanity in the midst of combat, runs contrary to many of the instructions Israelite soldiers are given in warfare. They seemingly must force themselves to disregard humanity altogether—their own, that of the people they face on the battlefield and that of non-combatants (including animals!) among the enemy camp. However, there are some traces of *Tohar haNeshek*'s spirit as early as Deuteronomy.

The IDF doctrine states, “the soldier shall make use of his weaponry and power only for the fulfillment of the mission and solely to the extent required.” In Moses' final oration, he instructs the people to offer peace before war when conquering the Land, and only revert to “weaponry and power” as a last resort. The mission here is conquering the Land and therefore by only using force when peace is rejected, the Israelite troops would be following the IDF's practice of only using their weapons for the fulfillment of the mission. Moses instructs to spare the women, children, livestock and trees which echoes the part of the doctrine reading “the soldier shall not make use of his weaponry or power in order to harm non-combatants or prisoners of war.”

The Bible displays some traces of the spirit behind *Tohar haNeshek*. However, no biblical text goes as far as to limit the use of force in battle or protect the rights of enemy non-combatants. Biblical sources lack a clear definition distinguishing combatants from civilians. Rather than avoiding the harm of “lives, body, honor and property,” like the IDF doctrine states, Moses tells his warriors to take the non-combatants as plunder. Whereas the IDF requires soldiers only use their weapons to the extent required, Moses tells the Israelites to put all men to the sword once a war has been engaged. However,

considering other instances of war in the Hebrew Bible as well as extemporaneous sources, sources like Deuteronomy 20 serve as moderating forces to all-out war. Bible seen as a link between ancient Israelite warfare and modern day Israeli code. However, it alone cannot provide a good source for contemporary Israeli terms of engagement and conduct in warfare. When the IDF Code of Ethics claims to be based, in part, upon the traditions of the Jewish People throughout their history, it references the ideal of limited warfare evident in the Bible which is further developed by later Jewish sources. *Tohar haNeshek* is based on a purposeful and intentional reading of the Biblical sources, through the interpretive lens colored by later tradition and modern conceptions of morality. IDF doctrine joins in conversation with the oldest Jewish texts in order to meet the moral standards that Israel's status as a Democratic and Jewish state demand.

Chapter 2: Rabbinic Texts

Great is peace for God's name is Peace – Numbers Rabbah 11:7

The *Ruach Tzahal*, “Spirit of the Israel Defense Forces” is the Israeli Armed Forces’ document laying out the ethical mores that will govern the conduct of its soldiers. It claims to draw upon “the tradition of the Jewish People throughout their history.”¹ In examining the use of indiscriminate use of force in Biblical accounts of war, it is clear that Purity of Arms did not govern the wartime practices of the ancient Israelites. But through legal exegesis, Rabbinic texts become a moderating force in the laws of war of the Jewish tradition. In today’s Jewish world, Rabbinic rulings are more influential than the Biblical text in how Jews live their lives and in how practices arise to govern the Jewish State. These texts are very important for *Tohar haNeshek* in practice because in many cases they overrule the war like nature of the Biblical sources. In Rabbinic Judaism we begin to see the roots of a true Purity of Arms.

Before looking into what the Rabbis have to say about the use of restraint in warfare, it is worth briefly examining the historical context of rabbinic activity. Rabbinic Judaism began in the Land of Israel at the beginning of the common era. During this time period, Jews experienced two major wars. In the first, the Jews rebelled against the Roman rulers of Israel, leading to the destruction of the second temple in 70 CE. The second major war was a severely crushed revolt led by Shimon bar Kokhba in 132-135. After the disastrous results of both of these wars, the

¹ Israel Defense Forces

[http://www.jewishvirtuallibrary.org/jsource/Society_&_Culture/IDF_ethics.html]

Rabbis saw their communities and institutions fragmented and exiled. The Rabbis came to power largely because of their ability to offer continuity in religious practice without a temple and without centralized government and population.² The Rabbis were products of their life experiences and they brought their own encounters with war to their interpretations of legal text.

The war of Bible is that of the conqueror—a victorious and protected people who go to war alongside the divine power. The laws and instructions describing biblical warfare ~~is~~ are presented as a set of mores to guide battles that are real and imminent. Rabbinic warfare is different. Since the second-century rebellion of Bar Kokhba, Jews "were victims of war rather than agents of war. Without a state and an army, Jews, with a diaspora mentality did not have the privilege or the need to articulate views on the ethics of war."³ We will see that the rabbis did articulate views about conduct in war and from these legal texts we can glean an idea about their views on the ethics of war. However, their approach to war, while often practical, was never one of practice. They legislated based on their situation as a community lacking sovereignty, always living under the governing hand of foreign bodies. In their opinions we can see their need to keep the people safe and perhaps also to retain their own power. In the societies of Palestine and Babylonia, where there were no Jewish priests or kings, the Rabbis wielded prominence and a certain degree of influence over society. By advocating moderation in warfare, they could help

² Schiffman, Lawrence H. *From Text to Tradition: A History of Second Temple and Rabbinic Judaism*. Hoboken, NJ: Ktav, 1991.

³ Afterman, Adam & Gedaliah. "Judaism." *Religion, War and Ethics: a Sourcebook of Textual Traditions*. Ed. Reichberg, Gregory M. & Syse, Henrik. New York: Cambridge University, 2014. (p. 8)

ensure that their status would not erode. By creating texts that depict the Jewish people as having restraint in battle, they could also keep their adherents from rebelling and endangering the community. According to Eisen, “An important aspect of rabbinic Judaism that allows the rabbis to develop their peaceful ethic is their methodology in interpreting the biblical text...the rabbis were bold and daring interpreters willing to impart innovative meanings to the biblical text in order to support their views.”⁴

To the rabbis, warfare was theoretical. Their categories of war and the way they approach violence vs. restraint of arms is always in reference to imagined battles that will be fought at some hypothetical time in the future. As the CCAR Responsa Committee put it, “It is instructive that Maimonides in his *Mishneh Torah* codifies the Talmudic discussions of the rules of war under the heading *Hilkhos Melakhim Umilchemoteihem*, “The Laws of Kings and their Wars,” and that the very first law he mentions is the Biblical commandment “to appoint a king over Israel. (Deuteronomy 17:15)”⁵ The rabbis held a non-violent theology stemming from the destruction of the temple. They believed their temple was destroyed and they were exiled their land due to the sins of the people—*mipney hata’einu*—as stated in the Festival Liturgy. In order to mend this great tragedy their only task was to piously abide by halakha until the arrival of the messiah who would lead them back to the land.⁶ At that time, and at that time only, wars would be fought and even then these would be holy wars again. Rabbinic texts never respond to and

⁴ Eisen, Robert. The Peace and Violence of Judaism. New York, NY: Oxford University Press. 2011 (p. 96)

⁵ Central Conference of American Rabbis. Responsa 5762.8 *Preventive War*.

<http://ccarnet.org/responsa/nyp-no-5762-8/> Accessed 2/29/17

⁶ Eisen, P. 83

interact with the here and now governance of a standing army the way *Ruach Tzahal* must. That is why it is so interesting to see how Jewish texts have played out in the IDF. The IDF are living armed forces, making important decisions, in real time. Yet, the IDF code of ethics claims to abide by the spirit of texts written long ago by a people with no army. There is a tension today in the modern State of Israel, as there are religious Jews living there who vocally want the state to conduct itself and its wars according to the spirit of the law. As a modern, western and democratic state, Israel is constantly walking a fine line between these often contradictory influences.

For all these reasons, Talmudic law serves as a mitigating force against the war of the Bible. Ehud Luz writes that where ~~Torah~~ the Bible appears to be somewhat ambivalent toward violence, “there is an even greater ambivalence toward military power in rabbinic literature.” Rabbinic Judaism is “not pacifistic, but tends to impose severe limitations on the use of force...and to sublimate or transform the martial ethos of Bible”⁷ Eisen points out that this stance is somewhat remarkable considering the suffering imposed on the Rabbis by their Roman rulers. Social psychologists have proven that “ethnic and national groups that have experienced extensive persecution are far more likely to adopt hostile views of outsiders than those that have not.”⁸

Halakha- Rabbinic law that was derived from the Rabbis’ interpretation of scriptural text- divides all wars into two main categories: *Milkhemet Mitzvah* (commanded wars) and *Milkhemet*

⁷ Luz, Ehud. Wrestling with an Angel: Power, Morality and Jewish Identity, trans. Michael Swirsky. New Haven: Yale University press, 2003. (pp. 21-24.)

⁸ Eisen, P. 80

Reshut (discretionary wars).⁹ As the rabbis never actually waged war there is not too much halakha of war. In fact the *Mishnah* (redacted around 200 c.e.) – the seminal work of Jewish law on which most later legal discussions were based- mentions this distinction only two times. The first is in Tractate *Sanhedrin*¹⁰ while discussing the king’s authority in drafting troops and the second is found in *Sotah*¹¹ in a discussion about military deferments.¹² These legal definitions are extrapolated from the text of Deuteronomy 20 discussed in Chapter One. Another significant rabbinic addition to war halakha is the *nesuach milkhama*¹³. This is a war priest whose existence originated in Deuteronomy, but the rabbis inferred that he was a special priest “anointed” for the purpose of leading the Israelites into war and ensuring God’s very presence fighting alongside them. The main sources about this war categorization can be found in Maimonides’ *Mishneh Torah* in tractate *Melakhim* and in the Babylonian Talmud in tractate *Sotah 44b*. According to Maimonides’ wording, both types of wars are really only waged by kings.

“The primary war which the king wages is a commanded war. What is a commanded war? It is war against the seven [Canaanite] nations, war against Amalek, and delivering Israel from an attacking enemy. Thereafter he [may] engage in a discretionary war, which is war that he wages against the rest of the nations to extend the borders of Israel and to enhance his greatness and prestige.” – *Mishneh Torah Hilkhos Melachim 5:1*

⁹ Eisen, P. 93

¹⁰ Mishnah Sanhedrin 1:5 and 2:4

¹¹ Mishnah Sotah 8:7

¹² Firestone, Reuven. *Holy War in Judaism: The Fall and Rise of a Controversial Idea*. New York, NY: Oxford, 2012. (p. 77)

¹³ Mishnah Sota 8:7

Milkhemet Mitzvah refers to wars that can be justified in some way as commanded by God. Maimonides explains that commanded wars include those commanded by God and also wars of self-defense. This is the category the wars of conquest against the Amalekites and the Canaanites fall into because we have the commandment documented in Torah. Talmud also teaches that this category includes those necessary in order to “assist the Jews against enemies who have attacked them.”¹⁴ *Milkhemet Reshut* includes wars that are initiated with the goal of expanding the borders of Israel, like the wars King David waged.¹⁵ These “discretionary wars” are meant to increase Israel’s size and therefore the king’s prestige.¹⁶ Additionally, a third category of preventative war exists in Rabbinic thought. This type of war presumes some loss of innocent life, but is considered a preventative war, to prevent a larger, more devastating destruction. This category is introduced by the Rabbinic sage, Rava. It is a war fought in order to “weaken the Gentiles so that they will not attack.”¹⁷ This is a middle category—it is not necessary a commanded war, yet it is also not entirely discretionary. Some of Israel’s contemporary operations, such as those in the realm of counter-terrorism, might fall into this category.

With these categories the rabbis seem to almost preempt any justification of waging biblical style, all-out warfare in later times. It is hard to make the case that God directly commands, and accompanies into war, in the style of the wars to conquer the Land of Israel included in the category of *milkhemet mitzvah*. First of all, no *meshuach milkhama* – special war

¹⁴ Mishnah Sotah 8:7 and Babylonian Talmud Sotah 44B

¹⁵ Babylonian Talmud *Sotah* 44b

¹⁶ Maimonides Mishneh Torah *Melakhim* 5:1

¹⁷ Babylonian Talmud *Sotah* 44b

priest—can exist and lead the troops after the destruction of the Temple because the Priesthood is defunct. Secondly, the rabbis assert that we can no longer identify the Canaanites because the nations have been too intermingled. In the ancient world, conquering nations exiled groups of the defeated people to different places to break up strongholds and render them unable to organize a retaliation, like what the Babylonians did to Israel. Wars cannot be justified under the documented commandment to utterly destroy the Canaanites because we cannot find them.¹⁸ Similarly, the rabbis figure that the commandment to destroy the Amalekites is no longer operational because of their disappearance as a people, like the Canaanites,¹⁹ or perhaps because the war against them is intended to be waged once the messianic era arrives.²⁰ Moshe Greenberg writes, “The biblical injunctions to take the land are embedded in narrative and give the appearance of being addressed to a specific generation, like the commandment to annihilate or expel the natives of Canaan, which refers specifically to the seven Canaanite nations. Now, had there been any inclination to generalize the law of extermination, it would have been easy for the Talmudic sages to. But in fact the sages left the ancient herem law as they found it: applying to

¹⁸ Maimonides *Mishneh Torah Melakhim* 6:1

¹⁹ Babad, R. Joseph. *Minhat Hinukh*. Mitzvah no. 604. New York: Pardes, n.d. (referenced in Eisen, 94)

²⁰ R. Moses of Coucy. *Sefer Mitsvot Gadol*. Negative mitzvah no. 226 Venice, 1522. And *hagahot Maymoniyyot on Mishneh Torah Melachim*, chapter 5, letter *alef*. (referenced in Eisen, 94)

seven extinct nations.”²¹ As far as *milchemet reshut*, there are certain stipulations put in place that makes it impossible to define a war in this category after the destruction of the temple and its hierarchy which don’t exist anymore by the fifth century. “They must be initiated by a king; they must be approved by the Sanhedrin, the highest rabbinic court in Temple times; and the king must consult the *urim ve-tumim*, an oracle attached to the breastplate of the high priest.”²²

However, the type of commanded war fought in self-defense is highly relevant to Israel. This is the only type of war which the IDF Code of Ethics attributes its need for existence- this value is evident in the very name of the armed forces- The Israel *Defense* Forces. “Our tradition rejects pacifism as a policy of national defense. The Torah does not expect us to submit to armed aggression, to stand silently and passively when others seek to conquer and dominate us. The people of Israel have the right to defend themselves from attack. Indeed, we are commanded to do so: the obligation to defend and preserve our lives overrides virtually every other religious duty.”²³

Self-defense in Judaism, whether Biblical or Rabbinic is a commandment and a duty. Exodus 22 speaks of a thief who breaks in and the homeowner’s right to kill him. The Rabbis take up the issue of this intruder, who is presumably there to do harm, since he comes at night when the homeowner is likely to be home. He is called a *rotzeach*. “If a man comes to kill you,

²¹ Greenberg, Moshe. “On the Political User of the Bible in Modern Israel: An Engaged Critique,” in *Pomegranates and golden bells: stuies in biblical, Jewish and Near Eastern ritual, law and literature*. Eisenbrauns: 1995. P. 467-469

²² Eisen, P. 93 sources- Babylonian Talmud *Berakhot* 3b; *Sanhedrin* 2a, 16a, 20a and sources for *urim ve-tumim* are Exodus 28:30, Leviticus 8:6-8, and Numbers 27:21

²³ Central Conference of American Rabbis

rise early and kill him first.”²⁴ Talmud teaches that it is a commandment to defend ourselves and others against this *rotzeach* at the cost of the would-be killer’s life.²⁵ However, Rambam clarifies. When a murder or rape could have been prevented by some non-lethal means, such as maiming of limbs, but instead it is stopped with deadly force, the “defender” is actually considered a murderer.²⁶ Rambam is arguing for the value of self-defense within the parameters of *Tohar haNeshek*. Force can only be used to the extent it is necessary, no matter how insidious a would be crime or criminal it is being exerted against. As we will discuss later, the extent of force necessary to defend Israel is an elusive measurement. Rambam addresses this conundrum. If there is no way to accurately measure the extent of force necessary to stop the *rodef*, one should kill him.²⁷

Rabbinic sources dealing with Romans serve to temper violence. The two crushed rebellions against Romans mentioned at the beginning of this chapter were met with some rabbinic approval. For example, the respected Rabbi Akiva supported the Bar Kochba revolt.²⁸ But other rabbis found the use of warfare unnecessary and showed their disapproval in their descriptions and dealing with Bar Kochba. “War had turned out to be too costly to keep in the political repertoire of Judaism. After two ruinous failures by Jewish zealots to remove Roman control of the Land of Israel by invoking war in the name of God, Jewish leaders tried to eliminate holy war from the range of actions available to the community. Their goal was to

²⁴ Babylonian Talmud, *Berakhot* 58a

²⁵ Babylonian Talmud, *Sanhedrin* 74a

²⁶ Maimonidea. *Mishneh Torah, Hilkhhot Rotzeach u’Shmirat Nefesh*. 1:13

²⁷ Maimonides. *Mishneh Torah, Hilkhhot Rotzeach u’Shmirat Nefesh*. 1:7

²⁸ Jerusalem Talmud *ta’anit* 4:6 (68d)

remove a deadly wild card that had proven so overwhelmingly disastrous... While not all the sages of Rabbinic Judaism initially agreed, they eventually came to the conclusion that they must prevent holy war from being applied in their own time, and they did this through unique strategies of scriptural interpretation.”²⁹ Jerusalem Talmud tractate *Ta’anit* 4:6, recounts a rabbinic version of the Bar Kochba revolt in which Bar Kochba acts reactionary and unnecessarily kills Rabbi Eleazar after assuming that the Rabbi had lied about a conversation. God’s response is to curse Bar Kochba: “woe to the worthless shepherd who abandons his flock! Let a sword descend upon his arm and his right eye. His arm will wither and his right eye will be blinded.”³⁰ Deuteronomy Rabbah 1:19 says in the name of Rav Hiyya, “[Moses] said to them [Israel]: ‘If you see that he seeks war against you, do not resist but hide from him until his world has passed.’”³¹ This text is a rabbinic interpretation of how Moses instructed the Israelites to respond to aggression and threats from the Edomites, descendants of Esau. Whereas *Tohar haNeshek* states, “The IDF serviceman will use force of arms only for the purpose of subduing the enemy to the necessary extent and will limit his use of force so as to prevent unnecessary harm to human life and limb, dignity and property,” Deuteronomy Rabbah supports the spirit of restraining the use of weaponry. It advocates non-violent response in a situation where taking up arms could easily be justified, but there is a chance that mere avoidance will result in less blood shed on both sides. In this case, Israel was perhaps even endangering themselves, but Moses instructed them to take the more moderate approach.

²⁹ Firestone, p. 319

³⁰ Jerusalem Talmud *Ta’anit* 4:6 (68d) quoting Zacheria 11:17

³¹ Eisen, P. 82

There are plenty of general rabbinic statements eschewing war and warlike activities in a general sense. The Rabbis were men whose worth came from their brains and their power from their academic accomplishments. Warfare and political power, which often go hand in hand, were antithetical to their own existence. In Babylonian Talmud *Bava Kamma* 93a, R. Abbahu states: “A man should always strive to be of the persecuted rather than of the persecutors because there is none among the birds more persecuted than doves and pigeons, and yet Scripture made them [alone among birds] eligible for the altar.” In *Mishna Middot* 4:3, the rabbis interpret Exodus 20:22, which forbids this same altar for offering sacrifices to be hewn with metal, the implement of waging war, as a cry of peace. *Mekhilta de Rabi Yishmael (Ba Hodesh 11)* extols the virtue of a person who is a peacemaker. Just as we cannot use a sword to cut a stone which will become an altar, we cannot use weapons or violence against one who brings peace because he is conflated with a holy altar, also bringing peace. Babylonian Talmud *Sanhedrin* 82a forbids anyone to enter a house of study carrying a weapon because “Torah study and violence are incompatible.”³²

Not only do the rabbis extol the virtues of restraint in battle and non-violence in their legal texts, but there is a distinct trend in their biblical exegesis that attempts to obfuscate, if not apologize for, some of the warlike texts in Torah. These texts of Rabbinic exegesis seem to speak directly to the clause of *Tohar haNeshek* and the way it is invoked in Israeli society today. The rabbis, like the IDF Code of Ethics, are deeply uncomfortable with the idea of collateral damage in war. In the case of Genesis 15:1, Rabbinic interpretation inserts the value of *Tohar haNeshek* into a seemingly unrelated biblical narrative. God tells Abraham to “fear not.” In asking what Abraham was scared of, the Rabbis of *Genesis Rabbah* state that in fighting off his nephew Lot’s

³² Eisen, P. 87-88

captors, Abraham feared that he might have killed an innocent bystander. Similarly, a famous rabbinic parable explains why the *hallel* service, verses of praise recited during prayer, is shortened on Passover. When the Red Sea closes, trapping Pharaoh's army and its animals who pursued the Israelites across, the angels wanted to sing out in praise but God admonished them, explain the rabbis. "My creatures are drowning in the sea, and you sing songs of praise?"³³ The rabbis' explanation makes it seem as if even God and Abraham were bound by the morality of *Tohar haNeshek*. Even at the Sea, when force was used to the "necessary extent" no noncombatants were harmed, the basic principle of "maintaining humanity in combat" is at play.³⁴

In dealing with the most brutal of warfare texts in Torah, the conquest passages that were discussed in the previous chapter, the rabbis attempt to retell them from a nuanced perspective in which purity of arms is applied and the carnage only occurred when it was more necessary. In dealing with the Canaanite conquest, there are a number of rabbinic texts that make it seem less like the all out warfare recounted in Torah.

"According to some sources, God commanded Moses to go to war with Sihon [the Amorite king ruling territory the Israelites had to cross on their journey toward the promised land] but he refused to do so because he did not want to kill the innocent with the guilty, and he therefore approached Sihon with the hope of making peace. In one of these sources, God was so impressed by Moses' actions that he made Moses's initiative the rule for all subsequent confrontations with the Canaanite nations. Joshua was therefore instructed by God to offer the Canaanites three choices before war on them: surrender, depart the land of Canaan, or fight. We

³³ Babylonian Talmud *Megillah* 10b

³⁴ IDF *Ruach Tzahal* <https://www.idfblog.com/about-the-idf/idf-code-of-ethics/>

are told that the Gibeonites made peace, the Girgashites left and were rewarded by being given another land, while the rest of the nations chose to fight and were annihilated. (Numbers Rabbah 19:27, Tanhuma Tsav 3, Deuteronomy Rabbah 13-14) This fanciful retelling of the biblical narrative seems to reflect an attempt on the part of the rabbis to soften the brutality of the Canaanite conquest.”³⁵

One of the most brutal instructions in the Bible is the commandment to destroy Amalek “wherever they might dwell” indiscriminate of combatants and non-combatants not to mention animals and people or adults and children.³⁶ Babylonian Talmud *Yoma* 22b directly addresses the inhumanity of this scenario: “When the Holy One, blessed be He, said to Saul, ‘Now go, attack Amalek’ (I Sam. 15.5), he said, ‘If on account of one person, the Torah said: Perform the ceremony of the heifer whose neck is broken, how much more to all these persons! And if human beings sinned, what [crime] has the cattle committed? And if adults have sinned, what have the little ones done?’ A divine voice came forth and said, ‘do not overdo goodness.’ (Ecclesiastes 7:16).” This Talmud passage refers to the practice, legislated in Deuteronomy 21, of killing a Heifer in the place of a murderer when a victim is found, but the assailant is not caught. The idea here is that one innocent human life can never go unanswered for. The taking of innocent life is so horrendous that when this crime goes without retribution something must be done to create order and balance in the world. The rabbis then address the obvious problems with the biblical commandments to destroy Amalek and the seven tribes. Why kill the innocent? Why murder even children and beasts? How can the same God who so values life, abide the destruction of innocent civilians? This passage from *Yoma* is the Rabbis’ answer to these questions which

³⁵ Eisen, P. 91

³⁶ Exodus 17:8-16 & Deuteronomy 25:17-19

clearly disturbed them. How then do we account for God's answer? See the Meiri (c. 1300) commentary to this passage. He's the author of the *Beit Hab'chirah* on the Talmud; his comment is available on the Bar Ilan data base or in a separate printed volume that the library should have.

If the rabbis of the Talmudic time period served as a moderating force in Jewish literature of warfare, then Medieval commentators, like Maimonides extended the implication. The Talmudic rabbis planted the seed for *Tohar haNeshek* to be a legacy of the Jewish cannon. Medieval Halakhists built upon their ideas to create a tradition that values moderation of force and restraint in warfare above even the value of self-defense in many instances.

Maimonides is a central commentator defining Jewish laws of war. His *Mishne Torah* (completed in 1180) includes a chapter of "Laws Concerning Kings and Wars." Of course, for him, like the Rabbis of Talmud, these laws were still theoretical. His life was shaped by being a Jew of the exile, living under Muslim rule and fleeing persecution. Though he rose to great success in many trades and areas, Maimonides did not legislate for Jewish armies and sovereigns as a matter of real life practice. His Laws of War were meant as a code to be used at some future date after a third Jewish commonwealth will have arisen.

One of the most landmark halakhic rulings of war, and a good source in Jewish tradition for *Tohar haNeshek* can be found in Maimonides' *Mishneh Torah Hilkhos Melachim* 6:1. Rambam paraphrases Deuteronomy 20's instructions for the Canaanite conquerors: "When you near a city to attack it, you must call to it for peace/capitulation. If they surrender and accept the seven Noahide Laws, none are killed, but they enter into forced labor." However, it seems clear that the Torah was talking about this specific instance, not as a blanket law, as the instructions to obliterate the seven Canaanite nations come with no such tempering. In the Torah this is only applied to one instance of commanded war, and no mention is made of the other type of

discretionary war. Maimonides makes a novel ruling when he states that from Deuteronomy, we can conclude “War is not made with anyone in the world until peace is offered. Neither *milchemet reshut* nor *milchemit mitzvah*.”³⁷ Maimonides uses the logic that “take as your booty the women and the children”³⁸ means no women or children were killed.³⁹ He also infers that “Not a single town made peace terms with Israel apart from the Hitites who dwelt in Gibeon; all were taken in battle. For it was the Lord’s doing to stiffen their hearts to give battle to Israel in order that they might be utterly destroyed,”⁴⁰ This means that terms of peace were offered in every instance of warfare, they were just rejected. Since Nachmanides’ interpretation of Deuteronomy 20:10 offers the same explanation, we can conclude that the medieval Rabbis desired an expansion of the idea of restraint and moderation in warfare in the Jewish tradition. Firestone sees Maimonides’ ruling differently. He thinks Maimonides is universalizing the biblical example of war against the Canaanites and Amalekites in order to justify war outside the Land of Israel against all idolaters. He sees it as Maimonides’ worldview: “more as a reflection of the divine will to bring humanity to right religion than for Israel to take possession of the Land.”⁴¹ This means that he thought they should accept the Noahide laws. For Firestone, Maimonides made commanded war a matter of spirituality rather than a matter of conquest and the physical Land of Israel. He saw this as a break with the rabbis of the Talmud. Unlike those

³⁷ Maimonides *Mishneh Torah Hilhot Melakhim* 6:1

³⁸ Deuteronomy 20:14

³⁹ Maimonides. *Mishneh Torah, Hilkhos Melachim* 6:4.

⁴⁰ Joshua 11:19-20

⁴¹ Firestone, P. 117

rabbis, Maimonides was a product of Muslim culture that sought “worldwide elimination of idolatry” which they linked to immorality.⁴² He was a product of Muslim universal aspirations rather than the Jewish particularism of Talmudic times. Either interpretation of Maimonides’ writing serves to continue the Rabbis’ goal of distancing diaspora Jews from the ability to carry out war. This piece of legislation extends the example from the Canaanite conquest and makes it much more far-reaching. In practice, Maimonides introduces the concept of Purity of Arms into the Jewish textual tradition and makes it a mandate on all future armed forces proposing to be governed by Jewish tradition, like the IDF.

Deuteronomy 20:19 also states that Israelites may not harm fruit trees on the outskirts of a besieged city. This could be seen as an act of compassion to allow the besieged civilians to at least gather food to eat.⁴³ Maimonides again takes it a step further. From here he rules that one is never permitted to cut off basic necessities, including food and water, from the enemy.⁴⁴ This certainly falls into the goal of *Tohar haNeshek* to do “all in their power” to avoid causing harm to non-comatants, “their lives, bodies, dignity and property.”⁴⁵ Maimonides also codified the rabbinic idea that, when attacking a city, the Jewish soldiers must leave an escape route open and protected to that civilians may flee the city, escaping harm and death.⁴⁶

Nachmanides, an early medieval rabbi who spent his life in Spain and the Land of Israel, lived one hundred years after his predecessor, Maimonides. He interprets this ruling as intended

⁴² Firestone, P. 126

⁴³ Eisen, P. 95

⁴⁴ Maimonides. *Mishneh Talmud Melakhim* 6:7-20

⁴⁵ IDF *Ruach Tzahal* <https://www.idfblog.com/about-the-idf/idf-code-of-ethics/>

⁴⁶ Maimonides. *Mishneh Torah Melakhim* 6:7 as well as *Sifre Numbers, Matot* 157

to teach soldiers to “act compassionately with our enemies even during wartime.”⁴⁷ This language, used by a medieval rabbinic commentator, draws a nice parallel to the language of *Tohar haNeshek*, which states that soldiers will “maintain their humanity, even during wartime.”⁴⁸ But for him, unlike Maimonides, the category of biblical commanded war was not about spirituality or idolatry. For him it was about taking possession over the Land of Israel. This required ridding the land of the previous inhabitants. In his commentary on Numbers, he includes any people inhabiting the Holy Land in this directive, not just the specified nations. The Land of Israel is to be in Jewish hands. This commandment is not bound by time, but must always be enforced.⁴⁹ However, he agrees with Maimonides that the inhabitants need not be killed. They should be offered the chance to surrender to conditions.⁵⁰

One rabbinic statement attributed to Rav Shmuel, a great 3rd century Babylonian, seems especially ripped from the headlines of contemporary IDF clashes in Gaza—that “one is not permitted to wage war if it is anticipated that more than one-sixth of the enemy population will be killed.”⁵¹ As will be discussed further, one of the main issues that Israel struggles with while fighting in densely populated areas is the civilian death toll and disproportionate warfare. *Tohar haNeshek* demands extreme lengths must be taken to avoid civilian death. In some cases, if even one innocent life is jeopardized, it might be worth calling off an entire mission. Rav Shmuel’s statement shows this modern struggle has roots in Jewish text.

⁴⁷ Eisen, P. 95

⁴⁸ IDF *Ruach Tzahal* <https://www.idfblog.com/about-the-idf/idf-code-of-ethics/>

⁴⁹ Nachmanides’ Commentary on Numbers 33:53, Deuteronomy 20:10

⁵⁰ Firestone, P. 131

⁵¹ Eisen, P. 95

Although the Rabbinic Sages serve to temper the all-out warfare of the Bible which seems to contradict the spirit of *Tohar haNeshek*, subsequent rabbis have been able to reason that the rabbis' rulings supported continuing the war campaigns of Torah. There seems to exist an Amalek loophole. While Maimonides declared the seven tribes no longer identifiable, no such nullification was made regarding Amalek. Reuven Firestone writes, "The rabbis associate Amalek with unredeemable evil. No other biblical enemies of Israel achieve this level... Amalek, therefore, although destroyed physically, lives on and becomes a metaphor for both the external and internal weakening of Israel... the Amalekites inclination for plunder and predation exists in the evil found among those who would destroy Israel."⁵² Some rabbis throughout history have linked the enemies of their own times to Amalek. If the enemies of any day are legally "Amalek," then too the harshest warfare practices of Torah can be legally unleashed upon enemies of Israel in modern times. Rabbi Judah Loew, the Maharal of Prague (d. 1609), considered all enemies of the Jewish people to be genetically descendant from the line of Amalek.⁵³ The Soloveitchik rabbinic dynasty were proponents of this idea. Rabbi Chaim Soloveitchik (1918) extended the commandment to destroy Amalek to all who act like Amalek in seeking destruction of Israel. Rabbi Joseph B. Soloveitchik (1992), in the name of his father, Rabbi Moshe Soloveitchik (1941) claimed that the commandment to destroy Amalek is two-fold. Each individual Jew is commanded to "erase the memory of Amalek" (Deuteronomy 25:19) by killing the tribe's genealogical descendants. Also, the entire Jewish people is communally commanded to defend Israel against those seeking to destroy it, citing Exodus 17:16. In 1980, Shear Yashuv Cohen, the Chief Rabbi of Haifa, wrote, "Every nation that conspires to destroy

⁵² Firestone, P. 101-103

⁵³ Firestone, P. 103

the community of Israel becomes Amalek according to the *halakha* ... and Amalek exists even now after the mixing up of the nations.⁵⁴ According to Firestone, this applies to the Arab nations seeking to destroy the modern State of Israel. "Not only is Hitler accused by Jewish leaders of being Amalek, but so is Yassir Arafat and others; sometimes collectives of contemporary Palestinians, have likewise been vilified as the seed of Amalek."⁵⁵

The Rabbis' legacy in *halakha* of warfare is mostly that of tempering the harshness of the Bible. As a group who benefitted from peace and, in some sense, Jewish powerlessness, the rabbis' interpretations aligned with a desire to minimize violence and uprisings. Whereas the Bible laid out instances demanding total war, the rabbis limited and scaled back these commandments until they were all but in-actionable. Whereas *Ruach Tzahal* claims to draw inspiration from "the tradition of the Jewish People throughout their history," rabbinic opinions from Mishnaic, Talmudic and Medieval times are generally supportive of the concept of *Tohar haNeshek*. Roots of this credo are deeply embedded in rabbinic texts and thinking. However, as we have seen in the case of Amalek, and will investigate in the coming chapters, military aggression and harsh treatment can and have been *halakhicaly* justified in spite of, or creatively because of, the rabbis' limitations. Just like the rabbis had to innovate in the face of exile, with the introduction of Jewish Sovereignty and Jewish borders to defend, *halakha* needed to be reassessed and applied in novel situations by later Jewish thinkers.

⁵⁴ Cohen, Shear Yashuv. "The Call for Peace in Israelite Wars," *Torah shebe al-peh* 1980, p.89.

⁵⁵ Firestone, P. 103

Chapter 3: Early Zionism

“We learn weapon, we carry weapon, we resist those who come to attack us, but we do not want our weapon to be stained with blood of innocents.” –Berl Katznelson

Early Zionist thinkers disagreed about which classical Jewish text should be the basis for a modern, sovereign Jewish State’s stance toward warfare. Unlike the Rabbis, they were not setting theoretical standards for battles that might be fought one day, after the messiah had arrived. They were setting out plans and propositions for how the soon to be organized Jewish armed forces would conduct themselves in the battles that would inevitably be fought in the pursuit of Jewish sovereignty in the Land of Israel.

The movement to return to the Land of Israel meant many things to many different types of Jews throughout the 19th century, when the modern movement to return to Israel got underway. To some, it was a signal of the coming messianic era, to others it was a practical and political movement. All types of ideology had to find their home within the *Yishuv* – the pre-state Jewish settlement in the Land of Israel. The *Ruach Tzahal* claims to draw on the tradition of the Jewish People throughout their history- and this was certainly a turning point in their history. Up until this point, we have examined the Biblical and Rabbinic texts that might have something to say about *tohar haNeshek*, and restrain in battle. Now, we will move into a survey of how modern thinkers, in the land of Israel put this tradition into practice.

The early Zionist thinkers were influenced by their experience of brutality toward the Jews of Europe which is reflected in the all-out war of Torah. But, they also exhibited a wistful idealism influenced by rabbinic texts. Ahad Ha-Am (1856-1927) was known as a spiritual

Zionist. He revered the Rabbis' focus on Judaism of the mind—study, piety and ultimately passivity. He saw that retreating from military confrontation with the Romans is what saved the Jews from collective destruction in the first place. So, he advocated for a passive and non-violent approach whenever possible. Perhaps his interpretation of Jewish tradition goes further than *Tohar haNeshek* because, the IDF doctrine supposes the need for use of deadly force in some occasions and just seeks to moderate it. "For Ahad ha-Am, the rabbis provided proof that the strength of Judaism was in the realm of the spirit, not in the realm of military power, and modern Zionism should adopt a similar emphasis in formulating its own ethos." Other pre-state Zionist thinkers opposed the passivity they perceived from the rabbis.

Micha Joseph Berdichevsky (1865-1921) and Joseph Brenner (1881-1921) preferred turning toward the Bible for inspiration of the new Jewish State's military ethics. They thought it was a better model because it "glorified military strength and power as exemplified by warriors such as Joshua and King David."¹ Berdichevsky claimed the Jewish tradition was, in fact, to place national interests above morality. He disliked the modifying rabbinic ethos because they "replaced the Bible's militarism with an ethos that was weak and cowardly and that held Jews hostage for centuries. It was the rabbis who surrendered to Rome and constructed a theology of passivity and acquiescence when it came to dealing with the humiliation of exile."² It is important to note that the rabbis' spirit of pacifism was a reaction to their politically powerless state of being in their time. Their legal texts hew closer to the Biblical ideals of war because their codes were made to be applied in a messianic future when a third Jewish commonwealth would

¹ Eisen, Robert. The Peace and Violence of Judaism. New York, NY: Oxford University Press. 2011 (p. 70)

² Eisen, p. 172.

exist in the Land of Israel. While they displayed a pacifist spirit born of necessity, it is hard to apply it to the sovereign Jewish non-*halakhic* State

Over the course of Jewish settlement in the Land of Israel, small militias gradually coalesced into larger paramilitary organizations, eventually forming the Israel Defense Forces of today. During the British Mandate (1921-1948) the main military organization, and the IDF's direct predecessor, was the *Haganah*. Meaning "defense," the *Haganah* transformed from an underground defense organization into a more structured, traditional military body in response to the Arab Revolt of 1936. This revolt marked a change in regional tensions as thousands of Arabs were mobilized in a class-crossing, grassroots uprising against British occupation and Jewish immigration. Most of the *Yishuv* still believed in the socialist ideals of brotherhood and cooperation with the Arab population, but the new organized violence of the Arab Revolt brought about new Jewish use of force. The Mapai Central Committee reassessed its needs in 1936 when the Arab Revolt broke out: "we come with true aspirations for peace, dignity, and mutual assistance. We do not come as conquerors but as builders. Yet we shall not retreat in the face of bloody attacks."³

As a military body, the *Haganah* abided by certain strategic policies, one of which was called *Havlagah*—"restraint." The official policy of the Mapai left-wing Israeli leadership (the predecessor of the Labor party) was to show restraint in battle. They wanted their armed forces to focus on fortification of the *yishuv* and strategic defense of their interests and to avoid revenge killings and attacks against civilians. The *yishuv*'s *Havlagah* can be seen as a direct predecessor to *Tohar haNeshek*. The Jewish communal response included the policy of self-restraint both

³ Firestone, Reuven. *Holy War in Judaism: The Fall and Rise of a Controversial Idea*. New York, NY: Oxford, 2012. (p. 191)

because of the ethical principles that went along with their ideals and as a political move in order to gain favor from the British mandatory leaders. *Havlagah* had complex implications for the new Jewish image that came along with Zionism. At the same time, the *Yishuv* population was trying to cast off the cowardly passivity of years of Jewish communal norms in the diaspora.⁴ But, they also were trying to live up to the socialist utopian dream of equality between all peoples and founding a nation based on working the land, not taking it by force.

Anita Shapira describes Labor Zionism's "defensive ethos." In the *Yishuv* of the 1920s and 1930s, the settlers struggled with the morality of building their society alongside the Palestinians and the possibility of dispossessing others of the land. They espoused the ultimate value of peace, but claimed Palestinian leadership was inciting peasants against the Jews for their own purposes. As socialists, they put their faith in the working class and glorified the innate wisdom of the Arab farmers, however, the absentee land-owning class was interfering with the natural progression of the society. They thought the ruling class was inciting violence in order to keep the class-order as it was and that a peasant uprising, not Jewish settlement was the real issue that the Palestinian leaders were fighting against. Along the lines of this socialist ideology, Shapira says, "eventually the peasants would recognize the advantages of living with the Zionists."⁵ This classic socialist ideology is an important root of *Havlagah* and therefore *Tohar haNeshek*. The targeting of civilians and oppressing of peoples naturally goes against pure socialism.

During this period, the ethic of self-restrain for the *Haganah* laid the ground work for what it must mean to today's IDF. Although in espoused values and title, they aspire to be purely

⁴ Firestone, p. 191.

defensive organizations, when faced with realities on the ground, neither body could act that way in reality and achieve their military objectives. “The meaning of self-restraint (and hence the response it engendered) changed in the Labor camp during the three year period of the Revolt, from pure defense of Jewish settlements and neighborhoods, to defense in conjunction with military actions that today would be called 'anti-terror tactics'. Small well-trained mobile units called FOSH (field squads) would be send out to lie in wait for Arab squads and gangs before they made contacts with Jewish areas. This in turn, helped further erode the old defensive ethos and replace it with a far more proactive stance.”⁶

Firestone argues that the emergence of *Tohar haNeshek* during this time period was a reaction to the methods of other Jewish militant break-off groups. The mainstream militia wanted to distinguish itself from these forces and their tactics and “purity of arms” was one method with which they did so. “The evolving forceful nature of Jewish attack included certain tactical and ideological restraints to excessive violence. These tend to be categorized under the term, 'purity of arms' (*tohar haneshek*), wherein fighters make use of their weaponry and power only for the fulfillment of the mission, and innocent bystanders may not be injured.”⁷ However, other historians, labeled in the “Revisionist Historian” camp, question this stark differentiation. *Etzel* and the Stern Gang or *Lechi*, right wing political militia groups, did not practice restraint and launched operations ranging from putting civilian populations at risk to directly targeting them as we will see. However, the *Haganah* has been accused of the same tactics. They are charged with

⁶ Firestone, p. 192.

⁷ Firestone, p. 192.

launching retaliatory and preemptive attacks that violate the spirit and laws of today's Code of Ethics.⁸

The various Jewish ideologies were as complex during the *Yishuv* as they are today. They were not merely broken along the lines of religious and secular; left and right, and various groups within groups had differing opinions about *Havlagah*. Which it was accepted by the mainstream of Labor Zionism, it had unlikely supporters in the religious right and opponents on the far left. The different Zionist groups invoked traditional Jewish values and source texts in order to prove their points. Both religious and non-religious Zionists used traditional styles of interpretation to justify their novel and modern positions about the Jewish State.⁹ One Religious Zionist, Orthodox group was called *HaPoel HaMizrachi*. They voiced their opinions through their newspaper *HaTzofeh*. Although staunchly religious Zionist (they are the predecessor to today's right wing settlement movement and Naftali Bennett's National Home party), this group also had socialist leanings and they strongly and consistently came out in favor of *Havlagah*, condemning indiscriminate acts of violence against Arabs on moral and pragmatic grounds. Their publication states, "We shall show restraint therefore, on moral grounds and also from the perspective of the national accounting."¹⁰ They thought that displaying restraint was essential to be seen externally and internally as a just and Jewish nation.

In support of *Havlagah* one of *Hapoel Hamizrachi*'s religious leaders, Isaiah Shapira, referenced Chronicles. "'You shall not build a House in my name because you are a man of war and spilled blood.' (1 Chron. 22:8) David was punished for spilling legitimate blood of non-

⁸ Morris, Benny. *Israel's Border Wars*. Oxford: Oxford University Press, 1993. (pp. 185-187)

⁹ Firestone, p. 197.

¹⁰ Firestone, p. 193.

innocent people, how much more so would it be wrong to spill the blood of innocent civilians in reprisal...this is a holy war. Let us not profane it by spilling the blood of innocent and let us not walk in the way of the nations around us. We refuse to ruin our holy war through murdering innocent people, and we will not defile the land by polluting it with [innocent] blood... Let us not spoil the moral purity of our war. The Rock of Israel will appear for our counsel and will send his holy help.”¹¹ Shapira likely drew reference to the Babylonian Talmud, when tractate *Yoma* warns not to spill innocent blood, lest God turn away from Israel.¹² While the act of couching the settlement of the Land of Israel in terms of “holy war”—the Religious Zionists of the *Yishuv* opened the door for possible indiscriminate warfare, they used this language as a moderating force. This quote implies that holy war must be fought in line with the ethics of Talmud and the universal ethics of modern society, rather than the guidelines given for *milchemet reshut* of Torah. In Talmud, “spilling of innocent blood” is code for murder. When Religious Zionists think of modern battles for the Land of Israel in terms of Holy War. Therefore, to invoke this language in reference to killing non-combatants, distinguishes between just and un-just actions in a holy war, but it deviates from the Biblical paradigm.

Both chief Rabbis of Mandate Palestine: Ashkenazi Isaac Herzog (1936-1959) and Sephardi Yakov Meir (1921-1939) wrote consistently and stridently against violent response to Arab terror. Their reasoning followed Jewish tradition closely and warned against harming any innocent people.¹³ There were even predecessors of the current ultraorthodox parties in Israel present at the time of the *yishuv* who weighed in on *Havlagah*. The non-Zionist *Agudath Israel*

¹¹ Firestone, p. 193.

¹² Babylonian Talmud, *Yoma* 85a

¹³ Firestone, p. 194.

group, was highly opposed to the use of indiscriminate violence and said that terror can never even be discussed as politically expedient. Interestingly, the Ultra Orthodox were the only faction not willing to attribute their views to Jewish textual sources in an attempt to avoid conflating the political Zionist project with any divine or halakhic significance.¹⁴ As a non-Zionist group, the ultra-orthodox had less interest in Jewish political presence in the Land of Israel and opposed a secular Jewish army in principle. Because they neither take up arms nor have an interest in the success of the Israeli armed forces, it is easy for the Ultra Orthodox to demand a purity of Jewish arms.

The reverse was also true of religious Zionist *Yishuv* rhetoric. Whereas *HaPoel HaMizrachi* invoked the prohibition against spilling innocent blood in support of *havlagah* it could also be argued that innocent Jewish blood was spilled as a result of *havlagah*. Yehuda Leib Maimon, who also became one of the founding fathers of modern National Religious Zionism in Israel, was one proponent of this ideology. "We are guilty of the deaths of 5 Jews by Arab terrorists in 1937 because of our unceasing sermonizing on behalf of restraint...Our religion opposes murder and the spilling of blood but in these days, according to Maimonides, one must consider every individual of the community from which the criminals came as if he himself were also a criminal."¹⁵ Rabbi Meir bar-Ilan of Berlin agreed. He accused Mapai of allowing Arabs to "shoot us like dogs" and went to far as to quote Deuteronomy 20:16—"do not let a single person of the enemy live." Even *HaPoel HaMizrachi* did put limitations on its belief in *havlagah*. A

¹⁴ Firestone, p. 194.

¹⁵ Firestone, p. 195.

1938 issue of Hatzofeh said, "although Jewish morality condemned hurting others for personal gain, it required everything for the good of the national whole."¹⁶

Abraham Isaac Kook (1865-1935), the first chief Ashkenazi Rabbi of British Mandatory Palestine, was influential in bringing traditional Jewish thought in line with the new idea of Jewish Nationalism. Eisen asserts that Religious Zionism was shaped by modern forces, mainly nationalism, transposed on the back of Jewish ideas like messianism. He goes as far as saying that it "distorted traditional Jewish teaching." Kook made the unprecedented ruling that settlement of the Land of Israel was a mitzvah on par with the three cardinal commandments Jews must never violate even on pain of death, "rendering a decision on an extremely weighty issue in Jewish law with little authority or precedent to support him."

He also conflated the *Haganah* with the Kabbalistic conception of good defeating evil and bringing God closer to the world.¹⁷ These heady ideas went a long way in charging the concepts surrounding *Tohar haNeshek* and in its application for Religious Zionists. Kook and his followers did not oppose *Havlagah*, but when settlement of the Land is framed in those paramount terms, it becomes difficult to justify foregoing opportunities to conquer. Kook's ruling places land above human life—a concept contrary to *Tohar haNeshek* and according to many, including Eisen, contrary to Jewish values. However, the commandment to conquer the land does exist¹⁸ and since it is obvious that many soldiers will perish in this pursuit, halakhists

¹⁶ Firestone, p. 196.

¹⁷ Eisen, p. 185.

הרב עובדיה יוסף, "מסירת שטחים מא"י במקום פיקוח נפש," *תחומין*, כרך י', תשמ"ט, עמ' 34-4

הרב שאול ישראלי, "מסירת שטחים מא"י במקום פיקוח נפש," *תחומין*, כרך י', תשמ"ט, עמ' 48-61

¹⁸ Leviticus 18:5

have found justification in giving the commandment to settle the Land of Israel precedence over the supreme value of human life.¹⁹

Also in opposition to *Havlagah*, right wing secularists thought Jews must fight Arabs with the same tactics they faced from them, including indiscriminate killings. In a trend we will continue to see, the religious parties never had a monopoly in invoking Torah to make their points. Ze'ev Jabotinsky, founder of the *Irgun* "National Military Organization," (1931-1947) also known as the Revisionist Zionist movement, that would later become *Etzel*, said, "the Jewish morality cited among those who counseled restraint was not really Jewish morality at all, but rather Christian morality...the Jewish God is a zealous God- the Lord of Armies."²⁰ To him and to later hawks, the God of the Bible was more instructive for the Jewish State than the God of Talmud. His *Beitar* youth movement drew on collective narratives like the Bar Kokhba rebellion and the mass suicide of Masada in order to instill militaristic values. Jabotinsky was the forefather of militaristic, secular Zionism. According to Firestone, "He was not an ultranationalist...he was a realist who understood that the Jewish community in Palestine was too weak to win a military struggle against the British...Jabotinsky was a nationalist who believed in militarism as the means of forwarding the aims of Zionism."²¹

Secular Revisionist Zionism also saw even more extreme Jewish nationalist groups splinter off to the right. In 1931, *Berit haBiryonim* ("Covenant of the Ruffians") was one such ultra-nationalist party that ironically modeled itself on the extreme Right wing groups coming to power in Europe. It was led by Uri Tsevi Greenberg, Abba Ahimeir and Yehoshua Heshel Yevin.

¹⁹ *sefer* מנחת חנוך

²⁰ Firestone, p. 196.

²¹ Eisen, p. 160.

They too sought legitimacy in Torah. "They believed that Zionism should model itself on the biblical past, when the Israelites conquered their enemies and expanded their kingdom through military force."²² *Lehi* ("Fighters for the Freedom of Israel") led by Avraham Stern sought to take over the Land of Israel by force. They embraced terrorism and even laid out the benefits and necessity of terroristic tactics in their publication *He Khazit*.²³ They thought only terrorism would shake the *Yishuv* of complacency. Their leaders thought Jews must use violence and even cultivate cruelty toward their enemies in the fight for their land in order to avenge the public humiliation they had faced over the course of many years of exile. They too turned to Torah for precedent by invoking the Canaanite conquest as a model for how the Arabs of the land should be dealt with. They even saw revenge as a Jewish value based on the commandment to utterly annihilate the Amalekites in response to their attack and the vengeance taken against the people of Shechem after Dinah's rape. They too saw ideas like *Havlagah* in opposition to Judaism. "Jews who opposed violence were captive to an exilic mentality that distorted true Jewish values."²⁴

These groups and others followed through on their beliefs, breaking with the policy of *havlagah*, violating the idea of *Tohar haNeshek* and committing the first acts of Jewish terrorism since biblical times. The *Irgun* operated by the methodology of tit-for-tat reprisals by targeting civilians the same way Palestinians did and continue to do. For example, on March 6, 1937, an Arab shot a Jew praying at the Western Wall and the *Irgun* responded by shooting an Arab

²² Eisen, p. 161.

²³ Heller, Joseph. *The Stern Gang: Ideology, Politics and Terror, 1940-1949*. Abingdon: Routledge, 1995. (P. 115)

²⁴ Eisen, p. 173.

civilian in Rehavia within a few hours. Their organization's answer to restraint was "active defense" a term laid out by them in a 1938 policy article:

"The actions of the Haganah alone will never be a true victory. If the goal of the war is to break the will of the enemy – and this cannot be attained without destroying his spirit – clearly we cannot be satisfied with solely defensive operations.... Such a method of defense, that allows the enemy to attack at will, to reorganize and attack again ... and does not intend to remove the enemy's ability to attack a second time – is called passive defense, and ends in downfall and destruction ... whoever does not wish to be beaten has no choice but to attack. The fighting side, that does not intend to oppress but to save its liberty and honor, he too has only one way available – the way of attack. Defensiveness by way of offensiveness, in order to deprive the enemy the option of attacking, is called *active defense*."²⁵

The revisionists deemed *Havlagah* as passivity and set out to break the enemy through fear and terrorism; attack of the spirit and psyche. Ultimately it was not their ideology that won out in mainstream Zionism and in Israeli policy. However, they played a role in the formation of the State and have made their way into Israeli collective memory not as evil terrorists, but as important figures in the Zionist narrative. Those who opposed *Havlagah* in the *Yishuv* laid the groundwork for those who oppose or bend *Tohar haNeshek* today. While the policy claims to derive from Jewish tradition, there is also a long standing practice of turning to claims of traditional reasoning in order to justify indiscriminate Jewish violence by groups such as the Orthodox *Peulot Tagmul*. "Jewish acts of terror during the Arab Revolt parallel what we will observe was carried out two generations later by Jewish radicals engaged in what they defined as

²⁵ Raziell, David. *Active Defense*. By The Sword, March, 1938.

Commanded War. The Orthodox Jews of the 1930s, however, would never have considered that such a definition could apply to them because the notion of commanded war had not yet been revived. It would take two major miracles before the dormant notion of Jewish holy war would be reawakened.” For Firestone, the *milchament mitzvah* of Torah was reclaimed only later by the national religious party of post ’67.

In addition to the military actions, there is also question about the motives of the establishment in *Yishuv* society. Classical Zionists from Theodore Herzl to Achad haAm envisioned a society where Arabs and Jews could live side by side. However, modern historians question the sincerity of the *Yishuv* settlers’ intentions for coexistence. This ideology leads to the controversial concept of “transfer”—an idea that is framed in terms of ethnic cleansing in today’s discourse. Eisen asserts, “much research has also been done demonstrating that in the pre-state years, many Zionists supported the notion of transfer, the idea that the conflict between Jews and Palestinians could be solved by resettling the Palestinian population in Arab countries and giving Jews sovereignty over the entirety of Palestine. Jewish opinions varied as to whether this scheme could be accomplished peacefully or would require the use of force.”²⁶ Much of the historical writing on transfer in the *Yishuv* mindset was done by Israeli Revisionist Historian, Benny Morris. He goes further in claiming that while it is well established that extremists like *Etzel* or *Lechi* favored transfer, he asserts that even the establishment Labor Zionists were also considering the policy behind the scenes and that this remained a strain of thought within Labor long after the establishment of the State. He supports this by showing that much later, post-1967, some prominent members of the Labor party joined the “Land of Israel Movement,” which was

²⁶ Eisen, p. 163.

devoted to ensuring that the territories captured in 1967 were not returned.²⁷ Transfer has implications for *Tohar haNeshek* because efforts to relocate a population would be aimed at civilians. It would be conceivably impossible to accomplish this without transgressing the letter and spirit of *Tohar haNeshek*.

The British White Paper of 1939 complicated the establishment's dedication to restraint in battle. The document was a harsh setback for the Zionist agenda. The British government policy began limiting Jewish immigration to the Land of Israel, restricting Jewish ability to purchase land and walked back the commitment to establishing a Jewish state put forth in the Balfour Declaration, by stating that this would only occur one day with Palestinian consent, which would be hard to come by. For many, this showed the efficacy of the Arab revolt and venerated their tactics which relied heavily on the indiscriminate use of force and the targeting of civilians—things that would fall under the classification of terrorism today.

However, the establishment stuck by the policy of *Havlagah*. Menachem Ussishkin, a central and influential Labor Zionist, also invoked Torah in a Zionist Workers' Committee meeting: "Jewish morality forbids the killing of innocents even if doing so would bring great progress to the national standing... if we were told today to kill innocent Arabs so that tomorrow the White Paper would be withdrawn, I would not agree to it...though shalt not murder."²⁸ He was a staunch secularist, but was perhaps gaining credibility by showing its accordance with Jewish continuity, just as The Spirit of the IDF does with its claim to base itself on the tradition of the Jewish People.

²⁷ Morris, Benny. *The Birth of the Palestinian Refugee Problem Revisited*. Cambridge: Cambridge University Press, 2004. (Chapter 2)

²⁸ Firestone, p. 195.

Havlagah as practiced by the *Haganah* is significant for our purposes because it is the direct predecessor of *Tohar haNeshek* as practiced by the IDF. Originally, the *Haganah* set out to be a purely defensive body, safeguarding Jewish life and property from attack in the *Yishuv*. However, in the *Yishuv*'s later years, developments like the Arab revolt as well as the rise of Fascism and anti-semitism in Europe put the Jews of the Land of Israel on guard. Though *Havlagah* was still a central tenet of the armed forces, the years between the Arab Revolt (1938) and the establishment of the State of Israel (1948) saw an evolution of the establishment armed forces from a defensive body into one that incorporated pre-emptive attacks and offensive warfare. Eisen writes, "There is no doubt that the defensive ethos of Labor Zionism gradually gave way to an offensive ethos that was unequivocal in its hostility to the Palestinians in the decade before the 1948 war."²⁹

Havlagah was more than an official policy, it was a matter of ethos deeply ingrained into the central establishment culture of *Yishuv* society and as society evolved so did *Havlagah*. Firestone characterizes this shift as a "slow movement from utopianism to a knowledge that war was inevitable...the transformation from historical timidity in the diaspora to proud and proactive defenders of their native Land." There was in deed a new generation of Jews who had come of age in the Land. They viewed it as their birthright- not in a religious sense, but based on their life experience of being born there and working the land. Eisen characterizes this generation with openly embracing militarism and nativism.³⁰ The *Haganah* originally showed an ambivalence toward militarism. They referred to themselves as "citizen fighters" and did not

²⁹ Eisen, p. 163.

³⁰ Eisen, p. 163.

view their roles as that of professional soldiers.³¹ This ethos still applies to many in the IDF. As a conscription army that draws from all pockets of society it is still very much a group of citizen soldiers. The ethos and mindset of the IDF will always be intermingled with that of civilian mindset.

However, during *Yishuv* times, the fighters were coming from a different background and worldview. As a society, they had just come from the exile experience of “being at the mercy of the world’s great armies. “The socialist credo with its sense of universal moral commitment also tended to keep extreme nationalist zeal in check.”³² Today’s IDF rears from a society that has become more accustomed to holding power and even ruling over others. It is a more diverse population drawing from different ethnic background than the *Haganah* was. Socialism of the *Yishuv* and Israeli society under a labor government has given way to generations steeped in capitalist lifestyles. *Tohar haNeshek* is a product of these earlier times, when Israel was more socialist/utopian and homogenous. Yet, it is a mandate that every member of the IDF must follow. We will examine this possible clash in ideology later.

³¹ Firestone, p. 198.

³² Firestone, p. 198.

Chapter 4: Modern Israel

“A conflict begins and ends in the hearts and minds of the people. Not in the hilltops.” –

Amos Oz

We have examined the *Ruach Tzahal*'s claim to be based on “the tradition of the Jewish People throughout their history”¹ by tracing applicable sources in Torah, rabbinic rulings from the Talmudic and Medieval periods and the modern history of how restraint in battle, *Havlagah*, was applied and proponed (or not) throughout the pre-state period in the Land of Israel. Based on our study, this thesis can reasonably conclude that *Tohar haNeshek* is indeed a Jewish value. The value of purity of arms can legitimately be drawn out from Jewish sources and practices throughout the history of the Jewish People.

To conclude our study, it is important that we examine *Tohar haNeshek* in practice today. The history of the Jewish People is not a static narrative to gaze back upon, but rather one that is being continuously written and must be continuously re-examined. *Tohar haNeshek* is central to this story. It can make the difference between how history will judge the Jewish People, and their greatest project since antiquity—their self-determination as a free people in their own land. Not only has it frequently graced the headlines of Israeli and international newspapers,² it has huge

¹ Israel Defense Forces. “Spirit of the IDF,” 2000.

² See *New York Times*: March 24, 2016

https://www.nytimes.com/2016/03/25/world/middleeast/video-shows-israel-soldier-shooting-palestinian.html?_r=0; *The Guardian*: March 24, 2016

implications for the security of the State of Israel and therefore for the success of the Jewish State. As we will discuss, the application of *Tohar haNeshek* is vital in attaining the objectives of the IDF in battle and deeply and holistically affects the perception of Israel around the world. It has implications for whether Israel will receive support and gain allies vital to its survival. In this final chapter, we ask, does *Tohar haNeshek* in practice live up to the legacy of Jewish history that bequeathed this restriction in the first place? The answer is tricky and never clear cut.

One could argue that in today's wars, Israel's enemies have turned *Tohar haNeshek* into an effective weapon against the IDF. By focusing on the provision that reads, "IDF soldiers will not use their weapons and force to harm human beings who are not combatants or prisoners of war, and will do all in their power to avoid causing harm to their lives, bodies, dignity and property,"³ Israel's enemies exploit the constraints *Tohar haNeshek* places on battle, claims Moshe Halbertal, one of the philosophers, lawyers and generals who drafted the IDF's updated code of ethics in 2000. He writes about being faced with the task of creating a moral document for a new kind of battlefield, one where making the moral decision is rarely a clear cut choice. "Since the early 1990s, the nature of the military conflict facing Israel has been dramatically shifting. What was mainly a clash between states and armies has turned into a clash between a state and paramilitary terror organizations, Hamas in the south and Hezbollah in the north."⁴

<https://www.theguardian.com/world/2016/mar/24/israeli-soldier-filmed-shoot-dead-wounded-palestinian-attacker-hebron>, Among many others.

³ Israel Defense Forces. "Spirit of the IDF," 2000.

⁴ Halbertal, Moshe. "The Goldstone Illusion," from *iEngage* lecture 6. Jerusalem, Israel: Shalom Hartmann Institute. (P. 98)

Halbertal asserts that the goal of this transformation in warfare is to create a “war of all against all and everywhere.”⁵

This new form of what has become known as “asymmetrical war” greatly complicates abiding by the principle of *Havlagah* and its doctrine of *Tohar haNeshek*. In this new form of warfare, the paramilitary groups Israel is fighting against intentionally do away with two important parts of warfare that allow fighters to distinguish between enemy combatants and civilians: the front and the uniform. This is what defines it as asymmetrical. The militants fight dressed in civilian clothing while embedding themselves within the civilian population. They are not even distinguishable by their arms— Hamas fighters have used the tactic of moving from one position to another unarmed—their weapons and ammunition had been pre-positioned and stored in various locations for them. This renders the fighters in the heat of battle—unarmed, ununiformed and away from any battlefield—virtually indistinguishable from the civilian population. “By disguising themselves as civilians and by attacking civilians with no uniforms and with no front, these paramilitary terrorist organizations attempt nothing less than to erase the distinction between combatants and noncombatants on both sides of the struggle.”⁶ Hamas and other terror groups purposely embed themselves within the civilian population. According to Rabbi Donniel Hartman, they are “willing to fight to the last drop of their own citizens’ blood, and...embed themselves in the midst of the most vulnerable and sensitive civilian targets. Civilian casualties on their own side are viewed as not only acceptable but a key tactical and

⁵ Halbertal P. 99

⁶ Halbertal P. 99

strategic tool to achieve their aims.”⁷ Further complicating matters, they attack Israeli civilians “wherever that are, intentionally and indiscriminately.”⁸ Hartman calls the distinction between combatants and non-combatants “morally intuitive”- meaning there is no definitive, quantifiable way to distinguish between the two. The targeting of non-combatants is what defines terrorists and sets them apart.⁹ In order to abide by *Tohar haNeshek*, the IDF is constantly charged with identifying and targeting enemy combatants by dressing them up in a “uniform” that they don’t wear and forcing them to a “front” that doesn’t exist. To fail at this task is to forsake the principle of Purity of Arms. The point of terrorism is to take the terror and destructiveness of warfare and bring it to civilian life. Avishai Margalit and Michael Walzer write, “The crucial means for limiting the scope of warfare is to draw a sharp line between combatants and noncombatants. This is the only morally relevant distinction that all those involved in a war can agree on. We should think of terrorism as a concerted effort to blur this distinction so as to turn civilians in to legitimate targets. When fighting against terrorism, we should not imitate it.”¹⁰ When fighting against terrorists, *tohar haNeshek* means not employing their tactics, but the way to effectively engage is complex.

⁷ Hartman, Donniel. “Fighting a Just War Against Hamas Justly,” from *iEngage* lecture 6.

Jerusalem, Israel: Shalom Hartmann Institute. (P. 111)

⁸ Halbertal P. 98

⁹ Hartman, P. 111

¹⁰ Margalit, Avishai and Walzer, Michael. “Israel: Civilians and Combatants,” *New York Review of Books*, May 14, 2009, <http://www.nybooks.com/articles/2009/05/14/israel-civilians-combatants/> :

Furthermore, the distinction between combatants and non-combatants lies at the heart of what makes *Tohar haNeshek* a Jewish text, descendant from Jewish legal tradition. The protection and value of human life is something our rabbis were concerned about.¹¹ “It also lies at the foundation of Judaism’s moral justification for self-defense. It is only against the individual who arises to kill you that one is allowed to use violent means, and even then, the level of the violence allowed is only that which is necessary to remove the threat.”¹²

This current reality creates extreme challenges for the IDF ethics committee. Domestically, they are faced with a divided population whose two extremes have very different approaches of implementing *Tohar haNeshek*. On the far left, some find that the IDF cannot fight without transgressing its own ethics code in this climate and must therefore refuse to engage in asymmetric warfare (in reality all warfare), ending the occupation immediately. Organizations like Jewish Voice for Peace consider not only the casualties but also the threat level to be asymmetrical.¹³ Hartman refers to *Tohar haNeshek*’s restriction against harming non-combatants as the “core minimal moral standard” and asserts that it is virtually impossible to uphold completely. Aside from the challenges of asymmetrical warfare, he calls the precision of the modern battlefield a myth. Even among Israel’s own casualties in battle, 25% are from friendly fire!¹⁴ Those who argue against the sustainability of Israel’s wars find that since *Tohar haNeshek* cannot be properly upheld in battle, it renders even “just” wars (wars of self-defense) unjust,

¹¹ Shulchan Arukh, Orakh Chayyim 328:2

¹² Hartman, P. 111

¹³ <https://jewishvoiceforpeace.org/letter-from-tel-aviv-hilla-dayan-and-pw-zuidhof/>

¹⁴ Hartman, P. 111

because they cannot be fought in a just manner.¹⁵ Furthermore, the idea that these wars of self-defense simply cannot be fought grants a military victory to those who harm Israeli civilians, and promotes what Hartman refers to as “evil” in the world.

The other side places the blame for civilian casualties on Hamas and Hezbollah who initiate the killing of Israeli civilians and place their own people in harm’s way. *Yisrael Beitenu* one of the political parties in Israel’s current governing coalition, writes on its website, “A ‘proportional’ response means that the heads of terror organizations know that they have immunity, that we will not destroy their rule.”¹⁶ The extreme right thinks that the IDF’s mandate lies in the protection of Israel above its duty to purity of arms and that *Tohar haNeshek* must take a back seat to this bottom line. These voices in Israeli society think that killing civilians is necessary and justified. Here it is important to note the unique nature of Israel’s military as a true army of the people. Whereas the American army is comprised of professional soldiers who volunteered, the IDF drafts every 18 year-old citizen. Rabbi Doniel Hartman, a prominent proponent and educator on the importance of morality on the battlefield, whose institute trains IDF commanders on the topic, shares his own personal emotion when it became personal: “As my son was heading into Gaza with his Army unit, I repeated a conversation that I had mentioned to him before. ‘Yitzi,’ I said, ‘if you are in doubt, please shoot first. I want you home. We will deal with the consequences later.’”¹⁷

¹⁵ Hartman, P. 111

¹⁶ *Yisrael Beitenu* February 1, 2015 <http://www.beytenu.org/fmr-liberman-the-time-has-come-to-take-off-the-gloves-when-dealing-with-terrorist-organizations/>

¹⁷ Hartman, P. 110

Even so, Hartman writes elsewhere, “We do a great disservice to ourselves as a Jewish people when moral discourse is limited under the guise of mistaken patriotism or associated exclusively with a particular political agenda or party or viewed as the consequence of weakness of spirit, or in the particular lingo of Israeli life - of being a *“yafe nefesh”* - roughly translated as a naive goody-two-shoes.”¹⁸ For the IDF ethics committee, neither of these responses is adequate. Israel does have the responsibility to protect its own civilians in the journey toward peace, and it also cannot abdicate responsibility for harming enemy non-combatants. “The killing of our civilians does not justify the killing of their civilians. Civilians do not lose their right to life when they are used as shields by Hamas and Hezbollah.”¹⁹ In *Tohar haNeshek*, the IDF aspires to hold itself accountable to the demands of Jewish tradition and this means it must confront the complicated realities of asymmetrical warfare and not coalesce to the easy road. The war is watching, and so is its own legal team who investigates and prosecutes soldiers, as we will later discuss. As Hartman powerfully puts it, “we want to fight the terrorists who target civilians and not emulate them.”²⁰

Halbertal and the ethics committee see the strategic goals of the IDF and its moral constraints such as *Tohar haNeshek* as mutually reinforcing. They assert that the Palestinian base tends to be more moderate than the militant groups facing the IDF. When Israel over-reacts and transgresses the edict of *Tohar haNeshek*, it helps build support for the militants and resistance against the IDF. This is actually a tactic that Hamas employs in battle.²¹ It also leads to “the

¹⁸ Hartman, P. 108

¹⁹ Halbertal, P. 99

²⁰ Hartman, P. 110

²¹ Halbertal, P. 99

shattering of Israel's moral legitimacy in its own struggle. In a democratic society with a citizen's army, any erosion of the ethical foundation of its soldiers and its citizens is of immense political and strategic consequence."²²

Halbertal asserts that the second principle in the code, "the principle of distinction," requires distinguishing combatants from non-combatants. It is the absolute prohibition against intentionally targeting noncombatants, applies even when it would prove effective in stopping terrorist acts against Israelis. If a soldier is given an order to the contrary he is required to defy it on punishment of law.²³ This hearkens back to one of the first sources studied in Chapter One, the origin story in Genesis, in which all humans are descended from Adam who was created in the image of God. Mishna draws an even further reaching conclusion from the story of creation. Since we are all originated from the same source, "if one causes a single life to be lost, it is as if he has lost a whole world, and if anyone saves a single life, it is on him as if he saved a whole world."²⁴ In distinguishing a legitimate target, Halbertal invokes the "food chain" of terrorism—the mastermind, the recruiter, the weapon maker, the transporter etc. It includes anyone who intentionally threatens Israeli civilians with their actions. In the act of distinguishing combatants there are blurred lines. "What about the financier of the bombing, for example?"²⁵ The Goldstone report, which has since been reconsidered and partially retracted by its author²⁶, calls into

²² Halbertal P. 99

²³ Halbertal P. 100

²⁴ *Mishnah Sanhedrin 4:5*

²⁵ Halbertal P. 110

²⁶ Goldstone, Richard. "Reconsidering the Goldstone Report on Israel and War Crimes."

Washington Post: April 1, 2011. <https://www.washingtonpost.com/opinions/reconsidering-the->

question the targeting of the Gaza Police during Operation Cast Lead.²⁷ But in the case of Gaza, Israel claimed that the Police force was a group of Hamas militants on the state payroll.²⁸

Halbertal asserts that the third principle of *Tohar haNeshek*, the principle of proportionality or “avoidance” – sometimes referred to as “collateral damage” – is the most difficult. This is the situation that arises when, while targeting combatants, noncombatants may be killed as well. “A proportionality test has to be enacted, according to which the foreseeable collateral death of civilians will be proportionate to the military advantage that will be achieved by eliminating the target.” Halbertal gives the example of a terrorist sniper sitting atop a roof under which sixty civilians live. If the only way to kill the sniper would be to bomb the roof, risking the lives of the sixty civilians, this would be ruled disproportionate and would be prohibited. The cost to civilian life in this scenario is disproportionate to the military advantage of eliminating one sniper.²⁹ A real life example is the 2002 bombing of Salah Shehadeh’s Gazan home. Shehadeh was a high level Hamas operative responsible for many Israeli deaths. The IDF intelligence reported that he was alone in the house and killed him with a bomb. However, 13 innocent lives, including eight children, were lost as the intelligence was inaccurate. There were shacks in the backyard which had been assumed to be storage sheds based on aerial photography.

goldstone-report-on-israel-and-war-crimes/2011/04/01/AFg111JC_story.html?utm_term=.01ac252a008d

²⁷ Goldstone, Richard. “Report of the United Nations Fact Finding Mission on the Gaza Conflict.” London: United Nations Human Rights Council, Twelfth Session: September 15, 2009.

²⁸ Halbertal, P. 101

²⁹ Halbertal, P. 101

However, these were actually shanty homes constructed for families to live in. Israeli Chief of Staff, Moshe Yaalon expressed regret and admitted error. He claimed that the mission would have been aborted had they known about the civilian residences and that similar missions had been aborted due to equitable foreseeable civilian deaths.³⁰

The difficult nature of the proportionality principle arises because it involves calculating the un-calculatable. In a tradition where every human life is created in the image of God, accurately calculating the number of innocent lives who must be destroyed in order to save other lives in the future is impossible. However, in battle such impossible decisions must be made and even quantified. Lt. Colonel Roni Katzir, Assistant Military Advocate General in the Legal Affairs Division of the IDF gave a lecture at AIPAC's 2016 Policy Conference, in which he detailed the way these calculations are made in the IDF. The Advocate General and his team provide binding order to soldiers and their commanders as they review every operation to make sure it complies with international law and the *Spirit of the IDF*. Each mission is categorized in one three ways: "legitimate" or "green light" means it meets legal and ethical conditions, "conditional" or "yellow light" means the Advocate General provides binding conditions to make the mission comply and "not legitimate" or "red light" indicates that the mission is not compliant and must be aborted.³¹

³⁰ Ravid, Barak. "Israel's 2002 Hit of Hamas Leader was Justified Despite Civilian Casualties." *Ha'Aretz*: February 27, 2011.

³¹ "The Laws of War" lecture by Lt. Colonel Roni Katzir, Assistant Military Advocate General (legal affairs division of the IDF) at AIPAC Policy Conference 2016

Halbertal says, "I do not believe that a clear-cut numerical rule can be established...yet, the Israeli army has traditions and precedents that can be relied upon."³² The IDF tactics must take into account much more than proportionality in their quest to fulfill the principle of avoidance. "It is not enough not to intend to kill civilians while attacking legitimate targets. A deliberate effort has to be made not to harm them."³³ Roni Katzir shared the IDF's multilayer assessment to weigh the laws of proportionality when categorizing a mission for approval. The first layer is the series of precautionary measures that will be employed to avoid civilian casualties. This includes a series of escalating requirements. First, comes a blanket warning to the population, second comes a specific warning to the region within two days' notice telling specifically where to go to evacuate and what area to avoid. Lastly, are specific warnings for individual families believed to be in proximity of the target. These come in the form of leaflets and phone calls. In response to the warning, Hamas, knowing that the IDF films the targets with unmanned drones, brings civilians to the roof of the targeted building in order to stave off attack. "Roof knocking" with loud but benign bombs is a tactic developed to provide an audible warning that an attack is coming. Halbertal claims this causes the civilians to disperse and calls it "an admirable and costly effort to avoid civilian collateral harm."³⁴ On the other hand, the Goldstone Report calls it "reckless in the extreme."³⁵

Even after the precautionary warnings are issued, the mission is bound by the laws of proportionality. They are not permitted to assume those who were warned actually evacuated

³² Halbertal, P. 101

³³ Halbertal P. 101

³⁴ Halbertal, P. 102

³⁵ Goldstone, 2009

unless they have accurate surveillance proving it so, which is hard to do inside of homes. The policy is to assume that those who were warned did not evacuate. Those who do not receive or heed warning are still not considered to be legitimate targets of violence.³⁶ “A leaflet dropped from the sky warning of an attack does not matter to the people—the sick, the old, the poor—who are not immediately mobile.”³⁷

The third step is calculating the military advantage of the target. The questions of what the target is “worth” or how much immediate danger Israel faces from the target must be qualified and then weighed against the estimated number of civilians who will be placed in harm’s way according to the best possible intelligence. These calculations must be done in real time as they can change at a moment’s notice. Finally, the un-quantifiable must be quantified. A maximum number of civilian casualties is assigned to the mission. This number is not presented in proportion to any number related to the target; it is a blanket number that is considered unacceptable to exceed in the mission. While the mission is carried out, the civilian casualty expectation must be assessed and compared to this number. If there is suspicion that the casualties will exceed this number, the mission is aborted and reconfigured.³⁸

A target card is a tool for disseminating intelligence to a commander during wartime. It describes the operational condition for attacking the target and includes how civilian casualty will be avoided, such as giving them specific advanced warnings or a time frame when intelligence indicates no civilians will be present. Every mission has officers in the Advocate General’s department sitting by the phone to provide legal oversight as the mission unfolds

³⁶ Katzir, 2016

³⁷ Halbertal, P. 101

³⁸ Katzir, 2016

because today's "battlefield" conditions constantly change and evolve and ethics compliance needs to be updated in real time. Examples of advice provided include the legality of improvised weapons (discharge weaponry for unintended usages, such as using large scale weapons intended for a more traditional battlefield in an urban environment) or what to do with detainees. Because in Israel, the battlefield is never far from the homefront command, the IDF is often able to implant international law specialists on the ground, embedded with troops.

The language of *tohar haNeshek* demands that Israeli soldiers must assume some risk to their own lives to avoid harming civilians. According to Halbertal, "such an expectation is not demanded in international law, but it is demanded in Israel's military code, and this has always been its tradition."³⁹ Weighing the risk to soldiers' lives in correlation to the risk to enemy non-combatants also results in a precarious and sensitive judgement call. Hartman articulates this point clearly: "While it is impossible to fight terror without civilian casualties, it is critical to maintain the standard that civilian casualties are fundamentally unacceptable and must be the exception to the rule. Every effort- and by that I mean every effort, up to and including some measure of increasing the danger to one's own soldiers- must not be merely acceptable but also embraced. We must target combatants exclusively and mourn any instance in which we are not able to harm them alone."⁴⁰

In some instances, this means that IDF strategy has placed soldiers in harm's way rather than risk civilian casualties. In 2002's Operation Defensive Shield, it chose house to house combat, resulting in the loss of 23 IDF soldiers, rather than aerial bombardment which would have kept the soldiers safe and been more effective but resulted in more civilian death. On the

³⁹ Halbertal, P. 102

⁴⁰ Hartman, P. 111

other hand, sometimes the IDF strategically does choose to risk harming enemy non-combatants.⁴¹ The Goldstone Report cites the IDF's firing of mortars on civilian neighborhoods resulting in the loss of civilian life.⁴² When Hamas was firing mortar shells at Israel from within these neighborhoods, the IDF was able to immediately detect their location with radar and retaliate. Waiting for a more precise means of reprisal would have allowed enough time for Hamas to move their rocket launchers, artillery and fighters, according to Halbertal. "When returning fire, the commanding officer cannot know whether there are civilians in that radius and how many of them there are."⁴³ In this case the IDF's calculations included risking civilian life. Halbertal assessed that in this situation the IDF's guidelines were not clear enough. Some units took on more risk to soldiers while others took on less at the expense of innocent life. "This is a very difficult choice...It is wrong to give the commanding officer a blank check to shoot anytime his soldiers are at probable risk—but he must be given the means of protecting them as well," says Halbertal.⁴⁴

The hardest facts to determine are the degrees to which *Tohar haNeshek* is carried out on the ground by the individual troops faced with going to battle. There are many varying accounts. We have looked at some of the damning Goldstone report, which has been retracted and disavowed by its author after more information came to light. Israel did not participate in the UN fact-finding mission in Gaza and therefore abdicated its opportunity to defend itself. Richard Goldstone published an op-ed in the Washington post explaining that civilians were not

⁴¹ Halbertal, P. 102

⁴² Goldstone, 2009

⁴³ Halbertal, P. 102

⁴⁴ P. 102

intentionally targeted as a matter of policy.⁴⁵ The article emphasizes that civilians were indeed killed but not as a matter of policy or intentionality, such as errors resulting from misinterpreted intelligence.

From a different perspective, Breaking the Silence is a non-profit organization comprised of Israeli combat veterans who tour domestically and internationally, bearing witness to IDF violations of *Tohar haNeshek*. Their website claims they exist in order to “stimulate public debate about the price paid for a reality in which young soldiers face a civilian population on a daily basis, and are engaged in the control of that population’s everyday life. Our work aims to bring an end to the occupation.”⁴⁶ Of 2014’s Operation Cast Lead in Gaza, the organization’s director, Dana Golan writes in *The New York Jewish Week*, “The briefing on rules of engagement was [to open fire at], ‘Anything you think you should...Anyone you spot that you can be positive is not the IDF.’ The only emphasis regarding rules of engagement was to make sure you weren’t firing at IDF forces, but other than that, ‘Any person you see.’ From the very start they told us, ‘Shoot to kill.’ As far as the IDF was concerned, there wasn’t supposed to be any civilian population there.”⁴⁷ Golan’s is one of many accounts published by the organization enumerating accounts of the IDF operating outside, or in direct contradiction of, its *Tohar haNeshek* policy. Golan went on to say, “The purity of Arms article can be erased from the Code of Ethics...An army that used statistical weapons like mortars and artillery cannons inside Gaza

⁴⁵ Goldstone, 2011.

⁴⁶ Breaking the Silence. https://www.washingtonpost.com/opinions/reconsidering-the-goldstone-report-on-israel-and-war-crimes/2011/04/01/AFg111JC_story.html?utm_term=.01ac252a008d. accessed 2/20/17

⁴⁷ Golan, Dana. *Breaking the Silence*, *The New York Jewish Week*. May 2015.

cannot say it did everything in its power to avoid harming civilians. An army that ordered soldiers to 'shoot everyone there,' since leaflets were thrown from the air, cannot say that it did everything in its power to avoid the killing of innocents." According to this account, the very safeguards and procedures that the IDF implemented to enforce *Tohar haNeshek* may have been transgressed and disregarded. However, for every account of the doctrine's violation, there is another account of the measures taken to adhere to *Tohar haNeshek*. This complicated issue cannot be adjudicated and seriously studied by simply comparing first-hand accounts.

It can be assumed that sometimes the carrying out of the policy goes better than other. Its success in practice depends not only on policies put in place but on the training and judgement of individual commanders and their troops and on self-assessment and investigation into violations after the fact. Halbertal addresses the practicality of executing *Tohar haNeshek* in real time while fighting these non-traditional wars. To the doctrine's architect, the emphasis for its successful implementation must come from extensive training and deep moral reflection before battle. He recounts the common complaint of Israeli officers: "Do you want to say that, before I open fire, I have to go through all these moral dilemmas and calculations? It will be completely paralyzing. Nobody can fight a war in such a straitjacket!"⁴⁸ He sees moral training on par with all other military training. If there is not time to consider tactical theory during battle, soldiers must be trained in tactics. Similarly, morality guidelines must be drilled into them. This is especially important in asymmetrical warfare. In Israel, the people making the most impactful decisions about *Tohar haNeshek* are not high level commanders, but ordinary young men and women right out of high school. On the non-traditional battlefield, these soldiers must make life or death judgement calls in the heat of battle. "In this new kind of micro-war, every soldier is a kind of

⁴⁸ Halbertal, P. 102

commanding officer, a full moral and strategic agent.”⁴⁹ Halbertal recognizes that the doctrine itself, carefully crafted upon the standards of morality, tradition and Judaism, falls short if it is not part of the internal make up of each individual soldier.

Goldstone’s article in the Washington Post focuses on an important part of carrying out *Tohar haNeshek*—the investigation after the fact. If the IDF claims to hold itself to these high standards, and also acknowledges that they cannot be carried out perfectly, the necessity of self-assessment and investigation are crucial to the validity of *Tohar haNeshek*. According to Lt. Colonel Roni Katzir, every allegation of criminal acts by the IDF, including such acts as stealing, vandalism or murder, are taken seriously. According to him, there are numerous NGOs who review the IDF’s operations. These include legitimate parties and also ones whose sole purpose is to find reasons to charge the IDF with criminal acts. This dynamic has become referred to as “lawfare”—the use of legal tools as a means of warfare. The IDF investigates all claims, matter where they originate. Sources include, NGOs, foreign media and Gazan citizens. When a fact-finding mission is launched, it is done by special commanders who are outside the chain of command. They are tasked with investigating the alleged acts and determining their criminality. The assessments are all publicly accessible.

A case-in-point that has proved polarizing and pertinent to the Israeli public in recent days was the shooting of a neutralized Palestinian assailant in Hebron by IDF soldier Elor Azaria. In 2016 two Palestinian terrorists perpetuated a stabbing attack on soldiers in Hebron. An IDF officer opened fire, killing one and wounding the other. About ten minutes later, Azaria arrived on the scene and shot the incapacitated assailant in the head. The Human Rights NGO B’Tselem caught the incident on tape and widely publicized it. One common tension surrounding

⁴⁹ Halbertal, P. 103

tohar haNeshek and its implementation is that of moral equivalency. Israel's enemies make a practice of targeting civilians.⁵⁰ They do not launch military investigations into misconduct or human rights abuses.⁵¹ Rather than indicting military operatives, the Palestinian Authority and Hamas named streets after war criminals⁵² and pay large sums of money to their families.⁵³ Supporters of Azaria call him a hero and desire similar treatment for him by the Israeli government (granted, his victim had perpetrated a terrorist attack minutes earlier and was not a civilian.) That the IDF does not warrant the moral equivalency argument with legitimacy aligns with *Ruach Tzahal's* goal of being guided by Jewish values throughout history.

In response to the situation, IDF Chief of staff, Gadi Eisenkot issued a letter to all troops: "The IDF puts in your hands the responsibility to fulfill our mission—defend the nation. Your commanders, and myself at the top, will continue to give support to any soldier who makes a mistake in the heat of battle, against a dangerous enemy threatening lives of civilians and soldiers...however we will not hesitate to exact justice on soldiers and officers who deviate from operational standards and the values we operate by...following the IDF's code of ethics is not a right but a requirement in order to maintain the IDF's status as the national army of a Jewish and

⁵⁰ Halbertal, P. 101

⁵¹ Goldstone, 2011

⁵² Haaretz Service. *PA Names Ramallah Street After Terror Mastermind*: Ha'aretz, April 7, 2010. <http://www.haaretz.com/news/pa-names-ramallah-street-after-hamas-terror-mastermind-1.891> Accessed February 24, 2017.

⁵³ Lake, Eli. *The Palestinian Incentive Program for Killing Jews*. Bloomberg News: July 1, 2016. <https://www.bloomberg.com/view/articles/2016-07-01/the-palestinian-incentive-program-for-killing-jews>. Accessed February 24, 2017.

democratic state...These values rest on a long Jewish tradition of being a nation that values life.”⁵⁴

Asa Kasher, one of the ethicists instrumental in drafting the *Ruach Tzahal* and *Tohar haNeshek* also spoke out about the Hebron shooting. He wrote in *The Forward* that the incident was immediately reported and the professional military investigation was repeated several times along the chain of command. Each investigation independently concluded that what Azaria did starkly violated his orders and military policy, especially the Code of Ethics’ requirement to respect human dignity and restrain the use of force. He addressed one popular defense of Azaria, that the soldier thought the terrorist still posed a threat and could be wearing a suicide vest. “The military investigation found that before the soldier shot the terrorist, he said that the terrorist had injured an IDF comrade and therefore ought to be killed. Such reasoning is utterly wrong, whether it is meant to justify retaliation, punishment, deterrence or what have you.” Kasher insisted that a difference still exists between terrorists wielding knives and enemy combatants on the battlefield. “The terrorists’ attempt to kill or injure ought to be foiled, but killing him is sanctioned only if there is no effective alternative—only if it’s a last resort...we don’t kill POWs who are enemy professional combatants; all the more so, we don’t kill terrorists once they’ve been rendered harmless.”⁵⁵ Kasher’s argument echoes one deeply ingrained in Jewish legal textual tradition. Rambam expounds on the prohibition against using excessive force

⁵⁴ Gross, Judah Ari. *Army Chief: No Support for Soldiers Who Break IDF’s Code*. The Times of Israel. March 30, 2016. http://www.timesofisrael.com/liveblog_entry/army-chief-no-support-for-soldiers-who-break-idfs-code/ Accessed February 20, 2017.

⁵⁵ Kasher, Asa. *I Wrote the IDF Code of Ethics. Here’s My Take on the Hebron Shooting*. The Forward, 6 Apr. 2016.

against a *rodef*—one who has come to kill you. If the *rodef* is killed unnecessarily, this is considered murder. Al-Sharif was undoubtedly a *Rodef*, but in using unnecessary force, Azaria transgressed *halakha*. Unlike many legal instances, it was clear what extent was needed to subdue the *rodef*—he had already been subdued. Rambam includes the requirement that someone defending himself against a *rodef* must be warned against using excessive force (receive *hatra'ah*) in order to be prosecuted for murder.⁵⁶

The IDF response was not to lionize Azaria for killing a terrorist, but to indict him on charges of murder, later reduced to manslaughter which eventually resulted in an eighteen-month prison sentence on February 21, 2017. It seems like the IDF strove to come down hard on this clear and widely known transgression of *tohar haNeshek*. They wanted to make the statement that Israel does not tolerate soldiers taking this policy into their own hands. They wanted to take a strong stand against abuses of power and weaponry. However, Israeli public opinion, while divided, diverged greatly from the IDF response. Huge protests broke out across the country and even the center-left felt that murder was too harsh of a charge. Many of Israel's politicians from across the political spectrum called for a presidential pardon to his manslaughter conviction. "IDF soldiers are our sons and daughters, and they must remain above all conflict. I support pardoning Elor Azaria," wrote Prime Minister Netanyahu on January 4, 2017, the day of Azaria's conviction. In response many of the IDF's top leadership rejected the politicians' reactions. They remained stalwart in their opposition to Azaria's abusive actions and supportive of punishing his breach of code. Former Defense Minister, Moshe Ya'alon called Azaria's actions "unethical" and accused politicians who were supporting Azaria of capitalizing on public

⁵⁶ *Mishneh Torah, Hilkhhot Rotzeach* 1:7

sentiment for their own political gain.⁵⁷ Politics aside, Elor Azaria is an important case study of *Tohar haNeshek*, its strengths, weaknesses and future. It shows that the ultimate implementation of the policy lies with individual soldiers- very young men and women who are conscripted without choice and have undergone minimal training in the policy and its underlying ideology. It shows the importance of independent investigations and the power of the court to check the military. When policy is executed on an untraditional battlefield, investigators and legal system hold soldiers accountable for upholding *Tohar haNeshek*. The reactions to the Azaria case show that the IDF and its leadership is committed to upholding and enforcing *Tohar haNeshek*, however it indicates a rift forming between IDF policy and public opinion. In a democracy like Israel, especially one with a true army of the people like the IDF, there is little room for this type of disconnect between army policy and public sentiment. The Azaria case indicates that *Tohar haNeshek* is alive and operational in Israel today, but shows that it might be vulnerable in the future.

⁵⁷ Wootliff, Raoul. *Natanyahu Backs Pardon for Soldier Convicted of Killing Wounded Stabber*: The Times of Israel. January 4, 2017. <http://www.timesofisrael.com/netanyahu-backs-pardon-for-soldier-convicted-of-killing-wounded-stabber/> Accessed February 20, 2017.

Conclusion

We have analyzed the extent to which *Tohar haNeshek* is rooted in Jewish tradition throughout the history of Jewish textual discourse and have touched on the question of whether it functions as a “Jewish Text” today. While the purpose of the Israel Defense Forces is to protect the Land of Israel and her citizens, one might say *Tohar haNeshek* works to protect the worthiness of their protection. Israel has never been just a physical construct, but also a symbol of spirituality, tradition and peoplehood. The concept of Israel in the Jewish tradition serves as a symbol for the aspirational and the ideal—the world as it should be, and will be in the messianic era. It might be legitimate to disregard the moral and symbolic significance of Israel in favor of the practical, modern military side of the IDF, were it not for its Code of Ethics, at the heart of which lies *Tohar haNeshek*. The “code” itself is titled *Ruach Tzahal*—The “Spirit” of the IDF, rather than “*chukim*”—rules or even a “*madrich*”—guide. The document aspires to lay out values and morals by which the Army defines itself and links it to the tradition it is defending. It lays claim to the very soul of the IDF, and arguable of the State itself. “When we and they speak of fighting for our home, the home we speak of is not simply a physical one, but a spiritual and moral one, in which certain ideas and values reign strong and free.”⁵⁸

The IDF, in its role as a Jewish organization, claiming to base its actions on Jewish values and tradition, must continually tread the fine line between the concomitant Jewish principles of self-defense as a moral obligation⁵⁹ and the obligation to pursue peace,⁶⁰ valuing

⁵⁸ Hartman, Donniel. “Fighting a Just War Against Hamas Justly,” from *iEngage* lecture 6.

Jerusalem, Israel: Shalom Hartmann Institute. (P. 108-109)

⁵⁹ Sanhedrin 74a and Rambam, *Mishne Torah*, *Hilkhot Rotzeach* 1:7 and 13.

the protection of innocent life⁶¹. When R. Judah b. Ilai analyzed Jacob's reaction to facing his brother Esau after many years of tense separation, he described the conflict as such: "Are not fear and distress identical? The meaning however is that he was afraid lest he should be slain, and was distressed lest he should slay."⁶² Like Jacob, the IDF and its soldiers are afraid of being slain—tradition demands they must diligently guard toward self-preservation, striking down those who would do them harm. But, they are also distressed lest they slay—Jewish values mean striving to avoid defiling themselves and their country with the use of indiscriminate bloodshed.

In practice, sometimes this means transgressing the very values ascribed in *Tohar haNeshek* in pursuit of the obligation of self defense, but maintaining the value of not harming non-combatants nonetheless in rhetoric, intent and investigatory practices after the fact. "The moral responsibility for harming civilians cannot be placed exclusively in the hands of the terrorists who choose to fight from their midst but must be carried as well by we who are fighting them, for it is only thus that we maintain our moral responsibilities to avoid harming them to the best of our ability."⁶³ The IDF does not and cannot always live up to the ideal of *Tohar haNeshek*, but neither does it release itself from this obligation nonetheless. It must take every precaution and make every effort to avoid harming non-combatants including risking safety to its own soldiers by placing them in harm's way and to its civilians by compromising the success of missions to avoid killing non-combatants. "Carrying" this grave responsibility means

⁶⁰ see *Mekhilta de Rabi Yishmael, Ba Hodesh 11*, Babylonian Talmud *Bava Kamma* 93a among others

⁶¹ Babylonian Talmud *Megillah* 10b

⁶² Genesis Rabbah, 76:2

⁶³ Hartman, P. 111.

that when the IDF fail's in its efforts, or avoiding harm to non-combatants is ruled to be "proportionally" unjustifiable according to strict standards, the IDF must take moral and vocal responsibility for its actions. "We must accept the immorality entailed in harming any civilian, but recognize the inevitability and even the moral imperative of acting to some extent immorally, as long as the overall purpose and the clear majority of operations fall under the moral standards and guidelines of morality in war."⁶⁴

The name *Tohar haNeshek* perfectly illustrates the contradiction and conflict contained within this doctrine and its implementation. *Tohar* is a concept right at home in the Jewish text and tradition that *Ruach Tzahal* claims to derive its mandates from. *Tohar* means pure—ritually pure. Both Biblical text and rabbinic exegesis from the Rabbinic and Medieval eras are very comfortable ruling on issues of purity and extoling purity's centrality to Israelite, and later Jewish, practice and society.⁶⁵ But Jewish text and tradition are less comfortable and clear cut in their treatment of *neshek* – weaponry. As we have discussed, for most of the time period in which our texts were being written and compiled, the Jewish people did not have a need to employ weaponry. Doing so was counterproductive for their safety and for the power of the rabbis writing these texts.

The concept of *Purity of Arms* does not exist in traditional Jewish law; to say it does would be anachronistic. Weaponry cannot be pure. In Jewish Law, violence, while justifiable, inevitable and even commanded, can never be cast in the realm of ritual cleanliness. Exodus 20:22 demands that the altar—the center of all Israelite ritual, must never even make contact with metal because its use in battle renders it so impure. In 1 Chronicles 22, God disqualified

⁶⁴ Hartman, P. 111.

⁶⁵ See Num 5:2, Lev 11 and Deut 12, among others

David, our most glorified ruler from whom the Messiah will one day descend, from building the Temple in Jerusalem, the apex of ritual purity, because his hands were stained with the blood of war. The closest thing to actual *Tohar haNeshek* in Jewish tradition might be the thing furthest from the IDF doctrine's aim: the commanded Amalekite and Cannanite wars, meant to ritually purify entire territories by cleansing them of idolatry and its practitioners. The idea of true "Purity of Arms" is not one that can be directly linked to Jewish text and tradition. However, the moral values implicit in the doctrine—the spirit of defending life while showing justice and restraint; the obligation to avoid innocent bloodshed, are in fact derivative of Jewish tradition.

In practice, *Tohar haNeshek* also comes up against contradictions. Just as *Tohar* and *Neshek* are a contradictory pair so are the words "humanity" and "combat" and "ethics" and "war." How can we view any document that demands humanity in combat, the most inhumane of all conditions, as anything but aspirational? The doctrine demands that IDF soldiers simultaneously defend Israel and her interests while defending the lives of non-combatants. Asymmetrical warfare greatly complicates this charge. As Donniel Hartman puts it, "Under these circumstances, one cannot remain morally pure in pursuing one's moral duty to preserve one's own life. The necessity of this compromise, however, is at the foundation of our decision to be a real people, living in real bodies, in a real country. We must, however be extremely careful never to allow this realism to remove our moral aspirations...To be a Jew and a moral human being is to be fearful for one's own life and never to become callous at the taking of another."⁶⁶

⁶⁶ P. 112

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