

PURITY OF ARMS: RELIGIOUS TEACHINGS ON
MORALITY IN WAR

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PURITY OF ARMS: RELIGIOUS TEACHINGS ON MORALITY IN WAR

Serving as an intelligence specialist in the US Navy several years ago, I sometimes found myself ethically challenged in carrying out my military duties. A number of my co-workers over the years struggled with the same difficulty. The nature of the military's varied missions, even in peacetime, often puts even relatively young and low-ranking personnel in a position of responsibility over life and death. Unfortunately, these young troops are often not adequately prepared for such an awesome responsibility.

During my last few years of service, I began to wonder what the Jewish tradition has to say about the kinds of ethical problems posed by war and military service. I knew that pacifism was not prescribed, but I also knew that Judaism holds human life as sacred; the normative position in Judaism had to be somewhere in the murky waters between refusal to kill at all and the "scorched earth" policy of waging war. I also wondered how much harmony existed between what Judaism and other religious traditions say concerning such matters.

Modern religious and secular philosophers, facing the moral implications of war in the face of advanced technologies that make more and more death and misery likely, offer a wealth of thought on this matter. In the nuclear age, the question of whether a "just war" is possible at all is indeed a topic of concern to thinkers of many orientations. But what interested me was not so much the question of morality *of* war, but rather the question of morality *in* war. Most young people volunteering to serve in their country's armed forces (or, in another place or another time, facing conscription) are not concerned so much with just war theory, rather the problem of how to behave morally in the stress of battle or military operations. It is this latter issue that I set out to explore, although as I proceeded I found that the two questions are difficult to separate in practice.

In my search for a modern text, I found Rabbi Shlomo Goren's 1982 three-volume work *Meishiv Milhamah* ("Response [to] War"). Goren was the IDF's first Chief Chaplain, serving in that capacity from 1948 until 1970. Although most of this monumental work is devoted to instruction regarding a soldier's requirement to conform with Jewish ritual practice, Goren also deals with the subject of

ethical norms and obligations incumbent upon the Jewish soldier. I have selected relevant portions of *Meishiv Milhamah*, translated them and provided commentary in which I consider what other voices have to say about the points Goren makes. I have organized this thesis as follows:

In Chapter One I introduce the concept of morality in war and the personage of Rabbi Shlomo Goren.

In Chapters Two through Five I present a translation, with commentary, of Volume One, Chapter One of *Mashiv Milhamah*. The Ethics of Warfare in the Light of the *Halakhah*.

In Chapters Six and Seven I present a translation, with commentary, of two sections of Volume Three, Part Five: Military Operations in the Present Time in the Light of the *Halakhah*. The two sections are, respectively: The Siege of Beirut in the Light of the *Halakhah*; and Military [Service] and [National] Security in the Light of the *Halakhah*.

In Chapter Eight I summarize and present my own conclusions.

TABLE OF CONTENTS

<u>Chapter</u>	<u>Page</u>
1. INTRODUCTION	1
2. THE ETHICS OF WARFARE IN THE LIGHT OF THE <i>HALAKHAH</i> - On the Value of Human Life	19
3. THE ETHICS OF WARFARE IN THE LIGHT OF THE <i>HALAKHAH</i> - On The Individual's Obligation to Answer The Call To War	49
4. THE ETHICS OF WARFARE IN THE LIGHT OF THE <i>HALAKHAH</i> - Restraints on Killing, Even in War, and Its Effect on the Killer	63
5. THE ETHICS OF WARFARE IN THE LIGHT OF THE <i>HALAKHAH</i> - Personal and Community Responsibility for the Preservation of Life	110
6. THE SIEGE OF BEIRUT IN THE LIGHT OF THE <i>HALAKHAH</i>	147
7. MILITARY [SERVICE] AND [NATIONAL] SECURITY IN THE LIGHT OF THE <i>HALAKHAH</i>	170
8. CONCLUSIONS	241
GLOSSARY	251
BIBLIOGRAPHY	271

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To Yitzhak Rabin, 1922-1995

The Consummate Warrior, He Died Making Peace

different than the action of targets of intelligence value in the
absence of hostilities which we did all the time. A few of us were

ONE

INTRODUCTION

Several years ago while serving in the US Navy, I was flying as a crewmember on an electronic reconnaissance mission during a minor military action which was not a declared war. We were instructed to provide precise locating data on several non-military targets to verify data obtained by other means. This was done to assist a flight of strike aircraft in a nighttime bombing of these targets. We obtained the locating data and passed it on for correlation, then we provided real-time threat assessment to the strike formation during the attack. We later learned that the action that night had been partially successful.

A number of our crewmembers were very enthusiastic about the strike's partial success, and they were proud of our contribution. Several were almost indifferent, considering the job we had done no different than the location of targets of intelligence value in the absence of hostilities, which we did all the time. A few of us were

somewhat troubled about the strike and our supporting role. One of my co-workers was so concerned about the ethical questions arising from our work on that night that he refused all further flight duty (it being completely voluntary). This earned the young man the ire of the command, and his security clearance was immediately revoked. Eventually he was transferred in to an administrative job under a cloud which would follow him as long as he remained in the service.

Many of our co-workers thought poorly of this young man, but a few of us thought him meritorious for standing up for his beliefs despite the unpleasant consequences, which he certainly could clearly foresee when he wrote and delivered his letter withdrawing his volunteer status.

After this incident I began to wonder about ethical limits in warfare. When one holds a life-and-death power over others, how does one incorporate ethical principles in one's decision making? How does one decide on personal standards with the sureness that will enable one to defy orders, if necessary, to maintain them? How to clearly assess one's role in killing when it is an indirect role as ours was?

The military establishment itself was not always helpful in providing guidelines. In the military it is understood that there are lawful and unlawful orders, and that the individual has the right to refuse an unlawful order if it will result in wrongful or accidental death, especially to civilians. However, there is always a tension between this principle and the need for "good order and discipline" in the ranks, and the individual is always advised to follow questionable orders first and then raise an inquiry after the fact unless he is *absolutely certain* of the undesirable outcome of his following the orders in question. With military justice being in some ways less protective of individual rights than civilian law, and with a guilty verdict in a military court martial carrying the certainty of a federal criminal record, it is extremely difficult and risky for an individual in the military to stand up to authority.

A recent Hollywood feature film, *Crimson Tide*, dramatized this dilemma. In the film, there has been a military rebellion against the elected government in newly-democratic Russia. The captain of a U.S. ballistic missile submarine receives an order to launch missiles against a base that the rebels have taken over. The

message, however, is partially garbled, and it is not possible to confirm the message because the ship is under attack and in the midst of defending itself, and the equipment for sending and receiving communications while submerged is disabled. The submarine's captain, not a cruel man but a "by the book" commander, decides to launch the missiles and ask questions later. He is afraid of the consequences of not attacking a legitimate target while the submarine is still able to launch missiles. The executive officer believes they should wait until they can receive confirmation of the order, since their Trident missiles are so lethal that a launch will result in massive civilian casualties. The executive mutinies against the captain, and his action buys enough time to prevent the launch until a query of the launch order can be sent. It turns out that the submarine was *not* supposed to launch, and the executive officer's action in defying the captain prevented the certain casualties as well as the probability that an exchange of nuclear salvos between the United States and Russia would have ensued. The executive officer is nevertheless put on trial for mutiny and could very well have been convicted except that his captain realizes his

own mistake, accepts the blame and offers to resign.

The message of *Crimson Tide* was that this tension between following orders and ethical principles is nothing new, but where nuclear weapons are involved the stakes are higher than ever and thus call for a more thoughtful approach to following orders to avoid the possibility of a nuclear holocaust. The "old" military approach, that of following orders and asking questions later, is inappropriate in the face of the destructive capability of modern nuclear weapons. The grizzled captain played by Gene Hackman, realizing this, exonerates his defiant executive officer and steps aside to make way for a new generation of military men with a different mentality.

Since Operation Desert Storm, the war in the Persian Gulf in 1991, the various branches of the U.S. armed forces have, in fact, begun emphasizing the teaching of ethics to personnel of all ranks as never before. W. Hays Parks, a Colonel in the U.S. Marine Corps Reserves, serves in a unit whose mission is the conduct of seminars on the Laws of War. He writes that, in addition to the "continuing education" seminars that he and his co-workers teach, every officer

and enlisted Marine receives education in the subject as a part of his or her initial entrance training¹. Additionally, series of lectures on the subject are incorporated into courses that Marines take when reaching higher levels of command, for example the Sergeant Majors Academy, Company Commanders Course, and the National War College. What is true of the Marine Corps in this regard applies equally to the other branches of the armed forces. The very fact of the publication of the book containing Colonel Parks' essay under military auspices attests to the new seriousness toward teaching ethics in war.

¹ W. Hays Parks, "Teaching the Law of War." James C. Gaston and Janis Bren Hietala, eds., Ethics and National Defense: The Timeless Issues (Washington: National Defense University Press, 1993), 145-168. Colonel Parks, quoting a publication distributed to every Marine, writes that, at the lowest level, everybody entering the Marine Corps receives two hours of instruction instilling in him or her the following principles:

- (1) Marines fight only enemy combatants.
- (2) Marines do not harm enemy soldiers who surrender. Disarm them and turn them over to you superior.
- (3) Marines do not kill or torture prisoners.
- (4) Marines collect and care for the wounded, whether friend or foe.
- (5) Marines do not attack medical personnel, facilities, or equipment.
- (6) Marines destroy no more than the mission requires.
- (7) Marines treat all civilians humanely.
- (8) Marines do not steal. Marines respect private property and possessions.
- (9) Marines should do their best to prevent violation of the law of war. Report all violations of the law of war to your superior.

But if there *is* a new imperative to teach the Laws of War in the U.S. armed forces, how do the ethics being taught compare to the laws on the subject as taught in Judaism? And what about other religious traditions?

The Laws of War as they are generally understood in the Western World can be divided into two categories: the theory of the right to go to war, known as just war theory or *jus ad bellum*, and the ethical conduct of war, known as *jus in bello*.

Jus ad bellum is today regulated among the nations of the world by the charter of the United Nations as enforced by the U.N. Security Council. The U.N. charter recognizes the right to go to war only for defensive purposes; a nation may defend its borders against aggression, or it may go to war against an aggressor in defense of a third nation, usually as called for in a mutual defense treaty. In the latter case, the Security Council must approve the action and its scope.²

² E.g., in 1990 the Security Council approved the U.S.-led coalition's military action against Iraq, which had invaded and occupied Kuwait in August. Only 100 hours after the start of the land war, U.S. President George Bush ordered a cease in hostilities. Bush has taken much after-the-fact criticism for stopping the war with Iraqi President Saddam Hussein still in power, and with half of his elite Republican Guards divisions still intact. However, one compelling reason for his order was that the Iraqis had been driven out of Kuwait, the goal which had been approved by the Security Council.

Christianity generally agrees with the U.N. principle, although there are Protestant sects and Catholic orders that forbid all warfare. In general, though, Christian groups teach that a nation may go to war if threatened itself, or in defense of a threatened ally. Judaism and Islam recognize, in addition to defensive wars, other categories of authorized wars.

Jewish teaching recognizes various "mandatory" wars for the proscription and conquest of certain nations, as well as "optional" wars for the expansion of national borders. However, these categories of war are not valid today; now only a defensive war may be fought according to Jewish law³.

Islamic law requires the Muslim to engage in *jihad*. But while many in the west erroneously associate *jihad* exclusively with the concept of "holy war," the word actually means "struggle." In religious context this can mean the struggle against one's own evil inclination, or struggle towards the moral uplift of society⁴. Some groups within Islam, often referred to as "*jihad* movements," have

³ This appears to be the mainstream opinion. As we shall see below in chapter seven, there is some disagreement on this point.

⁴ Rudolph Peters, "Jihad," in Miroca Eliade, et al, eds., Encyclopedia of Religion, vol. 8 (New York: McMillan Publishing Company, 1987), 88.

historically interpreted a number of the *qur'anic* verses that allude to *jihad* as mandating a continuous armed struggle against non-Muslims until Muslim domination of the entire world would be achieved, but clearly the majority opinion within Islam sees the "*jihad* of the sword" as requiring Muslims to go to war only for defensive reasons, either for physical security or to fight religious persecution by non-Muslims⁵.

Buddhism and Hinduism generally prohibit war and killing for any reason.

The four Geneva Conventions of 1949⁶ regulate *jus in bello* for their signatories. There is little agreement about the source of the unwritten laws that are the source of the Conventions. During the Middle Ages there developed a chivalrous tradition of honorable treatment towards one's worthy opponent, which also set certain borders as to the treatment of civilian populations. When the nature of warfare changed from contests between knights serving different

⁵ Ibid., 90.

⁶ The four Conventions are: Geneva Convention for the Amelioration of the Wounded and Sick in Armed Forces in the Field; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked members of Armed Forces at Sea; Geneva Convention Relative to the Treatment of Prisoners of War; and Geneva Convention Relative to the Protection of Civilian Persons in Time of War.

lords to larger battles between armies of conscripted footsoldiers, the customs of chivalry fell out of practice. The (Roman Catholic) Church developed a canon law regarding the conduct of war, but it was generally de-emphasized while justifying the war to satisfy *jus ad bellum* was considered of primary importance⁷. And the canon law on warfare, like the chivalrous customs of the knights before it, only regulated warfare against other Christians. When fighting "infidels" or "savages," there were not considered to be any limitations⁸.

By the advent of the Modern Period, it was clear that there were no effective restraints on the conduct of warfare in Europe, and as weapons became more and more capable this meant increased civilian casualties and suffering in wars. In the 20th century, little by little, European states began agreeing to protocols concerning the treatment of civilians and of military prisoners of war. These led to the 1949 Geneva Conventions.

In Judaism, in contrast, there is much teaching on the subject

⁷ Robert C. Stacey, "The Age of Chivalry," in Michael Howard, George J. Andreopoulos, and Howard Shulman, eds., The Laws of War: Constraints on Warfare in the Western World (New Haven: Yale University Press, 1994), 3.

⁸ Michael Howard, "Constraints on Warfare." The Laws of War, 3.

of *jus in bello*; it was discussed at length, starting in the Bible, continuing in the Talmuds and the midrash, and it was codified systematically in the medieval period. There is much in common between the *halakhah* on war and the Geneva Conventions. The *halakhah*, in fact, is even more protective of both belligerents and civilians than the Geneva Conventions, as we shall see⁹. Of course, Jewish law on the subject was entirely theoretical from the time of the failure of the Bar Kokhba revolt against Rome in 135 CE until the early 20th century. Then, with the growing Jewish population in Palestine increasingly vulnerable to attacks by indigenous Arabs, Jewish leaders formed *Hashomer*, the Jewish watchmen's society in 1907. With the 1920 inception of the *Haganah*, a full-blown Jewish militia with the beginnings of true military capability, the *halakhah*, it could probably be said, ceased to be only theoretical¹⁰. Given this gap, and the marginality of Jewish scholarship and thought in the estimation of the intellectual and ruling classes of Christian Europe

⁹ Especially below, in chapter six.

¹⁰ Although it is extremely doubtful that any of the early *Haganah*-niks were at all concerned about *halakhah*, being mostly socialists and secular. However, as we shall see below they were concerned with utopian idealism, which their later religious partners translated effectively into an ethic based on the *halakhah*.

throughout the centuries of the Jews' exile, the influence of the *halakhah* on war upon the emerging modern movement to define and legislate *jus in bello* is doubtful.

In my search for answers to the question of what my religious tradition teaches, I found *Meishiv Milhamah: She'eilot u'T'shuvot be'Inyanei TZava, Milhamah, u'Vitahon*¹¹ by Rabbi Shlomo Goren ז"ל.

Goren (1917-1994) was born in Poland to a religious family and taken to Palestine at the age of eight when his parents immigrated as members of the founding group of a religious farming settlement. He was a Torah prodigy from the age of 12, when he entered the Hebron Yeshiva in Jerusalem. His publishing career began at the age of 17 when he wrote a commentary on Maimonides' *Mishneh Torah*.

At 18, Goren joined the *Haganah*, and he fought among the defenders of Jerusalem in the War of Independence. During the war, he was appointed as the first chief chaplain of the nascent Israeli Army or *TZahal*¹². He served in that capacity until 1970. He was responsible for the organization of the military chaplaincy and for

¹¹ The title translates as, "Response (to) War: Questions and Responsa on Matters of (the) Army, War, and Defense."

establishing regulations for religious observance by soldiers. He wrote several important and innovative responsa regarding specific problems arising from service in war, for example the problem of the status of *agunah* or "chained woman" of the wives of soldiers missing in action. He is famous for accompanying his troops on dangerous campaigns; he rode along with mechanized forces in the Sinai campaign and advanced with the paratroopers in the liberation of the old city of Jerusalem. He was with the first units to reach the Western Wall, where he blew the *shofar* to announce its liberation, and he conducted the first Jewish religious service at Judaism's holiest site since the fall of the Old City to the Arab Legion in the War of Independence.

Goren retired from *TZahal* in 1970 with the rank of Brigadier General and was elected Ashkenazi chief rabbi of Tel Aviv-Jaffa, in which capacity he served until 1972. He was then elected Ashkenazi chief rabbi of Israel, serving in that office until 1983.

During the course of his life, Goren underwent an interesting metamorphosis. Until the 1970's he was considered to be a

¹² The acronym *TZahal* stands for *TZava Haganah Le'Yisra'el*, which translates as "Army for the Defense of Israel." It is usually referred to as the Israeli Defense Forces, or IDF, in English.

"liberal"; he made novel *halakhic* rulings which ameliorated various hardship cases, such as those of war widows and *mamzerim*. He was well-regarded in the secular community, who considered him a war hero and representative of the "enlightened" type of religious leader who did not try to coerce the non-religious to live in accordance with religious law. He was highly regarded by national leaders from David Ben Gurion to Yitzhak Rabin. He was progressively hated for his "unorthodoxy" by the *Haredi* community, the "ultra-Orthodox" who came to dominate the Israeli religious scene more and more at the expense of the "modern" nationalist-Orthodox whom Goren represented.

Then, during his tenure as Ashkenazi chief rabbi of Israel, Goren embraced the *Gush Emunim*, the ultra-nationalist, religious movement to settle the occupied lands on the West Bank of the Jordan River with Jews as a way of making these territories, part of the "Biblical Land of Israel," irreversible. A year before his death, shortly after the signing of the Oslo Accords between Israel and the PLO which would lead to an Israeli pullback from Gaza and the West Bank, he shocked many in the secular and moderate religious

communities with his *halakhic* ruling that religious soldiers in *TZahal* should refuse to carry out orders to forcefully evacuate Jews from the West Bank¹³. He explained that Jewish Law forbids giving up any part of the Land of Israel peacefully, and that the law of the democratic government of the modern secular state should be obeyed only insofar as it does not oppose Jewish religious law. Further, he stated that any Jew who has the opportunity to do so, is obliged to kill Yassir Arafat, the chairman of the PLO (and now the president of the Palestinian Authority), this because Arafat is guilty of killing Jews¹⁴.

Meishiv Milhamah, published in 1982, is a three-volume work of 1,289 pages. It is intended as a *halakhic* guide for the religious Jewish soldier in *TZahal*. No fewer than five other Israeli rabbis have also published such guides, but all the rest are small, pocket-sized books that are necessarily brief. And the others deal exclusively with the issue of *ritual* observance, for example the keeping of the dietary laws, observance of the Sabbath and festival

¹³ Avi Katzman, "Goren Purified *Mamzerim*, Freed *Agunot*, and Made Organ Transplants from the Dead Possible," *Ha'Aretz* (Jerusalem), 28 November 1994, A, 7.

¹⁴ *Ibid.*

limitations, and needs for ritual purity, when in field and combat conditions. Goren devotes most of the space in his voluminous work to these issues, but he also addresses questions of ethics in war.

The leadership of the pre-state *Haganah*, in which Goren participated, formulated a doctrine of ethical behavior in war, which they called *tohar haneshek*, literally, "purity of arms." This doctrine envisioned the Jewish citizen-soldier fighting in defense of his homeland, reluctantly and with great restraint toward his opponents and their civilian populations. Although *tohar haneshek* was expressed primarily as a liberal, secular, and utopian ideal in keeping with the orientation of the dominant Labor Zionists, certainly their religious-nationalist coalition partners under the leadership of chief rabbi Abraham Isaac Kook and including the likes of Goren were able to influence the formation of the policy to bring it in line with the *halakhah* of war fighting. *Meishiv Milhamah* is an expression of Goren's religious rationale for *tohar haneshek*. In that is a unique modern religious expression of the Laws of War, it is an important work.

In this thesis, I have translated three sections of *Meishiv*

Milhamah. In his introductory chapter, Goren outlines the principles of respect for human life and dignity, even in war, and he explores the responsibility of individuals and groups for the well-being of the nation. Because of the length of this chapter, I have dealt with it in four segments, each comprising a chapter of this thesis (chapters two through five). In a section of a later chapter of his work, Goren uses the siege of Beirut as a case study to explain the *halakhah* concerning the army's responsibility for the well-being of enemy civilian populations. This text comprises one chapter of this thesis (chapter six). Finally, in a subsequent chapter of his work, Goren discusses the *halakhot* concerning mandatory service and exemptions for certain individuals. This text also comprises one chapter of this thesis (chapter seven). Each chapter also includes my own commentary, in which I compare and contrast Goren's opinions with other voices within Judaism and from other religious traditions.

My aim in writing this thesis is to convey a sense of the thrust of the Jewish teaching on *jud ad bellum* and *jus in bello*, expressed in practical terms for anyone who has an interest in the subject, but particularly for the Jewish serviceman or woman who finds himself

or herself challenged to formulate and articulate a personal ethic for matters arising from military service. Secondly, I aim to afford the non-Jew who might be struggling with the same questions access to a "modern-traditionalist" Jewish point of view. Finally, I wish to provide the reader an opportunity to contemplate what the various religious traditions have taught on the Laws of War, and how their respective adherents have either succeeded or failed to live up to those teachings. I shall share my own views as to the ramifications of this phenomenon in my conclusionary chapter.

TWO

THE ETHICS OF WARFARE IN THE LIGHT OF THE HALAKHAH - On the Value of Human Life

In this chapter, we shall look at the first few pages of Goren's introductory chapter, THE ETHICS OF WARFARE IN THE LIGHT OF THE HALAKHAH. Goren begins his treatise by using rabbinic methodology to prove through various sources that, in the sight of God, all human life is holy and precious. He is clearly addressing the tendency among Jews to view non-Jews, "the *goyim*," as the Other, as less favored by God while they, Jews, belong to God's Chosen People. As an antidote to this tendency, Goren argues that each human soul, Jewish or otherwise, is sacred; the spilling of *any* person's blood is, strictly speaking, contrary to God's law.

To be fair, history has shown us that most national and ethnic groups in the world have also succumbed to this worldview of "Them" and "Us." But Goren's self-appointed task here is to show the religious Jew, by using the sources

such a person considers authoritative, that God values, and desires to protect the sanctity of, all life.

Goren uses several arguments to make his point. First, he takes the well-known dictum from the *Mishnah*, that "anyone who takes a single life is regarded as though he had killed an entire world; and anyone who saves a single life is regarded as though he had saved an entire world." (*Sanhedrin* 4:5) But the dictum has another, less "universalist" version that shows up in many texts and sources: "anyone who takes the life of a single Jew is regarded as though he had killed an entire world; and anyone who saves the life of a single Jew is regarded as though he had saved an entire world." (Emphasis added) The difference in meaning is clearly apparent; one who holds that the latter version is correct, need only be concerned with Jewish life and might therefore more readily justify the killing of gentiles. Goren takes a two step approach to support his contention that the former, more universal version of the passage is what the Jew should use in guiding his conception of the worth of human life. First he shows that, while some

instances of the version which omit "Jew" could possibly be attributed to a medieval form of "political correctness," other instances of the same version are from such unimpeachable sources; that they must be considered genuine. Then, rather than attempt to discredit the various instances of the version which specify "Jew," Goren acknowledges the existence of two parallel traditions and uses classical rabbinic method to argue that they do not contradict one another. This he does by ascribing two different meanings to the phrase "an entire world," with the meaning in each instance being dependent upon the inclusion or omission of "Jew" from the text at hand.

Next, Goren uses various scriptural texts to show that God does not rejoice over the death of any of His creatures, even the wicked and the mortal enemies of His Chosen People, the Jews. He is specifically trying to reconcile the Israelites' joyous Song at the Sea (Exodus 15) with the passage from the *Babylonian Talmud* which represents God as chastising the angels for singing an ecstatic song upon the fall of the Egyptians (*Gemara in Tractate Megillah 6b*, and in *Tractate Sanhedrin 39b*). Goren makes an interesting use of

biblical Hebrew grammar to prove his point (supported by a number of texts), that the Israelites' song did not in fact happen at the sea, when the Egyptians drowned. Rather, he suggests that it *will be* sung in the future, in Messianic Times.

Within the Jewish framework it is impossible to take issue with Goren's point here. The Torah supports the contention of the sanctity of life, proclaiming it from the Genesis account of Cain and Abel where God tells Cain (Gen. 4:10), "Your brother's blood cries out to me from the ground!"¹ Later, after the flood, Noah and his sons are told (Gen. 9:6), "Whoever sheds the blood of man, by man shall his blood be shed." When Jacob, returning from exile in the east, faced the possibility of war with his brother Esau, the scriptures tell us he was "greatly afraid and . . . distressed" (Gen. 32:7). The *midrash* (*Tanhuma, Parashat Vayishlakh*, 4) explains the use of the two adjectives: "afraid"-he was afraid of his brother's wrath; "distressed"-he was distressed over the possibility that, should they go to war, he might kill Esau.

¹ Translation of this verse, and all following biblical citations except where noted, from Tanakh: A New Translation of The Holy Scriptures According to the Traditional Hebrew Text (Philadelphia: Jewish Publication Society, 1985). ("The New JPS Translation")

But despite a biblical prescription of capital punishment for murderers, which actually supports the sanctity of human life², the Jewish Tradition displays a great reluctance toward even the taking of the life of a murderer. And even then, capital punishment must be understood as a means of blotting out the evil that would result in murder; the death penalty, in the Jewish Tradition, is not seen as retribution for the crime. The rabbinic literature makes it clear that the texts of Exodus 22 and Leviticus 24, where the well-known prescriptions of "eye for an eye, tooth for a tooth" are found, have always been understood as a basis for civil lawsuits for damages, and *not* as allowing physical retribution³. It was never intended that the death penalty would be used as revenge. This is clear from the passage of the cities of refuge (Deut. 19), where someone guilty of unintentional manslaughter would be protected from the vengeance of the deceased's family. The text gives the rationale for this requirement (vs. 10): "Thus blood of the innocent shall not be shed, bringing bloodguilt upon you in the land that the Lord your God

² Since a deliberate violation of that sanctity must be dealt with in the harshest terms.

³ Babylonian Talmud, Bava Kamma 84a, cited in Joseph Telushkin, Jewish Literacy (New York: William Morrow, 1991), 500-501.

is allotting to you."

If it is clear from the biblical text that the blood of the perpetrator would not be shed in the face of anything less than premeditated, aggravated murder, the Rabbis eventually placed so many safeguards against the administration of capital punishment as to effectively make it entirely theoretical. As Goren seeks to show later in the text (below in chapter four), while the "straight" *halakhah* allows certain punishments to be exacted, there is a higher standard called the "*Mishnah* of the Pious" wherein the quality of mercy is given primacy. All of this certainly supports the notion that the forfeiture of human life is never, under any circumstances, pleasing to God.

Other religions also teach, in their own ways, this concept of the worth of every human being. Islam's teaching is probably the closest to that of Judaism. The Qur'an, for example, states (*Surah* 6.151):

Do not take any human being's life-which God has declared to be sacred-except in [the pursuit of] justice.

The Qur'an, in fact, includes a passage similar to the *Mishnah's* "anyone who takes a single life is regarded as though he had killed

an entire world . . ."; in *Surah* 5.35 we find:

If any one slew a person-unless it be for murder or for spreading mischief in the land-it would be as if he slew the whole people: And if anyone saved a life, it would be as if he saved the life of the whole people⁴.

Christian tradition includes a very strong reluctance toward the taking of life, drawing directly upon the teachings of Jesus against harming another in anger. It seems, however, to be based not so much on the concept of the sacredness of human life but rather on the potential of each soul to accept Christian teaching. As Justin Martyr wrote in the second century CE:

We have hated and destroyed one another . . . now, since the coming of Christ, live familiarly with . . . , and pray for our enemies, and endeavor to persuade [them] . . . to live comfortably to the good precepts of Christ."⁵

Buddhism and Hinduism arguably hold within their teachings the strongest condemnation of taking any life, stronger on the surface than those of the Western monotheistic faiths. Both, for example, abhor the killing of even animals and, in the case of

⁴ The Arabic *umma*, here translated as "people," does not refer to the entire human race. Rather, the connotation is as the Greek *ethnos* or the Hebrew *am*, a nation.

⁵ Justin Martyr, *Apology*, 14, 3, cited in Alexander Roberts and James Donaldson, eds., *The Ante-Nicene Fathers*, vol. 1 (Grand Rapids: Eerdmans, 1981), 167.

Hinduism, even plants. Each of these Eastern religions recognizes a stronger underlying bond between humans and other created beings than Judaism, Christianity, and Islam, which hold that man, created in the Image of God, possesses a special relationship with the Creator and occupies higher position than other life-forms⁶.

Additionally, Buddhism in particular puts great emphasis on the concept of reincarnation, and its teachings hold that an animal could potentially become a human in a future life, and it could have been a human in a former life. This, of course, creates an impetus to advocate the preservation of *all* life, not just human⁷.

The argument Goren makes, concerning the worth of all human life, is a necessary prelude to much of the rest of his treatise, since many points he later makes depend on the reader's understanding of

⁶ An in-depth discussion of the Hindu and Buddhist concepts of the unity of all life, and their ramifications to the formulation of an antiviolence doctrine in these two faiths, is found in Haim Gordon and Leonard Grob, eds., Education for Peace: Testimonies from World Religions (Maryknoll, NY: Orbis Books, 1987). See the articles: Manjuvajara, "The Buddhist Teaching on Nonviolence," 114-126; and Ramakrishna Puligandla, "The Hindu Quest for Peace," 139-146.

⁷ Actually, in Judaism there is also such a belief found within the Kabbalistic (mystical) expression. It is called in Hebrew גִּילְגּוּל חַנּוּפֶשׁ (*gilgul hanefesh*), and it corresponds remarkably with the Buddhist doctrine. It holds that humans who went to their graves without atoning for sins will be brought back to life (even as animals) to give them an opportunity to right past wrongs. This notion first appeared in the 12th century and figures in the *Zohar* and the thought of *Isaac Luria*. The medieval Jewish philosophers opposed it. (Geoffrey Wigoder et al, eds., The Encyclopedia of Judaism Jerusalem: Jerusalem Publishing House, 1989, 714.

this conception. But Goren has in effect placed upon himself the burden of reconciling this conception of life with the reality of warfare which results in violent death, and in suffering for the living. In later chapters we shall see how he discharges this burden; the reader will judge as to whether he succeeds in making the case for the morality of war in the light of the sanctity of life.

(Goren text begins: Volume 1, page 3)

There is no doubt that human life is the highest value according to Israel's Torah as interpreted by the *halakhah* and as reflected in the ethics of the Prophets. This value is placed not only on the life of a Jew, but on the life of any human being, all of whom were created in the image of God. It is written, in *Mishnah Sanhedrin* (4:5):

A single man (Adam) was created for this reason: to teach you that anyone who takes the life of a single Jew⁸ is regarded as though he had killed an entire world; and anyone who saves the life of a single Jew is regarded as though he had saved an entire world⁹.

However, in the *Leyden Manuscript of the Jerusalem Talmud* and also in the *Genizah Manuscript of the Babylonian Talmud*, the word "Jew"

⁸ Literally, נֶפֶשׁ אַחַת מִיִּשְׂרָאֵל - "one soul from (among the people of) Israel.

does not appear in this passage from *Sanhedrin*.

Also the *Rambam*, in chapter 12 of *Hilkhot Sanhedrin*, *halakhah* 3, translates the text of the *Mishnah* without mentioning the word "Jew." Rather:

Therefore a single man was created in the world: to teach that anyone who takes the life of one [person] in the world is regarded as though he had killed an entire world; and anyone who saves the life of a single one in the world is regarded as though he had saved an entire world¹⁰.

This teaches that there is no difference between the value of the life of a Jew, and that of any other person. The *Rambam's* translation is confirmed by the *Munich manuscript* of the Talmud, which is the most reliable manuscript in the world for determining the translation of the Talmud. There too the word "Jew" is missing, which shows that the redactors of *Sanhedrin* 37 agreed. Moreover, in

⁹ This passage teaches two things. First, concerning the reproductive capacity (through ensuing generations) of a single man. Since the entire human race (according to this doctrine) descends from the seed of a single man (Adam), then each man has the potential to people an entire world through his offspring. And yet, the text specifies the life of a single Jew. But is this not a contradiction, de-emphasizing our common humanity and glorifying Israel? As we shall see below, Goren balances this reading against others that omit the word "Jew." In the instances where "Jew" is included in the formulation, he asserts that the passage in question is focused upon the significance of the Torah, maintained from generation to generation by the Jewish people, as a sustainer of life.

¹⁰ In this interpretation, (the doctrine) that the entire world sprang from Adam serves to teach us about our common humanity, regardless of race or national origin.

most manuscripts of the *Mishnah* the word "Jew" is missing: for example, in the *Kaufmann*, *Parma*, and *Cambridge manuscripts*; and also in most of the manuscripts of the *Mishnah* with the *Rambam's* commentary one does not find the word "Jew."

Nevertheless, in chapter 1 of *Hilkhot Rotse'akh U'shemirat Nefesh*, *halakhah* 16, the *Rambam* upholds the formulation of the *Mishnah*, that . . .

Anyone who takes the life of a single Jew is regarded as if he had killed an entire world; and anyone who saves the life of a single Jew is regarded as though he had saved an entire world.

Now there is no contradiction here in the words of the *Rambam*. In *Hilkhot Sanhedrin*, the *Rambam* establishes that every soul in the world is considered the legal equivalent of an entire world, as he writes there:

Therefore a single man was created in the world: to teach that anyone who takes the life of one in the world is regarded as though he had killed an entire world; and anyone who saves the life of one in the world, it is considered as if he had saved an entire world.

And the point of this [rendering] was that the world would renew itself in the future. (p. 4) But in *Hilkhot Rotse'akh*, in the matter of the prohibition against murder, [the *Rambam*] establishes

that . . .

Anyone who saves the life of a single *Jew* is regarded as though he had saved an entire world (emphasis added).

He refers to the existing world that was created in the Six Days of Creation, and which is sustained by the merit of Israel. As *Rashi* commented on the beginning of Genesis:

According to our Rabbis, God created the world for the sake of the Torah, which is called (Proverbs 8:22) "the beginning of His way," and for the sake of Israel, who are called (Jeremiah 2:3) "the beginning of His increase."

Therefore one reads here "the life of a single *Jew*," for by it the whole world is sustained, that for the sake of one righteous soul the whole exists.

As *Rabbi Yohanan* said in *Tractate Yoma* [of the *Babylonian Talmud*], 38b

The world is sustained even for the sake of the soul of *one* righteous [person]. As it is written (Proverbs 10:25) "The righteous is an everlasting foundation."

In *Avot de Rabbi Natan* [at the] end of Chapter 3, the traditional edition reads as in the aforementioned *Mishnah Sanhedrin*. In the edition [of the *Babylonian Talmud*] of *Rabbenu Hananel*, in *Sanhedrin* 31a, one reads that [for] anyone who takes a life, it is as if he has

killed an entire world. And this confirms the wording of the [above-mentioned] manuscripts, as well as the wording of the *Rambam* on [Mishnah] *Sanhedrin*, chapter 12. One can attribute some of the blottings-out of [the word] "Jew," to "The Censor"¹¹.

According To the Reading of a Manuscript of *Avot de Rabbi Natan* and of the *Rambam*, "Anyone Who Saves a Single Life" Means Even the Life of a Gentile.

In *Avot de Rabbi Natan* chapter 31, one reads as in the *Rambam*, *Hilkhot Sanhedrin*:

With ten decrees the world was created. Why did mankind need them? Only to teach you that everyone who fulfills one commandment, or who keeps one Sabbath, or who saves one life, is such that Scripture regards him as if he had sustained the entire world that was created with ten decrees. But everyone who commits one transgression, or who desecrates one Sabbath, or who takes one life, is considered as if he killed the entire world that was created with ten decrees. Thus it is with Cain who killed his brother Abel, as it is written (Genesis 4:10): ... קוֹל דְּמֵי אָחִיךָ - "The voice of your brother's 'bloods' (cry out to me from the ground.)" The blood of [only] one was shed; [why was] the blood of many written?¹² Only to teach that the blood of his children, and of his children's children, and of all his disciples¹³ until the end of all the generations which would eventually come from him-all of them were standing and crying out before the Holy One, (blessed be He).

¹¹ Goren is referring to the tendency by Jews during the Middle Ages, to expunge language particularly objectionable to the non-Jewish local authorities (and, sometimes, replace it with less-obvious euphemisms) lest they ban the Talmud, which was a frequent target of Christian clerics who believed it to be an anti-Christian text.

Thus you have learned that one man is equal to the entirety of Creation.

From this text we have learned three things. (a) The [correct] reading is: "Everyone who saves a single life (and not " . . . a single *Jewish* life"), it is as if he has saved an entire world." (b) This meaning is derived from Cain and Abel because Cain destroys his brother's blood, and the blood of his sons, and of all the descendants belonging to every man in the world. (c) The conclusion that one man is equal to the entire Creation, applies to every (p. 5) person. But this is not a conclusion of what was said in the aforementioned "Everyone who destroys" Rather, this is learned from *Avot de Rabbi Natan*:

One derives from an analogy: *Rabbi Nehemiah* says: From whence [do we learn] that one man is considered equal to the entire Creation? It is written (Genesis 5:1) "This is the book

¹² I.e., in the scriptural verse, דָּמָם - the construct plural of "blood" - is used. The midrash takes this use of the plural rather than the singular (דָּם דְּחַיִּים) to imply the blood of many. Thus in Genesis, God is upbraiding Cain for killing not only Abel, but also for killing all the potential generations that would issue from him.

¹³ Babylonian Talmud, Tractate Sanhedrin 19b: "Teaching Torah to the child of another is the same as giving the child life." Thus the inclusion of "disciples" with children and children's children. If killing a single person is akin to killing all the generations that would have issued from that person, then if the killed or any of his progeny would have been teachers of Torah, also all students who might have become disciples to the killed or his issue have also been "killed" - denied their master's wisdom.

of the generations of man." And further on it is written (ibid. 2:4): "These are the generations of heaven and earth when they were created." Just as further on [where the word תולדות - "generations" is used in the context of] creating and making, so here [the use of the word "generations" implies a context of] creating and making.

But in *Tractate Bava Batra* 11a [of the *Babylonian Talmud*], the reading is "one Jewish life." One finds likewise in *Tanna de Bei Eliyahu Rabba*, chapter 3. And in *Midrash Tanhuma parashat Mas'ei* paragraph 5. But in *Pirkei de Rabbi Eliezer*, chapter 48 there are variant readings in this passage: the published editions read "Jew," while most manuscripts do not read "Jew."

Despite this, there is the reading of the *Rambam* in *Hilkhot Sanhedrin*, upon which one can rely [for accuracy], and in the *Schechter edition of Avot de Rabbi Natan*, with the latter version (i.e. omitting "Jew"). Indeed they read, "...and everyone who saves one Jewish life," and according to this reading the publisher wants to to take note of the former version (i.e. including "Jew"). But it is clear that there's no place for this prooftext, since this is the reading of the manuscript of the *Mishnah*.

**In the Opinion of *Ben Azzai*, the Universal
Brotherhood of Man is the Torah's Highest Value.**

We have proof for this version, which does not speak only of a Jewish life, because also *Rabbi Nehemiah* teaches [the latter reading] from [the aforementioned Genesis 5:1] "This is the book of the generations of Adam (or, man)." But note that in the *Jerusalem Talmud*, [Tractate] *Nedarim*, chapter 9, *halakhah* 5, and also in *Torat Kohanim*¹⁴, [parashat] *Kedoshim* (*parashah* 2, chapter 4), *Rabbi Akiva* and *Ben Azzai* disagreed [as to the reading]. *Rabbi Akiva* said: "You shall love your fellowman as yourself" is the greatest principle in the Torah. But *Ben Azzai* said: "'This is the book of the generations of Adam (or, man)' is a greater principle." The commentators toiled to understand the ramifications of the dispute between the two. As I explained in my book *Torat HaMo'adim*, in the chapter "The Love of Israel in the Light of the *halakhah*," according to *Rabbi Akiva* the (greatest) principle only embraces the People Israel since [Scripture] speaks of "your neighbor"¹⁵. But according to *Ben Azzai* the [greatest] principle instructs us concerning universal human

¹⁴ I.e., The *midrash Sifrei to Leviticus*.

¹⁵ I.e., *ךלך*, understood by the Rabbis to mean "your fellow Jew."

brotherhood, and that the *mitzvah* of brotherhood applies not only to the People Israel [concerning relations] among themselves, but rather upon [all human beings] concerning the love of all creatures and humanity. As Scripture reads (Genesis 8:6): "For in the image of God He made man." Indeed one cannot fulfill this greatest principle except gradually, in stages. First, one must attain a love of Israel, which is the intermediate stage towards universal brotherhood. In any case, the final purpose is according to *Ben Azzai*: the brotherhood of all mankind when they (i.e. the Gentiles) accept the yoke of the (p. 6) Kingdom of Heaven. Therefore, *Ben Azzai* says that "This is the book of the generations of man" is a greater teleological principle of the Torah, than "You shall love your neighbor (i.e. your fellow Jew) as yourself."

In the light of this, we must say that even *Rabbi Nehemiah's* aforementioned discourse, [to the effect] that one man is equal to all creation, as it is said "This is the book of the generations of man" also refers to every human being in the world and not just every Jew. This corresponds to the aforementioned reading of *Avot de Rabbi Natan* that everyone who saves a single life (i.e. omitting

"Jewish") is regarded as though he had saved an entire world. This says that we are commanded to defend and to guard the life of every human being as [we would] our own life. And this is the ultimate purpose of the world, as it is written "This is the book of the generations of man." Since every human being is created in the image of God, the insistence on [the sanctity of] the life and honor of every human being is like the insistence on the honor of heaven.

The Angels Were not Allowed to Sing at the
Drowning of the Egyptians at the Red Sea Because
They, too Were the Works of The Holy One,
(blessed be He).

The conception of the principle that the Holy One, (blessed be He) does not discriminate between souls, whether they be Jewish or not, or even of the wicked who are unlearned, is in the words of the *Gemara* in *Tractate Megillah* 6b, and in [*Tractate*] *Sanhedrin* 39b:

Rabbi Yohanan said: What is the meaning of the scriptural verse (Exodus 14:20), "... so that the one could not come near the other all through the night"? The ministering angels wanted to sing a song, but the Holy One, (blessed be He) said "The works of My Hands are drowning in the sea, and you are singing a song??" From this we learn that the Holy One, (blessed be He) grieved for the Egyptians who drowned in the sea. True, it is written (Deuteronomy 28:63): "And as the Lord once delighted in making you prosperous and many, so will the Lord now delight in causing you to perish and in wiping you out; you shall be torn from the land that you are about to enter and

possess."

The *Gemara* there explains the difficulty¹⁶: He (i.e. God) did not "delight," but rather caused others to "delight;" and I can prove it also from [the fact that] it is also written "He will cause to delight," but it is not written "He will [Himself] delight"¹⁷. But it is not specified whom He delights [in causing to perish], righteous ones or wicked ones, as it is understood from Scripture in the above-mentioned chastisement where He *did* delight, meaning in the enemies of Israel, since they are not commanded to draw near to the qualities of the Holy One, (blessed be He). As *Abba Sha'ul* explains in *Tractate Shabbat* 133b, [concerning] the scriptural verse (Exodus 15:2) "He is my God and I will glorify Him": [it means] Be like Him: as He is gracious and compassionate, you must be gracious and compassionate. And even the *Rambam's* chapter 2 of *Hilkhot De'ot*, *halakhah* 6. And the *Rambam* takes this from the scriptural verse

¹⁶ Moses is here admonishing the People Israel to live according to God's law when they enter the Land of Israel. For just as God delighted in sustaining them when they were obedient to Him, he would delight in destroying them if they would turn away from Him. But this creates an apparent contradiction: if God truly grieved even at the perishing of the "wicked" Egyptians, as the *Gemara* asserts, then why would he "delight" to cause even His people Israel to perish in the future?

¹⁷ i.e. יִשְׂמַח is written and not יִשְׂמֹחַ.

(Deut. 28:9) "You shall walk in His ways."

(p. 7) Why Was Israel [Allowed to] Sing a Song at the Downfall of the Egyptians, When the Angels' Song was Interrupted?

But accordingly it is puzzling that this characteristic (i.e. of compassion) is not distinctive only to the Holy One, (blessed be He); rather we must also ourselves adopt this characteristic because we are commanded to walk in His ways. If so, how is it that Moses and (the People) Israel sang a song at the sea (i.e. to celebrate the drowning of the Egyptians) at the same time that the Holy One, (blessed be He) did not allow the ministering angels to sing a song about how the works of His hands were drowning in the sea? And not only that, the Israelites sang a song of their own accord, but they even merited that the *Shekhinah* should minister to them, and they sang a song about the defeat of the Egyptians. As we are taught in the *Tosefot*, in *Tractate Sotah* 76:

Rabbi Akiva explained: When (the People) Israel went up out of the sea [-bed, the waters having been parted for them], they wanted to sing a song; the Holy Spirit ministered to them and they sang a song.

Also it is explained in the *Mekhilta* [*de Rabbi Ishmael*], *parashat Beshalah*, paragraph 6:

Great was the faith [of Israel] before the Holy One, (blessed be He), that as a reward for their faith the Holy Spirit ministered to them and they sang a song. For behold, the basis of the Song at the Sea is not only thanks to the Holy One, (blessed be He); rather, also a song over the drowning of the Egyptians in the sea. As it is written (Exodus 15:1): "Horse and rider He has flung into the sea." (verse 4) Pharaoh's chariots and his army He has cast into the sea; and the pick of his officers are drowned in the Sea of Reeds. (vs. 5) The deeps covered them; they went down into the depths like a stone." And so forth.

So you see that most of the song is dedicated to realistically describing the drowning of the Egyptians in the Sea of Reeds. This song was not the People Israel's spontaneous expression; rather, the entire people - men, women, and children - simultaneously reached the highest level of prophesy and they sang a song with the inspiration of the Holy Spirit ministering to them. As our sages of blessed memory said: [Even the lowliest] maidservant saw at the sea, what neither Ezekiel nor the rest of the prophets saw. Thus, it was taught to us in [*Tractate*] *Sotah* 30b:

How did [the People Israel] sing [the] song? Infants were being carried on their mothers' shoulders, and sucklings were sucking at their mothers' breasts; and when they saw the *Shekhinah*, the infants picked up their heads and the sucklings dropped their mothers' breasts from their mouths, and they sang (Exodus 15:2): "He is my God, and I will glorify Him." As it is said (Psalms 8:3): "From the mouths of infants and sucklings You have founded strength . . ."

So the question is asked: if the Holy One, (blessed be He) prevented the angels from singing a song about the destruction of the wicked ones of Egypt, why did the Holy One cause His Holy Spirit to descend upon the People Israel to [enable them to] sing a song when the works of the Holy One's Hands were drowning in the sea?

According to *Yalkut Shim'oni* and *Midrash Tanhuma* (Buber Edition), the Angels' Song was interrupted when the Israelites were Encamped at the Sea [Because] they were Still in Danger, and not Because of [Sentiment Towards] the Egyptians.

Indeed in *Midrash Tanhuma* in *parashat Beshallah*, and in *Yalkut Shim'oni* in [*parashat*]*Shlihei* (p. 8) *Ramaz* 241, we see a different explanation given [for the angels' not being allowed to sing]. *Rabbi Yohanan* bases his interpretation on *Tractate Megillah* as mentioned above, and on the opinion of *Rabbi Shmu'el bar Nahman*. *Rabbi Yohanan* said in *Tractate Sanhedrin*, that it was not only because at the moment the Egyptians were drowning in the sea, but rather also because the People Israel were still in danger of drowning in the sea, that the Holy One, (blessed be He) did not allow the ministering angels to sing a song. We find this in accordance with the reading of the *Yalkut Shim'oni*.

When Israel was camped at the sea, the ministering angels came to praise the Holy One, (blessed be He) and He didn't let them, as it is written (Ex. 14:20): "... The one could not come near the other"; and (Isaiah 6:3): "And one called out to the other." To whom was this similar? To a king whose son was taken captive; he wants to take revenge against his enemies, so he goes out to retake him. [So too with God;] the people came out to sing a hymn of praise to him, and he said to them, "Because I redeemed my son, you praise me??!"

After the children of Israel came up out of the sea, the Holy One, (blessed be He) again did not allow the ministering angels to go ahead and sing a song before Israel. Likewise we find:

As soon as they went up from the sea, the ministering angels wanted to sing a song before Israel. The Holy One, (blessed be He) told the ministering angels, "First let Israel [sing their song]." As it is written: "Then Moses [and the people Israel] sang" The women were standing with the ministering angels (Psalm 68:26): "First come singers, then musicians, amidst maidens playing timbrels." "First come singers" - these are the Israelites, "... then musicians . . ." - these are the angels, "... amidst maidens playing timbrels." - these are the women. And the result of all this is that the Israelite (men) sang their song first, and after them the angels, and after the angels the women sang their song. But Rabbi Levi disagreed with this, saying: By the heavens, I don't accept this interpretation. Rather, the women praised [God] first, as it is written: "... amidst maidens playing timbrels." - the maidens disappeared in their midst. The ministering angels began to complain, saying: "It isn't enough that the men [sang] before us; even the women must? The Holy One, (blessed be He) replied to them: "By your life. Just so."

According to *Midrash Tanhuma* and the *Yalkut*, the Angels also Sang a Song at the Sea after the Song of Israel.

We have been taught from the formula of the midrash and the *Yalkut Shim'oni* that everyone - [the men of] Israel, the women, and the ministering angels - sang a song over the downfall of the Egyptians. But the Holy One, (blessed be He) did not allow the ministering angels to sing their song when the People Israel were [still] in danger.

(p. 9) Indeed this reading does not accord with the two *sugyot* in the Talmud, in *Tractate Megillah* and in *Tractate Sanhedrin*, where the *gemara* presents the essay of *Rabbi Yohanan* (as mentioned above) concerning the question:

Far be it for the Holy One, (blessed be He) to prohibit singing over the downfall of the wicked, as it is written (II Chronicles 20:21): "As they went forth ahead of the vanguard saying, 'Praise the Lord, for His steadfast love is eternal.'"

And *Rabbi Yohanan* said: Why is it not said in this verse "for He is good¹⁸?" Because the Holy One, (blessed be He) does not rejoice over the downfall of the wicked, as *Rabbi Shmu'el Bar Nahman* quoted *Rabbi Yohanan*, etc. above.

Also in the War of Ammon and Moab against Yehosephat, the Holy One, (blessed be He) did not Allow Singing before Him since there is no Joy in the Perishing of the Wicked.

Note that the ruling that one does not sing songs over the downfall of the wicked who are enemies of Israel, was in the context of the war of the Moabites and Ammonites against Jehosephat. It is possible, although this is not proof, that one does not sing songs over the downfall of the enemies of Israel because Jehosephat's song "Praise the Lord, for His steadfast love is eternal" was sung at the beginning of Jehosephat's war against the Moabites and the Ammonites, when Israel was still in danger, and therefore it is not written there "for He is good," and NOT because of the downfall of the enemies of Israel. Indeed in *Midrash Tanhuma, Beshallah* 11, it is explained why the text does not say "for He is good": There is no joy as it were before Him upon the death of the wicked. Likewise it is clear from the *gemara* that the ministering

¹⁸ I.e. the quote from II Chronicles, חוֹדוּ לַה' כִּי לְעוֹלָם חַסְדּוֹ, "Praise the Lord, for His steadfast love is eternal," differs from the wording of Psalm 118:1 חוֹדוּ לַה' כִּי טוֹב, "Praise the Lord, for He is good, His steadfast love is eternal," only in the omission from the former of the words כִּי טוֹב - "for He is good." Rabbi Yohanan's assertion is that in the former case, where the Israelites were going forth in battle to destroy the armies of Ammon, Moab, and Seir, the omission of "for He is good" is explained by God's unhappiness at having to destroy the wicked.

angels also wanted to sing a song before the Holy One, (blessed be He) in the verse regarding Jehosephat. It does not say "for He is good" there because one does not rejoice at the downfall of the wicked, whether they are the wicked of Israel as in the case of Ahab ben Omri, or the wicked of Egypt as at the parting of the Sea of Reeds. Or even the wicked of Ammon and Moab as in Jehosephat's war, as stated in the above-mentioned midrash. Even though the *gemara* concludes, "but others rejoice" it is problematic to say that it refers to the Israelites who sang a song at the sea over the downfall of Egypt. For the wording of the Talmud states that He will surely rejoice to kill you in order to rebuke you, meaning the enemies of Israel. But we must assimilate the qualities of the Holy One, (blessed be He), and neither sing a song nor rejoice at the downfall of the wicked, as explained above.

**The Song at the Sea Begins in Future Tense,
Because at that very Moment Israel was also not
Permitted to Sing at the Downfall of the
Egyptians.**

It is possible that for of this reason, that the Holy One, (blessed be He) did not rejoice at the downfall of the wicked, (p. 10), and did not allow the ministering angels to sing a song at the time

that the Egyptians were drowning in the sea, it was also appropriate that the Israelites were deterred from rejoicing and were not allowed to sing a song. Therefore this song begins with [the words] "Then Moses shall sang . . . " which is in the future tense¹⁹. As [the Rabbis] said in *Midrash Tanhuma, Buber Edition*:

"Then sang" (אז שר) is not said, rather "Then shall sing" (אז ישר) - in the Future to Come²⁰ Israel will have occasion to sing to the Lord.

And in *Mekhilta d'Rabbi Ishmael, parashat Shira* 3/20 it says:

There is a "then" (אז) that belongs to past tense and a "then" indicating the distant future.

And therefore the *Tanna Kamma* in the *Mekhilta* supposes that "Then sang" is in the past tense. Note that the second authority cited in the *Mekhilta* and likewise according to *Rabbi Meir* in *Sanhedrin* 91b, "Then sang" means in the distant future, as in *Midrash Tanhuma*. Thus *Rabbi Meir* explains and says:

¹⁹ This is an interesting comment, which Goren bases on a number of exegetical texts as we shall see below. The opening words of The Song at the Sea (Genesis 15:1) he quoted, אז ישר נשח, could, according to Biblical Hebrew grammar, be understood to be in either the past or future tense depending on its context. The texts Goren will cite will support the rendering of this instance in future tense. It is interesting to note that the New JPS Translation and virtually all other English translations of the Bible render the verse, "Then Moses sang . . .," in past tense.

²⁰ Understood to be synonymous with "the World to Come," i.e. the Afterlife.

How does one derive [the doctrine of] the resurrection of the dead from the Torah? As it is said: "Then [Moses] will sing." "Sang" is not said, rather "will sing." From here [one derives the doctrine of] the resurrection of the dead from the Torah.

But in *Midrash Tanhuma* it does not connect this (i.e. the Torah's supposed use of future tense in Exodus 15:1) with the resurrection of the dead, rather with the principle that the Song is directed to the Future to Come.

One finds also that Israel did not intend their song for the very time that the works of the Hands of the Holy One, (blessed be He) (i.e. the Egyptians) drowned in the sea, rather they intended it for the Future to Come. As it is written (Psalms 126:2):

Our mouths shall be filled with laughter . . . Then shall they say among the nations, "The Lord has done great things for them."

Just as the *Mekhilta* concludes.

Even in the Wars of Gog and Magog, there will be no Rejoicing before the Holy One, (blessed be He) at the Downfall of the Wicked of the Nations of the World.

There is another source which testifies that the Holy One, (blessed be He) is saddened over the downfall of the wicked of the nations: in the days of Gog and Magog. In [*Tractate*] *Sanhedrin* 98b

they explained the passage (Jeremiah 30:6): "Ask and see: Surely males do not bear young! Why then do I see every man with his hands on his loins like a woman in labor? Why have all faces turned pale?"

The Rabbis asked: How are we to understand "Why have all faces turned pale?" *Rabbi Yohanan* said: [This passage alludes to the] family of heaven and [the] family of earth. When the Holy One, (blessed be He) said "These are the works of My Hands and these [too] are the works of my hands, how can I destroy these before these?" *Rabbi Yohanan* explained there: The Holy One, (blessed be He) feels sorry for Himself like a woman in labor, saying when He removes the idol worshippers from before Israel: "How can I destroy these before these?" When the Holy One, (blessed be He) saw Israel's [imminent] downfall, He did His mighty deed against the idolators. And when the people of Israel return in repentance and are redeemed, it is difficult for Him to destroy the idolators before Israel. Hence the Holy One, (blessed be He) takes pity even on the lives of the idolators, and it is difficult for him to destroy them.

(p. 11) And since we are commanded to imitate the characteristics of the Holy One, (blessed be He), we are not allowed

to rejoice over the downfall of the nations of the world, the enemies of Israel.

THREE

THE ETHICS OF WARFARE IN THE LIGHT OF THE HALAKHAH - On The Individual's Obligation to Answer The Call To War

In this, the second section of his introductory chapter, Goren introduces several concepts that are extremely important for developing an understanding of the traditional Jewish position with regards to war.

First, he introduces the concepts of *milhemet reshut* and *milhemet mitzvah*¹, and he begins to show the differences between the two as far as the individual citizen's obligations are concerned. We shall see more elaboration on this point further on, especially in Chapter Seven where Goren specifically addresses the criteria for exemptions from military service in wartime.

¹ The terms *milhemet reshut* (מלחמת רשות) and *milhemet mitzvah* (מלחמת מצוה) are usually translated as "optional war" and "obligatory (i.e. commanded by God) war" respectively. But as we shall see, wars are only "optional" as far as the ruler of the nation is concerned; once declared by a legal governing authority, they are always virtually "obligatory" for the individual Jew as Goren interprets the *halakhah*. Alcalay suggests translations of "political war" or "profane war" for *milhemet reshut*, and "holy war" for *milhemet mitzvah*. To avoid confusion, we shall leave the two terms untranslated.

The Jewish categorization of wars into *milhemet reshut* and *milhemet mitzvah*² differs considerably from the “Western” Just War Theory. Timothy George identifies the latter as a development of the Roman emperor Constantine the Great, who ruled from 306 to 337 CE. The New Testament, in a number of places, prescribes a refusal to take up the sword. Matthew, in particular, quotes Jesus as saying “Love your enemies, do good to those who hate you; bless those who curse you and pray for those who maltreat you.” (Matt. 5:43-44) And, in the narrative concerning Jesus’ arrest, Matthew records:

At that moment one of those with Jesus reached for his sword and drew it, and he struck at the high priest’s servant and cut off his ear. But Jesus said to him, “Put up your sword.”

Virtually all Christian thought to the point where Christianity became the official religion of the Roman Empire, according to George, had been pacifistic; the need for a code specifying when war was “just” (e.g., when fought to restore peace), and an ethical code for the conduct of war (e.g., refusing to hurt noncombatants) was

² Goren implies the existence of a third category, the “forbidden war,” below in chapter four when he says of David’s conquest of Syria, “. . . it was not even considered as a *Milhemet Reshut*.” (emphasis added) Additionally, in Chapter Seven we shall see a different system of classification, rejected by Goren, which adds the category *milhemet hovah*.

necessitated when the interests of Christianity became identical to those of the state³.

Michael Howard disagrees somewhat; he points out that the (Christian) theologians were concerned almost exclusively with the question of the right to go to war, or *jus ad bellum*. Howard calls the laws for the conduct of war, *jus in bello*, "an entirely secular creation developed to suit the needs of a rigidly stratified social order in which the right to bear arms was a jealously guarded privilege."⁴ The latter, according to Howard, did not develop until the Middle Ages.

Whatever the origin of *jus in bello*, both George and Howard agree that the sanctioning of *jus ad bellum* by the Church fueled a tendency for "just" wars to become "holy" wars, divinely approved crusades sanctioned by God and aimed at the elimination of Christianity's "evil" opposition. We shall address this tendency below, in Chapter Seven, where we see Goren's interpretation of

³ Timothy George, "A Radically Christian Witness for Peace." Gordon and Grob, eds., Education for Peace 68-69.

⁴ Michael Howard, "Constraints on Warfare." Michael Howard, George J. Andreopolos, and Mark R. Shulman, eds., The Laws of War: Constraints on Warfare in the Western World (New Haven: Yale University Press, 1994), 3.

Jewish law as possibly leading to the same sort of tendency.

Here, in the current chapter, Goren looks at several key issues related to the distinction between *milhemet reshut* and *milhemet mitzvah*. First, Goren talks about the requirement to fight the enemy with all one's heart yet without enjoying it since, as we learned in the last chapter, all life is precious to God. This principle, of being the most proficient yet reluctant fighter possible, has been touted as the standard of the modern Israeli army since before the declaration of the state, when the army was called the *Haganah*, meaning defense. It is at the root of *tohar haneshek*, the modern Israeli state's doctrine of *jus in bello*.

Goren also addresses the point of whether the requirement to participate as a combatant is incumbent upon women. There seems to be agreement in the sources, that women are exempt from a *milhemet reshut*. In a *milhemet mitzvah*, however, the *Rambam* taught that "everybody takes the field [to fight], even the groom from his [bridal] chamber and the bride from her [wedding] canopy." Goren points out, though, that *Sefer HaHinukh* excludes women from the requirement to fight in a *milhemet mitzvah*. He attempts to

solve the contradiction by referring to the *Radbaz*, who on one hand asserts that the *Rambam's* words should not be taken to mean that women are required to fight. Rather, the requirement that the groom take the field means that the wedding celebration is over, and therefore the bride would certainly leave her canopy. But then the *Radbaz* states that the custom probably was for brides, and other women, to support the troops by feeding and provisioning them while they were in the field. Goren agrees with this view, and in fact in the modern Israeli army women have been assigned largely to support roles. Thus Goren supports the *Rambam's* view that women are subject to call-up, while acknowledging that custom dictates a reluctance to conscript women, or to use them in anything other than a support role, keeping them out of direct combat except when absolutely unavoidable.

Then, Goren moves on to make two points to which he will return in later chapters. He states that fighting a war (i.e. directly engaging the enemy) overrides the requirement of saving a life. Then, he brings up the question of the "conscientious objector," one who would claim exemption from war on the basis of objecting in

principle to war. Goren argues that there is no such provision in the *halakhah*, although there is a very pragmatic provision to exempt he who is in great fear of the enemy lest his fear infect the other soldiers. We shall see further elaboration on these last two issues in chapter seven; therefore, we shall hold all further commentary until then.

(Goren's text begins here: Volume 1, page 11)

The Obligation of Warfare and its Laws in *Milhemet Mitzvah* and in *Milhemet Reshut*.

It is clear that in a time of war certain obligations, commandments and warnings are imposed upon us. We should fight with all our heart and without fear, and our intent should be only to sanctify the Lord. In the words of the *Rambam*, [the Jewish warrior] should not think about his wife nor his children; rather, he should blot out all recollection of them from his heart and turn his full [attention] to the matter of the war, as he wrote in Chapter 7 of *Hilkhot Melakhim*, *halakhah* 15 and following:

Anyone who begins to think, and reflect, and become frightened during war, transgresses a negative precept. As it is said (Deut 20:3): "Let not your courage falter. Do not be in fear, or in panic, or in dread of them." Not only that, but the fate of all Israel depends on him alone. The one who cannot subdue his

fears and does not wage war with all his heart and all his soul, is as though he had shed the blood of all [his comrades who died in the battle]. As it is said: One [who fears] shall not cause his brother's heart to melt as his own has, as it is explained in scripture (Jer 48:10): "Cursed be he who is slack in doing the Lord's work! Cursed is he who withholds his sword from blood!"

Those who Go out to War are Obligated to Fight the Enemy with All their Heart and Soul, but Without Rejoicing in It.

This obligation, that one should not be afraid and fear the enemy during war and should not flee from them, but rather to be strong against them, is commanded of us. We are to gird ourselves and stand before them as is written in *Sefer HaHinukh*, *mitzvah* 525, [a commandment] that applies even in *milhemet reshut*. As it is stated in the *halakhot* that precede the above mentioned, the *Rambam* specifies who may be exempted from fighting in a war. From this we conclude that it refers to *milhemet reshut*, for in *milhemet mitzvah* nobody is exempt from fighting in the war, rather "everybody takes the field [to fight], even the groom from his [bridal] chamber and the bride from her [wedding] canopy," as the *Rambam* wrote in chapter 7, *halakhah* 4. Also one learns from the above mentioned *Sefer HaHinukh* that the precepts of war are applicable to males and not to women. From this it is apparent that

it is speaking of *milhemet reshut* as it is written there in *Minhat Hinukh*: "In the case of *milhemet mitzvah*, even a bride from her [wedding] canopy [must go out to fight]; if so, it applies to women."

Only from the *Hinukh* is there no evidence that it is talking about *milhemet reshut*. Even in the war to smite the males of Amalek, the *Hinukh* writes (in *mitzvah* 603): This *mitzvah* is applicable at all times and all places to males, for it is incumbent upon them and not upon women to wage war and execute vengeance upon the enemy. There has never been a more urgent *milhemet mitzvah* than that (p. 12) waged to wipe out the seed of Amalek, as the *Rambam* wrote in chapter 5 of *Hilkhot Melakhim*, *halakhah* 6, and as is written in *Sefer HaHinukh*, *mitzvah* 425. But despite that fact, the *Hinukh* limits its applicability to males and not to women. This despite the fact that it is written thus only in *mitzvah* 603 whose text reads, "Remember what Amalek did to you. etc.," whose significance is to remember with our mouths what Amalek did to us, and not to forget it in your heart, as it is written in the *Hinukh*, and this obligation is not limited to males in *mitzvah* 604, which specifies the obligation to wipe out only the males of Amalek.

Mitzvah 603 is written in such a way that it says the women are exempt from it. "For it is [incumbent] upon the males, and not upon the women, to wage war and extract revenge against the enemy." One learns thus that women are exempt from fighting the war itself. But there is a contrasting view, for in *mitzvah* 425, concerning the war against the Seven Nations, the *Hinukh* says: "This *mitzvah* is applicable to males and females everywhere and at all times." Significantly, the *Hinukh* also teaches that women are required to participate (as combatants) in a *milhemet mitzvah*, as we learned in the *Mishnah*, *Tractate Sotah* 44:2, and from the *Minhat Hinukh* which specifies that this *mitzvah* is applicable to every Israelite, both men and women. So why are the women exempt from wiping out Amalek? The *Minhat Hinukh* has already settled this in *mitzvah* 604.

But the *Radbaz*, in his commentary on the above-mentioned [passage of] *Hilkhos Melakhim* of the *Rambam* finds difficulty in the words of the *Mishnah* in *Tractate Sotah* (44:2) and [those] of the *Rambam* because [it is written]: "In an obligatory war everybody goes out to fight, even a groom from his [bridal] chamber and a bride from her [wedding] canopy." But is it the way of women to wage war,

as we are taught [by the applicability of the *mitzvah* to the] bride from her [wedding] canopy? [Even though] it is written, (Psalms 45:14) "All glorious is the king's daughter within the palace"⁵ ? But the *Radbaz* offers two answers there: (a) since it is specified that the bridegroom must go out from his [bridal] chamber, the bride then leaves her [wedding] canopy because [with her groom having gone off to war] the days of celebration must be cancelled; and (b) perhaps during an obligatory war the women would be occupied in providing their husbands with water and provisions. This is the custom today among the Arabs. So it is, according to the *Radbaz*.

But apparently the *Radbaz* missed the words of the *Rambam* in the fundamental principles of *Sefer HaMitzvot*. For at the end of principle 14 the *Rambam* writes: Granted that women neither adjudicate nor give testimony, nor offer sacrifices with their own hands, nor fight in *milhemet reshut*. But they *do* fight in *milhemet*

⁵ Translation from The Holy Scriptures according to the Masoretic Text: a New Translation, Philadelphia, The Jewish Publication Society of America, 1955 ("The Old JPS Translation"). In this instance, the "New JPS Translation" does not convey the same meaning and could very well be based on a variant source text.

The point being made is that the king's daughter (i.e. any Jewish woman) is glorious only when remaining within the palace; for her to go out (especially to fight in a war) would rob her of her glory.

mitzvah. This, in contrast to what the *Radbaz* wrote.

The Obligation to Fight, Even in a *Milhemet Reshut*, Overrides [the Obligation to] Save an Endangered Life When War is Declared, as Ruled by the *Great Sanhedrin*.

From every source it is clear that according to the *halakhah*, the obligation to fight, whether in *milhemet mitzvah* (p. 13) or in *milhemet reshut*, is incumbent on the entire people. The only difference is that in *milhemet reshut*, some may be released from active and imminent fighting in order to serve in the logistics corps in the rear. But in *milhemet mitzvah* and even in *milhemet reshut*, for all who do not merit release [from combat] the obligation falls upon them to fight the enemy with all their heart and soul and to put their very lives in jeopardy in order to defeat the enemy. And one cannot be exempted from the duties of war on the basis of a claim of reluctance to shed the blood of the enemy.

But in the case of *milhemet reshut* it is possible to be released because one fears the terror of war, since the priest, when consecrating the war, would declare and warn the fighters (Deut. 20:3): "Let not your courage falter. Do not be in fear, or in panic, or in dread of them." And in the end the official would announce and

proclaim (Deut 20:8): "Is there anyone afraid and disheartened? Let him go back to his home, lest the courage of his comrades flag like his."

One cannot be Released from Fighting on the Basis of Objecting to War.

But there's no provision for release from fighting on the basis of refusal to fight or opposition to shedding the enemy's blood, and not only because of the commandment to fight. Moreover, the obligation to fight, when it is declared by the legitimate governmental authorities, overrides the obligation for saving individual lives⁶, as it is written in the *Minhat Hinukh*, in *mitzvot* 425 and 604:

Even though all the *mitzvot* are overridden because of [life-threatening] danger, nevertheless this commandment is [such that] the Torah commands [us] to fight them (i.e. our enemies). And since it is known that the Torah does not base its laws on miraculous intervention⁷, as the *Ramban* explained, and since in the natural course of things [soldiers from] both sides are

⁶ A principle that applies to the *halakhah* in almost every other case is that a law from the Torah is to be overridden to save an individual life (Babylonian Talmud, Tractate Shabbat 151b). Even if only to prolong a life or a short time (e.g. if a physician violates the Sabbath to administer a treatment that will stave off the patient's death another hour), and even if the saving (prolonging, etc.) of life is not certain, but only a *possible* outcome, the laws of the Torah are still set aside (Babylonian Talmud, Tractate Yoma 83a).

⁷ I.e. even though we are promised Divine intervention, we are not to rely on this eventuality and thus slacken our efforts.

killed during a war, therefore one can see that the Torah decrees that one fight them even when there is danger. If so, then danger does not figure in wartime.

Also the *Minhat Hinukh* states in *mitzvah* 604:

Even in the presence of danger there is an obligation to fight. For it is known that the Torah does not rely on miracles for [making] judgments, and the Torah commands us to fight and endanger lives in a war. This being the case, the scripture's decree is in force even where there is danger of life, and the *mitzvah* applies.

Not only does *milhemet mitzvah* override the saving of the life of an individual; even *milhemet reshut*, if it is legal and declared by the king, the governmental authorities, or by the *beit din* of 71⁶, overrides the saving of individual lives, as we find explained in [Babylonian Talmud] Tractate Shevu'ot 35b:

As *Shmu'el* said, the king who slays a sixth of the [population of the] world is not punished, as it is said (Song of Songs 8:12): "I have my very own vineyard: (p. 14) You may have the thousand, O Solomon" - [this refers] to the dominion over the heavens. "And the guards of the fruit two hundred" - [this refers to] the dominion over the earth.

And the explanation of this is in the *Tosefot* concerning who slew one sixth [of those] within the world, etc. Concerning going out to war the authority is as said.

⁶ I.e., the Great Sanhedrin.

We have been taught that a king may elect to go out for a *milhemet reshut*, even though he knows that a sixth of the soldiers are likely to be killed, and the king is not subject to punishment for this even by God⁹. One derives therefore that the precept of fighting even in a *milhemet reshut* overrides [the requirement to] save lives of individuals, [that is,] up to a sixth of the fighters. And even though the *Rashba* and the *Ritba* explain [this] otherwise, that the king can kill (that is, himself!) at the discretion of the government a sixth of his population¹⁰, this interpretation is not generally accepted—that a king can kill, at the discretion of the government, a sixth of the population??! It is only necessary to explain their words according to the aforementioned *Tosefot*.

⁹ The *Tosafists'* interpretation is that the *halakhah*, while generally upholding the principle of the sacredness of even one life, does not question the wisdom and motives of legitimate governmental authority in entering into a risky war where heavy casualties could be foreseen from the outset.

¹⁰ The *Rashba* and the *Ritba*, in other words, take the above-mentioned dictum from *Tractate Shevu'ot* quite literally.

FOUR

THE ETHICS OF WARFARE IN THE LIGHT OF THE *HALAKHAH* - Restraints on Killing, Even in War, and Its Effect on the Killer

In this, the third segment of the first chapter of his treatise, Goren explores the limits on violence in war. Having presented his case above in Chapter Two for the universal value of the life every human soul, including those belonging to Israel's enemies, he is now compelled to reconcile this value to the fact that many die, or suffer, in war. He already began this process, above in Chapter Three, where he cautioned that, while one must fight the enemy heart and soul, one must not find pleasure in the activity. Even in one's enemy's downfall one must not rejoice. Christianity places an even more difficult demand on the individual. As we saw in Chapter Three, both Matthew (5:44) and Luke (6:27) quote Jesus as saying, "love your enemies."

Here Goren takes the discourse a step further. He presents the restraints imposed by Jewish law, which it turns out are essentially

compatible with, and even exceed the humanity of, the Western concept of *jus in bello*. No civilians are harmed deliberately and unnecessarily, and even the enemy's combatants are not killed indiscriminately. Lethal force is only used against an enemy when he poses a direct and immediate threat to one's life, or to the lives of one's comrades. To counter those who might claim that the enemies of God's people, Israel, are idolators and thus deserve to die in any case, Goren cites and interprets the *Rambam* commenting on various sources, that even in time of war the enemy is not to be considered as "fair game" for Israel to mete out death to him without regard to whether he poses an immediate threat at that very moment. While the rabbinic literature supports Goren on this point, it even goes farther in limiting killing. Goren does not mention, for example, *Rambam's Mishneh Torah, Hilkhhot Rotse'akh* 1:13:

If one is able to save a victim at the cost of only a limb of the pursuer and does not take the trouble to do so, but saves the victim's life at the cost of the pursuer's life by killing him, he is deemed a shedder of blood and he deserves to be put to death. He may not, however, be put to death by the court, because his true intention was to save life; he must be punished rather than put to death.

This consideration further constrains an army, forcing soldiers to

shoot to wound and disable except where deadly force is absolutely necessary¹. It brings an army's ethical requirements more in line with what is expected of a western police force. In fact, the modern Israeli army considers itself so constrained, or at least it did during the war in Lebanon, the so-called "Operation Peace for Galilee," and during the recent uprising by Arab residents of its occupied territories, the so-called "*Intifada*." Max Singer pointed out that, "in the war in Lebanon, dozens of Israelis were killed or wounded because of their reluctance to protect themselves by endangering or killing the Arabs among whom the PLO were hiding."² Regarding the *Intifada*, Singer claims that "the small numbers of Arab casualties demonstrate the success of the army's commitment to restraint."³ And Abraham Rabinovich, agreeing with Singer, quotes an Israeli Air

¹ The principle of shooting to wound rather than to kill is also a tactic, unrelated to morality, that is used by armies at times. The idea is that a wounded soldier is a greater liability than a dead soldier to the enemy, because the wounded require personnel to treat and evacuate them. Various armies use smaller-than-usual caliber weapons to achieve this effect.

Deliberately wounding the enemy, instead of killing him, is sometimes used in war as a sadistic measure, causing him to suffer when it is known that his forces cannot reach him.

² Max Singer, "Moral Standards Under Pressure: The Israeli Army and the Intifada," Ethics and International Affairs 4 (1990): 138.

³ Ibid. 140-141.

Force Colonel who volunteered early in the *Intifada* for a month of ground duty in the West Bank as claiming, "If you take into account the number of soldiers that are out there and the amount and intensity of the contact with the population every day, there are very few excesses."⁴

Goren, as Chief Rabbi of the Israeli army, was in the position of advocating the army's doctrine of *tohar haneshek* while articulating its rationale as being found within Jewish religious law, even though the doctrine has been expressed primarily in the army and in society as a secular, liberal value. The difficulty Goren faces in making the case for this humane doctrine within the *halakhah* is the reality that the Jewish scriptures record a number of instances where the heroes of the Jewish nation did not act with restraint towards taking life. For example, in the War against the Seven Nations, that is, the original conquest of Canaan by the Israelites under the leadership of Joshua son of Nun, God commanded the Israelites to kill every single soul. Goren, obviously aware that his readers are familiar with the Bible, confronts a number of these

⁴ Rabinovich, Abraham. "Purity of Arms: The Intifada Challenges the Israeli Army's Moral Code," Moment (December 1988): 19.

cases directly to show that special circumstances warranted extraordinary behavior there. For example, he argues that even in the case of the Seven Nations, they were not to be killed *indiscriminately*. Rather, their sentence of total annihilation was passed precisely because they, being an especially cruel people, *did* pose a direct threat to the last man, woman and child. But at the same time that he justifies certain violent episodes of the past, Goren wants to teach that such activity is not to be considered a norm, even in war, in the light of God's compassion and mercy for all mankind. Therefore he asserts clearly concerning these episodes that ". . . we should not learn from them, heaven forbid, concerning other wars in our times."

One of the most problematic biblical figures this regard is certainly King David. How are we to reconcile the "sweet psalm-singer of Israel" with the fierce commander-in-chief of the Israelite armies? We know that David called himself a "servant of the Lord" and endeavored to do good most of the time. For his efforts God, according to the Biblical narrative, blessed David greatly, bringing him success in battle and enabling him to unite the

people of the various Israelite tribes into one nation under his leadership. Yet we know that David also sinned grievously, for example, in the incident of Bathsheba and Uriah the Hittite. And we know that David was not allowed to build the Temple, because he had “shed much blood on the earth” in the sight of God (I Chron 22).

Goren endeavors to explain this charge against David, showing why he was unfit to build the Temple while, at the same time, exonerating him of such guilt that we should not honor his memory.

The incident with Uriah and Bathsheba would reasonably, by itself, be enough of an ethical lapse to make David unfit for the enterprise of building God's Temple. But Goren absolves David of being guilty to the point of unfitness, despite Nathan's chastisement, because of this incident. He bases this on the opinion of the Rabbis. The “much blood” was not that of Uriah the Hittite. This, despite the opinion of *Radak* to the contrary, that even though David might have escaped God's wrath for this incident, his own sense of guilt over it convicted him and made him unfit.

Another possibility that Goren explores and then rejects is that David's wars, while not making him culpable for the blood

spilled therein, nevertheless damaged his character sufficiently to render him unfit for building the Temple. Just as iron, or even stone hewn with iron, could not be used in the Temple as this represents an implement whose purpose is destruction being used to create that whose purpose is peace, so David after engaging in wars, even the wars of the Lord, could not be used as God's agent for the construction of the Temple. Rather Solomon, who was at rest and at peace with his neighbors, was the chosen builder despite his other character flaws. This is the opinion of the *Rambam*, but Goren disagrees.

This concept, that engaging in wars, no matter how just, damages the character of a person, is a popular notion. Matthew (26:52) quotes Jesus as saying, "all who take up the sword die by the sword." Timothy George suggests that this implies a *spiritual* death:

With the blade of the sword I may inflict death on another, but with the handle in my hand, I destroy my own humanity. While destroying my enemy, I destroy myself."⁵

Golda Meir, the late prime minister of Israel, seemed to express a similar sentiment when she stated, "We can forgive the Arabs for

⁵ George, "A Radically Christian Witness for Peace," 65.

killing our sons. We cannot forgive them for teaching our sons to kill." The Buddhist tradition sees inflicting of violence upon another not so much as damaging to the soul, but rather as evidence that the perpetrator is alienated from his higher nature which would prevent him from acting so⁶.

But returning to the character of King David, Goren rejects last and also the explanation of *Pesikta Rabbati*, which says that the deaths resulting from David's wars not only failed to render him unfit to build the Temple, but should even be counted to his merit for they are like sacrifices to God on the altar. Rather, this explanation holds that God would not let David build the Temple because, if he had, it would have stood forever and there would have been no more wars. But God foresaw that Israel would sin and would require chastisement, and therefore He would not let David bring everlasting peace to the people by building the Temple. Even Goren, who wishes to "whitewash" the Uriah incident and refuses to consider justified violence as damaging a man's character, rejects this opinion.

In the end, Goren claims there were two reasons for David's

⁶ Manjuvajra. "The Buddhist Teaching on Nonviolence." Gordon and Grob, eds., Education or Peace: Testimonies from World Religions, 117.

unfitness to build the Temple. One was that the Temple must be built within a love of all Israel, and David had many enemies among his own people. The second reason was David's "private conquest" of Aram-Naharâ'im and Aram-Zobah, in violation of God's commandments, in which 12,000 Israelite soldiers fell.

Finally, Goren turns his attention to Jacob's sons, Simeon and Levi, and their murder of the Hivites after the rape of their sister Dinah by Shechem. Jacob rebuked the two for this act, although it seemed that his rebuke was based solely on their bringing him a bad reputation and possible reprisals. It is not clear from Jacob's words at the time that he considered their act to be morally wrong. But later, just before his death, Jacob's testament to his sons makes clear that he considers what Simeon and Levi did to be a moral outrage. The *Rambam*, however, justified the incident while the *Ramban* condemned it.

Goren attempts to reconcile the two opinions by showing that there are two standards of justice in Jewish law and custom. Strict justice, where a particular crime merits a specific punishment, sometimes yields harsh results. This was the justice meted out to

the Hivites by Simeon and Levi. Jacob, however, held that justice needed to be more situational, that the circumstances of the crime must be considered in meting out punishment. This standard is called the "*Mishnah* of the Pious." By this standard, Simeon and Levi's actions in killing the Hivites would seem excessive. But, at the same time that he uses the existence of these two standards to clear Simeon and Levi as they had only one *halakhah*, that of strict justice, to go by, still he argues that the "*Mishnah* of the Pious" is superior.

(Goren text begins: Volume 1, page 14)

One cannot Harm the Non-belligerent Population,
and One cannot Draw Lessons in this Regard from
the Wars of Earlier Days.

Truly, despite the precept of fighting that has been explained from the Torah, we are commanded to have mercy even on the enemy, and not to kill him even during a war, except when there exists a necessity for self-defense as required for conquest and victory, and not to harm the nonbelligerent population, and it is certainly forbidden to harm the women and children who are not participating in the war, apart from the *Milhamot Mitzvah*, where we were

commanded as specified in the Torah in former times that (Deut. 20:16) "You shall not let a soul remain alive." Because the enemies behaved especially cruelly [then], the Torah was strict against them. But we should not learn from them, heaven forbid, concerning other wars in our own times, after we have seen to the contrary how much the Holy One, (blessed be He) has compassion even for idolators, how He does not rejoice at their downfall and how their demise is hard on Him. In accordance with justice we are commanded to walk in His ways and to have compassion for His creatures, as it is written (Psalms 145:9), "His mercy is upon all His works," and it is said in *Tractate Bava Metzia* 85a:

When they (i.e. the angels) in heaven saw that our Holy Master (i.e. *Yehudah Hanassi*) did not take pity on a beast, they decreed chastisements upon Him. When in the end he was sorry that he had not taken pity on the children of a weasel, they said in the heavens, "Since he has taken pity on others, one can take pity on him."

According to this, it is necessary to clarify *Rabbi Simeon bar Yohai's* puzzling discourse in *Tractate Soferim* at the end of chapter 15 which says: "The best among the idolators are killed in time of war." And his words are brought forth in *Tosefot Avodah Zarah* 26b under the opening words "and not." According to the *Tosefot*, the

discourse by *Rashbi* is also in the *Jerusalem Talmud Kedushin* 84, *halakhah* 11. (P. 15) And it seems to have been dropped from the printed version of the *Jerusalem Talmud*, but in the *Venice Edition* *Rabbi Simeon bar Yohai's* original wording "The best⁷ of the Egyptians were killed" remains. Also *Rashi* brings [to his commentary the comments] from the *Mekhilta* in *parashat Beshalah* [on Exodus] 14:7 on the verse "He took 600 of his picked chariots . . ."
"Rashi asks:

From where did these animals come? If you say that they constitute an allusion to Egypt, remember that it is said (Ex. 9:6), "all the livestock of the Egyptians died." If [you think] this is an allusion to Israel, it is said (Ex 10:26), "Our own livestock, too, will go along with us." So, to whom does it allude? To one who fears the word of God.

Concerning this, *Rabbi Simeon* said "Kill [even] the best of the Egyptians. Smash the brains [of even] the best of the snakes. [While] this (i.e. the latter statement) does not refer [specifically] to war, nevertheless it is clear that it teaches about a situation of war where the enemy constitutes a clear danger for us. As the words of the *Mekhilta* and *Rashi* ascribe to the aforementioned passage (Ex 14:7,9), "He took 600 of his picked chariots, and the rest of the

⁷ Literally, חֲכֻשִׁים; "the kosher," the fit.

chariots of Egypt . . . and the Egyptians gave chase to them.”

Moreover, there is no intention to condone killing them when they are not fighting us and when they constitute no danger for us, heaven forbid. Rather, [the intention is] to teach us that one must always be wary of them and not to trust them, as *Nahalat Ya'akov* brings out in a commentary on the above-mentioned passage in *Tractate Soferim* under the name *Hayafeh Mar'eh*: “For, in time of war, one needs to be most careful about him (i.e. the enemy) and not give a pretext for his words and wicked deeds to kill those who hate him.” But in this opinion there is no pretext or support for any kind of license to kill, even in time of war, either one who is not actively fighting against us (i.e. the civilians on the other side) or our enemy (i.e. the combatant) when he poses no [direct and immediate] threat to us. And *Rabbi Simeon bar Yohai's* discourse serves only to instruct us concerning what happened in Egypt, so that nobody who reveres the word of God as testified to in the Torah will go out to war against Israel. As did Egypt, when they feared that the People Israel would not return to their service. As we find in the *Mekhilta*, in *Parashat Beshalah* which says:

We have learned that those who fear the word of God are an obstacle to Israel. For example, In their standing at the Sea of Reeds.

But from this one does not derive a law for succeeding generations that they may harm, heaven forbid, the non-combatant population in time of war, for the words of *Rashbi* apply to those who are fighting us and not to those who are not engaged in active and actual warfare.

The *Rambam*, at the end of 84 in *Hilkhot Rotse'akh U'shmirat Nefesh*, *halakhah* 11, hints at this statement of *Rashbi* supporting the above-mentioned explanation in the *Mekhilta* and in *Tractate Soferim* in that he writes:

But concerning the idol worshippers, when there is no war between them and us . . . death is not meted out to them.

The point of this is that, when there *is* war between us and them, one *can* mete out death to them. And the *Rambam's* source (P. 16) is without a doubt the aforementioned words of *Rashbi*. And even in the words of *Rambam* one can say that his intent is not only in *time* of war, but specifically when they are actively fighting us and constitute a[n immediate] danger to our lives. As the Egyptians who were specified as "Fearer(s) of the word of God" who in the end went out to pursue the children of Israel to fight them at the sea.

But when they are not fighting us and not pursuing after us and pose no [immediate] danger to our lives, even in time of war, one should not strike them. And in chapter 10 of *Avodat Kohavim U'mazalot halakhah* 1, the *Rambam* teaches that even concerning the Seven Nations, it is forbidden to kill them when they are not waging war against us.

What was the "Much Bloodshed" that David
Committed, that as a Result He was not Allowed
to Build the Temple?

Who among us is greater than King David, [the composer of] Israel's [most] pleasant songs, about whom even his enemies testify (II Sam 17:8-10):

"You know that your father and his men are courageous fighters, and they are as desperate as a bear in the wild robbed of her whelps. Your father is an experienced soldier, and he will not spend the night with the troops; even now he must be hiding in one of the pits or in some other place. And if any of them fall at the first attack, whoever hears of it will say, 'A disaster has struck the troops that follow Absalom'; and even if he is a brave man with the heart of a lion, he will be shaken, for all Israel that your father and the soldiers with him are courageous fighters."⁸

And up to then there was no fighter like him, as was sung (Psalms

⁸ Hushai the Archite speaking to Absalom, the son of David. Absalom and Ahithophel are plotting against David. Hushai's words are meant to discourage Absalom from following Ahithophel's advice in sending out an army of 12,000 to defeat David at a time when his troops are battle-weary.

144:1):

Of David. Blessed is the Lord, my rock, who trains my hands for battle, [and] my fingers for warfare.

All his life he spilled the blood of Israel's enemies in wars. Even so, when he wanted to build the Temple on Mt. Moriah in Jerusalem, and he swore to the Lord (Psalms 132:2-5),

He vowed to the Mighty One of Jacob, "I will not enter my house, nor will I mount my bed, I will not give sleep to my eyes, or slumber to my eyelids until I find a place for the Lord, an abode for the Mighty One of Jacob."

But he was not allowed to build the Temple.

Accordingly David said to his son Solomon (1 Chron 22:7-10): My son, I wanted to build a House for the name of the Lord my God. But the word of the Lord came to me, saying, 'You have shed much blood and fought great battles; you shall not build a House for My name for you have shed much blood on the earth in My sight. But you will have a son who will be a man at rest, for I will give him for I will give him rest from all his enemies on all sides . . . He will build a House in My name.

Consequently, the great question that is asked is, what kind of wars did David wage that he was deemed unfit to build God's House on account of them? Did not Abigail prophesy concerning the obligatory wars that David waged in Amora (1 Sam 25:28):

For the Lord will grant my lord an enduring house, because my lord is fighting the battles of the Lord, and no wrong is ever to be found in you.

Indeed his wars were the wars of the Lord. And in his life he shed no Jewish blood nor did he kill, except for his most bitter enemies who hurt him in a (P. 17) personal way, for example Shimei, son of Gera, who cursed David and threw stones at him, saying (II Sam 16:7): "Get out, get out, you criminal, you villain!" David accepted the judgment and when Abishai, son of Zeruiah requested from the king (v. 9): "Let me go over and cut off his head!" The king answered him (v. 10-12):

"What has this to do with you, you sons of Zeruiah? He is abusing [me] only because the Lord told him to abuse David; and who is to say, 'Why did you do that?' . . . Let him go on hurling abuse, for the Lord has told him to. . . . Perhaps the Lord will look upon my punishment and recompense me for the abuse (Shimei) has uttered today."

Was David Punished for Killing Uriah the Hittite?

When David returned and went to the Jordan after the death of Absalom, Shimei, son of Gera the Benjaminite hurried to the king to request forgiveness from him (II Sam 19:20):

He said to the king, "Let not my lord hold me guilty, and do not remember the wrong your servant committed on the day my lord, the king, left Jerusalem; let Your Majesty give it no thought." (v. 22) Thereupon Abishai son of Zeruiah spoke up, "Shouldn't Shimei be put to death for insulting the Lord's anointed?" (v. 24) Then the king said to Shimei, "You shall not die"; and the king gave him his oath.

Indeed, when King David was about to die, he commanded Solomon to collect a heavy debt of blood from those who hated him. But during his lifetime he never did so. And when he wanted to build the Lord's House, he had not [up to that point] shed Jewish blood. This was before the incident with Bathsheba and Uriah the Hittite, and before his son Solomon was born. And as it is written in the above-mentioned I Chronicles 22:8-9: "You will have a son who will be a man at rest," as mentioned above. Despite this, it is also written concerning him (ibid): "You have shed much blood on the earth in My sight."

Additionally, in the matter of Uriah the Hittite, the prophet Nathan said to him (II Sam 12:9):

"You have put Uriah the Hittite to the sword; you took his wife and made her your wife and had him killed by the sword of the Ammonites."

The Rabbis have already explained "You had him killed by the sword of the Ammonites" in *Tractate Kedushin* 43a:

Behold you are like the sword of the Ammonites; just as you are not culpable for the sword of the Ammonites, so too you are not culpable for Uriah the Hittite.

What is the import of this? His culpability had diminished in that

[Uriah] said (II Sam 11:11):

“... my master Joab and Your Majesty's men are camped in the open; how can I go home and eat and drink and sleep with my wife⁹?”

However, *Shammai the Elder* in the name of the Prophet Haggai [and the Sages] argued concerning this as we learn in the aforementioned *Baraita* in *Kedushin*, “He who tells his representative to go forth and kill someone, he is guilty and his representative is not.” *Shammai the Elder* said in the name of the Prophet Haggai, that his representative (P. 18) is also guilty, as it is written (II Sam 12:9), “You had him killed by the sword of the Ammonites.” But the *halakhah* is according to the Rabbis who disagreed with *Shammai the Elder*. And the question is asked: if so, what is the significance of the words spoken concerning David (I Chron 22:8-9): “You have shed much blood”?

Was David Prevented From Building the Temple Because of the Wars of the Lord?

Radak, in his commentary on Chronicles, is perplexed about

⁹ The point Goren is making here is that David should not be considered unfit to build the Temple because of the incident of Uriah the Hittite, on two grounds: 1) The Ammonites, not David himself, actually put Uriah to the sword; and 2) Uriah himself insisted on not returning home for the night (and, had he done so as David bade him, he would not have been killed).

this problem and raises the possibility that the Holy One, (blessed be He) did not say so to David, but rather David said so in his heart, and because of this the Holy One prevented him from building the Lord's House¹⁰. Or [perhaps] the Prophet Nathan told him so. And the "much blood" that he shed was, according to *Radak*, the blood of Uriah. This, despite the fact that this prophecy came before the incident of Uriah¹¹. He further raises the possibility that David was the reason for the slaying of Nob, the city of the priests, by Saul, as David said to Abiathar the priest (I Sam 22:22): "I am to blame for all the deaths in your father's house." But it is difficult indeed to conclude that was the intent of God's word to David: (I Chron 22:8) "You have shed much blood and fought great battles. . ." and "You have shed much blood on the earth in my sight." In the end *Radak* concludes that David was held accountable for the blood of the gentiles, who were not combatants, which he shed. It is possible that among them were good and saintly men. But despite this he was not held fully

¹⁰ I.e., that God considered David unfit only to the extent that he considered himself so.

¹¹ Since, following the rabbinic dictum, "לפני ואחרי בתורה" - There is no before or after in Torah," one does not limit the Torah's lessons to those that are dependent upon the chronicity of the narrative.

accountable for them, because his intent was to exterminate the wicked so they would not destroy Israel, to save himself when the Philistines were in the Land - [so He decreed that] neither man nor woman would be allowed to live. But since [this] shedding of much blood happened to (i.e., was perpetrated by) him, He (God) prevented him from building the Temple. Its purpose, after all, is peace, the atonement of sins, and the glory of praise. Likewise, it was not permitted to place iron for the altar and in the Temple since it is used to make instruments of killing¹².

From this interpretation one can deduce concerning danger that even though David shed the blood [at issue here] in the wars that the Holy One ordered, the blood being that of enemies and gentiles, in order to defend the People Israel and their land, it made him unfit to build the Temple just as we were commanded not to build the altar with hewn stones (Ex. 20:22) "for by wielding your tool upon them you have profaned them." As Rashi expounded on the verse:

¹² I.e., just as iron, a material associated with weapons of destruction, could not be used in the construction of the Temple whose purpose was peace and reconciliation, so too David, the king who was associated with wars wherein many were killed, could not be used (by God) as His agent for the construction of the Temple. This, despite Goren's argument here that David should not be considered culpable for those who were killed in his wars. See also the discussion in the next paragraph, concerning hewn stones.

The altar was created to lengthen the days of man, and iron was created to shorten the days of man. It is forbidden to place that which shortens upon that which lengthens.

And furthermore, the altar makes peace between Israel and their Father in heaven. Therefore, that which cuts off [life] and that which destroys shall not come upon it, as is (P. 19) explained in the *Mekhilta* at the end of *parashat Yitro* in the name of *Rabbi Shim'on ben Elazar* and *Rabban Yohanan ben Zakkai*.

But if so, even Abraham, Jacob, and Moses shed the blood of enemies. Abraham fought Amraphel king of Shinar and his allies, and it is written (Gen. 14:15): "At night, he and his servants deployed against them and defeated them, and he pursued them as far as Hobah." Concerning Jacob, it is written (Gen. 48:22): "I assign to you one portion (Shechem) more than to your brothers, which I wrested from the Amorites with my sword and bow." And *Rashi's* explanation concerning the place is that, when Simeon and Levi killed the men of Shechem, all the neighboring peoples assembled against them, and Jacob girded on weapons of war against them as is explained below. And Moses fought against Og the King of Bashan and it is written (Num. 21:34): "The Lord said to Moses, 'Do not fear him, for I give

him and all his people and his land into your hand.'” And despite this Moses set up the Tabernacle as it is written (Num. 7:1): “On the day that Moses finished setting up the Tabernacle, he anointed and consecrated it . . . ” *Rashi* expounded concerning this: Was [Moses] not rendered unfit for [setting up the Tabernacle] because he had spilled the blood of Og King of Bashan and all his people? No, and there is no proof that the setting up of the Tabernacle occurred before the war with Og¹³.

**The *Pesikta*'s Surprise Explanation: If David Had
Built the Temple, the Sword Would have been
Forever Banished.**

Nevertheless we find in *Pesikta Rabbati piska d'Hanuka Piska 5* concerning Psalm 30 (“A Psalm of David. A song for the dedication of the House.”), an explanation completely opposed to all the aforementioned explanations, and to what we heard in all the aforementioned passages concerning this matter. There it is written:

Come and learn: Solomon built the Temple but it was called by David's name? [This serves to teach us] that David was fit to build it but did not [build it] because of [only] one matter. Even

¹³ *Rashi* is also clearly relying on the principle, אין לפני ואחרי, there is no before or after in Torah. See footnote (11) above.

though he planned to build it, the Prophet Nathan came and told him not to build the Temple. Why? Because (I Chron. 22:8) "You have shed much blood on the earth . . ." When David heard this he was afraid. He said, "Behold, I have become unfit to build the Temple." *Rabbi Yehudah bar Ilai* said: The Holy One, (blessed be He) said to him, "Do not fear, David. They are certainly like the gazelle and deer to me. Therefore it is said 'You have shed (much blood) on the earth,' and 'on the earth' means only gazelle and deer." As it is written (Deut. 12:15,16): "The unclean and the clean alike may partake of it, as of the gazelle and the deer. But you must not partake of the blood; you shall pour it out on the ground like water." - The Holy One, (blessed be He) said to him, "Certainly all the blood that you shed was like sacrifices to me, since everything is as a sacrifice before Me, as it is said (Lev. 1:5): "The bull shall be slaughtered before the Lord." David said to Him: "If so, why am I not building it?" The Holy One, (blessed be He) said to him: "If you build it, while it is standing there shall be no sword (i.e. no wars)." He said to Him: "Well, that would be wonderful." The Holy One, (blessed be He) said to him: "It has been revealed to and foreseen by Me that they (i.e. Israel) are going to sin (P. 20), and I am easing my anger towards it and destroying it (i.e. the Temple), but Israel will be saved. As it is written (Lam. 2:4): "He poured out His wrath like fire in the tent of fair Zion." The Holy One, (blessed be He) said: "Certainly you wanted to build it. Despite that your son Solomon is building it to your name, [therefore] I write (Psalm 30:1) "A psalm; a song at the dedication of the House; of David."

We find a similar explanation also in *Midrash Shahar Tov, mizmor*

62. We also find it in *Midrash Rabba* [at the] start of *Parashat*

Pinhas (chapter 21, 3) concerning what is written in *Pinhas* (Num.

25:13): "because he took impassioned action for his God, thus making expiation for the Israelites." And the Midrash asks: "Because he

sacrificed an offering it is said that he made expiation? This is only to teach you that everybody who sheds the blood of the wicked, it is as if he has sacrificed an offering¹⁴."

We have learned that (I Chron 22:8) "You have shed much blood on the earth in my sight," said of David, is not to be considered as a negative reflection of his character, rather the opposite, as a positive. The blood that David shed in his wars, the aforementioned wars of the Lord, is considered by the Holy One, (blessed be He) as the blood of sacrifices which is poured out on the altar before the Lord, which pleases [Him] and atones for [the sins of] Israel. And in this explanation there is a clear hint to the scripture itself, as it is written: "You have shed much blood on the earth in my sight," the implication is that he (David) is judged as if he had [literally] done it *in the sight* of God¹⁵, as it is written concerning the pouring out of the blood of the sacrifices (Lev. 1:3): "He shall bring it . . . for acceptance in his behalf before the Lord." And if so, why was David

¹⁴ Severe as this dictum sounds, the point is that the ancient Israelites believed that the crimes of the wicked defiled the entire land (and, by extension, its inhabitants). Therefore, in meting out capital punishment where prescribed, it was as if they were (so they believed) making an offering before God, since it is He who legislates, and judges, and who is satisfied with the blood of atonement.

¹⁵ I.e., on the altar.

not allowed to build the Temple himself? Because, if he had built it, it would never have been destroyed, as it said in the *Pesikta* and in *Midrash Tehillim*.

According to the *Rambam*, David Was Not Allowed
to Build the Temple Because Wars Damage Man's
Character.

But the *Rambam*, in the "Eight Chapters"¹⁶ explains the verse in Chronicles concerning David according to its plain sense, that because of David's wars, even though they were fought against gentiles and idolators, he was considered to be merciless and was therefore unfit to build the Temple. He wrote in this way there to prove that it is not one of the conditions of being a prophet that he have all of the virtues and moral qualities to the point that no defect (at all) would detract from his character. And earlier on he brings evidence from King Solomon and even King David (may he rest in peace!):

The prophet said: "The Rock of Israel said concerning me (II Sam 23:3,4): 'He who rules men justly, he who rules in awe of God is like the light of morning at sunrise . . .'" And we find that he was a cruel person, despite the fact that he waged war only against idolators, and because of the killing of the hostages, and despite the fact that he was a comfort to Israel.

¹⁶ I.e., his introduction to his commentary on the *Mishnah*.

The explanation comes from Chronicles that God (blessed be He) did not permit him to build the Temple, and he was unfit for this task because of the multitudes he had killed. God said (I Chron, 22:8): "You shall not build a house for My name, for you have shed (P. 21) much blood on the earth in My sight."

We have learned that, in the opinion of the *Rambam*, the verse should not be understood contrary to its plain meaning. And despite the fact that David's wars were wars of the Lord against idolators, they caused him to take on a quality of cruelty, and this is what rendered him unfit for the building of the Lord's Temple.

We can find an example of this in the *Ramban's* commentary on the Torah, in *Parashat Ki Tetze* (Deut. 23:10): "When you go out as a troop against your enemies, be on your guard against anything untoward." And the *Ramban* wrote concerning this:

[Even] the man who is most upright by nature comes to clothe himself in pure cruelty and fury when the army advances against the enemy; therefore Scripture warned them, "be on your guard against anything untoward." This is the reason for the opinion of the *Ramban* (of blessed memory) that David was made unfit for building the Temple.

And there is no need to search out other explanations when the *Ramban* explains the verse according to its plain meaning. This does not impugn the greatness, righteousness, and the [high] standing of King David's, Israel's psalmist's, prophecy.

**What is it About the Quality of Cruelty and the
Quality of Lust and of Turning the Heart Away
from the Lord, Which Renders One Unfit for
Building the Temple?**

But there is something puzzling about the explanation of the *Rambam*. If so why did King Solomon merit being the builder of the Temple? Especially after the *Rambam* himself wrote that the Scriptures testify that King Solomon (may he rest in peace) was a prophet, (even though) he possessed the disgraceful qualities of lusting after women, and despite this he transcended David's unfitness to build the Temple in that the good tidings were received (I Chron. 22:9):

"But you will have a son who will be a man at rest, for I will give him rest from all his enemies on all sides; Solomon¹⁷ will be his name, and I shall confer peace and quiet on Israel in his time."

The question is asked: What about Solomon's disgraceful qualities, [for example,] that he had an insatiable lust for women which induced him to violate the precepts of the Torah and to remove his heart from the Lord his God, as it is written (Deut. 17:17): "He shall not have many wives, lest his heart go astray." - and Solomon said,

¹⁷ The name Solomon (שְׁלֹמֹה/sh'lomo) is, according to a popular interpretation, a play on the word peace (שָׁלוֹם/shalom).

in effect, "I will have many (wives), and I will not go astray." But as it is written (I Kings 11:4): "In his old age, his wives turned Solomon's heart away after other gods." As is written in *Sanhedrin* 21b:

What is the difference between this and the misgiving [on the part of God] concerning the quality of cruelty that King David, as it were, took on as a result of his wars, in that [God] did not rebuke [Solomon for the behavior that produced] this misgiving in the end (i.e. that Solomon was allowed to build the Temple)? Certainly, King David was revealed to be merciful towards Israel.

For, in the words of the *Rambam*, David only exhibited the quality of cruelty "[towards] idolators." Nevertheless, he was considered unfit to build the Temple. This while Solomon, who turned his heart away from the Lord, was declared fit to build it. Is it that Solomon's lusting after women and turning his heart away from the Lord, is preferable (P. 22) for the task of building the Temple to the fear that the quality of cruelty had been assimilated by David as a result of the wars of the Lord that he waged??!

Now, you might want to say that the quality of cruelty was already in him when he wanted to build the Temple, while Solomon when he built the Temple had not yet turned his heart away from the

Lord. But the Holy One, (blessed be He) can see in the newborn, how he will behave as a grown man. As it is written in the *Jerusalem Talmud, Tractate Rosh Hashanah*, chapter 1, *halakhah* 3, on the subject of the three books for the Day of Judgement. The completely righteous ones have already been placed in "Book of Life" from Rosh Hashanah. The completely wicked ones have already been placed in "their book" from Rosh Hashanah. Concerning the ones who are in-between, they have been given the Ten Days of Repentance: if they repent, then they are inscribed with the righteous, and if they don't, then they are inscribed with the wicked. As Hananiah the Friend of the Rabbis asks, "Does the Holy One, (blessed be He) not see the newborn¹⁸?" And the *Jerusalem Talmud*, at the end of [*Tractate*] *Yoma*, ponders the matter of the scapegoat that Israel did not bring. Also *Rambam* wrote, in chapter 5 of *Hilkhot Teshuvah*, *halakhah* 5:

You should not say that the Holy One, (blessed be He) foresees everything that will be before it happens, that he knows which men will be righteous and which ones will be wicked, and if so He knew that David would remain merciful towards Israel and Solomon would lust after women in his heart, and despite that David was considered unfit for building the Temple and

¹⁸ I.e. Does God not know the heart of each person from his birth?

Solomon was chosen to build it.

The Building of the Temple Must be Done out of a Mutual Love: On the part of the Builder for All Israel, and on the part of All Israel for the Builder.

Perhaps it is necessary to distinguish between faulty characteristics [that are] between the king and the Holy One, for which He pardons him and atones for him; and those [that are] between the king and the people - for example the characteristic of cruelty, for which no one can pardon him¹⁹. Solomon's defect was between him and the Holy One. But David's defect was between him and the people, and he was not forgiven during his lifetime. Therefore, he was not allowed to build the Temple.

From this explanation by the *Rambam*, it becomes clear that the prohibition that was imposed against David's building of the Temple was not because of his personal responsibility for the large amount of blood that was shed in the great wars that he waged. Rather, [David was not allowed to build it because] the building of the Temple must be accomplished out of the love of one's heart for

¹⁹ I.e., when one has wronged another, the only one who can pardon the wrong is the one who was wronged; according to Tradition, God does not forgive such wrongs.

all Israel, because the Temple symbolizes the heart of all Israel, and since David's character was impaired by the wars, he was prevented, according to the *Rambam*, from building the House of the Lord. Because, [in order to be considered fit to build the Temple,] he would have had to be loved by the entire People Israel, and the entire People would have had to be loved by him. But David had many enemies, as it is said in *Tractate Sanhedrin* 103b in [the commentary of] *Rashi*. In this way our surprise (P. 23) at how one can accuse David for all the blood that was shed in the wars that he waged, is resolved, since these were obligatory wars, and he shed the blood of the enemies of Israel who were killed during the wars of the Lord as Abigail defined.

**King David is Described by the Prophet as the
Glory of Man and the Servant of the Lord.**

Indeed even this explanation does not contradict the words of Scripture on the same matter in II Samuel 7:4-13. There it is written:

The word of the Lord came to Nathan: Go and say to my servant David: Thus said the Lord: Are you the one to build a house for Me to dwell in? . . . I have been with you wherever you went, and I have cut down all your enemies before you. Moreover, I will give you great renown like that of the greatest men on

earth. I will establish a home for My people Israel and will plant them firm, so that they shall dwell secure . . . I will raise up your offspring after you . . . He shall build a house for My name.

Here the prophet is exalting David and is pronouncing important praise upon David's name. And he is attributing [to David] the destruction of the enemies of the Holy One, (blessed be He). So how is it possible to say that, because of David's defective character he was prevented from building the Temple?

Scripture Reveals the Secret: The "Much Blood" That David Shed and the Wars That He Waged Was for Private Conquest, of Aram-Nahara'im and Aram-Zobah.

Therefore, it seems appropriate to explain, in a different way from all the above-mentioned commentators, why David was punished by not being allowed to build the Temple. Because he waged wars privately (i.e. without God's authorization) and conquered Syria without being instructed to do so, before he conquered the Jebusites dwelling in Jerusalem. As it is explained in *Sifrei debe Rav, in Parashat Ekev, piska 51.*

Concerning the verse (Deut. 11:24) "Every spot on which your foot treads shall be yours": if you should say, why did David conquer Aram-Nahara'im and Aram-Zobah? Are the commandments not in effect there? They said: David did

something not in accordance with the Torah. The Torah says that once they conquer the Land, you will be [considered as] authorized to conquer [territory] outside the Land. He did not do thus but turned and conquered Aram-Nahara'im and Aram-Zobah, without [first] dispossessing the Jebusites who were close to Jerusalem. The Holy One, (blessed be He) said to him: "Close to your palace you did not dispossess them, so why do you turn to Aram-Nahara'im and Aram-Zobah?"

Therefore they said, in *Tractate Gittin* 8b, that Syria was judged to be a private conquest, as they explained it there in *Tosefot* (8a) in the opening words, [judging the] conquest according to the aforementioned *Sifrei*. And *Rashi* explained there that David conquered Syria on his own initiative, that all the Israelites were not (P. 24) together "and David conquered it only for his own purposes." And in the *Tosefot* 21a concerning this conquest. Likewise *Rambam* argued, in chapter 1 of *Hilkhot Terumot*:

David conquered lands outside of the Land of Canaan, for instance Aram-Nahara'im, Aram-Zobah, Ahlab and others. Despite the fact that he was the king of Israel, according to the High Court he did not act in accordance [with the special provisions of the law concerning conquest of] the Land of Israel in every instance [where he should have so acted], nor [did he act] in accordance [with the special provisions of the law concerning conquest of lands] outside the Land [of Israel] in every instance [where he should have so acted]²⁰. . . . Why did they (i.e. these lands) not come under the provisions of the

²⁰ David, as the King, was responsible for acting in accordance with the dicta of the High Court, which had the authority to rule on all matters of the Law, including which lands would constitute lawful conquests and which ones unlawful.

Land of Israel²¹? Because he conquered them before he conquered all of the Land of Israel, while some of the Seven Nations [still] remained in it.

And despite the fact that the *Rambam* wrote that David conquered Syria at the behest of the Great Court, this does not correspond to what is said in the aforementioned *Sifrei debe Rav*, [for] there "They said that David had acted in violation of the Torah." Thus it is not possible that he acted thus at the behest of the Great Court.

From the Explanation of the *Targum*, It Turns out That, in the Conquest of Aram-Nahara'im and Aram-Zobah, 12,000 of Israel's Soldiers Fell.

In Psalms 60:1-3, 5 it is written:

For the leader, on *Shushan Eduth*. A *michtam* of David [to be taught], when he fought with Aram-Nahara'im and Aram-Zobah, and Joab returned and defeated Edom-[an army] of 12,000 men-in the Valley of Salt. O God, You have rejected us, You have made a breach in us, You have been angry; restore us! . . . You have made Your people suffer hardship; You have given us wine that makes us reel . . .

And further on it is written (v. 12): "But you have rejected us, O God; God, You do not march with our armies." And apparently, it is difficult from the beginning of the psalm (to foresee) its end, because from the beginning the implication is that Joab struck the

²¹ Lit., וּמִפְּנֵי סֶחַ יִרְדּוּ מִמַּעַלְת אֶרֶץ יִשְׂרָאֵל-Why did they descend from the height of the Land of Israel?

enemy and won a great victory. But from the end the implication is that we were in great distress, and the Holy One, (blessed be He) rejected us and broke forth against us. *Rashi* explains that the end refers to the future to come, in the time when the [places of] exile will pass away²². But through this [explanation] the Scripture goes out from its simple meaning. Therefore, one must accept the explanation of the *Targum*, from which comes [the interpretation] that in this war of David, over Aram-Nahara'im and Aram-Zobah, 12,000 of David and Joab's soldiers were killed, as it translated there: "Afterward Joab returned from smiting the Edomites in the Valley of Salt; 12,000 of David and Joab's soldiers had been killed." (See also II Sam. 8:13, and I Chron. 18:14.) In the *Meiri commentary on the Book of Psalms*, the implication is that also in his opinion the psalm does not cry out about the future to come in the time of the exile, but rather about David and Joab's war in Aram-Nahara'im and Aram-Zobah, which was difficult and bloody for Israel. One can also look in *Tosefot to Shabbat 115a* under the opening words "and in his hands," because in the days of the *Tanna'im* there was already a

²² i.e. when Israel will again be sovereign in its own land.

targum of The Writings. In it the secret of this episode relating to David was revealed. (P. 25)

David did not Merit Building the Temple Because
He Conquered, Without (God's) Authorization,
Other Lands Before He Conquered Jerusalem and
Mt. Moriah.

It turns out that David's war against Aram-Nahara'im and Aram-Zobah was soaked with Jewish blood and in violation of the *halakhah*, and therefore these lands were not sanctified with the holiness of the Land of Israel. Moreover, it was not even considered as a *Milhemet Reshut*, [rather, as a "forbidden war," that David had no right to engage in,] because [David] conquered them before he conquered Jerusalem and the site of the Temple. Also, 12,000 of David and Joab's soldiers fell in this war. Because of them David was punished, in that he was not allowed to build the Temple, so it was said concerning this war (I Chron. 22:8) that [David] had "shed much blood on the earth," because 12,000 of David's soldiers fell and it was not sanctioned [by God]. Therefore, David cried out in his speech (Psalms 60:3-5): "You have rejected us, You have broke forth against us . . . You have given us wine that makes us reel" as quoted above, because he had put off the conquest of Jerusalem and the site

of the Temple. Because they (the Jebusite inhabitants of Jerusalem) were close to his palace, but nevertheless he went off to conquer foreign lands, and this constituted a blow to the honor of the Temple, and therefore - let the punishment fit the crime - he was prevented from building the Temple. This is the true interpretation of this passage, and in this interpretation is revealed the sense of the*complicated scriptural verse in Chronicles.

Differences of Opinion regarding the Ethics of Warfare Between Jacob and His Sons.

A precedent-the most important *halakhah* which reflects the differences of outlook in this entire matter of collective responsibility for transgressions as a criterion for the ethics of warfare-we find in the Book of Genesis in the incident of the rape of Dinah by Shechem the son of Hamor the Hivite. There it is written (Gen. 34:25, 26):

On the third day, when they (the male Hivites) were in pain [having submitted to circumcision at the insistence of Jacob's sons], Simeon and Levi, two of Jacob's sons, brothers of Dinah, took each his sword, came upon the city unmolested, and slew all the males. They put Hamor and his son Shechem to the sword.

Against this mass murder, Jacob went out in violent anger, as

it is written (vs. 30, 31):

Jacob said to Simeon and Levi, "You have brought trouble on me, making me odious among the inhabitants of the land, the Canaanites and the Perizzites; my men are few in number, so that if they unite against me and attack me, I and my house will be destroyed." But they answered, "Should our sister be treated like a whore?"

From these words it seems that even Jacob did not rebuke the murder by Simeon and Levi for its own sake. Rather, [he rebuked them] because of the fear of reprisal from the inhabitants of the land, that would likely bring upon him a holocaust and would destroy the entire House of Jacob as indicated by Jacob's words. But this is not the case, because even many years afterward, in his testament to his sons before his death when they were in Egypt, Jacob went back and expressed his abhorrence over Simeon's and Levi's acts. As it is written (Gen. 49:5-7):

Simeon and Levi are a pair; their weapons are tools of lawlessness. (P. 26) Let not my person be included in their council, let not my being be counted in their assembly. For when angry they slay men, and when pleased they maim oxen. Cursed be their anger so fierce, and their wrath so relentless. I will divide them in Jacob, scatter them in Israel.

There are differences of opinion in the midrashic literature as to the consequences of Simeon's and Levi's mass murder in Shechem.

Were Jacob's fears realized, and did the inhabitants of the land come to him in a war of retribution, or not? *Rashi* brings into the discussion, the verse (Gen. 48:22; Jacob addressing Joseph): "And now, I assign you one portion (Shechem) more than to your brothers, which I wrested from the Amorites with my sword and bow." *Rashi*.

When Simeon and Levi slew the inhabitants of Shechem all the surrounding nations gathered together to join in battle against them, and Jacob girded on his weapons to war against them.

It is likewise clarified in *Targum Yonatan* but the [*Targum*] *Onkelos* translates: "From the hand of the Amorites [they] took the land with praise and petition." In other words, "I took (the land) from the hands of the Amorites with my prayer and petition," and the interpretation is the same in the *Mekhilta*, *parashat Beshallah* 2.

In *Genesis Rabbah* chapter 97, *Rabbi Yehudah* and *Rabbi*

Nehemiah argued over this:

Rabbi Yehudah said: "With my sword and bow" - with *mitzvot* and good deeds," and *Rabbi Nehemiah* said: "With my sword and bow" - Our Patriarch Jacob did not want his sons to commit this act (of mass murder). But as soon as they did it, he said, How can I allow my sons to be cut down by the nations of the world? What did he do? He girded on his sword and bow and stood up against the gates of Shechem. He said, If the nations of the world come to square off against my sons, I will fight them off."

In the *Yalkut Shim'oni*, *parashat Vayishlach* remez 133 under the opening words "and he stood up," we find a long and detailed story about the difficult war that Jacob and his sons waged against Shechem. After seven years, all the Amorite kings pursued Jacob, assembled against them, and wanted to kill them at Bik'at Shechem, etc. The likely outcome was clear. Therefore, although Jacob had opposed the murderous behavior of Simeon and Levi, he now stood up for them both from a security standpoint, as he expressed later (Gen. 34:30) "You have brought trouble on me, making me odious among the inhabitants of the land . . . " and from an ethical standpoint, when he gave his testament before his death, as related above.

**The Dispute Between the *Rambam* and the *Ramban*
Concerning the Righteousness of Killing the Men
of Shechem by Simeon and Levi.**

The Lights of the World, *Rambam* and *Ramban*, differed as to whether the acts of Simeon and Levi in Shechem were in accordance with the *halakhah* or not. The *Rambam*, in the end of chapter 9 of *Hilkhos Melakhim*, *halakhah* 4 justifies their acts and writes:

Since the sons of Noah (P. 27), men were commanded concerning the laws [to establish courts of justice to enforce the laws]. Because of this all the Shechemites were deserving of death: Shechem stole [Dinah], and they (his people) saw this

and knew about it but did not judge him²³.

But the *Ramban* in his commentary on the Torah (in *Parashat Vayishlach*, Gen. 34:13), disagrees with him and writes:

These words (i.e. the above-mentioned opinion of *Rambam*) are not correct in my view, for if so our Patriarch Jacob would have been liable before and would have merited their death. And if he feared them, why was he angry at his sons, so that he cursed them in anger even long afterward? And why did he punish them, and distribute their portion [to their brothers]? If they did rightly and performed a *mitzvah*, and had faith in God and rescued them? Perhaps Jacob was angry and cursed them, because they had killed men of the city who had not sinned against him, while it would have been fitting for them to kill only Shechem himself.

Afterwards the *Ramban* returns to question the *Rambam*.

Why does the Master (i.e. *Rambam*) seek to pronounce them culpable? Are not the men of Shechem and all the Nations, idolators and sexual perverts²⁴ and perpetrators of abominations before the Lord? But Jacob and his sons were not told to judge them [for all this]. In the matter of Shechem, what the sons of Jacob did was because of their wickedness. Their blood (i.e. that of the men of Shechem) was important to them like water; they wanted to exact revenge from them with an avenging sword, and they killed the king and all the men of his city. And Jacob spoke with them (his sons) in anger

²³ In the *Babylonian Talmud, Tractate Sanhedrin* 56b, we find the rabbinic "Noahide Covenant" or "Seven Laws of the Sons of Noah" which are an interpretation of Genesis 2:16 and chapter 9. Six of the precepts are negative (proscribing idol worship, blasphemy of God, murder, sexual perversions, and stealing), and one is positive (prescribing the establishment of courts of justice). The *Ramban* is excusing the behavior of Jacob's sons by asserting that the Hivites had no courts of justice (since they had imposed no sanctions on Shechem for the rape of Dinah).

²⁴ Lit., "uncoverers of nakedness."

because they had put him in danger, as it is said, "You have brought trouble on me." And he cursed them in anger because they perpetrated violence against the men of the city, after saying to them (Gen. 34:16), "We will dwell among you and become as one kindred," and they (the men of Shechem) chose the Lord (i.e. they chose in principle to worship the Lord, the God of Jacob), and stood by their word (by submitting to circumcision), and perhaps they would become repentant to the Lord (i.e., *truly* forsake their previous idolatrous ways, as they had promised). But they killed them for nothing because they had not wronged them at all, and for this (Jacob) said of them (Simeon and Levi, in Gen. 49:5), "their weapons are tools of lawlessness."

In the *Ramban's* Opinion, Jacob Opposed the
Killing of the Men of Shechem, Both From a
Security Standpoint and From an Ethical
Standpoint.

The *Ramban* adds that even from a security standpoint Jacob was right in what he said to his sons. If we are to believe in the words of the Book of Wars of the Sons of Jacob, the fear of their father came upon them. For the inhabitants of Shechem gathered and fought three major wars against them. And had he (Jacob) not also girded his weapons of war and fought them, they would have been in danger as is told in that book. Our Rabbis mentioned this in [their explanation of] the verse (Gen. 48:22), "which I wrested from the Amorites with my sword and bow." All the inhabitants of the region gathered to face off with them, so Jacob girded his weapons of war

against them, as *Rashi* wrote, etc.

In Criminal Law there are Two Ways to Measure
[punishment]: *Halakhic* Justice - "Let the
Judgment Pierce the Mountain²⁵!" and the Justice
of the "*Mishnah* of the Pious."

We have learned that from the *halakhic* aspect, there are two principles. According to the *Rambam*, Simeon and Levi apparently behaved in accordance with the *halakhah*, while according to the *Ramban* (P. 28) they killed them (the men of Shechem) for nothing, in contrast to the principles of the *halakhah*, and in contrast to sacred ethical obligation [concerning the preservation of life]. Apparently, the *Ramban* justified that which he said in opposition to the *Rambam*, because Jacob opposed the acts of Simeon and Levi not only out of a fear of the inhabitants of the land, but also as a matter of ethical and *halakhic* principle since he denounced them in his testament before his death, many years afterward.

It is necessary to explain the words of the *Rambam*, that indeed from the standpoint of the *halakhah* Simeon and Levi were justified, but this was *halakhic* justice from the standpoint of [the

²⁵ יִקַּבְּ חֵדִין אֶת הָהָר i.e. extract justice strictly, according to the law, with no thought given to extenuating circumstances.

principle] "let the judgment pierce the mountain." But this is not justice from the *ethical* standpoint, as we find these two ways to measure [punishment] - *halakhic* justice and the justice of the *Mishnah* of the Pious stated in the *Jerusalem Talmud* at the end of chapter 8 of *Tractate Terumot*. Over the entire range of criminal justice, the *Mishnah* of the Pious is sometimes in opposition to the *halakhah*, which demands that "the judgment pierce the mountain," and [when such an opposition occurs] one must take the road of the *Mishnah* of the Pious, as we find in the writings of *Ula Bar Kushab*, who told the story of the man whom the [Roman] authorities wanted to capture and execute. He fled to Lod, to the home of *Rabbi Yehoshua ben Levi*, and they (the authorities) surrounded them, and they said to him, "If you don't surrender him into our hands we'll lay waste to the city." *Rabbi Yehoshua ben Levi* went to the man, and influenced him to give himself up to the authorities. It is told in the *Jerusalem Talmud* that *Elijah the Prophet* had been in the habit of revealing himself to *Rabbi Yehoshua*, but [after this incident] stopped doing so and did not appear for a long time. *Rabbi Yehoshua* fasted several times, and then *Elijah* revealed himself to him and

said, "Why I should reveal myself to an informer?" And *Rabbi Yehoshua* asked, "Did I not do according to the *Mishnah*²⁶?" And *Elijah* asked, "Is this the *Mishnah* of the Pious?"

We have learned that, when judging the life of a man, there are two ways to measure [punishment]: that of the fixed *halakhah* and that of the *Mishnah* of the Pious. In an incident like this, one must behave in accordance with the truth of the *Mishnah* of the Pious which is as [binding as] Torah (i.e. as the *halakhah*), and in criminal law it is from the standpoint of "overall *halakhah*²⁷," as we find in the *Mishnah* at the end of chapter 1 of *Tractate Makkot* 7a: *Rabbi Tarfon* and *Rabbi Akiva* said: "If we had been on the *Sanhedrin* there never would have been an execution [in a criminal case]!" And it was explained there in the *Gemara* that they would inquire and investigate [and would reject the punishment of execution if there

²⁶ The *halachic* point that he is making, that one should surrender oneself in order to save an entire city, is actually found not in the *Mishnah* but in *Tosefta Terumot* 7:23.

²⁷ חִלְכַת-עַבֵּי; "meta-*halachah*"; the "overall thrust" of *halachah*. Goren is saying that one, in applying the law to a particular situation, should not lose sight of the "thrust" of the law, i.e. what one believes that the law intends to achieve. In other words, the "spirit of the law." It should be noted, however, that an Orthodox rabbi like Goren would not advocate ignoring, or setting aside, the law in order to act within its "spirit"; rather, that one should find provisions for leniency *within* the law where necessary to avoid a judgement more severe than the "spirit" of the law would have intended.

was] the slightest doubt, and that they (executions) are very rare and all is done in order to spare the lives of the offenders. This is the law according to the *parashah* concerning Shechem. In the opinion of the *Rambam*, indeed Simeon and Levi acted in accordance with the *halakhah* that they possessed. But our Patriarch Jacob expected them to walk in the way of the *Mishnah* of the Pious, which is the true ethic. According to it, one must act, when we judge in matters of criminal law, even in the case of gentiles and even with idolators as in the case of the men of Shechem, (P. 29) as the *Ramban* writes. "The *Mishnah* of the Pious" is based on the principle of compassion, according to which one must behave even in war, and of [all] the characteristics of the Holy One, (blessed be He), that is the one we must learn. Just as He is "gracious and compassionate" (Psalms 145:8), so too must we be. This is in contrast to the principle of judgment and to the principle "let the judgment pierce the mountain." Rather, "His mercy is upon all his works." (Ps. 145:9)

FIVE

THE ETHICS OF WARFARE IN THE LIGHT OF THE HALAKHAH - Personal and Community Responsibility for the Preservation of Life

In this, the last instalment of Goren's introductory chapter, he explores the issue of responsibility for the preservation of life. What, in a wartime situation, is the responsibility of each individual for the lives of others? What is the difference between the responsibility of the "rank and file," and that of the military or civilian leaders of the community? What about the collective responsibility of the people as a whole?

Goren's answer, in every case, is simple: each individual, and by extension the nation collectively, bears responsibility for preventing unnecessary loss of life. This responsibility ranges from the most direct cause of death to the most indirect. The differences occur in whether one is accountable to a *beit din* for punishment, or not. Only for purposes of accountability to a human court, not in *ethical* responsibility, is there a difference between the ordinary

citizen, or soldier, and the person commissioned to a position of leadership.

The ordinary citizen is required to take all reasonable precautions to avoid loss of life, for example by building a parapet (or railing) on his roof to prevent someone from accidentally falling to his death. Additionally, he is required to come to his fellow's assistance whenever he sees him in danger, for example if he comes upon someone drowning in a river. If he cannot personally help his fellow (e.g., he cannot swim), he is obliged to call for help, even if necessary paying someone else to come to the endangered one's assistance. If he did not go to such lengths to assist, and his fellow drowned, he would be accountable to God for the bloodguilt. He would not, however, be accountable to a human court, either criminally or under tort law¹.

The application of this to a wartime situation is, of course, that the soldier must drop other activities to help a wounded comrade, or even a wounded enemy soldier. However, it must be remembered that efforts concerned with engaging the enemy take

¹ The *halakhah*, however, does not distinguish between types of law; all law is religious law.

precedence over the saving of individual lives, both in a *milhemet mitzvah* and in a *milhemet reshut*, as we learned in Chapter Three.

The leader, one appointed or elected to serve in a leadership position over the people, *can* be tried and held accountable by a court for negligence resulting in the death of others. For example, if the city treasurer failed to hire somebody to go out and repair potholes in the roads, and as a result a horse fell in a pothole and its rider died in the accident.

Goren shows how this principle applies to wartime situations. It being understood that there is a certain amount of risk to life in wartime, leaders are held accountable when their negligence results in unnecessary deaths. Goren gives as an example a commander having his troops camp close to the walls of a besieged city, where there is understood to be a danger of attack from atop the walls. If someone threw a stone or other heavy object from the wall, and one of the soldiers was killed, the one who decided to have the troops camp there would be held accountable.

Finally, Goren addresses the treatment of enemy captives and dead. As he states, "the combat ethics of every army in the world

are expressed in principle by these two phenomena." He is not expressing a minority opinion, certainly not as regards the treatment of enemy captives. Here we touch on a subject that is indispensable to what soldiers call "The Law of War" or "The Law of Armed Conflict." While substantial elements of it existed, *de facto*, prior to World War II, the war crimes trials following that war established its principles, *de jure*, and the 1949 Geneva Conventions codified the principles for the signatory nations². One of the four Geneva Conventions deals with the rights of prisoners of war to receive humane treatment.

Beyond legislation, mistreatment of captives is bad military policy. Evidence or rumors of the mistreatment of captives "may arouse an enemy to greater resistance, leading to increased friendly casualties."³ Recently, in the Persian Gulf War, one US airman shot down and taken captive by the Iraqis deliberately tried to make himself look, by his appearance and his mannerisms when he appeared on Iraqi television, as if he had been mistreated. It later

² Parks, "Teaching the Law of War," 145.

³ Ibid., 148. Colonel Parks points to this as one of the four basic assumptions that form the U.S. military program for teaching the Law of War in the ranks.

turned out that this had not been the case. However, the man, a Naval Flight Officer, achieved his aim; the indignation of the American public and its government was so pronounced that Iraqi president Hussein understood the need to make a conciliatory gesture; he quickly freed all American and allied states' captives.

Although Goren states that the humane treatment of captives is of great importance, he goes into very little detail on the "wherefores" of this subject. He does imply clearly that the captor should not vent his anger upon the captive, that the captor is responsible for the captive's well-being when in captivity. However, left unanswered is the question: what are the limits of pressure that can be applied when interrogating enemy captives for information?

Anytime captives are taken on the battlefield, there is a tendency to go to extremes in trying to wrest information as the other side's operational plans and disposition of forces. This is especially so when the battle is still ongoing and the captor's side is taking casualties. A captive who has been mistreated by his own government might talk freely, as was often the case in the Gulf War

with Iraqi prisoners, but this cannot be counted upon. All armies in the world, including the US forces, have military intelligence specialists attached to each combat formation, whose primary duty is the interrogation of enemy captives. The modern Israeli Army's doctrine of *tohar haneshek* calls for considerable restraint in treating detained persons. When a soldier finds it necessary to detain and question an Arab, he is "taught never to do more than what is necessary to get the job done, and never without as much respect as is possible under the circumstances."⁴ Evidence shows that while excesses do exist, the Israeli army succeeds most of the time to uphold this standard⁵. The problem is that, when the enemy is a religiously fanatic guerrilla army whose members are indoctrinated to believe that martyrdom is an instant ticket to paradise, it has got to be extremely difficult to wrest information from captives without putting them under extreme physical duress. Under such circumstances, it might be considered "reasonable" for an interrogator to shoot or torture a captive to obtain the cooperation of his fellows. Can Goren's silence on this particular

⁴ Singer, "Moral Standards Under Pressure," 138.

⁵ Ibid. and Rabinovich, "Purity of Arms," 12-19.

matter be taken to mean that the principle of "humane treatment of captives" is unequivocal and speaks for itself? Or should it be taken to mean that, as far as specifics, the area is "wide open" to situational ethics? Obviously, different readers will variously interpret his silence.

As to the treatment of enemy dead, Goren states only that they must be buried, it being implied with dignity. It is understandably the tendency of advancing armies to ignore the enemy dead (other than picking them over for needed equipment or war trophies). Burial of all the enemy dead is a task that would tie up many personnel, who are certainly needed elsewhere.

But Goren cites *Rashi* as asserting that King David buried the dead of his enemies, and in doing so he acquired an admirable reputation. And he mentions the existence of burial units in the modern Israeli Army, whose job it is to identify and bury the enemy dead in wartime. Goren, given his long discourse on all mankind as being created in God's image⁶, has already established a basis for ascribing great importance to this activity. Here he also mentions

⁶ See chapter two above.

the messianic times, when all mankind will serve God with one accord as expressed by the prophet Zephaniah.

(Goren's text begins: Volume 1, page 29)

The Ethical, *Halakhic* Responsibility Incumbent upon Those Who have been Charged with the Safety of Others.

Now we must discuss a new *sugya*, on our subject, and it is the extent of the *halakhic* or ethical responsibility which is incumbent upon those whose duties include overseeing the peace and safety of individuals, groups, or [military] formations [whether] Jews or gentiles. Now their responsibility is not direct but rather indirect. In the event of an attack on the safety of individuals or groups by a foreign factor/force, to a certain extent the Torah sees those in charge as being responsible, in an indirect way, for the sins and transgressions which might be propagated against the population, because they are in charge of them. Therefore they (the leaders) cannot claim not to know about it (the danger posed by the foreign factor/force). They are supposed to know.

From the standpoint of morality, not only is he who is in charge of someone's safety required to take steps of caution in order

to ensure his safety and life, but rather everybody who is in a position to rescue a man who is in distress must do so, as the *Rambam* ruled in chapter 1 of *Hilkhos Rotse'akh U'shemirat Nefesh*, *halakhah* 14:

Everybody who is in a position to rescue somebody and does not, transgresses [the commandment] (Leviticus 19:16) "[Do not] stand upon the blood of your neighbor." Likewise everybody who sees his fellowman drowning in the sea, or beset by robbers, or being approached by a beast of prey, being in a position to rescue him by himself [but does not]; or [who encounters someone in distress] who had hired others to rescue him and they did not or who heard that idolators or informers intend to perpetrate evil on him, or they are setting a trap for him and none of his [other] fellows are aware of it so they can warn him, or who knows about idolators or is under duress because he is coming upon his fellow and needs to appease his fellow in order to remove that which is in his heart, and he does not succeed in appeasing him; and all the implications of these things, he who does these things transgresses (the commandment) "[Do not] stand upon the blood of your neighbor."

We find these *halakhic* principles in *Sanhedrin* 73a. And from *Torat Kohanim*, *parashat Kedoshim* *parashah* 2, chapter 4 it is taught in keeping with the words of the *Rambam* that this obligation applies to every kind of rescue or aid that a man is able to offer to his neighbor. In other words, when one knows that one can help another, one is obliged to do so. This we learn from the above-

mentioned; and from where do we learn that, if you have information that would enable you to give testimony beneficial to your neighbor, you are not allowed to remain silent? Tradition teaches: "[Do not] stand upon the blood of your neighbor." And this is in addition to the obligation and *mitzvah* (p. 30) which is incumbent upon witnesses that they must testify, based on the scriptural verse (Lev. 5:1):

If a person incurs guilt-When he has heard a public imprecation and-although able to testify as one who has either seen or learned of the matter-he does not give information, so that he is subject to punishment.

The Distinction Between *Mitzvah* and the Imposition of [Legal] Responsibility.

However, it is necessary to distinguish between the imposition of [legal] Responsibility and *mitzvah*, even in the obligation to rescue one's neighbor when he is in distress. For this *mitzvah* is anchored in many scriptural verses, for example [the passage] (Deut. 22:2) "then you shall give it back to him," which was explained in *Tractate Bava Kamma* 81b and in *Sanhedrin* 73a, which increases its authority⁷ (lit., "its telling"). And also it is written (Deut. 25:12): "You shall cut off her hand, show her no pity⁸." This is explained in *Sifrei* as teaching that you are obliged to save him. Likewise the

Rambam wrote at the end of chapter 1 of *Hilchot Rotse'akh U'shemirat Nefesh*. Although these *mitzvot* are [taken] together with "[Do not] stand upon the blood of your neighbor," they are obligations and *mitzvot* that are incumbent upon every man when he sees or knows that his neighbor is in distress. But this is not to be construed as an imposition of [legal] accountability for the life of the other. And therefore, the one who transgresses them is not remanded to a *beit din*, but [is accountable] to God, as the Rambam wrote at the end of chapter 1 of the aforementioned *Hilchot Rotse'akh*. One is not punished by a *beit din* for these *mitzvot* and transgressions, and the injured party does not receive a summons

⁷ The entire passage (Deut. 22:1-2) reads:

If you see your fellow's ox or sheep gone astray, do not ignore it; you must take it back to your fellow. If your fellow does not live near you or you do not know who he is, you shall bring it home and it shall remain with you until your fellow claims it; then you shall give it back to him.

The passage in *Bava Kamma* clarifies "you shall give it back to him" as including his own body; if your fellow is in distress, in danger, or lost, you shall give (himself) back to him, i.e. help him in any way possible. The passage in *Sanhedrin* reiterates this principle, and goes further to say that you must even hire others to help you, if necessary, to save your fellow.

⁸ The entire passage (Deut. 25:11-12) reads:

If two men get into a fight with each other, and the wife of one comes up to save her husband from his antagonist and puts out her hand and seizes him by his genitals, you shall cut off her hand; show no pity.

The point is that one who sees his fellow under distress, he must take even extraordinary means (such as cutting off the hand of a woman who seizes him by the genitals, if necessary) to assist him.

from a *beit din* [to testify] against one who could have rescued him but did not.

Against this, we must clarify the case of one who has been [specifically] charged with responsibility for the safety of others, and does not fulfill his duties, or one who in conjunction with his [other] duties is held responsible for the safety of others, where he was not sufficiently vigilant in his duties and as a result of his actions was not careful, or as a result of some omission another is injured. Is his offense reported to a *beit din* or judged by God?

On the face of it, it is possible to learn the answer from the passage in Ezekiel (33:2-4,6):

When I bring the sword against a country, the citizens of the country take one of their number and make him their watchman. Suppose he sees the sword advancing against the country, and he blows the horn and warns the people. If anybody hears the sound of the horn but ignores the warning, and the sword comes and dispatches him, his blood shall be on his own head . . . But if the watchman sees the sword advancing and does not blow the horn, so that the people are not warned, and the sword comes and destroys one of them, that person was destroyed for his own sins; however, I will demand a reckoning from the watchman.

Here we are talking about the imposition of accountability on the watchman for the safety of the people, and it is explained that if he

does not fulfill his duties and neglects the fulfillment of his duties and does not warn the people, their blood is demanded from the watchman. But here we are also apparently talking about punishment by God, as it is written "I will demand a reckoning from the watchman." And the question is, how can this be judged by a (p. 31) *beit din*? Is it possible to serve him with a summons from a *beit din* for injuries which were caused because of him to the people or to an individual? Apparently, it is similar to the watchman in that even the unpaid watchman is responsible for negligence. His offense is like that of a shepherd who could have rescued other shepherds, and no other shepherds called out, and he did not bring rescue as a result of [his] irresponsibility; this person is culpable. One is an unpaid watchman and one is a paid watchman, as the *Rambam* ruled in chapter 3 of *Hilkhos Sekhirut halakhah* 6.

On the face of it, the *halachot* of the watchman apply only to one who guards monetary wealth, not to [one who guards] people, as we learned in *Tractate Bava Metzia* 56a: The unpaid watchman is not [accountable] to protect slaves, money, documents and consecrated things because he is not sworn [to office] and earns no

salary. The laws of the watchman speak only of [accountability for] things that can be carried around on one's person. As it is explained there in the *Gemara* on 57b. According to *Rashi* on *Kidushin* 7a, even a freeman is not bound by the laws of the watchman. In *Bava Metzia* 58a it is taught that the laws of the watchman apply to the child, but this is not the place to go into this. Because the *Rambam* already wrote in chapter 2 of *Hilkhos Sekhirut*, *halakhah* 3:

It would appear to me that if the watchman failed in his duty [resulting in injury to] slaves, it would turn out that he would be required to pay [compensation], because he is not exempt concerning slaves or land or money except concerning theft and death, etc. Rather, if he failed in his duties, he would be required to pay compensation like any other person who causes damages. Moreover, there is no difference between the laws of one who damages land, and the laws of one who damages portable goods. This is the true rule of law.

We have learned from his words that a watchman is liable for negligence from the sense of [the laws concerning] one who causes damage, and not from the laws of the watchman. This is *Rashi's* opinion, but the *Rif*, the *Rabad*, the *Ramban* and the *Rosh* dispute the *Rambam* and consider that the watchman's responsibility for negligence also stems from the laws of the watchman. Therefore they are not liable except for a thing which has a monetary value.

This is explained in the *Tur Hoshen Mishpat*, nr. 66 and in the *Shulhan Arukh*, paragraph 40. And the *Rosh* wrote in *Teshuvah*, principle 94, that the words of the *Rambam* are the words of prophecy. And the *Gara* already ruled in his clarification of *Hoshen Mishpat* no. 64, subparagraph 146 concerning this problem of whether one who is negligent in his duties as a watchman is liable under the laws of one who causes damage, or those of the watchman. In any case, according to the opinion of the *Rambam* and his evidence, one is even responsible for the safety of people if one is negligent in not using some warning that one could have used. In this case one would be judged as a negligent watchman, and could even be summoned by a *beit din*, and not just be [liable for judgment] by God. This deserves elaboration, but this is not the place to do so. From the prophecy of Ezekiel, that the accountability imposed upon the scout who does not blow the horn and warn the people [and is warned] (33:6) "I will demand a reckoning from the watchman," one cannot determine whether he means [that the reckoning will be exacted] by the Holy One, (blessed be He) and that his punishment will be imposed only by a heavenly *beit din* or whether his judgment will be exacted by an

earthly *beit din*, as is the case with a negligent watchman.

According to the opinion of the *Rambam*, he is judged as one who has caused damage with [his own] hands. (p. 32) Also, the type of punishment imposed upon a watchman when his negligence causes the death of another, requires a deeper explanation than is possible here. In any case it is clear that, in the case of the imposition of accountability upon those whose duties include the safety of people, they can be held accountable for the results [of their negligence] as it is written in Ezekiel.

It is possible to derive the obligation to learn lessons from [past] mistakes in war, and the means of warning that commanders must use during war to ensure the safety of their men, from the verse in II Samuel (11:19) concerning Uriah the Hittite:

When you finish reporting to the king all about the battle, the king may get angry and say to you: "Why did you come so close to the city to attack it? Didn't you know that they would shoot from the wall? Who struck down Abimelech son of Jerubbesheth? Was it not a woman who dropped an upper millstone on him from the wall at Thebez, from which he died? Why did you come so close to the wall?"

Normally, the king would be within his rights to be angry at Joab and the other commanders for not drawing a lesson from Abimelech son

of Jerubbesheth and from Gideon, and to demand to know why they were not careful in guarding the lives of the soldiers.

From this we learn that despite King David's order in his letter about Uriah (II Sam 11:15) "Place Uriah in the front line where the fighting is fiercest," King David was within his rights to reckon the blood of Uriah from Joab, who failed to warn him not to approach close to the city to fight, because Joab as an army commander is in a position of responsibility for the lives of the soldiers, and [is therefore obliged] to employ all necessary means of caution one can use even in the heat of battle⁹.

**Not Fulfilling One's Indirect Responsibility to
Protect the Lives of People, is Considered as if
One had Spilled their Blood Oneself.**

An additional proof of the indirect responsibility imposed upon one man for the life of another [is provided by the following case]. When one requires the assistance of another in the form of water or food, and by not providing such help one endangers the life of one's fellowman and as a result he dies or is killed, one is charged with

⁹ This is an incredible statement on the part of Goren, given that the verse in II Samuel continues with David instruction Joab, "... then fall back so that he may be killed." Apart from the David/Joab/Uriah incident, however, it is a valid point; the army commander is charged with the responsibility of taking all reasonable measures to protect his men, even in the heat of battle.

accountability for the blood of his fellow even as if he had caused his death himself as we are taught in tractate *Sotah* 45b, concerning the verse about the heifer whose neck is broken (Deut. 21):

And they shall make this declaration: "Our hands did not shed this blood, nor did our eyes see it done.

The *Mishnah* asks:

Did it occur to us that the elders of the nearest town shed the blood??! [No,] this only serves [to teach us] that we should have given him food and an escort.

And *Rashi* explained the meaning of the *Mishnah*:

Even though they did not [directly] shed [his blood] and did not [directly] kill [him], they are liable for leaving him without sustenance, and therefore it is as if they had robbed him of his health and thereby he was killed. One who sees his fellowman out alone cannot leave him alone without company as if (p. 33) he had not seen him. End of quote.

Also the *Rambam*, in chapter 9 of *Hilkhot Rotse'akh U'shemirat*

Nefesh, halakhah 3, brought the following to bear:

They say in the wadi [referred to in the verse from Deuteronomy 25] in the Holy Tongue, "Our hands did not shed his blood and our eyes did not see him," that is to say the deceased did not come to us, and we did not leave him without food, nor did we see him and leave him without escort.

And in his commentary on the *Mishnah*, to *Sotah* chapter 9, the

Rambam explains:

This pronominal suffix that they use, [when they say] we left him, we saw him, and we abandoned him, brings us back to the one killed. They want to say with this [language] that we were not negligent, we did not sin in this matter so that we would be as if we had been present at his killing. And what they are saying is that he did not come to us, and we left him without food, and we did not see him, and leave him without escort.

We have learned that when there is a *beit din* or elders in the city closest to the wilderness area where a man without food or escort is in danger, it is as if they were present at his death, and the *beit din* and the elders of that city are considered to be responsible for his death. We cannot wash our hands and say, "Our hands did not shed this blood, and our eyes did not see." Therefore one does not bring [to bear] a verse like the one concerning the heifer whose neck is broken, because the blood does not atone for them.

This responsibility of the *beit din* and the elders of the city, its administrators and leaders, is taught from one specific passage in the Torah, as is proven below, but it is apparently not similar to the responsibility for what they do which is not according to the law, rather it is an ethical accountability imposed upon a *beit din* or upon the leaders of a city or upon the general public to use all [reasonable] means to guard the lives of its inhabitants and

travellers who happen upon it. And the principle is binding vis-a-vis God, concerning what they do not do which is commanded of them, that thereby the matter is considered by God if they had shed innocent blood.

The Responsibility Which is Imposed on the
Public, for the Repair of Roads, is Considered to
be a Direct Accountability and the Punishment
[for Non-compliance] is Heavy.

There is clear proof of this in the *Baraita* in *Tractate Mo'ed Katan* (5a) concerning *hol hamo'ed*. They (the local officials) go out to remove thorns from the roads, and to repair the streets and the highways and to measure the *mikva'ot*. Whence do we know that if they do not do all these repairs, all blood spilled [because of the resulting accidents] is regarded as if [the local inhabitants] had spilled it? Tradition teaches (Deut. 19:10) "[the] bloodguilt [is] upon you." Consequently, [we] see that that the accountability imposed upon the administrators of the city by its inhabitants and all people resident there is not just an indirect or abstract responsibility; rather, they are directly responsible for blood shed because of (p. 34) their negligence in not taking the necessary steps to protect the public. Only it is not yet clear whether this very responsibility is

executed by a *beit din*, if someone was injured on a road that had not been repaired when required, as described above, if it is possible to subpoena the administrators of the city who are responsible for the repair of the roads to pay for the blood of the injured party/ies, or if this accountability is limited to [accountability to] God.

Responsibility for the Lives of the Public is
Imposed on the Officials of the Community, and
the *Beit Din* has "Overall Responsibility"

It has already been settled in the galleys of the Talmud concerning the words of the *Tosefot* under the opening words "and it was/shall be" that was written in the name of the *Rah*: "The verse in the passage of the 'parapet' (Deut. 22) is similar [in regard to imposing accountability] to the [passage of the] 'obstacle.' (Lev. 19)" Moreover, it is surprising that this scriptural text concerns the cities of refuge (Deut 19) and not the passage about the parapet where it is written (Deut. 22:8): "Do not bring bloodguilt on your house." And the language of the *Tosefot* version should not be changed to say "from the passage about the [cities of] refuge," as the various readings suggest, for in the [interpretation of] *Rabbenu Hananel* in front of us it is written that it says "You shall make a

parapet for your roof . . .” and also “Do not bring bloodguilt on your house.” And it should be read that the *Baraita* brings in both verses, from “parapet” and from “cities of refuge,” and the two together increase the obligation and accountability.

Again, we find in the book *System [of Interpretation] on Mo'ed Katan* by the Disciple of Rabbenu Yehiel Mafrish, that the verse is included in the passage about “murderers” and prior to it, it is written (Deut. 19:10) “Thus blood of the innocent will not be shed, bringing bloodguilt upon you in the land.” It is also explained: This verse here pertaining to the issue of the “parapet” is also similar to this one [about] the “obstacle.” But his words are not clear; apparently it is as he wrote there in the [foot]notes and it is necessary to comment on his words and write: Like this verse here concerning the issue of the “parapet” (i.e. and not the “obstacle”). It is found in *Bava Kama* 15b as presented below.

Likewise, the writer explains concerning the change “blood that was spilled there” - that a man was injured thereby and died, or that there were enemies pursuing him, and he was unable to flee from the obstructions and the enemies on the roads, and the enemy

caught him and killed him.

**The Accountability Imposed Upon the Community
Even Concerns the Most Indirect Injuries.**

From these words of his we learn that the accountability imposed upon the community or upon the *beit din* is not just for direct injuries to the person of one who is injured on roads in disrepair, (p. 35) which discusses the accountability for the one responsible for a pit in the public domain, rather also for indirect injuries when one is injured because of roads in disrepair, for example, one being pursued by enemies who wish to kill him, and he cannot flee fast enough because of roads being in disrepair, and as a result he is killed by his pursuers. Even in such a case the community or the *beit din* of the city is punished, and Scripture regards it as if they had [personally] spilled this blood. This is a great, far-reaching stringency in accountability for the population's safety, which is imposed upon the community, even concerning the most indirect injuries.

Thus explained the *disciple of Rabbenu Yehiel* [who] wrote that Scripture regards them as if they had [personally] shed [the spilled blood], meaning the city's *beit din*. But it is clear that if the

community had appointed tax-collectors¹⁰ responsible for this, the direct accountability falls upon the appointed officials. But this does not take away the accountability of the city's *beit din*, which always has "overall responsibility" for the fulfillment of all the *mitzvot* of the Torah that are imposed upon the community, as has been explained by a number of bodies of *mitzvot* and *halakhot* in the Talmud and in the *halakhic* authorities (*poskim*). And this is also explained above in the words of the *disciple of Rabbenu Yehiel*.

In any case, through his words, it is clear that our version [of the text] in the Talmud is the correct one, and the teaching is from the text in the passage on the "cities of refuge." The point of the passage [on the cities of refuge] is: "Thus blood of the innocent will not be shed, bringing bloodguilt upon you in the land that the Lord your God is allotting to you," from which it is understood according to the above-mentioned *Baraita*, that if the people did not fulfill their obligation and did not set aside cities of refuge for inadvertent killers as they have been commanded, the blood of the killers that would be shed by blood-avengers, would be charged against the

¹⁰ I.e. גַּבַּיִם - "gabbais."

entire people, namely upon the supreme *beit din* or leaders of the people of that time.

**Withholding Assistance to a Person in Distress
Makes One Directly Responsible for that Person's
Death.**

But, despite what is said to the effect that this indirect responsibility is not imposed but lies with the *beit din* towards Heaven there is a responsibility regarding this. Apparently, even though a *beit din* lacks jurisdiction for imposing this indirect responsibility, God does, to the point of imposition of the death penalty by God. As the *Targum Onkelos* translated the verse "bringing bloodguilt upon you" - "the culpability for the slaying shall be upon you." And [*Targum*] *Yonatan* translated: "the culpability for the slaying shall be upon you"¹¹. The point (p. 36) is that the death penalty exists for this [offense]. It is certain that [both] are speaking of punishment imposed by God, and the *targumim* are in accordance with the words of the above-mentioned *Baraita* in *Tractate Mo'ed Katan*. For all blood shed [indirectly because of the

¹¹ The two *targumim* rendered the verse very similarly. Onkelos: וְיָחַץ עֲלֶיךָ חֻבַּת דִּין דְּקָסוֹב; Yonatan translated it the same, except that his last word is דְּקָסוֹב instead of Onkelos' וְיָחַץ.

city officials' not fulfilling their duties], it is counted against them as if they had [personally] shed it.

In the *halakhah* there exists a responsibility parallel to this, regarding which it is also explicit: if one who does not hasten to fulfill one's obligations, [and another's death resulted,] it is as if he had personally shed his blood. This is the responsibility imposed upon an "expert" physician by the sick person who is in need of his assistance, as is explained in the *Tur* and in *Shulhan Arukh, Yoreh De'ah* no. 236:1:

The Torah has given the physician the authority to heal, and this is a *mitzvah*, namely the saving of lives, and he who withholds his [assistance, whereby the sick person's death results,] is [as if] he had [personally] shed blood. And even the non-professional sometime healer who is called upon for assistance, [where he] is the most qualified in the vicinity, if he does not provide assistance then it is as if he [personally] had shed [the victim's] blood.

This *halakhah* is based upon the words of the *Gera* in his commentary on *Yoreh De'ah*, on the *Jerusalem Talmud* in *Tractate Yoma* chapter 8, *halakhah* 1, that taught in relation to the saving of lives:

The one who hastens [to save lives] is praiseworthy, while the one who accepts questions [while someone requires his assistance] is contemptible; it is as if he had shed blood.

From this the author of the *Shulhan Arukh* teaches that withholding

of medical assistance from a person by one who is capable of assisting, of not rescuing someone in danger, puts [he negligent party in both cases] into a position of responsibility for the death of the sick person, and he is judged as if he had [personally] shed his blood. The *Ramban* also wrote thus in his book *Torat Ha'Adam - Sha'ar HaSakanah*. Also, *Beit Yosef* brought in his (*Ramban's*) name, in the above-mentioned *siman* 236 and summarizes there: "Come and learn that every physician who knows [the physician's] wisdom and craft must heal [one in need of healing], and if he withholds his [assistance] it is as if he has shed blood." This [accountability] is also punished by the authority of the general injunction (Lev. 19:16): "[Do not] stand upon the blood of your neighbor."

Two Criteria for the Imposition of Responsibility
for the Life of One's Fellowman: (a) "[Do not]
Stand upon the Blood of Your Neighbor; and (b)
"Blood of the Innocent shall not be Shed, Bringing
Bloodguilt upon You."

We have learned that there are two criteria in the *halakhah* by which a person bears responsibility for the safety of another or of the public. (a) When another is already in danger and someone else has the means to rescue him, he is obligated to hasten and save him

according to the understanding of (Deut. 19:16) "[Do not] stand upon the blood of your neighbor." (b) The community is given the responsibility to take whatever means it has to prevent the possibility of danger to people, as taught by the verse in the passage on the cities of refuge (Deut. 19:10) "blood of the innocent shall not be shed, bringing bloodguilt upon you." These two verses taken together determine that the responsible party, whether it be an individual or the community, will be held accountable for the results of their not using all means at their disposal to prevent all danger to others.

(p. 37) Indeed, this important *halakhic* criterion, based on the verse "blood of the innocent shall not be shed, bringing bloodguilt upon you," is not cited by the *Rambam* in chapter 7 of *Hilkhot Yom Tov*, *halakhah* 10, nor in the *Shulhan Arukh Orakh Hayyim*, no. 444 par. 1. There the *halachot* which are found in the aforementioned *Baraita* in tractate *Mo'ed Katan* are cited. The *Rambam* and the *Shulhan Arukh* omitted the concluding part of the *Baraita*, which is the source of the responsibility for the protection of the public that is imposed upon the leadership, or upon the *beit din* and for the

stringency of the punishment for not fulfilling the obligation as written in the *baraita*: "How do we know that, if one does not go out [to fulfill his responsibilities] and does one of these [offenses specified above], that any blood shed as a result is considered as if he had shed it." etc. Moreover, there is no provision for reducing this accountability.

Both of the Verses Which Impose Responsibility,
are Intended as the Two Criteria: [One] for the
Individual and [one] for the Community.

Even in the *Rashba's* response, which is explained in *Beit Yosef* in the above-mentioned passage teaches that according to the interpretation of *Rabbenu Hananel* on tractate *Mo'ed Katan*, the teaching is [to be taken] from the verse (Deut 22:8): "You shall make a parapet for your roof, so that you do not bring bloodguilt on your house." Only like *Rabbenu Hananel*, *Rashba* also combines the verses from the two passages together. *Rashba* taught thus from the words of the *Baraita* which they did not allow in *Mo'ed [Katan]*...

They are only talking about bodily necessities (i.e. physical dangers) such as the excavation of pits, ditches, and caves, and the removal of thorns from the roads and the repair of streets which are all requirements of the public in order to remain alive and to guard against injury, and where it is impossible for the public to consider the roads, etc."

And even the *Baraita* teaches that, on account of lives this is cancelled, as we were taught in the *Baraita*: They go out to repair the roads, etc. And how do we know that, if they do not go out and do all these things, blood that might be shed [as an indirect result] is counted against them as if they had [personally] shed it? Tradition teaches "You shall make a parapet for your roof, so that you do not bring bloodguilt on your house." This warning is directed towards individuals and not towards the community. This is not the case with the verse that deals with the issue of the cities of refuge. It is directed towards the responsibility imposed upon the community to prevent the possibility of shedding blood because of the public's omissions, this is in accordance with the text of the *Baraita* concerning the obligation to repair the roads, etc.

In any case, it is clear that even though it is not cited [explicitly] in the *halakhah*, [it is] the source [of the principle] but not [of] the punishment for the collective responsibility for the blood that was spilled; one cannot ignore the *Baraita* (p. 38) explained in the Talmud, whose meaning the *Rishonim* upheld. Many important implications [follow] from it concerning the subject of

the responsibility of appointed officials for the safety of the community or the safety of individuals, which they bear, according to the *halakhah*, with direct responsibility for every one of their omissions, within the framework of their duties.

It is possible to reinterpret and say that the two verses come as one, occupying two parallel [trains of thought] and therefore both of them are essential and vital. The one concerning the cities of refuge is directed towards one who is responsible for the safety of the community, while the one concerning the parapet is directed towards one who is responsible for the safety of individuals.

Likewise Rabbi Nathan taught in the *Baraita* in tractate *Bava Kama* 15b; in this verse it is explained how we learn that a man should not raise a vicious dog in his house nor place a rickety ladder in his house. Tradition teaches "Do not bring bloodguilt on your house," which speaks of the individual, but the *Baraita* in *Mo'ed Katan* which speaks about the community is based on the verse "blood of the innocent shall not be shed, bringing bloodguilt upon you," which pertains to the cities of refuge. It deals with the community's responsibility that is imposed upon the leadership, to worry about

the safety of the population.

Treatment of Enemy Captives and Dead.

The combat ethics of every army in the world are expressed in principle by two phenomena: (a) the treatment of enemy captives; and (b) the treatment of enemy dead. In these two areas we find in both the Scriptures and the Talmud, the greatest difference between the behavior of the army of Israel, and that of foreign armies. As we learned in *Mishnah Sotah* chapter 8:1 on the verse (Deut. 20:2,3): "The priest shall come forward and address the troops. He shall say to them, 'Hear, O Israel! You are about to join battle with your enemy.'" - not with your brothers, for since if you should fall into their hands they would be compassionate with you as it is written (II Chron. 28:15): "Then the men . . . proceeded to take the captives in hand, and . . . they clothed them and shod them and gave them to eat and drink, etc." [No,] you are going to meet an enemy who, if you should fall into his hands, would not be compassionate with you.

But apparently there is no evidence of this fact [as presented] in Chronicles for two reasons: (a) from the Scriptures we learn that, in the beginning, the people Israel did not treat captives with

characteristic compassion; and (b) these were the sons of Judah and Jerusalem who fell into captivity during the war between Ahaz, King of Judah, and Pekah ben Remaliah, King of Israel. Oded, the prophet, rebuked them for the poor treatment of the sons of Israel towards their brothers (II Chron. 28:9-11):

He said to them, "Because of the fury of the Lord God of your fathers against Judah, he delivered them over to you, and you killed them in a rage that reached heaven. Do you now intend (p. 39) to subjugate the men and women of Judah and Jerusalem to be your slaves? . . . Now then, listen to me, and send back the captives you have taken from your kinsmen, for the wrath of the Lord is upon you!"

We have learned that it was only because of the rebuke of the Prophet Oded, that they changed their treatment [of their captives] for the better.

But we find evidence apart from the Scriptures that the people Israel treated all enemy captives - even the pagans - with compassion, even when the enemy initiated the war and then was defeated and fell captive to Israel. This behavior [towards captives] was well-known among the nations who were Israel's neighbors. As we find in I Kings, in the war of Ben-hadad, King of Aram, against Ahab, King of Israel, at Aphek, and it is written there (I Kings 20:30-

32):

Ben-hadad also fled and took refuge inside the town, in an inner chamber. His ministers said to him, "We have heard that the kings of Israel are magnanimous kings. Let us put sackcloth on our loins and ropes on our heads, and surrender to the king of Israel; perhaps he will spare your life." . . . and [they] came to the king of Israel and said, "Your servant Ben-hadad says, 'I beg you, spare my life.'"

And at the end it is written (v. 34):

So he (Ahab, King of Israel) made a treaty with him (Ben-hadad) and dismissed him.

The prophet nevertheless was angered at this, and came to Ahab:

He said to him, "Thus said the Lord: Because you have set free the man whom I doomed, your life shall be forfeit for his life and your people for his people."

But this was because Ahab paid no heed to the words of the prophet who had warned him at the start of the war with two sayings. The first saying [was this]: he told him that, when Ben-hadad would fall into his hands, he was not to take pity on him. The second saying [was this]: he told him "Know how many traps I set for him until he would come into your hands, and now you have set him free! Your life will be forfeit for his life!" As it is written in the *Yalkut Shim'oni* on Kings, no.120. And *Rashi*, in his commentary to the above-mentioned verse[s], hints at this interpretation. But it is

clear from these verses that it was common knowledge among the nations that the kings of Israel were compassionate kings. And this [compassion] was expressed in merciful treatment towards captives. One can back this up [by reviewing] the position of captives in our hands from the standpoint of the *halakhah*, which the *Rambam* determined in *Hilkhot Melakhim* and the rest of the decisors, but this is not the place for that.

**Taking Care of the Burial of the Enemy's Dead
Causes a Man to Acquire a Good Reputation,
Praise, and the Title "Pious Man."**

In dealing with the enemy's dead, we have a clear-cut indication of one's personal [moral] stature and degree of piety, which confers admiration, which prevailed in the army of Israel from ancient times. As we read in II Samuel (8:13):

David gained fame when he returned from defeating Edom in the Valley of Salt, (p. 40) 18,000 in all.

And *Rashi* commented on this:

David gained fame - because he buried the dead of the Edomites and thus made a good name for Israel because they bury their enemies' dead.

Likewise in the wars of Gog and Magog (Ezekiel 39:13): "All the people of the land shall bury them. The day I manifest My glory shall

bring reknown to them." And how do we know that David buried them? As it is written in the Book of (I) Kings (11:15): "When David was in Edom, Joab the army commander went up to bury the dead." Also *Rashi* commented on this passage: To bury the dead as he buried dead of Edom, as it is written in the Book of (II) Samuel (8:13) "David gained fame when he returned from defeating Edom"- everybody was praising him as a righteous man because he buried their dead. And whether David did this, or Joab [did it] in David's name and on his orders, the [whole] thing produced the most positive echoes in the world, that they praised David because of this humane activity of rendering honor to the enemy's dead, and they called David a righteous man. In our being faithful to the holy heritage and piety of the army of Israel in ancient times, we have established in the service of *TZahal*, special burial units whose job is to see to the identification and burial of the enemy's dead in time of war. And this accords with the beginning of this essay as the words of Scripture declare (Gen. 9:6): "For in His image did God make man." This is said concerning every human being without distinctions among nations or races, out of trust in the [ultimate] fulfillment of

the prophetic vision for the end of time. (Zephaniah 3:9) "For then I will make the peoples pure of speech, so that they all invoke the Lord by name and serve Him with one accord."

SIX

THE SIEGE OF BEIRUT IN THE LIGHT OF THE HALAKHAH

In this chapter, Goren attempts to reconcile the theoretical and the practical aspects of the *halakhot* of waging war. Looking at the laws of siege, he asks whether the siege imposed on Beirut during "Operation Peace for Galilee" in 1982 was carried out in accordance with those laws.

At issue is the *halakhic* requirement to leave one side open, as a "safety valve" to let the besieged city's inhabitants save themselves by quitting the city. This was not done during the siege of Beirut by the Israeli Army in the 1980s; the city was completely sealed, even from the sea, to trap the PLO fighters caught in the city and force them to surrender¹. Was Israel in the wrong there?

As we shall see, this is not as simple a question as it might seem to be on the surface. Goren must first walk us through a

¹ Eventually a deal was struck which allowed the fighters free exit by sea after the Tunisian government agreed to take them in.

discussion as to whether the open side is truly a *halakhic* requirement or not, and if so, does it apply under conditions matching those of Operation Peace for Galilee? In doing so, he must return to the concepts of *milhemet reshut* and *milhemet mitzvah*, which he discussed in Chapter Three and to which he will return in Chapter Seven.

Goren explores the possibility that the requirement to leave a side open is not *halakhic* at all. The *halakhah* in this case is derived from the biblical account of the Midianite War, where Moses was commanded not to surround the city on all four sides. From this textual evidence, the *Rambam* considers this to be a *halakhah* whose basis is humanitarian. But others argue that Moses was instructed to leave a side open for tactical, military considerations; the instruction should be construed as advice on soldiering and not as an ethical commandment. If that were so, then the assessment of master tacticians would be the only criterion for whether the practice of leaving a side open would be used in a particular war; the *halakhah* would not be a consideration at all.

Goren, however, rules out this possibility; he holds with the

Rambam that this is a *halakhic* issue. But then the question arises; do the concepts of *milhemet reshut* and *milhemet mitzvah* apply at all today, it being the case that the Temple and its priesthood are defunct and that there is no sitting *Sanhedrin*? It is interesting that he raises this issue here, although he did not mention it back in chapter three where he originally discussed *milhemet Reshut* and *milhemet mitzvah*. However, he clearly raises this issue as a "straw man"; he concludes that the concepts of *milhemet reshut* and *milhemet mitzvah* are indeed valid today. Therefore, the specific *halakhot* for each type of war apply to all wars of the respective categories today. Using this argument, Goren does conclude that the Israeli Army erred in the siege of Beirut. One side of the city should have been left open.

It is interesting that Jewish law, as interpreted by Goren, insists on this point of leaving a safety valve in a siege. Although the principle of the right of civilians to non-involvement is a cornerstone of international law on warfare², the Nazi war crimes tribunal did not find Field Marshal von Leeb, commander of the

² Henkin, Louis et al. Basic Documents: Supplement to International Law: Cases and Materials (St. Paul, 1980), 397. Cited in Bradley Shavit Artson, Love Peace and Pursue Peace (New York: United Synagogue of America, 1988) 146-147.

forces laying siege to Leningrad, guilty of war crimes for preventing civilians from escaping the city by shooting them³. Throughout history, it has often been the norm for besieging forces to use the presence of civilians, and the specter of their suffering and starvation under siege, as an incentive to effect the surrender of the besieged. Artson⁴ points out that the laws of siege in the Torah and in the rabbinic writings represent a reaction to prevailing practice. Instead of outlawing siege warfare, Jewish law sought to soften its inhumane edge.

(Goren text begins: Volume 3, page 239)

In the *Book of the Wars of the Lord* there is one *halakhah* which is current[ly applicable] to Israel. It touches on the laws of siege, such as that which was enacted in the days of Moses, as taught by the verse (Numbers 31:7): "They took the field against Midian, as the Lord had commanded Moses." The *Rambam*, in *Hilkhot Melakhim* chapter 6, *halakhah* 7 rules:

When laying siege to a city in order to capture it, one does not surround it on all four sides. One leaves open a place for escape for everyone who wants to save himself. As it is

³ Artson, Love Peace and Pursue Peace 148.

⁴ *Ibid.*, 151.

written, "They took the field against Midian, as the Lord had commanded Moses"-on the basis of tradition⁵ it was taught that He (God) commanded them thus.

Also *Yonatan ben Uziel* translated this verse [that] , "they surrounded them from three sides."

This *halakhah* in the [*Mishneh Torah* of] the *Rambam* is, apparently, based on Rabbi Nathan's explanation in *Sifrei deBe Rav* in *Parashat Matot*, *piska* 157, which comments on the verse "They took the field against Midian'-they left the fourth [side] open in order [to give them the opportunity] to escape." Just as the *Rambam* brings [out in his *halakhah*]. Apparently we learn from the *Sifrei deBe Rav*, that its author, *Rabbi Simeon bar Yohai*, takes issue with *Rabbi Nathan*, as it is also written there in *Sifrei*: "They took the field against Midian'-they surrounded it on [all] four sides." However, in *Yalkut Shim'oni*, in *Parashat Matot*, the first interpretation, according to the *Tanna Kamma*, is different; according to it, *Rabbi Simeon* also opines that our teacher Moses was commanded to surround Midian on only three sides [thus leaving the fourth side open for escape]. *Rabbi Nathan* gives an explanation for this

⁵ Hebrew: מפּי השמועה.

halakhah. Its aim is to give the enemy, upon whom a siege is being imposed, an open fourth side in order to escape and to save his life, as the *Rambam* writes. Therefore, on the surface it seems that the reason for this *halakhah* is humanitarian. The Torah, after all, shelters even the enemies of Israel, that [Israel] should not kill them [unnecessarily], but rather should allow them to save their lives.

Likewise we learn from the words of the *Rambam* that speak of the wars of conquest [of the Land of Israel]. According to the words of the *Rambam*, "When laying siege to a city in order to take it, do not surround it on [all] four sides." In a siege like this, apart from the humanitarian purpose that is achieved (p. 240) by this (i.e., by leaving one side open), this *halakhah* comes to achieve two military aims. (1) It gives the enemy a chance to save himself, which will weaken the will to fight of those besieged, so that they will not fight to the end. (2) The opening of one side will bring about the population's vacating of the city, which was, apparently, the aim of the war of conquest and the siege [in the first place].

The exception to this is in a war and siege which is not for the

purpose of conquest of the city, but to protect Israel from a hostile enemy, where the aim of the siege is to destroy the enemy. Perhaps the [aforementioned] *halakhot* [concerning] siege do not apply, because in such an instance we are obligated by the *mitzvah* (Deut. 13:6) "Thus you will sweep out evil from your midst," or [by] the *mitzvah* in the verse (Num. 33:55) "Those whom you allow to remain shall be stings in your eyes and thorns in your sides, and they shall harass you in the land in which you live." According to *Targum Onkelos*, the meaning of the verse is that there was a fear that the remnants [of the defeated nations] would organize into armed terror groups, which would greatly oppress us in the land in which we dwelt.

But after [further investigation into] the matter, it becomes clear that this view is not correct. Rather, in every siege mounted by the army of Israel, they are obliged to leave one side open so the people of the city under siege are able to save themselves. For, behold, the entire principle of this *halakhah* which is in the [*Mishneh Torah* of the] Rambam is taught from the aforementioned Midianite War. And the Midianite War was *not* a war of conquest, but rather a

war of revenge against the enemies of Israel. This has been defined twice in the Torah: once in *Parashat Pinhas* (Num. 25:16-18):

The Lord spoke to Moses, saying, "Assail the Midianites and defeat them-for they assailed you by the trickery they practiced against you."

Also in *Parashat Matot* (Num. 31:1-2):

The Lord spoke to Moses, saying, "Avenge the Israelite people on the Midianites."

Our teacher Moses changed the aim of the war and made its consequences more serious; instead of "aveng[ing] the Israelite people on the Midianites" as the Mighty One defined, Moses defined it as "the Lord's vengeance on Midian," as it is written (vs. 3):

Moses spoke to the people saying, "Let men be picked out from among you for a campaign, and let them fall upon Midian to wreak the Lord's vengeance on Midian."

The import of this change is explained in *Sifrei* and in the *Rashi* on that verse:

Moses said to them, to Israel, "You are not wreaking the vengeance of flesh and blood, rather the vengeance of the One who spoke and the world came into being, because whoever attacks Israel is as though he attacks the Holy One, blessed be He."

Also the *Ramban* wrote, in his commentary on the *Humash*:

For Moses was commanded to avenge the Israelite people on

the Midianites, and he sent there small ones (military units, probably like commando forces) to strike at the cities of the Perizzites, and (p. 241) to fell every good tree, and to plug every water well, and to strew boulders upon every good piece [of land], and he did not command them [to do] a thing except to wreak vengeance, whenever [and wherever] you should find them.

This notwithstanding, our teacher Moses was commanded not to surround Midian on [all] four sides, but rather on three sides, in order to enable anyone who wanted to save himself and spare his own life. According to this *halakhah*, one concludes that in every type of war and siege, without considering the aim of the war or the siege, it is forbidden to close the besieged city on every side, since this *halakhah* shows us that even in the war of revenge against Midian, the children of Israel were commanded to enable anyone who wanted to save himself and to escape.

However, according to this *halakhah* we also have full authority to prevent reinforcements, or the means of breaking the siege, from being brought to the besieged via the open fourth side: for example provisions, water, or arms. The limitation is only one sided, concerning the obligation to open one side free from the siege in order to enable whomever desires to save himself.

Now we must ask whether this *halakhah* of the *Rambam* obligates us [even] today. For example, in the war for "Peace for Galilee"⁶ when we laid siege upon Beirut, was it permissible for us to surround Beirut on all sides, including from the sea?⁷

The question is twofold. Do the *halakhot* of war in the *Rambam's Sefer HaMelakhim* apply even today? Or, were they only meant for when the Temple was still standing, and for the future (i.e. when the Temple will be rebuilt); when the wars were and will be anchored to the *halakhah*, but not for the present time, for the wars are apparently not anchored to the *halakhah*?⁸ As the *Rambam* determined in *shoresh* 14 of the *Sefer HaMitzvot*:

⁶ Normally called "שנינום לגליל" - Operation Peace for Galilee." Israel's invasion of Lebanon, for the stated purpose of neutralizing guerilla forces, especially the Palestine Liberation Organization, which had been mounting raids against cities and settlements in the Galilee from their bases in southern Lebanon. It began in 1982 and saw IDF forces swiftly advance as far as Beirut, where the seige was only lifted after a deal was made to extract the PLO fighters and evacuate them to Tunisia. The Israelis were only able to extract themselves completely from Lebanon (except for the "security zone" adjacent to the Israeli border) in 1988.

⁷ As was indeed done by the IDF during that campaign.

⁸ All the *halakhot* concerning the operation of the sacrificial cult are not in effect today, because without the Temple standing there is, of course, no sacrificial cult. Goren is asking whether the *halakhot* concerning war are similar. Not that one can say that there is no war today, but that, since the *halakhot* concerning war are dependent on the applicability of the concepts of *milhemet mitzvah* and *milhemet reshut*, then the *halachot* would not be in force if these two concepts could be proven to be entirely theoretical in the absence of an operating Temple. As we shall see, Goren raises this question only as a "straw man," which he will eventually reject.

It is known that war and conquest of towns will only be [undertaken upon the order of] the king and with the counsel of the *Great Sanhedrin* and the High Priest, as it is said, "Have him stand before Eleazar the Priest."⁹

Indeed, on the surface it appears that there the *Rambam* is talking exclusively about a *milhemet reshut*, and not about a *milhemet mitzvah* which is conducted always, and in every age, according to the *halakhah*.¹⁰ The War for "Peace for Galilee" is defined in our eyes as a *milhemet mitzvah* because its aim is to help Israel overcome an enemy who has beset them. But the difficulty is that the Midianite War was *also* considered to be a *milhemet mitzvah* because it was ordained by God, and despite this we were commanded *not* to surround them on all four sides, rather to allow them to save themselves, [and] the same applies to the War for

⁹ The entire passage reads (Num. 18-21):

And the Lord answered Moses, "Single out Joshua son of Nun, an inspired man, and lay your hand upon him. Have him stand before Eleazar the priest and before the whole community, and commission him in their sight. Invest him with some of your authority, so that the whole Israelite community may obey. But he shall present himself to Eleazar the priest, who shall on his behalf seek the decision of the Urim before the Lord.

Since today we have no High Priest for the national leader—the modern equivalent of Joshua bin Nun—to consult (who would, in turn, consult his Urim), then it might logically follow that the particular *halakhot* concerning sieges would not be in effect.

¹⁰ Since a *milhemet mitzvah* is entered into because the nation is in peril from its enemies, it does not require that the national leader consult with the High Priest; therefore, the Temple need not be standing and in operation.

"Peace for Galilee." The judgement is thus.¹¹

The evidence, that the *Rambam* is apparently talking only about *milhemet reshut* in the *Sefer HaMitzvot*, is from what he wrote there at the end of *shoresh* 14:

Most people know this: every positive *mitzvah* or negative [*mitzvah*] hangs on (p. 242) the sacrifices, or on worship; or on [the imposition of the] death [penalty] by [the decree of] a *beit din*, or by the *Sanhedrin*, or by a prophet or king; or on a *milhemet reshut*. I need not say this concerning it; you are not obligated concerning this, except when the Temple is [in existence and in operation], which is explained according to what we remember.

But this reading of the words of the *Rambam* is not correct. Rather, the true reading is the opposite of this. It is found in the manuscript of the *Rambam's Sefer HaMitzvot*, according to the Arabic tradition as is brought forth in the scientific edition of the *Sefer HaMitzvot* that the *Ga'on Rabbi H. Heller* ז"ל published, in his notes. It is also in the new edition of the *Rambam's Sefer HaMitzvot*, [that] of *Rabbi Joseph Kapah*. According to the most

¹¹ Therefore, the conclusion that *milhemet mitzvah* (and the *halachot* governing it) is a valid concept even in the absence of the Temple, and the classification of "Peace for Galilee" is *milhemet mitzvah*, still yields a problem. If Israel was required to leave one side of the besieged city open in the Midianite War, classified as *milhemet mitzvah* because God had ordained it (not because the Midianites posed a direct threat to the security of the Land), then it would follow that the IDF should have done the same in Beirut.

reliable manuscripts, the passage is rendered in the commentary [as follows]:

Every positive and negative *mitzvah* depends on the sacrifices, etc., but concerning *milhemet mitzvah* or *milhemet reshut* there is no need to say concerning them that this *mitzvah* applies only when the Temple is [standing], because it is clear according to what we remember.

The words "but concerning *milhemet mitzvah* or *milhemet reshut*" are also written in the Arabic text. Therefore it is clear from the words of the *Rambam* that all the wars of Israel in our day are apparently not [required to be fought] in accordance with the *halakhah*.¹²

But it appears that it is necessary to distinguish between *milhemot mitzvah* whose aim is conquest, or wars of [Divine] vengeance which, according to the *Rambam*, are not applicable in this age because we have neither a [Divinely-appointed] king nor a *Great Sanhedrin*; and a defensive war, for example to save Israel from an enemy who besets them, as the *Rambam* wrote in chapter 5 of *Hilkhot Melakhim*, *halakhah* 1. There are three [types of] *milhemot mitzvah*: the War of the Seven Nations (i.e. for the initial conquest

¹² Since today's wars are neither *milhemot mitzvah* nor *milhemot reshut* by the reasoning presented here, they are not subject to the *halakhot* of war. But as we shall see, Goren does not accept this notion.

of the Land of Israel); the war against Amalek and Midian; and [wars] to save Israel from enemies, in which we are commanded to fight [when necessary] in every age, from the sense of (Lev. 19:16) "do not stand upon the blood of your fellow" because [the reason] for it (i.e., entering into the war) is to save Jewish lives¹³. Therefore, the war for peace for Galilee would be included in this type of *milhemet mitzvah*.

The second question which arises from this subject is, [what is] the meaning and grounds for this *mitzvah* of opening the fourth side in a siege? Is its meaning ethical and humanitarian, since the Torah shelters human lives? [The Torah shelters] even the lives of our enemies who fight us, and it obligates us even in a siege to take pity on the lives of the besieged, and to allow anyone who desires to save himself. If this is the meaning of this *halakhah*, [then] it is clear that it falls upon us in every age and under all conditions.

Or, perhaps, the meaning of the *mitzvah* is *not* humanitarian and humane, rather because of tactical-military reasons. For giving them the possibility of saving themselves will weaken the strength

¹³ See discussion regarding types of war, and *Rambam's* classification thereof, at the beginning of chapter seven.

of their opposition, [and] they will cease fighting and will decide to escape. This will ease the confusion of the siege and the war.

According to this meaning, there is no obligation to behave thus, rather, the matter depends upon military, tactical considerations, [as to whether] (p. 243) the military situation requires a "hermetic sealing" of the besieged city, as [was the case in] the siege of Jericho, as it is written (Josh. 6:1) "Jericho was shut up tight . . . no one could leave or enter." [If this notion, that the meaning of this *mitzvah* is tactical and military, is correct,] then there is no force to this *halakhah*. It is clear that, in the conquest of Jericho, they (the Israelites) did not act in accordance with the *halakhah* of Midian; rather, they imposed a siege on the city from every side. But this is no evidence [for this conclusion], for the point there [in the above mentioned verse from Joshua] was that Jericho was shut up tight [from] *inside*, that the city's people would not let any of their own leave or enter, as we read in the *Targum Yonatan*. Then it was [not] by us that the [complete] siege was imposed. In any case, according to this explanation, also in Beirut we were permitted to act accordingly and to weigh only the military point of view,

without consideration of this *halakhah* concerning siege.

We find in the book *Hemshekh Hokhmah* on the Torah, of the *Ga'on Rabbi Meir Simcha of Dvinsk* זצ"ל, the author of the *Or Same'akh* on the *Rambam*, that this problem hangs on a dispute between the *Rambam* and the *Ramban*. The *Rambam*, in his *Sefer HaMitzvot*, did not count the *mitzvah* of leaving the fourth side open during a siege [as being] among the 613 *mitzvot*, even though he brought it into the *halakhah* in his halachic book *HaYad HaHazakah*. In contrast to this, the *Ramban* considered that one must include this *mitzvah* among the 613 *mitzvot*. As he wrote in his critical [commentary] of the *Rambam's Sefer HaMitzvot*:

God has commanded us with a *mitzvah*, that during the siege of a city we must leave one side unblocked, so that if they (the city's inhabitants) desire to escape they will have a way to flee, for we are taught to behave with compassion even with our enemies during a war. In this [decree] is another correction, that we should leave them an opening so they could escape and not make efforts towards [thwarting] us, and this is not a *mitzvah* [only] for the time of [the war of] Midian, rather it is a *mitzvah* for the generations in *milhamot reshut*.

Thus wrote the Rabbi (i.e. *Ramban*) in his great composition on the *halakhot* of the kings and their wars.

Concerning this, the *Hemshekh Hokhmah* writes, in *parashat*

Matot about the verse (Num. 31:7) "They took the field against Midian," that in the opinion of the *Ramban* the reason for the *mitzvah* is humanitarian, as the Torah commanded (Deut. 20:10): "When you approach a town to attack it, you shall offer it terms of peace." In order to spare the enemy's life, we are commanded to take pity upon them during our siege against a city of the gentiles, and to leave them one side open so that they would be able to escape and to save themselves. But the *Rambam* believes that the foundation and meaning of this *mitzvah* is not humanitarian for saving the enemies' lives; rather, it is a lesson in the ways of war, [and] in the strategy of war. If we should surround them (the enemy) on every side and not allow them to escape, they will strengthen their resolve, and they will muster all of their remaining forces, so that they will be able to act valorously in that a look at (p. 244) history will show that sometimes a great victory came out of a great despair.

Therefore this (the notion of leaving one side open) is not a *mitzvah* from the *mitzvot* of the Torah, but rather good advice teaching us how to bring about a victory in war from a siege. This is the opinion of the *ga'on*, the author of *Hemshekh Hokhmah*, on this subject.

Nevertheless it is necessary to grasp several things [in this connection]. (1) We have seen that the *Ramban* himself mentioned the two meanings together, the humanitarian and the military-tactical, and despite that, the *Ramban's* opinion is that this *mitzvah* must be included in the 613 *mitzvot*. (2) Indeed the *Rambam* does not limit this *mitzvah*, of opening the fourth side in a siege, to *milhemet reshut* exclusively, and [this] teaches that it applies also to *milhemet mitzvah*. Likewise the *Rambam* opined that the *mitzvah* to offer terms of peace applies to both *milhemet reshut* and *milhemet mitzvah* as he ruled in chapter 6 of *Hilkhot Melakhim, halakhah 1*. But the *Ramban* wrote in [his] commentary that this *mitzvah*, of opening the fourth side in a siege, “. . . is a *mitzvah* for the generations in every *milhemet reshut*.” [This] teaches that it does not apply in a *milhemet mitzvah*. But if the words of the author of the above mentioned *Hemshekh Hokhmah* are correct, that in the opinion of the *Ramban* the reasons for the *mitzvah* concerning laying seige to a city are humanitarian as are the reasons for offering terms of peace, then the *Ramban's* opinion (in his commentary on the *Humash* on *parashat Shof'tim/Deut. 20:6*) coincides with that of the

Rambam, that the *mitzvah* of offering terms of peace applies also in a *milhemet mitzvah*. Why, according to the *Ramban*, does this *mitzvah* [to offer terms] of peace apply also in a *milhemet mitzvah*, while the *mitzvah* to take pity on the besieged people and allow them to save themselves on the fourth side *does not* apply in a *milhemet mitzvah*? Because it (i.e. *milhemet mitzvah*) could be as [the war] against the Seven Nations, or for example to save Israel from its enemy who has beset him, and while pursuing him bringing a siege to him.

It is necessary to add to this discussion the opinion of the author of *Sefer HaHinukh*, that *mitzvah* number 527, [i.e.] "Before [starting a] war, you shall offer terms of peace" *includes within it* the *mitzvah* of leaving one side of a town [open] in a siege in a *milhemet reshut* so that [the besieged people] would be able to escape. But in the War against the Seven Nations they surrounded them on every side. What this teaches is that they (i.e. the besiegers) [must] notify them (i.e. the defenders) from the start [of the imminent imposition of the siege], so that if they want to leave the town, they would give them that opportunity [before the siege

begins]. This teaches that the *Hinukh*, like the *Ramban*, distinguishes between *milhemet reshut* and *milhemet mitzvah*, because in *milhemet mitzvah* one [can] surround a town from all sides. The *Minhat Hinukh* has already expressed surprise about this, because the Midianite War was a *milhemet mitzvah* as mentioned above, and [nevertheless] they (i.e. the Israelite besiegers) left one side open [to allow the Midianites] to escape.

Despite this, it is clear that the author of the *Hinukh* (p. 245) is going along with the opinion of the *Ramban* that one need not leave one side open except in a *milhemet reshut*.

In summarizing the matter: it turns out that the opinion of the *Rambam* obliges [one to act in accordance with] this *mitzvah* even in this age; if we act hostilely towards our enemy's towns, regardless of whether it is in a *milhemet mitzvah* or in a *milhemet reshut*, whether it is within the borders of the Land of Israel or outside its borders, it is forbidden to hem in the besieged city from all sides. Rather we are obliged to leave one side open [allowing free movement] towards the outside, in order to allow whomever desires to flee from the besieged city to save himself. Only one must not let

them exploit this [open] side in order to bring in reinforcements of men, arms, or food. In this [matter] one should not rely upon the opinion of the *Ramban* and the *Hinukh* that this does not apply in a *milhemet mitzvah*. [Rather,] it is logical that, in their opinions, one does not exclude [*milhemet mitzvah* from this requirement], except in the [case of the] War of the Seven Nations, where there existed the *mitzvah* (Deut. 7:2) "you must doom them to destruction," not [out of a concern] to save Israel from an enemy who had beset them, but rather because of the concern that the enemy would flee [but not] without returning [later]¹⁴. Therefore, even though according to the *Ramban* this *mitzvah* applies only in a *milhemet reshut*, and [despite the fact that] the War for "Peace for Galilee" is indeed defined as a *milhemet mitzvah*, this *mitzvah* applies to the siege of Beirut. We cannot close Beirut from all sides in a siege, according to the opinions of both the *Ramban* and the author of *Sefer HaHinukh*, because concerning the enemy [as such], there is no *mitzvah* [to the effect that] "you must doom them to destruction."

For the Midianite War was also a *milhemet mitzvah* and,

¹⁴ In the case of this war, for the conquest of the Land of Israel, it made no sense to allow the enemies to escape their cities since they would only return later to their conquered homes and seduce Israel to accept idolatry.

despite this, this *mitzvah* [to leave a side open] was enacted there for the first time. Therefore, one must say that the *Ramban's* intent was only to distinguish between a siege within the Land of Israel, such as [that] against the Seven Nations, whom we were commanded to doom to destruction, which, according to the *Ramban*, is always defined as a *milhemet mitzvah*, as he wrote in his glosses to the *Rambam's Sefer HaMitzvot*, (missing) *mitzvah* 4, and a war and siege, outside the borders of the Land of Israel, which according to the *Ramban* is always defined as a *milhemet reshut* even though it is something commanded by God [Himself] like the Midianite War. This is in contrast to the *Rambam's* definition in chapter 5 of *Hilkhot Melakhim, halakhah* 1, [as to] what is a *milhemet mitzvah* and what is a *milhemet reshut*.

From this it follows, that since the War for "Peace in the Galilee" and the siege of Beirut took place outside the borders of the Land of Israel [as described] in the Torah, and even though it was [fought for the purpose] of saving Israel from an enemy, is indeed considered to be a *milhemet reshut*¹⁵ according to both the *Ramban*

¹⁵ Actually, Goren writes *milhamot mitzvah* here, but that is clearly a mistake; in the context, he must mean *milhemet reshut*.

and the *Sefer HaHinukh*, like the Midianite War, the above mentioned *halakhot* of laying a siege which were learned from the [case of the] Midianite War nevertheless apply to it, according to the method of the *Ramban*.

But according to the opinion of the *Ga'on*, the author of the book *Hemshekh Hokhmah* who is [also the author of] the *Or Same'akh* (p. 246) this *mitzvah* does not obligate us in this age according to the *Ramban*, because the reasons for it are military [and] tactical, and not religious [and] humanitarian. Rather, the matter is up to the army commander's evaluation of the situation. But it is clear to us that this method of explaining the *Or Same'akh* concerning *Ramban's* opinion is surprising [in the light of our inquiry into the opinions of] both the *Rambam* and the *Ramban*, and moreover it is not written in the book *Or Same'akh* which is a *halakhic* work, rather [it is found] in his book on the *Humash* which is conceptual, and one should not teach practical *halakhah* on the basis of it regarding the question under discussion here, especially so when the issue touches upon criminal law [as applied] to our forces and the inhabitants of Beirut, who were besieged in the city's western sector.

SEVEN

MILITARY [SERVICE] AND [NATIONAL] SECURITY IN THE LIGHT OF THE *HALAKHAH*

Here, in our last selection from Goren's treatise in translation, we explore several issues related to the individual's requirement to participate in the wars of the nation through military service.

For the purposes of the issues at stake here, Goren finds it necessary to restate, and elaborate upon, the distinctions between *milhemet mitzvah* and *milhemet reshut*. We recall that in the last chapter he offered the "straw man" argument that the *halakhot* regarding *milhemet mitzvah* and *milhemet reshut* are not active today in the absence of the Temple with its cult and priesthood, and without a sitting *Sanhedrin*. But then he argued against this proposition, and he concluded that the *halakhot* which distinguish between the two types of war still apply today.

Goren has invoked the concepts of *milhemet reshut* and *milhemet mitzvah* a number of times to this point, but he has yet to define precisely what constitute the two types of war. Here he does

just that.

According to Goren, there are three types of war that fit the categorization *milhemet mitzvah*: (1) the wars against Amalek and Midian; (2) the war of conquest against the Seven Nations of Canaan; and (3) any war to save an Israel under attack by its enemies. He mentions a third category, *milhemet hovah*, defined by *Rabbi Yehudah* in *Mishnah Sotah*, but this category simply defines what Goren has identified as *milhemet mitzvah*, types one and two. Goren dismisses it as a variation in nomenclature, while he holds to what he characterizes as the majority view that only two categories are necessary. Bradley Shavit Artson, however, points out that while in the early rabbinic writings the two terms *milhemet hovah* and *milhemet mitzvah* (types one and two) are used interchangeably, and while the *Rambam* (whom Goren seems to consider as the ultimate authority) uses only the terms *milhemet reshut* and *milhemet mitzvah*, Joseph Caro in his *Kesef Mishnah* (a commentary to the *Rambam's Mishneh Torah*) expresses astonishment at the *Rambam's* dropping of the third category¹. Artson shows that there are

¹ Artson, *Love Peace and Pursue Peace* 159, 206-211.

differences in the *halakhot* of *milhemet hovah* and *milhemet mitzvah* and, in contrast with Goren, sees *milhemet reshut* as an inoperative category today due to the absence of the Temple, the *Great Sanhedrin*, and the Davidic Monarchy² (see table 7-1). Beyond this point, we must remember that in Chapter Four Goren strongly implied the existence of an *additional* category: the *forbidden* war, where the *halakhah* points to a *prohibition* against entering into a particular war as was the case, he concludes, with King David's war against Syria.

Working from the principle that every member of the people Israel has an obligation to support the reigning monarch or other legally constituted government, Goren shows that when an army is being mustered to fight in a war, the *halakhah* makes provisions for exemption of certain individuals. The criteria for exemptions are, in some ways, more "liberal" than the laws of conscription of most modern states, in that reasons for exemption which are elsewhere unheard of are herein specified. Some of the criteria exempt an individual only from actual combat but require him to serve the army

² Ibid., 208.

in a logistics or engineering unit. Some of the criteria, however, exempt the individual from service, period.

TABLE 7-1

THE JEWISH CATEGORIES OF WAR (ARTSON)

TYPE	AUTHORIZED BY	DRAFT	OFFER PEACE TERMS?	CURRENT STATUS
HOVAH				
Obligatory. For: Conquest, Amalek, Midian	God	universal; a voluntary affiliation of tribes; all individuals must fight	Yes!	None
RESHUT				
Permissible. For: securing or extending borders	The King, the Great Sanhedrin of 71, and the <i>Kohen Gadol</i> using the <i>Urim ve-</i> <i>Tummim</i>	exemptions for the newlywed, the faint- hearted, and those lacking faith	Yes!	None
MITZVAH				
Commanded. For: defense	The King or Chief Executive	universal, no exceptions	Yes!	Still applies

Source: Bradley Shavit Artson, *Love Peace and Pursue Peace: A Jewish Response to War and Nuclear Annihilation* (New York: United Synagogue of America, 1988), 206.

TABLE 7-2

THE JEWISH CATEGORIES OF WAR (GOREN)

TYPE	AUTHORIZED BY	DRAFT	OFFER PEACE TERMS?	CURRENT STATUS
MITZVAH 1, 2				
Commanded. For: Conquest, Amalek, Midian	God	universal; no exceptions	Yes!	None
MITZVAH 3				
Commanded. For: defense	The King or Chief Executive (executing their divinely appointed duties)	universal, no exceptions	Yes!	Still applies
RESHUT				
Permissible. For: securing or extending borders	The King, the Great Sanhedrin of 71, and the <i>Kohen Gadol</i> using the <i>Urim ve-</i> <i>Tummim</i>	exemptions for the newlywed, the faint- hearted, and those who have built a house or planted a vineyard	Yes!	Still applies

Compiled from: Shlomo Goren, *Mashiv Milhamah (Response on War)* (Jerusalem: Ha'idara Publishing House, 1986)

Not all of this represents a triumph of the primacy of family over the needs of the state; peace in the home and the happiness of one's spouse take precedence over the ruler's political aims, for

For example, there are exemptions from direct combat service for one who has built a new house but not yet dedicated it, planted a vineyard but not yet harvested it, or betrothed a woman but not yet taken her in marriage. Men fitting all these three categories are exempt from direct combat service, but must serve in a logistical capacity. The reason is that these men should not be put in a position where they are subject to extreme danger. Should they be killed, someone else would take the house and dedicate it, harvest the vineyard, or take the woman as a wife. The service of such men should be limited to tasks well outside the normal battlefield, such as bringing supplies from the rear, or repairing roads.

Additionally, some individuals are exempt from *all* service for one year: one who has gotten married, one who has built and moved into a new house, and one who has planted a new vineyard where the year of its first harvest (the third year) has arrived. These exemptions are granted, as Goren points out, for the sake of one's household. This represents quite a triumph of the primacy of family over the needs of the state; peace in the home and the happiness of one's spouse take precedence over the ruler's political aims, for

which he has taken the nation into a war.

But it is necessary to point out that these "liberal" exemptions are available *only* in the case of a *milhemet reshut*, because in a *milhemet mitzvah*, according to the *Rambam*, "all take the field, even a groom from his [bridal] chamber, and a bride from her [wedding] canopy." And, by definition, any war fought to defend the nation from an enemy who has beset them (i.e., a "defensive war") is a *milhemet mitzvah*. The definition "defensive war" can be broadly interpreted; the modern State of Israel, in particular, tends to call all preemptive military actions, "defensive." Our purpose here is not to take issue with this tendency; certainly, in many cases a preemptive action against an enemy whom intelligence shows to be preparing to strike, *could* rightfully be called "defensive." But the problem for our purposes is that few wars then fall outside the definition of *milhemet mitzvah*, and thus the draft exemption categories detailed in this section become highly theoretical. Especially since Goren argues here that *enemy* for this purpose includes enemies both *internal* and *external*.

Additionally, there are "liberal" exemptions for those who are

afraid of war, and for those whose compassion for the enemy would not allow them to kill him. These are clearly pragmatic exemptions, since the reason stated is that the other soldiers should not become infected with this fear or compassion. These individuals are exempt only from direct combat, not from serving altogether. But again, these exemptions only apply to a *milhemet reshut*; Goren argues that in a *milhemet mitzvah* one has a responsibility to overcome such qualms, and failure to do so constitutes an offense punishable with the death penalty. This implies that the individual who is afraid or compassionate has the capacity to overcome his "weakness" in a *milhemet reshut* as well, but the *halakhah* grants the individual an "indulgence" (or, looking at it differently, puts a constraint upon the ruler) in the event of a *milhemet reshut*.

But there is, according to Goren, no provision for "conscientious objector" status, either in a *milhemet mitzvah* or in a *milhemet reshut*. True, one who opposes war in principle might qualify for exemption on the basis of compassion for the enemy, but since this is not a total exemption from the war effort but rather only from front-line duty, the objector probably would not consider

this exemption to be adequate since he still must contribute to the war effort, to which he objects. And again, it is available only in a *milhemet reshut*, which is a rare occurrence.

But even then, Goren adds (in another chapter of the book, but alluded to at the end of the section included in this chapter) that a *milhemet reshut* effectively becomes a *milhemet mitzvah* under two circumstances. In one, the war has escalated to the point where the service of the exempted individuals is now required, because the nation is in danger of defeat. All exemptions, therefore, are cancelled. In the other, the ruler simply does not have the manpower to successfully prosecute the war from the beginning without the services of those who would merit exemptions; in this case, too, all exemptions are cancelled.

Goren, in arguing against the validity of being a conscientious objector, is surely speaking not only as an Orthodox rabbi but also as the Chief Rabbi of the Israeli army, and under Israeli public law there is no provision for conscientious objection. He bases his argument upon several of the scriptural verses repeated a number of times in this section, particularly Jer. 48:10: "Cursed be he who

withholds his sword from blood!" He finds that, since from the Torah to the *halakhah* the source texts do not proscribe war but rather regulate it, then the individual who opposes war completely does so in contrast to the God of Israel and His prophets. What adds some legitimacy to his argument is that in most countries where there is an exemption from military service for conscientious objectors, the test for the status is whether the individual claiming it belongs to a religious organization that opposes war outright³. Since only Jews and Druse are subject to conscription in Israel, and their respective religious faiths do not oppose war in this outright fashion, then nobody in Israel whose religion would require them to refuse military service would theoretically be "hurt" by the lack of a provision for conscientious objection.

But Goren's position is not without "internal" opposition. Voices from within liberal Judaism argue for the right to refuse to fight within the Jewish Tradition. Brickner and Vorspan point to *Yohanan ben Zakkai* as the "great hero of Jewish pacifism"; instead of fighting the Roman Emperor Vespasian during the siege of

³ Balfour Brickner and Albert Vorspan, *Searching the Prophets for Values* (New York: Union of American Hebrew Congregations, 1981), 160. The authors point out that U.S. law now makes provision for a secular conscientious objector.

Jerusalem, he begged to be allowed to establish an academy and a *beit din* outside the Holy City. His academy at Yavne arguably kept Judaism alive after the fall of Jerusalem, by enabling *Yohanan* to pass down the Traditions of Torah to ensuing generations. This, Brickner and Vorspan argue, shows that there *is* precedent within Judaism for refusal to fight on religious grounds⁴.

A number of other religious traditions include stronger pacifistic strains. Hinduism has a strong pacifistic school, attributable in large part to the work of M.K. Gandhi in interpreting the pacifism of monastic Hinduism for the everyday world. However, Gandhi and the Hindu concept of nonviolence⁵ notwithstanding, there is actually no universal condemnation of violence in Hinduism. It is within the *dharma*, the duties and obligations, of the ruling and warrior castes to engage in violence in order to protect the subject

⁴ Ibid., 159-160. To compare the actions of *Yohanan ben Zakkai* to those of a conscientious objector is something of a logical stretch. As president of the *Sanhedrin* he would not have been subject to military service, and in any case the conflict with the Romans was a zealots' rebellion and not a war of a sovereign Jewish state. *Yohanan* did not collaborate with the Romans against his fellow Jews, he only escaped the zealots' grip on Jerusalem to continue his scholarly work in Yavneh with the Roman emperor's permission. Nevertheless, Brickner and Vorspan's point, that there is some precedent in the Tradition for refusing to participate in a conflict (and that a good result can come out of that refusal) is well-taken.

⁵ Discussed in Chapter Two.

castes⁶. Buddhism, too, harbors a strong pacifistic teaching. Indeed, according to Manjuvajra, the practice of nonviolence is the first duty of anyone who would call himself a Buddhist⁷.

Christianity, of all the religions noted here, certainly harbors the most controversy in this area. Jesus himself, we have seen, advocated a refusal to take up arms. As long as the nascent Christianity was a rogue sect and its adherents persecuted in the Roman Empire, this did not present a problem. But as Christianity gained respectability, and eventually status as official religion of the empire, this created problems.

Celsus, the Roman philosopher, charged that Christians were irresponsible for refusing to take up arms to defend the empire against the barbarians. "What if everyone did the same as you?" he asked. Origen, a Christian apologist, responded to Celsus that if *everyone* did as the Christians, then the barbarians would be converted to Christianity there would be no problem. Of course, Celsus had not meant *everyone* including the barbarians; he meant everyone in the empire and its allies. Origen, then, answered

⁶ Puligandla, "The Hindu Quest for Peace," 142.

⁷ Manjuvajra, "The Buddhist Teaching on Nonviolence," 117.

differently: what if everyone in the Roman empire became a Christian? "There would then be no need for massive military defense, because God would protect His own people."⁸

Official Christianity eventually shed its pacifism except in the monastic realm. Certain sects within Christianity during various ages, however, have recaptured the pacifism of the New Testament. Today a few Roman Catholic orders, and a few small Protestant denominations, eschew the taking up of arms altogether. Their adherents would doubtlessly apply for conscientious objector status in any state with a military draft where such an exemption were available.

Goren also explores the *halakhic* basis for a limitation of the state's power to conscript those below, or above, a certain age. The *Rambam*, whose *Hilkhot Melakhim* constitutes the most comprehensive compendium on the *halakhot* of war, is silent on this matter. Although Goren shows that other texts *do* specify various minimum and maximum ages for conscription, he considers the *Rambam* to be the most authoritative on this matter, and he takes

⁸ Origen, *Contra Celsum*, Henry Chadwick, tr. (Cambridge University Press, 1953), 305. Cited in George, "A Radically Christian Witness for Peace," 67.

his silence to mean that the government and the army have a certain amount of latitude. Goren suggests that age limits are more properly used to determine one's specific assignment in the army, since age is certainly a factor in determining one's physical capabilities.

Finally, Goren looks at the issue of physical and other disabilities as a criteria for exemption from conscription. He finds evidence in several sources for an exemption, at least in a *milhemet reshut*, but only for those who are actually missing some bodily member (e.g., a limb or an eye). For lesser disabilities, there is no *halakhic* exemption, only the assumption that the extent of one's impairment would be taken into account when determining one's military assignment. And it is not clear from his argument as to whether the exemption for missing members is from all service, or just from front-line combat. But he states explicitly that the exemption from fighting on this basis, or on the basis of any other exemption specified in this chapter, constitutes only a *legal* exemption from actual military (or in some cases, as we have seen, direct combat) service. No circumstance, however, excludes an

individual from his *ethical* responsibility to do everything within his capabilities to assist his fellows who are fighting and thus in danger.

(Goren text begins: Volume 3, page 369) .

From the totality of the *mitzvot*, the laws, and the *halakhot* which are commanded in the *Talmud* and the *midrashim* on the subjects of military [service] and war; and [from] the texts of the Torah, the Prophets, and the Writings; and also [from] the chapters of chronicles which were written about them and passed down in the external books⁹; [which deal with] the wars of Israel and [its] army in the time of the Second Temple, for example, the books of the *Maccabees*, and the books of *Yosef ben Mattityahu HaCohen*, known as *Flavius Josephus*, all these have the power to make the glory of the ancient times rest upon us in everything concerning the power, might, organization, missions, problems, and customs of the army of Israel in former times. They can also give us a complete picture of the laws of war and the army [as depicted] in the Torah of Israel, which are operative [even today] in everyday life in the ranks of the

⁹ I.e., extra-canonical works; the Apocrypha (and possibly also the Pseudepigraphia).

soldiers.

Despite the fact that the sources are scattered and fragmented, and that the different hints are not [contained] in a complete body of legislation in the manner of the current [*halakhic*] literature because there is no complete composition nor total and continuous picture with regard to this comprehensive subject, there is [still a possibility that] one might reach a clear and ordered law code concerning Toraitic law for the army, for defense, and for war by compiling and ordering the material and by conducting a comprehensive, penetrating and precise *halakhic*-scientific analysis, because the various and vital security services of the people Israel in their land are guided and regulated for all generations by virtue of these eternal laws of justice.

This scientific work of assembling and ordering is most important, because by doing so we will be able to decipher the eternal light which is hidden in the righteous laws, and the original truth and justice of our holy Torah. There will be a practical possibility of activating these *halakhot* and these laws within the holy camp of Israel. This way, we shall be able to give the army of

Israel in our generation an original biblical character [in order] to base its way of life and way of fighting on the [rulings of] men of ethics and justice and godliness, and to progress towards the realization of the vision of the prophets for the future. Thus we shall be able to facilitate the continuation of the way of the armies of Israel of former times, and [by doing so] to merit the crown of strength and holiness [characteristic] of the camp of Israel of former generations, and the majesty and glory that hovers over its pure flag.

(p. 370) One of the serious shortcomings of our generation, the generation of liberation and of bravery, those who paved the way for renewed national redemption for the people, is our spiritual inability and lack of resolve to elevate ourselves to a life [guided by] the prophetic vision appropriate to this historical era. [We] hide within [our]selves the limitless vigor of the power that results from a people's faith, confidence and hope directed towards the fulfillment of the highest spiritual mission of Israel. Insofar as our nation is without vision, it denies the principal motive force for progress and raising itself upward. The prophetic vision is the soul distinction and [that] it was the criterion for every war and

of the nation, and the faith in this vision is the secret of its eternal life. The [means of] realizing this vision are hidden principally in activating the laws of Heaven in our everyday lives as a nation and as a state, for with the threads of one's life woven from the laws of God and His Torah, one will weave together the web of the people's visionary life for the future in accordance with the commandments of the Torah, and [with] prophecy.

We shall try to decipher and to raise up [for all to see] the sources from the Torah, from the *halakhah*, from the *aggadah*, and from history on this holy subject, and to lift up from the depths of oblivion the laws of the army and of war according to the Torah of Israel. Then perhaps the eternal light of these laws of God will break through, and it will greatly influence the soul of the nation.

Saving Life in a *Milhemet Mitzvah* and in a *Milhemet Reshut*

Several bodies of *halakhot* depend upon the distinction between *milhemet mitzvah* and *milhemet reshut*, as we learned in the [requirement of] saving lives in conditions that are unlike all other previous chapter. One must prove that all the missions of the army commandments of the Torah, as will be explained below, in contrast to the three negative precepts for which the *halakhah* obligates one distinction and [that] it was the criterion for every war and

mobilization of the army of Israel. In this comprehensive article we shall clarify the different legal principles which come out of this distinction between *milhemet mitzvah* and *milhemet reshut*.

In the event of *milhemet mitzvah* in defense of the nation and the Land, it (the war) [is commanded] from the Torah. The people are commanded to give their lives without exception for the sake of realizing the goals of the war, which are: the liberation of the Land and the defense of the lives of the people from its enemies. By the same token, the Torah is not entirely content with *milhamot reshut*, and therefore the Torah imposes all sorts of limits to prevent this kind of war, as much as possible, and offers many possibilities for exemptions from conscription in a *milhemet reshut*.

There is no other positive *mitzvah* that has the power to cancel out all the *mitzvot* of the Torah, including the *mitzvah* of saving lives, like the *mitzvah* of fighting in a *milhemet mitzvah*, (p. 371) because it is clear that this *mitzvah* cancels out even the [requirement of] saving lives in conditions that are unlike all other commandments of the Torah, as will be explained below. In contrast to the three negative precepts for which the *halakhah* obligates one

to be killed rather than transgress, namely, [the prohibitions against] idol worship, incest and spilling [innocent] blood, if one does not take into account the *mitzvah* (Lev. 22:32) "that I may be sanctified in the midst of the Israelite people," [then] no positive *mitzvah* cancels the positive [precept of] saving lives. The only exception is the *mitzvah* of fighting in a *milhemet mitzvah*, in which there is a holy obligation upon every individual to lay down his life without any possibility of evasion by staying put and not acting¹⁰.

The basis for this conception will come out below through a general examination of the *halakhot* that differentiate between the various types of war, so that we shall be able to easily feel the general aim of these *halakhot*, the aim of which on one hand is to encourage and strengthen our national security and the power of the fighters' spirit in a *milhemet mitzvah*, and on the other hand is to prevent a *milhemet reshut* and prevent the spilling of blood where the aim [of the government] is [merely] to increase our power and widen our borders.

Also ¹⁰ Of the 365 negative *mitzvot*, all may be laid aside when one's life is in danger except for three: the prohibitions against idol worship, incest and the spilling of [innocent] blood. Of the 248 positive *mitzvot*, one-the saving of life-overrides all others except for two: fighting in a *milhemet mitzvah*, and *kiddush hashem* (the sanctification of God), either of which overrides even the saving of life.

Three Types of *Milhemet Mitzvah* According to the Rambam

We already explained above¹¹ that the *Rambam*, in *Hilkhot Melakhim* chapter 5, *halakhah* 1, lists three types of *milhemet mitzvah*. All [wars] that do not fall into these three categories must be, according to the *Rambam*, *milhamot reshut*:

The only war a king may start is a *milhemet mitzvah*; and what is a *milhemet mitzvah*? These include the War of the Seven Nations, the War against Amalek, and [any war to] save Israel from an enemy who has attacked them. Otherwise, a *milhemet reshut* is fought; this is a war that is fought with the rest of the nations in order to expand the borders of Israel, to increase its greatness and its fame.

We have learned that the following are the three types of *milhemet mitzvah*:

A. Israel's war to destroy the Seven Nations as recorded in the Torah, Deuteronomy 7:1-2:

... and [when] He dislodges many nations before you-the Hittites, Girgashites, Amorites, Canaanites, Perizzites, Hivites, and Jebusites, seven nations much larger than you-and the Lord your God delivers them to you and you defeat them, you must doom them to destruction ...

Also Deut. 20:17:

... and [when] He dislodges many nations before you-the Hittites, Girgashites, Amorites, Canaanites, Perizzites, Hivites, and Jebusites, seven nations much larger than you-and the Lord your God delivers them to you and you defeat them, you must doom them to destruction ...

¹¹ In another chapter, which we have not included in this thesis.

You must proscribe them-the Hittites and the Amorites, the Canaanites and the Perizzites, the Hivites and the Jebusites-
This as the Lord your God has commanded you.

Although only six nations are listed here, it has already been explained in *Sifrei* that when it says "as the Lord your God has commanded you"-[this] includes the Girgashites.

(p. 372) B. The War against Amalek, as is written about in

Deut. 25:19:

You shall blot out the memory of Amalek from under heaven.

Also [King] Saul was commanded by the prophet Samuel, as is written in I Samuel 15:1-3:

Samuel said to Saul, . . . "Now go, attack Amalek, and proscribe all that belongs to him," etc.

C. Saving Israel from an enemy who has attacked them.

Although this type of war is not mentioned explicitly in the Torah, it is included by virtue of (Lev. 19:16) "Do not stand upon the blood of your fellow," which imposes the obligation upon every Jew to rescue [one's fellow Jew], [even] by giving one's one life, as was explained.

in *Torat Kohanim, seder Kedoshim*, chapter 4:

Whence do we know that, if you see him drowning in a river, or see him beset by robbers, or by ravenous beasts, that you are obliged to save [your fellow Jew's] life? As scripture says,

"Do not stand upon the blood of your fellow."

This was the obligation to go out to war in the days of the war of Israel against Sisera in the time of Deborah, when Meroz was cursed from heaven as it is written (Judges 5:23):

"Curse Meroz!" said the angel of the Lord. "Bitterly curse its inhabitants, because they came not to the aid of the Lord, to the aid of the Lord among the warriors."

Likewise when Saul fought Nahash the Ammonite and besieged Jabesh-Gilead, as it is written in I Sam 11:7:

He took a yoke of oxen and cut them into pieces, which he sent by messengers throughout the territory of Israel, with the warning, "Thus will be done to the cattle of anyone who does not follow Saul and Samuel into battle!"

And the requirement to rescue Israel from an enemy is not limited to foreign enemies; rather, [it also includes] internal enemies. Upon this basis of *milhemet mitzvah* the nation went out to war with the children of Benjamin at the time of the concubine at Gibeah, and they decreed a mandatory conscription and punished evasion with the death penalty as it is written in Judges 21:5:

For a solemn oath had been taken concerning anyone who did not go up to the Lord at Mizpah: "He shall be put to death."
But there is no proof from the fact that the war of the

¹² In, citing an opinion expressed in the Talmudic Abodah.

concubine at Gibeah is considered to be a *milhemet mitzvah*, that rescuing Israel from an enemy is considered to be a *milhemet mitzvah* even when the enemy is a Jew. On the basis of the words of the *Ramban* in his commentary on Leviticus 27:29 and in *Ramban's* short compendium of the laws of proscription in war concerning the verse "No human being who has been proscribed can be ransomed: he shall be put to death," he wrote in the name of *Hayelamdeinu*¹²:

It has been taught: *Rabbi Akiva* said, the proscription is the oath, and the oath is the proscription. The men of Jabesh transgressed the proscription and thus were punished with death. Therefore I say that from this verse comes this law: every king of Israel, or great Sanhedrin ruling over Israel, has the authority to impose a proscription against a city when fighting against it, and if they proscribe everything [therein], one who violates [the proscription] can be punished with death. This is the charge against Jabesh-Gilead, and [against] Jonathan.

(p. 373) The *Hatam Sofer* expounded on this and explained it in *Orakh Hayyim*, no. 208, writing that [whenever] any prince of Israel [declares a war of proscription], and certainly [whenever] any Jew agrees to proscribe something, one who violates the proscription is punishable by death. According to this method, one can also explain the death penalty that was imposed on the draft-evaders at the time

¹² I.e., citing an opinion expressed in the *Tanhuma Midrashim*.

of the concubine at Gibeah inasmuch as it was because of the community's proscription, or any regulation of all Israel, [or] of a king, and prince, and all who transgress it are punishable by death according to the above mentioned [words of the] *Ramban*. The residents of Gilead also deserved the death penalty because they broke the great oath of Israel as explained there. By virtue of the great oath of all Israel, the war of the concubine at Gibeah is considered to be a *milhemet mitzvah*, and not because of the general *halakhah* of rescuing Israel from an enemy who has attacked them.

The Differences Between the Laws of *Milhemet Mitzvah* and *Milhemet Reshut*

The differences between the laws and *halakhot* of *milhemet mitzvah* and those of *milhemet reshut* are many according to the *Talmud* and the *Tanna'itic Midrashim*, although in the heat of battle itself, even in a *milhemet reshut*, the soldiers who have been ordered by the authorities to fight must engage in battle and lay down [their own] lives [if necessary] for the success of the war, just as in a *milhemet mitzvah*. There is no difference in the responsibility and obligation that is imposed on each individual participating in a war to fight without fear, whether in a *milhemet*

reshut or a *milhemet mitzvah*. This obligation is from the Torah; one is commanded to lay down one's life, if necessary, for the attainment of victory, as will be made clear below. Wherever great differences exist in the *halakhot* pertaining to these two types of war, they are expressed in the laws of conscription and of the organization of the army that has been mustered for the war, and in the *halakhot* [for the conduct] of the war itself.

The first *halakhah* laid down in the *Mishnah* that differentiates between *milhemet mitzvah* and *milhemet reshut* touches upon the governmental authority to declare war, and the emergency mobilization that occurs as a consequence of it. For we learned in *Tractate Sanhedrin* 2:4:

One does not take the field in a *milhemet reshut* except upon the decision of a court of 71 (i.e. the Great Sanhedrin).

The point is that a *milhemet mitzvah*[, in contrast to a *milhemet reshut*,] does not require the authorization of the *Sanhedrin*.

Likewise the *Rambam* ruled, in *Hilkhot Melakhim*, chapter 5, 2:

A *milhemet mitzvah* does not require the authorization of [the] court, rather [the king] takes the field [to war] on his own [authority] at any time, and he forces the nation to take the field [with him]. But in a *milhemet reshut* he cannot send the nation out to war except upon the authority of the court of 71.

We learn [about] three types of *halakhot* from these words of the *Rambam* in *Hilkhot Milhama VeTSava*:

(p. 374) A. The ultimate authority to declare war, whether in a *milhemet mitzvah* or in a *milhemet reshut*, rests with the king.

When there is no king over Israel, whether by chance or because the state's form of government is based upon the rule of a prince, a judge, democratic rule, or any other form of government that is recognized by the Torah, according to the Torah this authority transfers to the [legitimate] ruling body, as will be clarified below.

B. The obligation incumbent upon all Israel to accept conscription [in the army] as a result of the king's sovereign order, is based on the authority of the Torah's prohibition against flouting the commands of the king. As it is written in Joshua 1:18:

"Any man who flouts your commands and does not obey every order your give him shall be put to death."

Likewise the *Rambam* taught in *Hilkhot Melakhim*, chapter 3, *halakhah* 8:

The king of Israel has the authority to put to death anyone who rebels against him. Even if he decreed to one of the rest of the nation to go to place "X" and he did not go, or if he refused to go out from his house and then went out he is liable for the death penalty. If [the king] wanted to kill him he could, as it is

written: "Any man who flouts your commands . . . shall be put to death."

This is the source of the authority of the king's order to the nation to be mustered and conscripted [into the army], and the authority that the Torah bestowed upon him gives force to his order, because the Torah has already determined the two general functions of the king of Israel, or of any other ruling authority who comes [into power] legally. In the words of the *Rambam* at the end of chapter 4 of *Hilkhot Melakhim* it is written:

A king is enthroned only to make judgements and wars, as it is written (I Sam 8:20): "Let our king rule over us and go out at our head to fight our battles."

In carrying out his obligation to fight Israel's wars, the authority to conscript the entire nation has been bestowed upon him. Even in a *milhemet reshut* his authority does not lapse, because the national [ruling] body which declares the war, on the validity of whose command the nation is mustered, is the king except that he needs first to receive authorization for this declaration from the *Sanhedrin*. After the authorization is received from the *Sanhedrin*, the king is the one who activates the forces, and his authority musters the nation and declares the war.

C. The principal difference between a *milhemet mitzvah* and a *milhemet reshut* [is that] a *milhemet mitzvah* does not require authorization from the *Sanhedrin* or the recommendation of the nation, rather the king or ruler acting with sovereign authority is the one who musters the army and declares war and forces the nation to take the field. But in a *milhemet reshut*, he requires the decision and authorization of the *Sanhedrin* before [he may declare war or muster the army], because the *Sanhedrin* holds two principal authorities: a) it is the highest Toraitic authority to teach and interpret the Torah and its laws, from which instruction goes out to all Israel; [and] (p. 375) b) it is the representative of the will of the nation, because every law and judgment that is in accordance with the laws of the Torah claims the nation's authority. The *Sanhedrin* fulfills this function, serving as the nation's representative and spokesman, and expresses the opinion in [this] area, [and its word] obligates the nation and the state. However, *Rashi* [in his commentary to the *Babylonian Talmud*] Tractate *Berakhot* 3b, does not teach thus; his words there [, however,] are surprising as will be explained below.

laws of the Torah, writes.

Exemption and Classification in *Milhemet Mitzvah* and *Milhemet Reshut*

The second principal *halakhah* which differentiates between *milhemet mitzvah* and *milhemet reshut* is taught in *Tractate Sotah*, chapter 8, *halakhah* 7 which deals with exemptions from conscription and [with] the assignment of soldiers into combat troops and support troops-these are the soldiers of the various [logistics/ combat support] services. The *Mishnah* determines that the various personal reasons recorded in *Parashat Shof'tim* (Deut. 20:5-8) and *Parashat Ki Tetse* (Deut. 24:5) serve as grounds for exemption from the army altogether or from the obligation to take the field to wage war, [but] these are only valid in the case of a *milhemet reshut*. In a *milhemet mitzvah* everybody goes out, even a groom from his [bridal] chamber, and a bride from her [wedding] canopy.

Also the *Rambam*, in *Hilkhos Melakhim* chapter 7, 4, after he listed all those who are sent home from waging war following upon the declaration of the priest who consecrates [the troops] for war, or who are altogether exempt from conscription according to the laws of the Torah, writes:

What is being said here? These men are sent home from waging war in a *milhemet reshut*, but in a *milhemet mitzvah* all take the field, even a groom from his [bridal] chamber and a bride from her [wedding] canopy.

This *halakhah* was fixed and accepted by all the *rishonim*, also *Sefer HaHinuch* presented it as *mitzvah* 426. The source of the difference in the Torah is, it appears, in *Sifrei, Parashat Shof'tim*, no. 190 which, at the beginning of the *parashah*, explains [the context of] the priest's consecrating [the troops] for war:

"When you take the field against your enemies" (Deut. 20:1)- the verse is talking [only] about *milhemet reshut*. The explanation of the words "When you take the field,"¹³ whose significance is when you want to take the field, and if in a *milhemet mitzvah*-one takes the field out of obligation as the commentators explained.

On the strength of this explanation the *Sifrei* summed up at the end of this *parashah* at no. 198-"What is being said here? In a *milhemet reshut*, but in a *milhemet mitzvah* everybody goes out, etc.," as [is explained] in the above mentioned *mishnah*.

Halakhah reflecting this spirit of the *Mishnah* was enacted during the period of the kings of the House of David, in the war of

¹³ Or, to express it more literally, "When you go out to war/כִּי תֵצֵא לַמִּלְחָמָה"

Baasha, the King of Israel, against Asa, the King of Judah, when Baasha built the ramparts around Jerusalem, as is written in I Kings 15:22: "Then King Asa mustered (p. 376) all Judah, with no exceptions." The correct interpretation, of the commentators and of the *Talmud* in [Tractate] *Sotah* 10a:

"Without exception," even a groom from his [bridal] chamber and a bride from her [wedding] canopy, as it is written concerning them (Deut. 24:5) "[A man who has taken a bride] shall be exempt [from army service for] one year for the sake of his household."

That is, Asa required the conscription of all who, according to the Torah, would have been exempt in a *milhemet reshut* [for the various reasons] mentioned in the declaration of the priest who consecrated [the troops] for war. The reason was certainly that King Asa defined his war of self-defense against King Baasha as a *milhemet mitzvah*, to rescue Israel from an enemy, because here also an enemy of Israel is being talked about as we declared at the beginning of this chapter¹⁴; therefore, everybody, without exception, is obliged to be conscripted.

But in the above mentioned [passage of the] *Babylonian Talmud*,

¹⁴ I.e., as Goren asserted above, a *milhemet mitzvah* can also be to rescue Israel from "internal enemies."

[Tractate] *Sotah*, we find that King Asa was punished for this, because in the opinion of the *Talmud* this war of Jew against Jew was not a *milhemet mitzvah*. However, the *Jerusalem Talmud* in *Sotah*, [at the] end of chapter 8, learns from [King] Asa the obligation to be conscripted, in a *milhemet mitzvah*, for all who would be exempt in a *milhemet reshut*. From this it appears that it (i.e. the *Jerusalem Talmud*) disagrees with the *Babylonian [Talmud]*. Be that as it may, it is clear that this distinction between *milhemet mitzvah* and *milhemet reshut* was known at the time of the kings of the Davidic dynasty, and was applied in their wars.

In contrast to this it is difficult to understand, according to this accepted *halakhah*, the verse explained in I Maccabees 3, in the war of Judah Maccabee against Gorgias. There it is told:

A voice was heard in the camp, saying: "Is there anyone who has built a new house and not yet dedicated it? Or who has betrothed a woman and not yet married her? Or who has planted a vineyard and not yet harvested it? Or is there anyone who is fainthearted? Let them go and return to their homes, as is written in the Lord's Torah."

We know, and it is clear, that the wars of the Hasmoneans were defined by everyone as *milhamot mitzvah*, because these were wars of self-defense to rescue Israel, its Torah, and its land from their

enemies, the Greeks. The question is asked, then: why did Judah Maccabee, when he fought the Greeks who had come to kill them and to nullify their Torah, make a declaration to send home all these who were exempt from the war when, in a *milhemet mitzvah*, all go out, even a bridegroom from his chamber and a bride from her canopy? No war better qualifies as a *milhemet mitzvah* to defend the nation than this, as is written in *Maccabees*:

All the nations have gathered against us to destroy us . . .
 Prepare for action and show yourselves men. Be ready at dawn to fight these nations massed against us to destroy us and our holy place.

But this [chapter] is not the appropriate framework in which to clarify this, and we have come only to determine, in general terms, the foundations of the *halakhah* in this matter. We have already explained the *halakhic* foundation for the declarations of the Hasmoneans in a comprehensive chapter in *Torat HaMo'adim*.

(p. 377) Age and Requirements for Conscription

In the Torah we find no explicit command defining the age of least than twenty years of age takes the field with the army conscription, and the requirements concerning the types of exemptions available to the people were not fixed for all

"From twenty years old and above" - [Scripture] teaches you

generations. In every census that Israel took in the wilderness, including the first census to determine the shekel head-tax as is recorded in Exodus 30:14, and in the military census in the second year after the exodus from Egypt which is mentioned in Numbers 1:3, and also [in the census that was taken] on the steppes of Moab at the end of the 40 years in the wilderness after the plague of Pe'or; in every case they were counted (Num. 1:3, 26:2) "From the age of twenty years up, all those in Israel who are able to bear arms."

On the face of it, one can learn from these verses not only that those younger than twenty were not counted in the wilderness. [This includes] not only the census in the wilderness which was for that purpose (i.e. to count the number eligible for army service) [which] fixed the age of conscription at twenty. Rather [we learn] that the general obligation [to serve in] the army does not fall upon those younger than this age. *Rashi* explained and clarified the matter [in his commentary on the *Humash*] where it is written (Num. 1:3):

"All . . . who are able to bear arms"-this tells us that no one less than twenty years of age takes the field with the army.

Also, *Rashi* wrote on Exodus 30:14, on the matter of the *Sh'kalim*.

"From twenty years old and above"-[Scripture] teaches you

here that anyone less than twenty years of age does not take the field with the army, nor is he to be counted among the "men."

The explanation of "All those in Israel who are able to bear arms" teaches, in its simple sense, everyone who is counted with the army in war, and [this does] not [include] anyone less than twenty years of age.

The *Ramban*, in his commentary on the Torah, brings out two ways [of explaining] this (actually in the printed editions of the *Mumash*, in *Mikra'ot Gedolot*, a mistake has occurred in the arrangement of the paragraphs of the *Ramban's* commentary; the correct order has been changed), and in the *Ramban's* book, [in the] 1544 Venice edition, after the first paragraph which ends with "... and the speech in the Tent of Meeting" the paragraph is written:

"All those in Israel who go out [to] the host¹⁵," teaches that nobody less than twenty years of age bears arms. "Lift up the heads of the entire congregation of the children of Israel" (or, "Take a census of the whole Israelite community.") (Num. 1:2), as they say to the executioner, "I will lift up the head of (i.e. count) this one."

¹⁵ Host (חֵיָל) is the same as the Hebrew for army. In this section, we will translate the scriptures as literally as possible, not using the NJPS translation, in order that it will be easier to see what Goren is trying to say. In his citation of the *Ramban* just ahead, the proof that this is not talking specifically about military service hinges on the repeated use in the scriptures of the noun חֵיָל and its verbal form חִיל, "to be gathered," where the context is not specifically connect with the army.

This according to *Rashi*. Immediately after this the text offers two reasons:

Perhaps the reason was that someone under the age of twenty was not strong [enough] for war, as they said (*Mishnah Avot* 5:24)-"a twenty year old [begins] to pursue"¹⁶, but it is possible that the explanation of "all those [in Israel] who go out to the army"-all who go out to be assembled in the congregation, because the youths were not assembled among the people, inasmuch as every gathering of the nation is called "a host"¹⁷, and likewise "to assemble a host" (Num. 8:24) for service in the Tent of Meeting, "he will return from the host of service" (Num. 8:25), "in the mirrors of the women assembling, who had assembled"¹⁸ (Ex. 38:8) and also "the host of heaven" (Deut. 4:19), and also "I commanded all their host" (Isaiah 45:12). Therefore one makes it explicit that the "men of war" belong to the "host of war" and their relationship is to the "host of war," but it says here "all who go forth as a host," by way of saying all who go out to the gate of the city. And it says "in their hosts" because they are many hosts, as each and every tribe is a large host.

(p. 378) All the above endorse *Rashi's* first paragraph on verse 3, and afterwards *Ramban* continues to explain *Rashi's* second paragraph on this matter:

The words that *Rashi* wrote "as they say to an executioner": although this paragraph is endorsed by verse 2 in the Torah "take a census of the whole Israelite community," which precedes verse 3 "all who go forth as a host."

¹⁶ Some commentators add parenthetically, "a livelihood." Taken in its literal meaning, though, the verse could mean "to pursue" an enemy, as in war.

¹⁷ I.e., *חיל*, the same word translated as "army."

¹⁸ "The women assembling" - *תצבונות*; "who had assembled" - *אשר צבנו*.

(The printed versions of the *Humash* present the *Ramban's* commentary with a different verse order, so that verse 2 is laid aside until after 3, and therefore displace *Ramban's* explanation on the words of *Rashi* to verse 3. The words are corrupted, so that verse 2 *Ramban* begins with *Rashi's* explanation, but with no explanation afterwards.)

We have learned according to this first method of *Rashi* [recorded] by the *Ramban*, "all who go forth as a host" means all who fight in the army. Consequently one can apply this to the [later] generations, so that one does not get inducted into the army [at an age of] less than twenty years. But according to *Ramban's* second explanation, that the meaning of "all who go forth as a host" is all who are assembled in the congregation, this is not an instruction for conscription for war in the future, because here [in the above mentioned verses in Exodus and Numbers] they are not being counted for war, but rather in the context of a general counting of the nation for other purposes.

For this reason the *Ramban* apparently omitted the age of conscription into the army in his book *Hilkhot Melakhim*, which

decides all matters of the army in its *halakhot*. He also did not give an age limit for those who take the field in a war, whether it be in a *milhemet mitzvah*, or in a *milhemet reshut*, since these verses do not specify the correct age for conscription into the army or for war. Rather, the counting of the community [in these cases] is *ad hoc*, for the sake of certain aims associated with that occasion.

Similarly, in the entire [corpus of] *midrashic* and *Talmudic* literature we find no instruction concerning the age of conscription, and the above mentioned scriptural passages are explained by our Sages to be saying different things and not specifying the age of conscription.

In the *Yalkut Shim'oni*, *Mishlei*, no. 1029, we find:

Until what age is one called "a youth"? *Rabbi Meir* says until 25 years old, *Rabbi Akiva* says, until 30 years old, [and] *Rabbi Ishmael* says: Not according to this one (i.e. *Meir*) and not according to that one (i.e. *Akiva*), rather until the age of 20, because until the age of 20 one is not taken into account, as the verse expresses "from twenty years old and above."

This passage does not come to determine the age of mandatory conscription in a war. Rather [it is in accordance with] *Ramban's* second explanation, which [tells that this verse] comes to instruct us about the age of the youth's entrance into adulthood and into the

community. For a heavenly court will not punish one less than 20 years old, as is explained in the *Jerusalem [Talmud]*, chapter 2 of *[Tractate] Bikurim, halakhah 31*. Likewise they said in the *Babylonian [Talmud]*, *[Tractate] Shabbat 89b*:

[At an age of] less than twenty years one is not subject to punishment, it being the age (p. 379) of the counting in the wilderness which was from the age of twenty and above.

Likewise *Rashi* wrote, on *Tractate Avot* chapter 5, *mishnah 21*:

"At the age of twenty [one begins] to pursue" and from twenty and up one is considered to be joined to adulthood, as it is written "from age twenty and above."

But it is possible that the intent of all these is only that of the verse in *parashat Shekalim*, in Exodus 30:14, because "all those in Israel who go forth in the host" is not written there, and [there] the reason is to separate out the youth from those who are joined with the [adults] of the congregation of the nation. But where, in the rest of the verses, it is explicitly mentioned "all those who go forth in the host," it is possible that they come to teach us the age of conscription for war, and a verse need not depart from its simple sense. Rather, for the requirements of other types of service, different ages were determined, for example concerning the service

of the Levites it was determined (Numbers 4:3) "from the age of thirty years up to the age of fifty, all are subject to service, to perform tasks for the Tent of Meeting," and also (Num. 4:23) "all who are subject to service."

But in *parashat Beha'alotekha* (Num. 8:24) the age for the Levites was fixed ". . . from twenty-five years of age up they shall participate in the work force in the service of the Tent of Meeting." However, the Sages, in [the *Babylonian Talmud*,] *Tractate Hullin* 24a, already solved the discrepancy between the ages, as *Rashi* explained there.

Also, the maximum age for the obligation of conscription is not specified in the Torah. Indeed concerning the Levites it is written and specified (Num. 8:25) "but at the age of fifty they shall retire from the work force and shall serve no more." But it is clear that this limitation of age is only for the purposes of the Levites' service in the Tent of Meeting in the wilderness, and the verse does not mean to limit the age for [other kinds of] service, because apart from the Levites, in the censuses of the nation there is no maximum age given.

But concerning the age [above which one is] exempt from military service we have a hint in the *Tannaitic Midrash, Sifrei, Parashat Shof'tim*, paragraph 197, concerning the verse (Deut. 20:8) "Is there anyone afraid and disheartened? Let him go back to his home, lest he soften the hearts of his comrades like his heart"¹⁹:

Rabbi Yossi explained, "afraid and disheartened"-this is one who is 40 years old.

[But]*Rabbenu Hillel* reads [it], in his commentary on *Sifrei* [as follows]:

This age of forty years old seems a little strange, in as much as it is less than the age of fifty, at which age the Levites are retired from their service²⁰.

Rabbenu Hillel himself rejects the reading, since in *Mishnah Sotah* 44:1 and in the *Tosefta* on the same, 8:22, *Rabbi Yossi the Galilean* interprets:

"Afraid and disheartened"-this is one who fears the transgressions in his hands.²¹

¹⁹ Here we have used a more literal translation of Deut. 21:8 (וְהָיָה יָדָם כְּיָדָיו כְּלָבָיו) than the previously used NJPS "lest the courage of his comrades flag like his." The more literal translation will be necessary for the *gematria* below.

²⁰ I.e., perhaps *Rabbenu Hillel* is implying that military service in wartime is more rigorous than the service of the Levites in the Tent of Meeting?

²¹ I.e., that he is likely to do. This opinion of *Rabbi Yossi*, found in the *Mishnah*, differs considerably from the opinion attributed to the same *Rabbi Yossi* found in *Sifrei*, that "afraid and disheartened" equals the age of 40.

Also *Rabbenu Hillel* brings in an additional interpretation in *Sifrei*, in summing up the words of *Rabbi Yossi the Galilean*:

As it is written "lest he soften the hearts of his comrades like his heart"-in *gematria*, 40 is [the sum of] the letters [of "like his heart"]. It is impossible to fit this *gematria* because (p. 380) there is no hint to the number 40 in this verse. But he (i.e. *Rabbi Yossi*) wants to explain that the word "like his heart" without the "kaf" equals 40²².

But reading [the *gematria* attributed to] *Rabbi Yossi the Galilean* as 60 is more correct, because that is what "like his heart" yields²³.

The *Ramban* wrote that the contradiction stems from the books that read "40 years old." But this reading of *Sifrei* is brought out in the book *Sefer Mitzvot Gadol*, positive [*mitzvah*] no. 120, and is also [this way] according to the *Gemara*.

This age, like the age of conscription from twenty years and up, is not mentioned at all in the books of the *Rambam*. Therefore one must deduce that, in the *Rambam's* opinion, there is no

²² The numerical value of the letters of the word "like his heart" (לִּי לֵב) but without the letter kaf (כ), thus yielding "his heart" (לֵב) equals 40. *Rabbenu Hillel* is pointing out that the opinion attributed to *Rabbi Yossi* uses this device to (erroneously) conclude that the maximum age for conscription is 40.

²³ I.e., Goren is saying that the correct interpretation of *Rabbi Yossi* would clearly be that the maximum age of conscription is 60, because with the letter "kaf" as the word "like his heart" appears in the verse in Deut. 20:8 (לִּי לֵב), its numerical value is 60.

predetermined age of conscription for the [later] generations.

Rather, it depends upon the type of war and the individual's strength.

The matter is also not clear from *Rashi's* opinion and that of his supporters who fix a minimum age of obligation for conscription for war, but only in a *milhemet reshut* where the Torah lists all those who are exempt from the war. However, as we mentioned at the beginning of this chapter, in a *milhemet mitzvah* everybody is obliged to serve, and therefore there is no specified age of exemption from taking the field for battle because everybody is commanded concerning (Lev. 19:16) "do not stand upon the blood of your fellow"-or [perhaps], concerning one's age, there is no difference between *milhemet mitzvah* and *milhemet reshut*.

Indeed concerning the setting of a maximum age, in the opinion of *Rabbi Yossi the Galilean* it appears that the words are not talking about a *milhemet mitzvah*, because it is taught explicitly concerning the passage [in which the priest] consecrates the troops for war (Deut. 20), which lists all those who are exempt from the war, and the *Mishnah* and other sources have already determined that this is only talking about a *milhemet reshut*, because in a *milhemet mitzvah*

all go out, including those who are exempt [in a *milhemet reshut*] because of their age, the reason being that in a *milhemet mitzvah* EVERYBODY is obliged.

Four Kinds of Exemptions from War

Four kinds of exemptions from the obligation to take the field for battle are listed in the Torah: exemption for administrative reasons; exemption for family reasons; exemption for moral reasons; and exemption for reasons of disability. Although the first three reasons are specified in the Torah, the fourth reason is not; rather it is taught from the principles which are expounded in the Torah, as is clarified below. The first two kinds are divided into two, making four altogether. [There] are fundamental *halakhic* differences between them concerning the time of the requirement for exemption; they are general [categories of] exemption.

The first three kinds are specified in the Torah in *Parashat Shof'tim*, (p. 381) Deut. 20:5-8, in the passage about the priest who consecrates the troops for war. According to the verse, the officials would listen to the declaration of the exemptees, as it says (vs. 5-7):

Then the officials shall address the troops, as follows: "Is there anyone who has built a new house but has not dedicated it? Let him go back to his home, lest he die in battle and another dedicate it. Is there anyone who has planted a vineyard and has never harvested it? Let him go back to his home, lest he die in battle and another harvest it. Is there anyone who has paid the bride-price for a wife, but who has not yet married her? Let him go back to his home, lest he die in battle and another marry her²⁴."

These are the two kinds of exemptions, for administrative reasons and for family reasons. Afterwards, the third kind is specified, for moral reasons (vs. 8):

The officials shall go on addressing the troops and say, "Is there anyone afraid and disheartened? Let him go back home, lest the courage of his comrades flag like his."

The first two kinds of exemption do not qualify one to defer himself if he wants to claim his right to self-exemption. Rather, he has been forewarned not to go out to war, as they said in *Tosefta Sotah*, chapter 7, 14:

Rabbi Simeon says, everybody who hears the words of the priest in the battle-lines and does not return [home], in the end he will fall in battle and will fell Israel with the sword and exile them from their land, as it is said "and another marry her."²⁵

²⁴ Lit., "take her."

²⁵ I.e., if a woman who is betrothed to one man is taken by another, this sin will stain the entire people Israel, and the nation will suffer dire consequences as a result.

Likewise, *Rashi* wrote in his commentary on the *Humash*, [on] Deut.

20:7:

"Lest he die in battle"-let him return so that he will not die, for if he will not hearken to the words of the priests he deserves death.²⁶

The requirement to [determine eligibility for] these exemptions does not rest with the individual who is called for conscription, rather as the Sages of the *Mishnah* defined in *Tractate Sotah* 8:2:

All these listen to the words of the priest in the battle-lines and return, and [then spend the war] supplying water and provisions [to the combat troops], or repairing the roads.

This says that, in the beginning, everyone was lined up for mustering and the entire army was going out together, and there the priest made his declaration about the exemptions, and all of these [who claim exemptions] would leave their fighting units [and transfer] to service units in the rear [lines], for example, the supply corps or the engineering corps, to repair the roads in order to ensure the provision of supplies [to the combat units]; this is *Rashi's*

explanation. Likewise, we learned from a *Baraita* in *Sotah*, 42a:

²⁶ Therefore, none of the individuals eligible for these exemptions may voluntarily waive their exemptions and fight anyway out of a sense of duty. Goren makes this clear below.

Our Rabbis taught: [the official] speaks with them twice, once at the frontier²⁷ and once in the war²⁸. What does he say at the frontier? Listen to my words from the battle-formations and return. In the war what does he say? (Deut. 20:3) "Let not your courage falter. Do not be in fear," etc.

Rashi expounded:

"Listen to my words from the battle-formations"-whoever is eligible to return [home], for example: he who has built a house, or who has planted a vineyard, or who has paid a bride-price, or who is afraid and disheartened.

Despite this the *Rambam*, in *Hilkhot Melakhim* chapter 7, has another explanation (p. 382) for the order of exemptions. Indeed the priest would make his declaration about the exemptions first at the frontier, but the exemptions themselves were not carried out until [they reached] the place where they set up the battle formations, when the officials would again make this declaration. The *Rambam* wrote:

Twice the [priest] consecrating [the troops] for war would speak to the nation, once at the frontier. When they went out, before they set up formations for the battle, he would say to the nation "Is there anyone who has planted a vineyard," etc. When they heard his words, [anyone claiming such an exemption]

²⁷ I.e., when departing to go abroad to the war. For, if the war were being fought on home territory, it would be a defensive war and, therefore, a *milhemet mitzvah*. In such a case, these exemptions would be unavailable, as we have learned.

²⁸ I.e., when the start of the battle is imminent.

would return from the battle formation. Then, once [they had arrived] at the battle formation, he would say: "Let not your courage falter. Do not be in fear."

In *halakhah* 3 he wrote:

When they set up formations for the battle and are close to the fighting, the [priest] consecrating [the troops] for war stands on a high place with all the battle formations in front of him, and he says to them in the Holy tongue: "Hear, O Israel! You are about to join battle with your enemy . . ." And afterwards the [priest] consecrating [the troops] for war says: "Is there anyone who has built a new house . . . Is there anyone who has planted a vineyard . . ." and, after all those who will leave have left the battle-lines, the battle formations are corrected²⁹, etc.

It is clear, then, that the exemptions were carried out in the place where the battle formations were set up and not beforehand, when they were at the frontier.

Why did the priest need to make the declaration concerning the exemptions twice, despite the fact that even according to the opinion of the *Rambam*, those eligible for it were not yet released at the frontier? We can find the answer to this in *Tosefta Sotah* chapter 7, 10, but the meaning is confused there. The text of the *Tosefta* is corrected somewhat in the *Zukermandel* edition, where it

²⁹ To compensate for the missing men—those who had received exemptions and left their units.

is written:

Twice he would speak with them, once at the frontier and once at the battle[field]. What would he say at the frontier? "He that hears, let him go to heed the arrangements of the priest of war and return." At the battlefield what does he say? "Hear, O Israel. You are about to join battle with your enemy . . . Is there anyone who has built a new house . . . ?"

In the old text of the *Tosefta* it is written:

What would he say at the frontier? "Go and heed the words of the priest, etc."

The point is that, at the frontier, the priest consecrating [the troops] for war would warn the soldiers, so that he would plant in their ears the words of the priests and the officials, [then,] at the point of the [battle-]lines, the priests and the officials would declare their words to the nation in a loud voice in order that everyone would hear. In the words of the *Rambam*:

To hear the [priest] consecrating [the troops for] war, and another priest beneath him, would declare to the entire nation in a loud voice, and afterwards the [priest] consecrating [the troops for] war would say "Is there anyone . . ." To here the [priest] consecrating [the troops for] war would speak, and the official would proclaim to the entire nation in a loud voice.

(p. 383) Absolute Exemption from Conscription

Despite that all the [individuals granted the] exemptions listed above must leave [the ranks] at the point of setting up for battle

formations and are not entirely exempt from conscription [for military service], but rather transfer to rear-line services, in the Torah we find one kind of exemption where the individual does not report [for duty] at all and is completely exempt from serving. We find this in *Parashat Ki Tetse*, Deut. 24:5:

When a man has taken a bride, he shall not go out with the army or be assigned to it for any purpose; he shall be exempt one year for the sake of his household, to give happiness to the woman he has married.

The Sages of the *Mishnah* explained that this law does not pertain only to marriage, but also to one who has built a new house and dedicated it, or planted a new vineyard and harvested it, so that they should definitely not go out to the army in the first year. As we learned in *Sotah* 43a:

These do not move from their place [to go out to war]: one who has built a house and dedicated it, one who has planted a vineyard and harvested it; one who has married his betrothed, and one who has taken home his sister-in-law,³⁰ as it is written: "he shall be free at home one year." "At home"-this refers to his house; "shall be"-this refers to his vineyard; "and give happiness to the woman he has married"-this refers to his wife, "he has married"³¹-to include his sister-in-law. These [individuals] need not [report for duty to] supply [the

³⁰ I.e., his dead brother's childless widow, to marry her as is required under the law of levirate marriage (Deut. 25:5-6).

³¹ Lit., "whom he has taken."

combat troops with] water and provisions, or to repair the roads.

And in *Tosefta Sotah*, at the end of chapter 7, these *halakhot* are defined and stated:

There are those that go out and return [after having received exemptions], those that go out and do not return, and those who do not go out at all. All those who go out and return give town taxes³², and they supply water and provisions [to the combat troops] in the war, or they repair the roads. The rest go out [to war] and do not return.

All these whom they told not to go out at all, [namely] one who has built a new house and dedicated it; one who has planted a vineyard and harvested it; who has betrothed a woman and taken her and has not yet lived with her 12 months, do not go out at all, nor do they give town taxes, nor do they supply water and provisions to the combat troops, nor do they repair roads. Likewise this *halakhah* was fixed by the *Rambam* in *Hilkhot Melakhim* 7, 11:

For a whole year they are exempt from supplying water and food [to the army], [from] repairing the roads, guard the [city] fortifications, and paying town taxes; no duties whatever shall be laid upon them, as it is said: "He shall not go out in the host, neither shall he be assigned to it for any purpose." Two prohibitions apply to him; he [shall not be assigned to serve] for the needs of the city, nor for the needs of the brigade.

less than one year who, with the concurrence of his wife, would be

³² Lit., "they give the stripes of the city/פס" חמיר"

We have learned that one who has built a house and not yet dedicated it, that is to say who has not yet entered it to dwell in it; or who has planted a vineyard and never harvested it, that is to say it has not entered its fourth year and he is obliged to harvest the fruit of his vine; or who has paid a bride-price for a wife but has not yet married her; all of these go out to the mustering-place and return when the priest who is consecrating the troops makes his declaration, [and then they serve] in the supply corps. But one who has built a house and has already entered it to dwell in it, but has not yet dwelt in it one year, or who planted a vineyard and the fourth year has already begun, but he has not yet begun to harvest, or who has married a wife but a year has not yet passed since the wedding; all these are completely exempt (p. 384) from taking the field with the army. They do not go out to the frontier with the army, nor are they conscripted [to serve] in the rear-line service corps.

Among the Sages there is a question on this subject, as to whether any of these exempt individuals could volunteer of their own accord to take the field for war. [For example, a bridegroom of less than one year who,] with the concurrence of his wife, would be

happy to take the field for war. Is there a prohibition on this sort of thing? One of the great *Rishonim*, the author of *Sefer HaHinukh*, in his book of the *mitzvot* defined the prohibition by saying:

Even the prince cannot send him out against his will, that is to say, to send him out [either] to take the field for war or to perform various labors for the war effort, etc.

The initial sense is that, if he agrees [to volunteer], he may, but after it has already been clarified above according to the *Tosefta*, that even those who are required to be inducted [for rear-line] services cannot volunteer to take the field for war [with the front-line combat troops], so much the more so those who are completely exempt are surely not allowed to voluntarily take the field [as combat troops].

One must add to all this what was written at the start of our chapter, that all of these exemptions are in force only in a *milhemet reshut*, but in a *milhemet mitzvah* everyone takes the field: even a bridegroom from his [bridal] chamber, or a bride from her [wedding] canopy. This *halakhah* was already applied by Asa, King of Judah, in his war against Baasha, all of which has been explained above. But on the other hand, we showed above from *Maccabees* that at the time

of the Hasmoneans all these were exempted from conscription even though their war was to rescue Israel from an enemy and was therefore considered by all to be a *milhemet mitzvah*, as we explained in [my] book *Torat HaMo'adim*.

Exemptions for Reasons of Conscience or Morality

The third kind of exemption, for reasons of character, conscience or morality, is specified in the Torah, in the passage concerning [the priest] consecrating [the troops for] war, Deut. 20:8:

"Is there anyone afraid and disheartened? Let him go back to his home, lest the courage of his comrades flag like his." *

The Sages of Israel, in the *Mishnah*, in the *Sifrei*, and in the *Talmud*, disagreed. The opinion of *Rabbi Akiva*, in Tractate *Sotah* 44a, is according to the simple sense of the text, as he says:

"afraid and disheartened"-it means exactly what it says, one who is not able to stand the conduct of war or look upon a drawn sword.

From this formula the implication is that [the words] "afraid and disheartened" do not teach us about two types of exemptions for reasons of fear of battle. Rather, it gives [us] a general principle concerning one who is unable to stand the stress of battle from a spiritual or physical standpoint, or because of other fears of war.

The *Rambam* ruled thus in *Hilkhot Melakhim* chapter 7, 15:

"Is there anyone afraid and disheartened"-it means exactly what it says, one who lacks resolve in his heart to stand the conduct of war.

(p. 385) we find a different explanation from that of *Rabbi Akiva* in *Tosefta Sotah* chapter 7, where it is clarified that "afraid and disheartened" are two distinct psychic phenomena. For [either of] the two of them, one is exempted from going out to battle. As it says there:

Rabbi Akiva says "afraid" for certain, and what does scripture say [concerning] "soft-hearted"³³? Even the bravest of the brave, [if] he is compassionate, is sent home. As it is said: "lest he soften the hearts of his comrades like his heart." This says that "afraid" is one who is afraid for his life, who cannot stand up to personal danger. But "soft-hearted" is not one who fears for his own life, rather the opposite, he may be brave and strong and fearless concerning his own life, but he is compassionate towards others and as a result will avoid killing the enemy. Concerning such behavior the Torah warned: "lest he melt the hearts of his comrades like his heart."

Even those who disagree with *Rabbi Akiva*, and who explain the words "afraid and disheartened" differently, agree that all those of weak character as listed above are exempt from the obligation to go out to battle, as it is said in *Tractate Sotah* 44b:

³³ i.e., compassionate, a more literal translation of "רך חלול" than the NJPS's "disheartened" as used in this verse.

One who hears the sound of the horn³⁴ and is frightened, the closing of shutters and is frightened, the clashing of swords and water flows from him to his knees³⁵-is sent home, as it is written "lest the courage of his comrades flag like his."

In addition to this, one must also take into consideration the opinion of the *Tanna'im* who leave room for exemptions for all those who, from a standpoint of conscience, are unsure of themselves in their going out to war. For example, *Rabbi Yossi the Galilean* who explained:

"Afraid and disheartened"-this means one who is afraid of the transgressions he may commit, in as much as his pangs of conscience may cause him to ease the pressure of the battle for them (i.e. the enemy).

The *Rambam* does not take this opinion into consideration, and he omits it from his book, but the author of *Sefer HaHinukh*, in *mitzvah* 526, brings the opinion of *Rabbi Yossi the Galilean* into the *halakhah* in his explanation:

One who is afraid of transgressions is also eligible [to be considered for exemption], because all these are men too weak

³⁴ In battle, commands for formation, movement, and attack would be given via the sounding of specific sequences of notes on some kind of horn (a ram's horn in the case of ancient Israel, a bugle in more recent history). This custom persisted until this century, until World War I. With the development of radio communications, especially portable radios that could be carried by a man in each infantry squad, the practice went away.

³⁵ Uncontrollable urination is characteristic of one who is frightened in battle.

to go to war. Their thoughts are often caught up on the things which are mentioned in the passage, and they will move their comrades' hearts, as the scriptures specify "lest the courage of his comrades flag like his." Also one who is afraid of the transgressions he may commit is fit to be returned lest he kill others through his sin. So all the words of the Torah are upright and reliable.

Although the Torah gave all those listed above the right to be exempted because of character weaknesses, this is only when such characteristics are discovered before the start of the battle. But when such a manifestation is revealed in a soldier in the heat of battle, and especially when he is able to overcome the weakness of fear and his character weaknesses but does not (p. 386) overcome it [by choice or due to lack of resolve], his punishment is very severe for he has transgressed several prohibitions in the Torah, for example: (Deut. 20:8) "lest the courage of his comrades flag like his"; and (Jer. 48:10) "Cursed be he who is slack in doing the Lord's work! Cursed be he who withholds his sword from blood!" This is from there. But on the other hand we find, concerning exemptions, likened to one who has spilled everyone's blood, and moreover that the third type, that he is sent home even after he has gone out with all the blood of Israel hangs on his neck, as the *Rambam* explained in his equipment to the battle, as the Tanna'itic Sages established, in *Hilkhot Melakhim*, at the end of chapter 7. It will be clarified below *Shofrim*, no. 192, the obligation for proof in all this, that, according to the sources, when all these weaknesses are above types of exemptions, saying

discovered in a soldier during battle they send him home from the war. What is this saying? Concerning these [grounds for] exemption [they send him home], but for the first two types of exemptions that we listed in the last chapter, those who are exempted for family or administrative reasons, if they undertake their duties in the war and afterward these events that would entitle them to an exemption occur to them, they are not sent home.

Although this *halakhah* is not brought out in other *halakhic* books, it is specified in *Tosefta Sotah*, page 14, where it says:

If, during a war, a man learned that his brother had died [and thus he was suddenly obliged to marry his sister-in-law], as long as he had not already been "given [his] load"-he is sent home. Once he is "given [his] load"-he is not sent home.

The concept "given [his] load" is understood [to mean], when he fastens on his battle equipment and his full [field] gear, and he has joined his unit to take the field in battle. He is still not sent home from there. But on the other hand we find, concerning exemptions of the third type, that he is sent home even after he has gone out with his equipment to the battle, as the *Tanna'itic* Sages established, in *Sifrei, Parashat Shof'tim*, no. 192, the obligation for proof in all the above types of exemptions, saying:

All [those petitioning for exemptions] must bring evidence, apart from the one who [should be exempted because he is] afraid and fainthearted, whose testimony is with him³⁶: being terrified upon hearing the sound of closing the shutters, trembling upon hearing the whinnying of horses, being alarmed upon hearing the sound of the horn, and, upon seeing the unsheathing of swords, having water run down between his knees.

All of these are results of the actual conduct of battle³⁷, and in all these [cases], it is written that he is released immediately.

Indeed, the *Rambam* does not bring out this *halakhah* in his book, although it is also specified in the *Jerusalem Talmud* [Tractate] *Sotah*, chapter 5, *halakhah* 9. The *Jerusalem Talmud* proves this, because in this *Baraita* it supposes like *Rabbi Akiva*, that "the afraid and fainthearted" means [someone] who is unable to stand the conduct of war [or] the sight of an unsheathed sword. For this he need not bring evidence, because the testimony is with him, as everyone can see that he is frightened and afraid.

From this we have learned four categories of *halakhot*: (A) For all those who are entitled to be exempted [from war] for administrative or family reasons, the burden of proof is upon them;

³⁶ I.e., is apparent through his demeanor.

³⁷ I.e., these manifestations would not necessarily be noticed beforehand.

they must bring witnesses. (B) Those who would be exempted for reasons of conscience, morals and weakness of character need not bring witnesses; they are exempted on the basis of outward manifestations. (C) Those who would be exempted for administrative (p. 387) or family reasons, if the reason for which they would be entitled to an exemption occurred after the start of the war, then they are not entitled to an exemption. But those who would be exempted for character reasons are released even after the start of the battle for the reason "lest the courage of his comrades flag like his." (D) The start of the war, for the purposes of this *halakhah*, is the soldier's putting on his battle gear, and falling in with his fighting unit.

It is necessary to inquire, in regard to exemptions for reasons of character, as to whether these apply only to *milhemet reshut*, and [these cases] must take the field in a *milhemet mitzvah* or not, since they are unable to stand the conduct of war due to their psychological or physical character. Because the editor of the *halakhot* in *Mishnah Sotah* indicates, that for all the exemptions listed in the Torah and taught in the *Mishnah*, including "the one who

is afraid and fainthearted," the *halakhah* teaches "this matter refers to a *milhemet reshut*, but in a *milhemet mitzvah* all take the field." This is also indicated by the words of the *Rambam*, in that he writes after [specifying] all the declarations of exemption, that these are all only in reference to *milhemet reshut*. In *milhemet mitzvah* there appears to be an obligation upon everybody to be strong and be ready to endure to the end in order to fulfill the *mitzvah* of the Torah to fight and conquer.

In the light of the things said here, the question is asked in regard to the objectors to war who are known in the world; what is their judgement according to the Torah? The answer from *halakhic* explanation is: (A) In a *milhemet mitzvah* there is no room to exempt an objector for any reason. (B) In a *milhemet reshut* it is necessary to distinguish between two types. The first type, where the grounds are personal fear, is determined by manifestations on the man at the time of the battle according to the signs listed above, or where he is compassionate to the point where he would not have the resolve to hurt the enemy, he is eligible for an exemption from taking the field in battle and must be transferred to the rear service

corps. But in all cases where the grounds are not extraordinary fear based on psychological observation, nor uncommon compassion based on exceptional psychological data, but rather [simply] that the man's opinions and personal philosophy oppose war, [then] according to the Torah there is no room for exempting him from taking the field. For one's opinions and personal philosophy must be based upon the understanding of the Torah and the philosophy of the prophets, and therefore as long as according to the laws of the Torah a man must go out to war, nobody has a right to shirk this obligation in contravention of the laws of the Torah.

(p. 388) Exemptions for Medical Reasons

Apart from exemptions due to psychological weakness that were specified in the Torah in *Parashat Shof'tim*, we find no provision in the Torah for exemption on grounds of grounds as we explained in the previous chapter. However, an explanation is given to exempt [individuals with] various disabilities, physical weaknesses or ailments from the obligation of conscription. The matter is taught in the *Tannaitic midrash Sifrei, Parashat Shof'tim*, paragraph 190 in support of the passage "When you take the field

against your enemies" concerning the passage on the false witnesses (Deut. 19:21) which ends: "life for life, eye for eye, tooth for tooth, hand for hand, foot for foot." *Rabbi Yossi the Galilean* explains there in *Sifrei*:

Whence do we learn that one does not take the field if one does not have [all his] hands, feet, eyes, and teeth? Scripture teaches (Deut. 19:21): "You must not show pity: life for life . . . (20:1) When you take the field . . ." ³⁸

This foundational *halakhah* which serves to exempt the disabled and stricken of body from the obligation of conscription is not mentioned in the books of the *pos'im*, and even the *Rambam* omitted it from his book. But *Rashi*, in his commentary on the *Humash*, in *Parashat Shof'tim* [on] Deut. 20:1 brought out this interpretation saying:

"When you take the field"-this verse is [found in the text] adjacent to [the verse about] taking the field in a war, to teach us that one who is missing a member (or, limb) does not take the field ³⁹.

From these words of *Rashi* one learns that this interpretation, which is based on the principle of "*Smukhin*" in the Torah⁴⁰, not only

³⁸ See further below in this paragraph for an explanation of how *Rabbi Yossi* is using the principle of *smukhin* here.

³⁹ I.e., immediately after stating, "eye for eye, tooth for tooth, hand for hand, foot for foot . . ." the text continues "when you take the field . . ."

teaches us about those blemishes that are mentioned in the passage on the false witnesses, but also serves to exclude all those who are missing members from taking the field. Indeed, according to this opinion, we still have no authority to exclude individuals with lesser disabilities who are not missing members. It appears that the Torah gave the conscripting authorities a free hand and wide latitude in this matter, to obligate or to exempt, according to circumstances and needs.

The principal question that is asked in connection to this kind of exemption for those with the blemishes mentioned in the *Sifrei* and the midrashic sources on the authority of these passages, is whether these are also exempt only in a *milhemet reshut*, while in a *milhemet mitzvah* even they are obliged [to fight]?

In the above mentioned paragraph 190 of *Sifrei*, immediately after the interpretation of *Rabbi Yossi the Galilean* who interpreted from whence we know that those missing hands, etc., do not take the field, it is written:

***Rabbi Yehudah* said, What are these words talking about?**

⁴⁰ *Smukhin*, one of the thirteen principles for interpreting scripture, ties two passages conceptually based upon their physical proximity in the text.

About a *milhemet mitzvah*, but in a *milhemet hovah*⁴¹ all take the field, even a groom from his [bridal] chamber and a bride from her [wedding] canopy.

Afterwards the *Sifrei* goes back and begins the *mishnah*:

"When you take the field against your enemies"-the text is talking about a *milhemet reshut*, etc.

(p. 389) Before we clarify this matter in its essence, it is necessary to introduce the passage in *Mishnah Sotah* at the end of chapter 8. There, *Rabbi Yehudah* and the [rest of the] sages were divided over the definitions of *milhemet mitzvah*, *milhemet hovah*, and *milhemet reshut*. It turns out from this *sugya* in the *Talmud*, that what the sages call "*milhemet mitzvah*", *Rabbi Yehudah* calls "*milhemet hovah*", and what they call "*milhemet reshut*", *Rabbi Yehudah* calls "*milhemet mitzvah*". The significance is [a difference] between them in [the use of] terminology, and nothing more.

On the face of it, it appears according to the words of the *Sifrei*, that concerning *Rabbi Yossi the Galilean's* passage where he

⁴¹ We have not seen this designation, מלחמת חובה, "war of obligation" before this point. Hanoch Albeck, in his commentary on the *Mishnah*, in Tractate *Sotah* 8:7, states that it refers to the wars of Joshua [for the conquest of the Land of Israel] and Amalek. As we saw earlier, Goren classifies these two wars as being among the three categories of *milhemot mitzvah*. See the discussion in the next two paragraphs of this chapter.

interprets that those with blemishes are exempt from the obligation [to serve in] the army, *Rabbi Yehudah* says, What are these words talking about? About a *milhemet mitzvah*-which, according to the sages⁴², is [here the same as] a *milhemet reshut*. But, in a *milhemet hovah*-which is [here the same as] a *milhemet mitzvah*, according to the sages in the *Mishnah*, all take the field including the disabled and blemished. The author of *Minhat Hinukh* also understood the *Sifrei* this way in his explanation of *mitzvah* no. 427, where he wrote concerning the above mentioned words of *Rashi* on the *Humash*:

[This] teaches that those who are missing members do not take the field.

But here in the *Sifrei*, *Rabbi Yehudah* interprets that only in a *milhemet reshut*, while in a *milhemet mitzvah* all take the field. It is clear that he interpreted the words of *Rabbi Yehudah* in the *Sifrei*, as [he interpreted] before this in the opinion of *Rabbi Yossi the Galilean*, and the *Malbim* interpreted [the passage] likewise in his commentary on the *Sifrei*.

But it is clear that the *Sifrei's* text is corrupted here, and that the words of *Rabbi Yehudah* are not properly set but rather belong to

⁴² And, as we have learned from Goren here.

paragraph 198 further on, where it is written:

What are these words talking about? In a *milhemet reshut*, but in a *milhemet mitzvah* all take the field, etc.

To this it is necessary to add the words of *Rabbi Yehudah*, who disagrees and says:

What are these words talking about? In a *milhemet mitzvah*, but in a *milhemet hovah* all take the field.

This version is in accordance with, and parallel to, the passage in *Mishnah Sotah* at the end of chapter 8⁴³. Although from the critical text of *Rabbi Elijah*, it appears that he did not write off the words of *Rabbi Yehudah* in the above mentioned paragraph 190, but in paragraph 198 he amended the text. Instead of "but in a *milhemet mitzvah* all take the field," he wrote "but in a *milhemet hovah* all take the field." This says that, according to his reading, he would reverse the version of *Sifrei* where the opinion of *Rabbi Yehudah* is concerned, but the opinion of the Sages is not mentioned [in his notes]. Not only that, but the words of *Rabbi Yehudah*, according to *Rabbi Elijah's* critical text, are not in keeping with his words in the *Mishnah*, for in the *Mishnah*, *Rabbi Yehudah* does not mention

⁴³ Actually, Goren mistakenly writes "chapter 5" here. However, he clearly means chapter 8.

milhemet reshut, and here in *Sifrei*, Rabbi *Elijah* leaves in the reading "*milhemet reshut*" as is written before us. In addition to that, it is not made clear whether these [individuals] are exempted for reasons of disability, and those missing members are completely exempt [from service] and return home from the war, or whether the rule applying to them is like that applying to all the other exemptees that [are mentioned] in the passage of the priest consecrating [the troops for] war [where various individuals are pronounced] exempt from taking the field (p. 390) in battle and transfer over to logistics, supplying water and provisions, or repairing the roads, [that is,] if their disability does not hamper them in [performing] these services.

Here it is necessary to offer a new interpretation and say that all those who are exempt from the obligation of conscription, including the four types [of exemptions] that we have mentioned in this chapter, are exempt only from the obligation of conscription resulting from a royal order which obligates every Israelite man to be mustered and inducted into the army and [readied] for war, and also on the authority of the command of the king granted him by the

Torah as was determined in the [description of] the right of the monarchy in I Samuel 8:11-12:

"This will be the practice of the king who will rule over you: He will take your sons and appoint them as his charioteers and horsemen, and they will serve as outrunners for his chariots. He will appoint them as his chiefs of thousands and of fifties; or they will have to plow his fields, reap his harvest, and make his weapons and the equipment for his chariots."

All that is said in the passage concerning the king, [is that] the king has within his authority [to conscript the people for various duties], as the *Rambam* wrote in chapter 4 of *Hilkhos Melakhim*. But in this matter, the king[']s authority] is subject to the Torah's laws concerning conscription.

But in addition to all this we have already made clear that every Israelite man is subject to an additional obligation from the Torah, to come to the assistance of [his fellow] Jew who has come into distress or danger, as we read in the verse "Do not stand upon the blood of your fellow," which is written in *Parashat Kedoshim* (Lev. 19:16), [and] which serves to warn us: if you see [your fellow] drowning in a river, or beset by robbers, or by a vicious animal, you are obliged to rescue him, as is written in *Torat Kohanim* as clarified above. This obligation falls upon every Jew, who must help Israel in a war against its enemies with all the power at his disposal. In the matter of this obligation there is no difference between a *milhemet mitzvah* and a *milhemet reshut*, as wherever a [single] Jew or the entire people is in distress, the obligation is

imposed upon everybody to help them with all means at their disposal. There is no reason on account of which one might be absolved from upholding this holy *mitzvah*.

We have learned that even those exempted from conscription by royal law are obliged to do everything with their capabilities to assist those taking the field in the army who have gotten into difficulty, and [they are obliged] to go out to the aid of their brothers and save them from their enemies. We have already seen above, in the chapter about the War for the Peace for Galilee, the opinion of the *ga'on*, the *Hazon Ish* זצ"ל concerning exemptions from a *milhemet reshut*, who wrote that nobody is exempt except when Israel's victory does not depend upon them. But if they are needed, they are obliged to come to the aid of their brothers, and [thus] the matter has returned to *milhemet mitzvah*.

But when it is impossible to start a *milhemet reshut* without them, the [ones who would normally be eligible for] exemptions are conscripted according to the laws of the Torah. See [the discussion] there⁴⁴.

⁴⁴ In the chapter on the War for Peace in Galilee, not included in this thesis, on page 274, Goren cites the *Hazon Ish* on this matter. If the war, which would otherwise be classified as a *milhemet reshut* where the exemptions defined above are available, escalates to where every man is needed, then the principle of the obligation to save one's fellow Jew turns the war, in effect, into a *milhemet mitzvah* where no exemptions are available. But the *Hazon Ish* even goes as far as to say that, if the Sanhedrin or a prophet determine, even before the war begins, that the king in starting a *milhemet reshut* does not have sufficient manpower to successfully wage war without the above-exempted individuals, then all exemptions are called off and the call-up is universal as in a *milhemet mitzvah*.

EIGHT

CONCLUSIONS

From a religious standpoint, it should be rather simple to translate the ethical concepts of morality of war, *jus ad bellum*, and morality in war, *jus in bello*, into coherent and attainable moral standards. Certainly this should be the case within any one religious tradition, despite the sectarian nature of the five major world religions I have mentioned in this thesis. Even in a group that is not monolithic by nature, after all, if the various interpretive camps claim their authority from the same Holy Book or Books then one would expect a certain harmony on, at the very least, the life-and-death issues involved here. But this is not the case. As we have seen, doctrines vary considerably, perhaps most glaringly so within Christianity where a significant minority holds that *all* war is wrong, while the majority has never had trouble justifying wars.

And not only as concerns wars against "the Other"; as Timothy George pointed out, "One of the greatest sources of conflict in

Western history has been internecine warfare among Christians, all claiming to be followers of the Prince of Peace."¹ But the rest of us do not escape scrutiny; history has shown us that all the religions in question have been stages for both interreligious and internecine warfare.

What troubles me the most is the lack of emphasis and discussion of *jus in bello* in most of the religious traditions. In the case of Hinduism and Buddhism, this omission is somewhat understandable since the two, at least normatively, teach an unconditional abstinence from the taking of life². This notwithstanding, Hindus and Buddhists engage in war, and with no more restraint than the Western religions as regards the commission of atrocities.

In the case of Christianity, we see a minority arguing for complete pacifism. But the mainstream expression is that a just war is possible, and theologians from those sects that hold this

¹ Timothy George, "A Radically Christian Witness or Peace." Education for Peace: Testimonies from World Religions, 71.

² Although, in the case of Hinduism, we have seen that there are castes who see the waging of war not only as unproscribed but as incumbent upon them as the modern equivalent of Plato's Guardian class.

position have expended much ink in expounding on just war theory while remaining relatively silent regarding moral behavior *in* war. True, there were the chivalrous conventions between knights, but these must be seen as niceties between members of an elite class who, although they might have served various kings and lords, saw themselves as all belonging to the Christian Nation. But the restraints existing in knightly warfare never extended to the non-Christian "infidels" and "savages," and once warfare became the province of a broader base of the populations, the mutual restraint that characterized the age of chivalry largely disappeared.

Islam teaches much about the nature of peace. Riffat Hassan explains that "... in quranic terms, peace is much more than mere absence of war. It is a positive state of safety or security in which one is free from anxiety or fear."³ So far, so good; in Judaic terms, too, peace means more than an absence of shooting. The Hebrew word for peace, *shalom*, closely related to the Arabic *salaam*, comes from a root implying "wholeness."⁴ And just as the Hebrew/Arabic

³ Riffat Hassan, "Peace Education: A Muslim Perspective." Education for Peace: Testimonies from World Religions, 96.

⁴ I.e., שָׁלוֹם (*shalom*) comes from the root ש-ל-ם (*s-l-m*) which also gives us שָׁלֵם (*shalem*), "whole" or "complete." Education for Peace 97.

concept of *shalom/salaam* connotes more than an absence of conflict, so reconciliation in the New Testament goes far beyond the limits of passive nonviolence.⁵ But Hassan, in an essay whose ostensible purpose is to lay out the Islamic position on war and peace, handily avoids touching on the subject in any but the most abstract terms. He fills several pages with homilies on why just behavior is necessary for the Muslim, and he *does* take the time and space to say that Islam requires the giving of alms to the unfortunate, and the working to make Islamic society a "just" society, but he misses the opportunity to show exactly what Islam considers to be just behavior in the event of war. And when one reads that ". . . peace on earth (which is a precondition of peace in heaven) is the result of living in accordance with God's will and pleasure,"⁶ one might reasonably conclude that Islam (at least as interpreted by Hassan) defines peace completely in spiritual, other-worldly terms. The problem with this stance, of course, is that it effectively removes Islam as a force to bring about this-worldly

⁵ Timothy George, "A Radically Christian Witness or Peace." Education for Peace 65.

⁶ Hassan, "A Muslim Perspective." Education for Peace 97.

peace.

All the religions in question see themselves as sources of morality in its entirety, as it touches all areas of the adherent's life. If this is truly the case, and if religion is going to be a voice for morality among its adherents, must it abdicate the role of moral voice to not only lessen the incidence of war but also to ameliorate its brutality?

This brings us to Judaism. As we have seen from the portions of *Meishiv Milhamah* presented in translation here, normative Judaism through the ages has extensively addressed both *jus ad bellum* and *jus in bello*. Has that made Jewish hands any cleaner than others as regards their propensity to go to war and their behavior in war? Unfortunately, it is hard to answer his question. Where the ancient wars of conquest, vengeance, and border expansion are concerned, the scriptures of the Jewish people themselves make no attempt to "whitewash" the brutality of the Jewish armies. But if the ancients had no access to the extensive ethical teachings of the "Oral-Torah", or the extra-canonical Tradition within Judaism (assuming, in contrast to the Orthodox Jewish position, that it is a

product of a later period), then one should look only at Jewish behavior *after* the classical rabbinic period (i.e. after the sixth century of so CE), when the Talmuds were completed, to judge as to whether the ethical rabbinic teachings "took." But then the problem is that, from the first and second centuries of the Common Era until the early 20th century, there was no autonomous Jewish entity with the ability to wage war⁷. Thus, during almost two millennia that could only be characterized as bloody in terms of mankind's warmaking enterprise, the Jews simply were not in a position to engage in war at all, and one cannot fairly judge as to whether their ethical teachings *would have* prevented brutal behavior, had they been able to wage wars.

The modern state of Israel puts great emphasis on the teaching of *jus ad bellum* and *jus in bello*, as witnessed by the publication of Shlomo Goren's three-volume work, and by the extensive dialogue within Israeli society regarding *tohar haneshek*, "purity of arms." Has this manifested itself by making the behavior of Israeli

⁷ With the possible exception of the Khazar Kingdom in the Caucasus (south-central Russia), whose king Bulan and his nobles, along with a significant portion of the populace, embraced Judaism in the mid-eighth century. The kingdom was destroyed by the 11th century, with a remnant surviving a few more centuries.

governments and armies significantly better than those of other modern nations where restraint in entering into, and conduct in, war are concerned?

I would argue that it has. Realizing that others might argue otherwise, and understanding that I cannot be considered to be totally objective, I can find a reasonable defensive rationale for the three wars that Israel could be said to have "started," namely the 1956 Sinai Campaign, the 1967 Six Day War, and the 1982 Operation Peace for Galilee. I would concede that, in the case of the 1982 war, General Ariel Sharon and his strategists probably took the war much further than what would have been considered defensive by advancing to, and besieging, Beirut. At least this seems to be the consensus in Israeli society (although we have seen that Goren did not agree), and it was even expressed by then-Prime Minister Menahem Begin. And in the same war, Israeli military leaders clearly were culpable of some complicity in allowing the slaughter of Palestinians in the Sabra and Shatilla refugee camps by Lebanese Christian militiamen. But the public outcry that followed the massacres, and the opposition to the war's aims that caused (or,

perhaps, exacerbated) deep divisions within Israeli society, serve to show that these events were aberrations; they violated the moral code of *tohar haneshek* and the people knew it. The Israeli public expects its leaders, and its soldiers, to follow that code. Perhaps this is small comfort to the Palestinians who were massacred at Sabra and Shatilla, but it *does* show that the code was, and is, considered operative and binding.

I conclude that, while war is certainly undesirable in any form, its conduct can be made less brutal, and the religions of the world should provide the moral guidance to make it so. I would therefore argue for the utility, and the necessity, of a religious teaching on both *jus ad bellum* and *jus in bello*. If one does not learn restraint and a reverence for life from one's religion, then there will be a vacuum ready to be filled by the teachings of the likes of Carl von Clausewitz. He taught that war is just another instrument of *Staatspolitik* to be employed by a nation when other means, such as diplomacy, fail to achieve its aims⁸. Regarding restraint in war, Clausewitz wrote:

⁸ Michael Howard, "Constraints on Warfare." *The Laws of War*, 2.

Kind-hearted people might, of course, think there was some ingenious way to disarm or defeat an enemy without too much bloodshed and might imagine this is the true goal of the art of war. Pleasant as it sounds, it is a fallacy that must be exposed; war is such a dangerous business that the mistakes that come from kindness are the very worst.⁹

On one level, Clausewitz has a point: war is not, and can never be, nice. On the other hand, his dismissal of any tendency to introduce restraint by writing it off as misplaced kindness is disturbing. If all the great teachings of the world's religions regarding the sanctity of human life can be written off as the sentiments of kindhearted people, then the brutality that has characterized man's behavior in war will continue unabated.

Clausewitz and his On War are very popular with, and are often quoted by, military and political leaders in the Western World. The Chinese Sun Tsu and his The Art of War, expressing similar sentiments, are also popular. Instead of learning this *carte blanche* justification for going to war and for the unbridled application of force therein, we must be able to rely upon our religious traditions. If religion takes the "high ground" of simply arguing against war,

⁹ Carl von Clausewitz, On War, trans. Michael Howard and Peter Paret. Princeton: Princeton University Press, 1976, 75.

even defensive wars, then it will continue to be irrelevant in providing a moderating influence. That *tohar haneshek* is considered so essential a doctrine in Israel, whose society and army have been overwhelmingly secular, argues against the detractor who would point to the secularization of the modern world as a reason that a strong religious teaching on *jus ad bellum* and *jus in bello* would not necessarily be effective. We have restraints that are expressed in secular terms, namely the United Nations Charter and the Geneva Conventions. If each religion would articulate an ethical system similar to these legislative breakthroughs, perhaps we would see a higher incidence of compliance with them.

But what about nuclear weapons? Can it not be argued that, with more and more states joining the "nuclear club," the possibility of a war fought with restraint is becoming less and less real? If any war is more likely to explode into a nuclear exchange, can it not be argued that no war can be considered just? Martin Luther King, Jr., alluding to this argument, expressed his conviction:

Today the choice is no longer between violence and nonviolence. It is either nonviolence or nonexistence.¹⁰

A discussion on the immorality of, and a religious argument for the

dismantling of nuclear weapons, is far beyond the scope of this thesis. But regarding the tendency of some religious leaders to take a harder line against the idea of the just war because of the possibility of a nuclear exchange, I think it is important to make a point. As I have already pointed out, the tendency in the world's dominant religions with few exceptions is not to account for the reality of war by making significant efforts to regulate war's brutality. Thus, religion has largely abdicated, or at least underplayed, its role as moral agent for teaching restraint and ethical conduct in war, and this has not been to mankind's benefit. The coming of the nuclear age has not changed this; it has only increased the need for a moral force to witness for restraint.

Bava Batra. See Tractate Bava Batra.

Bava Kamma. See Tractate Bava Kamma.

Bava Metzia. See Tractate Bava Metzia.

¹⁰ Martin Luther King, Jr. Stride Toward Freedom. New York: Harper and Row, 1958.

GLOSSARY

Abba Sha'ul. Palestinian *Tanna* of the third and fourth generations.

aggadah. Literally, "telling." The non-legal elements in classical rabbinic writings: Talmud and midrash.

agunah. "Chained" woman. One whose husband has abandoned her without giving her a *get* (bill of divorcement). She is not allowed to remarry, and any children she bears are considered *mamzerim* (illegitimates: see *mamzerim*).

Avodat Kohavim U'mazalot. Tractate of the Rambam's *Mishneh Torah*.

Avot. See Tractate Avot.

Avot de Rabbi Natan. *Aggadic* midrash on Mishnah Avot (see Tractate Avot), including moral sayings by *tanna'im* absent from Avot itself. Perhaps produced originally by Rabbi Nathan the Babylonian in the 2nd-3rd century CE.

Babylonian Talmud. The Mishnah (see Mishnah), together with the *gemara* (see *gemara*) of the rabbis of Babylon, completed about 500 CE.

baraita. Literally, "external teaching." *Tanna'itic* teaching not found in the Mishnah; found in Tosefta and halakhic midrashim, and often cited and explained in the *gemara*.

Bava Batra. See Tractate Bava Batra.

Bava Kamma. See tractate Bava Kamma.

Bava Metzia. See Tractate Bava Metzia.

Beha'alotekha. See parashat Beha'alotekha.

beit din. A rabbinic court. See also Sanhedrin.

Beit Yosef. Joseph Caro's (1488-1575) comprehensive commentary on Jacob ben Asher's Arba'ah Turim (see Tur). Caro, who was born in Spain, began writing it during the years that he lived in Turkey (he moved to Turkey from Spain c.1490) and completed it after moving to Safed in the Land of Israel (in 1536). It was Caro's first important work on Jewish law, the second being the concise digest of the Beit Yoseph, called the Shulhan Arukh (See Shulhan Arukh).

Ben Azzai. See Rabbi Shim'on Ben Azzai.

Bikurim. See Tractate Bikurim.

Book of Commandments. See Sefer HaMitzvot.

Book of the Wars of the Lord. A reference to several passages in chapter 21 of the biblical Book of Numbers. Probably includes verses 14-15, 17-20, 27-30.

Cambridge Manuscript of the Mishnah. Authoritative manuscript of Mishnah, possibly dating to 9th century. Published by W.H. Lowe in 1883.

Ekev. See parashat Ekev.

Flavius Josephus (c. 38 CE-100 CE). Jewish Historian and one of the chief representatives of Jewish-Hellenistic literature. Controversial for his aligning himself with the Romans during the Jewish revolt against Vespasian in 66-73 CE, Josephus was the author of the important historical work, *The Jewish War*, about the ill-fated revolt.

Ga'on, the Hazon Ish. See Hazon Ish.

Gara. The Ga'on, Rabbi Elijah ben Solomon Zalman of Vilna (1720-1797), known as the Vilna Ga'on. Vilna's most prominent rabbinic scholar of his time, he was an uncompromising opponent of Hasidism.

Gemara. Rabbinic discussion and commentary on the Mishnah, preserved in the Talmuds. (see Mishnah, Babylonian Talmud, and Jerusalem Talmud)

gematria. Numerology. The practice of searching for hidden meanings in the Torah and other Hebrew documents (as well as names, dates, etc.) by using and manipulating numerical equivalents of the Hebrew letters and words of the text.

Genesis Rabbah. See Midrash Rabbah.

Genizah Manuscript of the Babylonian Talmud. Authoritative manuscript, but only extant in fragments, some of which have been published.

Ga'on Rabbi H. Heller. See Rabbi Hayyim Heller.

Ga'on Rabbi Meir Simcha [haKohen] of Dvinsk (1843-1926). The author of *Or Same'akh*, a commentary on the Rambam's *Mishneh Torah*, and *Hemshekh Hokhmah* on the Humash.

Gittin. See Tractate Gittin

Great Sanhedrin. See Sanhedrin.

Gush Emunim. Literally, "Bloc of the Faithful." An ultra-nationalist, religious movement to settle Jews in the occupied territory of the West Bank, called "Judea and Samaria" after the Biblical names of these lands by Gush Emunim's activists. Opposes any territorial compromise with the Palestinian Arab residents of the West Bank.

H. Heller. See Rabbi Hayyim Heller.

halakhah. The corpus of Jewish religious law. Alternatively, a single point of religious law.

halakhic. Adjective from halakhah: e.g. "halakhic ruling."

halakhot. Plural of halakhah.

haredi. Literally, "One who fears [God]." "Ultra-Orthodox," characterized in Israel by refusal to wear modern dress and absolute devotion to religious observance in a semi-cloistered community. In Israel, many of the haredis do not recognize the legitimacy of the state, since it was founded on secular principles and in advance of the coming of the Messiah.

Hatam Sofer. Title of collection of responsa by Moses Sofer (1762-1839), born in Frankfurt-am-Main and later chief rabbi of Pressburg (Bratislava), Hungary. He established a renowned rabbinical academy. He was known especially for his opposition of Reform and Zionism.

HaYad HaHazakah. See Mishneh Torah.

HaYafeh Mar'eh. See Nahalat Ya'akov.

Hazon Ish. Commentary on Joseph Karo's Shulhan Arukh, published in 1911 by Avraham Yeshayahu Karelitz (1878-1953).

Hemshekh'Hokhmah on the Torah. See Ga'on Rabbi Meir Simcha [ha-Kohen] of Dvinsk.

Hilkhot De'ot. Tractate of Rambam's Mishneh Torah.

Hilkhot Melakhim. Tractate of Rambam's Mishneh Torah.

Hilkhot Milhama VeTSava. Tractate of Rambam's Mishneh Torah.

Hilkhot Rotse'akh U'shemirat Nefesh. Tractate of Rambam's Mishneh Torah.

Hilkhot Sanhedrin. Tractate of Rambam's Mishneh Torah.

Hilkhot Sekhirut. Tractate of Rambam's Mishneh Torah.

Hilkhot Terumot. Tractate of Rambam's Mishneh Torah.

Hilkhot Teshuvah. Tractate of Rambam's Mishneh Torah.

Hilkhot Yom Tov. Tractate of Rambam's Mishneh Torah.

Hillel. See Rabbenu Hillel.

Hinukh, the. See Sefer HaHinukh.

hol hamo'ed. The intermediate days of the festivals of Sukkot-Shmini Atseret-Simkhat Torah and Pesakh. The days between the first and last day (in the Diaspora, the first two and last two days). On hol hamo'ed, the restrictions on work and other activities associated with a festival do not apply.

Hoshen Mishpat. See Tur Hoshen Mishpat.

Hullin. See Tractate Hullin.

Humash. The Five Books of Moses ("The Torah").

Jerusalem Talmud. The Mishnah (see Mishnah), along with the gemara (see gemara) of the rabbis of the Land of Israel, completed about 400 CE. Also known as the Palestinian Talmud, and the Talmud of the Land of Israel.

Kaufmann manuscript of the Mishnah. One of most important and authoritative extant manuscripts of the Mishnah, located in Hungarian Academy of Sciences in Budapest. Published in 1930.

Kiddushin. See Tractate Kiddushin.

Ki Tetze. See parashat Ki Tetze.

Leyden Manuscript of the Jerusalem Talmud. Sole extant complete version of the Jer. Talmud, written in 1289. Venice edition (see Venice Edition) based on it.

Maccabees (I and II). Books of the Apocrypha ("hidden" books); historical works dealing with the Hasmonean revolt against the Seleucid ruler Antiochus Epiphanes in the year 167 BCE.

Makkot. See Tractate Makkot.

Malbim. Meir Leib ben Yehiel Michael (1809-1979), Chief rabbi of Romania and commentator on the Torah. His commentary is known by the acronym for his name, Malbim. An uncompromising champion of Orthodoxy and opponent of acculturation among Jews.

mamzerim (singular "mamzer"). Illegitimates. Children born of an incestuous or adulterous union.

Matot. See Parashat Matot.

Megillah. See Tractate Megillah.

Meiri commentary on the Book of Psalms. Part of the commentary on the Bible by Menahem ben Solomon Meiri (1249-1316), French commentator and rationalist who is best known for his commentary on the Talmud.

Mekhilta, the. See Mekhilta de Rabbi Ishmael.

Mekhilta de Rabbi Ishmael. Tanna'itic midrash on Exodus, attributed to the disciples of Rabbi Ishmael.

Midrash. Corpus of rabbinic literature that expounds on the Bible, using various methods to extract non-apparent meanings from the text. Often classified into halakhic midrash (that dealing primarily with Jewish law) and aggadic midrash (that dealing with matters not necessarily halakhic).

Midrash Rabba. Printed collection of Midrashim on the Torah: Genesis Rabba, Exodus Rabba, Leviticus Rabbi, Numbers Rabba, and Deuteronomy Rabba.

Midrash Shahr Tov. Midrash Mishlei (Proverbs) is often, erroneously, referred to by this title. It is a homiletical midrash from the Middle Period (640-900 CE).

Midrash Tanhuma. Also referred to as Midrash Yelamdeinu, after language used throughout. Corpus of homiletical texts from Middle period (640-900 CE).

Midrash Tehillim. Exegetical midrash on Tehillim (Psalms), from Late-Middle Period (900-1100 CE).

midrashic literature. The entire corpus of literature that comes under the definition of "midrash."

midrashim. Plural of midrash.

Mikra'ot Gedolot. "Great Writings"; generic name for a printed edition of the Bible with some or all of the medieval Rabbinic commentaries printed along with the biblical text.

mikva'ot (singular: mikvah). Public baths used under various circumstances to achieve ritual purity.

milhemet hovah. Obligatory War. The original wars of conquest of the Land of Israel against the Seven Nations, and the wars of proscription against Midian and Amalek.

edition of the Babylonian Talmud, written about 1334

milhemet mitzvah. Commanded War. A "holy war" for the defense of the nation and land of Israel.

milhemet reshut. Optional war. A "profane" or political war for the expansion of Israel's borders or increasing its greatness or reknown.

milhemot mitzvah. Plural of milhemet mitzvah.

milhemot reshut. Plural of milhemet reshut.

Minhat Hinukh. Commentary on Sefer HaHinukh, by Joseph Babad ben Moses (1800- c. 1874/5).

Mishlei. The biblical Book of Proverbs.

mishnah. A verse, or concise statement, in the Mishnah.

Mishnah. The compilation of the Oral Law, arranged in six orders and 63 tractates, completed about 200 CE by Judah HaNasi.

Mishnah Avot. See Tractate Avot.

Mishneh Torah. The Rambam's monumental codification of the halakhah, completed in 1180.

mitzvah. Commandment. A divine precept.

mitzvot. Plural of mitzvah.

mizmor. Psalm. Many of the Psalms open with the words, *Mizmor l'David*: "A Psalm of David."

Mo'ed Katan. See Tractate Mo'ed Katan.

Munich manuscript of the Talmud. The only complete manuscript edition of the Babylonian Talmud, written about 1334.

Nahalat Ya'akov. Commentary on minor tractate Gerim found in Romm-Vilna editions of Babylonian Talmud. Written by Rabbi Jacob Neuberg of Offenbach.

Nedarim. See Tractate Nedarim.

Orakh Hayyim. See Shulhan Arukh Orakh Hayyim.

parashah. A portion of a larger text. Usually refers to one of the 54 divisions of the Humash (or Torah), one or two of which is/are read on every Sabbath in synagogues.

Parashat Beha'alotekha. Numbers 8:1-12:16.

Parashat Beshalah. Exodus 13:7-17:16.

Parashat Ekev. Deuteronomy 7:12-11:25.

Parashat Kedoshim. Leviticus 19:1-20:27.

Parashat Ki Tetze. Deuteronomy 21:10-25:19.

Parashat Mas'ei. Numbers 22:1-36:13.

Parashat Matot. Numbers 30:2-32:42.

Parashat Pinhas. Numbers 25:10-30:1.

Parashat Shira. See Parashat Beshalah.

Parashat Shof'tim. Deuteronomy 16:18-21:9.

Parashat Vayishlach. Genesis 32:4-36:43.

Parashat Yitro. Exodus 18:1-20:26.

Parma Manuscript of the Mishnah. One of the most authoritative manuscripts of the Mishnah.

Pesikta. See **Pesikta Rabbati**.

Pesikta Rabbati. Part of Tanhuma literature (see **Midrash Tanhuma**).
From Middle Period (775-900 CE).

Pinhas. See **parashat Pinhas**.

Pirkei de Rabbi Eliezer. Aggadic midrash of the Middle Period (about 750 CE).

piska. Paragraph.

poskim (singular **posek**). Halakhic decisors. Prominent rabbis to whom Jews turn for halakhic rulings.

Rabad. Abraham Ibn Daud (1110-1180). Spanish Jewish historian and philosopher. Author of *Sefer Kabbalah*, an historical work, and *Emunah Ramah*, a philosophical work.

Rabban Yohanan ben Zakkai (1st century CE). Leader of the Pharisees, president of the *Sanhedrin* at the time of the siege of Jerusalem by the Roman armies under Vespasian. Yohanan thought the war with Rome to be foolhardy, that it would ultimately be ruinous for the Jewish people. In order to preserve the Tradition, he escaped from Jerusalem and went to see Vespasian and asked him to spare the academy at Yavneh. The request was granted, and Yavneh became the center of Jewish learning.

Rabbenu Hananel [ben Hushiel] (11th century). North African rabbi, author of one of the first extensive commentaries of the Babylonian Talmud, and publisher of an edition of same (see next entry).

Rabbenu Hananel edition of the Babylonian Talmud (11th century). According to Ramban, the most reliable edition of the Babylonian Talmud.

Rabbenu Hillel (c. 70 BCE-c. 10 CE). A leader of the Pharisees during the reign of King Herod. Greatest sage of the Second Temple period.

Rabbi Akiva (c. 45-135 CE). Pre-eminent sage of the Mishnaic era, third-generation *tanna*, spiritual hero reknowned as one of the Ten Martyrs. One of the "Four Elders of Yavne" (with Rabbis Yossi the Galilean, Tarfon, and Elazar ben Azariah).

Rabbi Elijah. See Gara.

Rabbi Hayyim Heller (1878-1960). Rabbinical and biblical scholar, born in Bialystok. Established a modern Orthodox Yeshiva in Berlin in 1922, and moved to the United States to join the faculty of the Issac Elchanan Theological seminary in 1929. He published a number of important volumes; of particular note is his critical, scientific edition of Rambam's *Sefer HaMitzvot*.

Rabbi Ishmael [ben Elisha] (100-130 CE). *Tanna* of the third generation who helped to consolidate rabbinic Judaism in the years following the Temple's destruction in 70 CE. One of the Ten Martyrs. Student of Rabbis Joshua, Eliezer ben Hyrcanus, and Nehunyah ben haKanah. From his school came important halakhic midrashim, most notably *Mekhilta de Rabbi Ishmael* on Exodus, and *Sifrei* on Numbers and Deuteronomy.

Rabbi Meir (c. 110-c. 175 CE). Sage of the fourth generation, an outstanding scholar and master of dialectics. Student of Rabbis Akiva, Ishmael ben Elisha, and Elisha ben Abuyah.

Rabbi Nathan [of Babylonia]. *Tanna* who settled in the Land of Israel. Was elected head of the Sanhedrin. Probably participated in redaction of the Mishnah. Responsible for midrash *Avot de Rabbi Natan* (see *Avot de Rabbi Natan*).

Rabbi Nehemiah. Palestinian *tanna* of the fourth generation. Disciple of Rabbi Akiva.

Rabbi Shim'on Ben Azzai. Palestinian *tanna* of the third generation. Disciple of Rabbi Yehoshua ben Hananiah. Colleague of Rabbi Akiva.

Rabbi Shmu'el bar Nahman. Palestinian *amora* of the second and third generation. Disciple of Rabbis Yonatan and Yehoshua ben Levi. Colleague of Rabbi Elazar.

Rabbi Shim'on ben Elazar. Palestinian *tanna* of the fifth generation. Disciple of Rabbi Meir, colleague of Rabban Judah HaNasi.

Rabbi Simeon. See Rabbi Simeon bar Yohai.

Rabbi Simeon bar Yohai. *Tanna* of the fourth generation, outstanding student of Rabbi Akiva. Teacher of Raban Judah haNasi. Outspoken critic of Roman rule. The Zohar is popularly (and almost certainly erroneously) ascribed to his authorship.

Rabbi Tarfon. Palestinian *tanna* of the second and third generations. Disciple of Rabbans Gamliel HaZaken and Yohanan ben Zakkai. Teacher of Rabbis Yehudah, Yossi the Galilean, Hananiah ben Gamliel, and Shim'on Ben Azzai. One of the "Four Elders of Yavneh" (with Rabbis Yossi the Galilean, Elazar ben Azariah, and Akiva).

Rabbi Yehoshua ben Levi. Palestinian *amora* of the first generation. Teacher of Rabbi Shim'on.

Rabbi Yehudah bar Ilai (c. 100-c. 180 CE). Palestinian *Tanna* of the fourth generation; student of Rabbis Akiva and Tarfon. Teacher of Rabban Judah haNasi.

Rabbi Yohanan. Palestinian *amora* of the second generation. Disciple of Rabban Judah HaNasi.

Rabbi Yossi. Palestinian *tanna* of the fourth generation. Disciple of Rabbi Akiva. Teacher of Rabban Judah HaNasi. Colleague of Rabbis Meir, Yehudah, Shim'on, and Elazar.

Rabbi Yossi the Galilean. Palestinian *tanna* of the third generation. One of the "Four Elders of Yavneh" (with Rabbis Tarfon, Elazar ben Azariah, and Akiva).

Radak. Rabbi David Kimhi (1160-1235). Bible commentator and Hebrew grammarian of Provence. Rationalist pro-Maimonidian.

Radbaz. Rabbi David ben Solomon ibn Abi Zimra (1479-1573). Talmudic scholar, halakhic authority, and kabbalist. Published a number of important works, notably *Yakar Tiferet*, a commentary on parts of Rambam's *Mishneh Torah*.

Rah. Aaron ben Joseph Ha-Levi (c. 1235-1300). Spanish rabbi and halakhist.

Ramaz. Rabbi Moses Sebulun Margolies (1851-1936). Russian-born rabbi who moved to the United States in 1889 to assume the post of chief rabbi of Boston's Orthodox community. He later moved to New York, where he served as president of the Isaac Elchanan Theological Seminary for several years.

Rambam. Rabbi Moses ben Maimon (1135-1204), also known as Moses Maimonides. Spanish-born philosopher, halakhist, physician, and astronomer. The most illustrious figure in post-talmudic Judaism. Published many important works, including: *Commentary to the Mishnah*; *Sefer HaMitzvot*; *Mishneh Torah*; *Guide to the Perplexed*; and numerous responsa.

Ramban. Rabbi Moses ben Nahman (1194-1270), also known as Nahmanides. Bible commentator and Jewish communal leader in Gerona, Spain.

Rashba. Rabbi Solomon ben Abraham Adret (1235-1310). Rabbinic authority in Spain.

Rashbi. See Rabbi Simeon bar Yohai.

Shabbat. See Tractate Shabbat.

Rashi. Rabbi Solomon ben Isaac (1040-1105). Outstanding early commentator of Troyes, France; author of the most-studied commentaries on the Torah and the Babylonian Talmud.

Rif. Rabbi Isaac [ben Jacob] Alfasi (1013-1103). North African rabbinic scholar, disciple of Rabbenu Hananel (see Rabbenu Hananel), and author of *Sefer HaHalakhot*, a concise restating of the legal sections of the Babylonian Talmud that are relevant to the diaspora.

Rishonim. literally, "first ones." Early rabbinic scholars and commentators from the end of the Ga'onic period (11th century) to the publication of the *Shulkhan Arukh* in 1564).

Ritba. Rabbi Yom Tov ben Abraham Ishbili (1250-1330). Spanish talmudist.

Rosh. Rabbi Asher ben Yehiel (1250-1327). Talmudist, religious leader of German Jewry.

Rosh Hashanah. See Tractate Rosh Hashanah.

Sanhedrin. The supreme rabbinic court of the Land of Israel in the classical rabbinic period. Consisted of 71 members. Also referred to the Great Sanhedrin (*Sanhedrin Gadol*) or Great Court of 71 (*Beit Din Gadol shel 71*).

Sefer HaHinukh. Treatise on the 613 commandments. Written anonymously in the mid-13th century, often ascribed to the rabbinic authority Aaron Ha-Levi of Barcelona.

Sefer HaMelakhim. One of the 14 major sections of Rambam's *Mishneh Torah*.

Sefer HaMitzvot. Rambam's work on the 613 mitzvot.

Shabbat. See Tractate Shabbat.

Shammai the Elder. Palestinian *tanna*, colleague and contemporary of Hillel (see Rabbenu Hillel), and founder of a school of disciples whose opinions are frequently cited in the Mishnah. The School of Shammai was known for its stringency, while the School of Hillel was known for its leniency in halakhic rulings.

Shekhinah. God's Presence in the world.

Shevu'ot. See Tractate Shevuot.

shoresh. Literally, "root." Name given to paragraphs in Rambam's *Sefer HaMitzvot*.

Shulhan Arukh. Literally, "set table." Joseph Caro's (1488-1575) concise digest of his monumental codification of Jewish law, the *Beit Yosef* (see *Beit Yosef*). The *Shulhan Arukh* was universally accepted in the Sephardi world (i.e. among the Jews who were exiled from Spain). When Moses Isserlis of Crakow (c. 1525-1572) added his *Mappah* ("tablecloth"), a supplement to show where Ashkenazi custom (i.e., that of the Jews of northern Europe) differed, the two documents together became the universal codification for world Jewry.

Shulhan Arukh Orakh Hayyim (literally, "The Path of Life"). One of the four major sections of the *Shulhan Arukh*. Deals with religious conduct from waking up in the morning until going to bed at night: blessings, prayers, synagogue ritual; observance of the Sabbath, festivals, and fast days.

Shulhan Arukh Yoreh De'ah (literally, "The Teaching of Knowledge"). One of the four major sections of the *Shulhan Arukh*. Deals with forbidden and permitted things, including dietary laws, family purity, oaths, usury, and mourning.

Sifra debe Rav. A midrash on the biblical book of Leviticus. It is also known as simply "Sifra," or "Torat Kohanim" ("The Torah of Priests") because its content, following Leviticus, centers upon the laws of the priestly cult. It is believed to have been compiled by the Babylonian *amora*, Rav.

Sifrei. A collection of two *tanna'itic* midrashim, on the biblical books of Numbers and Deuteronomy. Both are considered primarily halakhic midrashim, although each also contains considerable aggadic material.

siman. Literally, "sign." The name given to paragraphs in some midrashic texts.

Smukhin. One of the 13 principles for the explication of scripture. When two words or phrases are located adjacent to one another in the text, even though they might belong to separate passages, one can assume a relationship between the two. The practice of using that juxtaposition to draw out an otherwise unapparent meaning is referred to as Smukhin.

Sotah. See Tractate Sotah.

sugya. A complete discourse on a particular subject in the Talmud.

sugyot. Plural of sugya.

surah. Chapter in the Qur'an, Islam's chief holy book.

Talmudic literature. The two Talmuds, Babylonian and Palestinian, and the Tosefta, as a complete corpus of literature.

Tanna de Bei Eliyahu Rabba. A probable reference to the tannaitic midrash *Seder Eliyahu Rabba*, which together with *Seder Eliyahu Zuta* comprises *Tanna de Bei Eliyahu*. A moralistic midrash of uncertain origin.

Tanna Kamma. In the Mishnah and other Tanna'itic literature, the first opinion cited on a particular subject.

Tanna'im (Singular: Tanna). The rabbinic sages, almost exclusively of the Land of Israel, of the period of the Mishnah (see Mishnah), about 20 CE to 200 CE. The word means "teacher."

Tanna'itic Midrashim. Midrashic texts originating from the schools of various tanna'im.

Targum. Literally "translation." A rendering of the scriptures from Hebrew into Aramaic. The targumim are also considered to be semi-midrashic texts, since they are interpretive translations. The earliest known targumim date from the mid-second century BCE.

Targum Onkelos. A targum based on a translation into Aramaic of the Greek rendering of the Bible by Onkelos the Proselyte (second century CE). This work, accomplished under the sanction of Rabbis Eliezer and Joshua, is referred to in the Talmud as the "authorized" translation of the scriptures.

Targum Yonatan. More properly referred to as the "Pseudo Jonathan Targum." A conglomerate of the Targum Onkelos (see Targum Onkelos) and the Palestinian Targumim.

Targumim. Plural of targum.

Torat Ha'Adam - Sha'ar HaSakanah. Torat Ha'Adam ("The Torah of Man") is a comprehensive monograph by Ramban (see Ramban) on all the laws concerning death. Sha'ar HaSakanah ("The Gate of Danger") is one of its chapters. The work was used by a number of important later authorities (e.g. Jacob ben Asher, Joseph Caro) in formulating their compendia of Jewish law.

Torat Kohanim. See Sifra debe Rav.

Treatate Berachot. Treatate of the Mishnah. Babylonian Talmud. 41a. Jerusalem Talmud. Deals with prayers and benedictions.

Tosafists. A class of scholars numbering about 300, about 100 of whom are known by name, who lived in France and Germany and contributed to the Tosefot (see Tosefot). Spanning the 12th to 14th centuries, the Tosafist school began with the Rashi's two sons-in-law.

Tosefot ("additions"). Commentaries on the Babylonian Talmud (or, some say, more a supercommentary on Rashi's commentary to the Talmud: see Rashi) written by the Tosafists (see Tosafists). Covering 30 tractates, the Tosefot are topical passages as opposed to a running commentary on the text (in the manner of Rashi's commentary).

Tosefta ("addition"). Collection of Tanna'itic teachings contemporaneous with, but not included in the Mishnah (see Mishnah). The Tosefta generally follows the Mishnah's organizational scheme.

Tosefta Sotah. The Tosefta on the same topics covered in Mishnah Sotah.

Tractate Avot. Tractate of the Mishnah. Teaches ethics and proper deportment.

Tractate Bava Batra. Tractate of the Mishnah, Babylonian Talmud, and Jerusalem Talmud. Deals with partnership, sales, promissory notes, and inheritance.

Tractate Bava Kamma. Tractate of the Mishnah, Babylonian Talmud, and Jerusalem Talmud. Deals with direct and indirect damages.

Tractate Bava Metzia. Tractate of the Mishnah, Babylonian Talmud, and Jerusalem Talmud. Deals with losses, loans, work, and wage contracts.

Tractate Berakhot. Tractate of the Mishnah, Babylonian Talmud, and Jerusalem Talmud. Deals with prayers and benedictions.

Tractate Bikurin. Tractate of the Mishnah and Jerusalem Talmud.
Deals with offering of the first fruits at the Temple.

Tractate Gittin. Tractate of the Mishnah, Babylonian Talmud, and Jerusalem Talmud. Deals with divorce, and the writing and sending of the *get* (bill of divorcement).

Tractate Hullin. Tractate of the Mishnah and Babylonian Talmud.
Deals with the laws of ritual slaughter and dietary laws.

Tractate Kiddushin. tractate of the Mishnah, Babylonian Talmud, and Jerusalem Talmud. Deals with the marriage act and the laws of genealogy.

Tractate Makkot. Tractate of the Mishnah, Babylonian Talmud, and Jerusalem Talmud. Deals with punishment by flagellation.

Tractate Megillah. Tractate of the Mishnah, Babylonian Talmud, and Jerusalem Talmud. Deals with the laws of Purim.

Tractate Mo'ed Katan. Tractate of the Mishnah, Babylonian Talmud, and Jerusalem Talmud. Deals with the laws of *hol hamo'ed* (the intermediate festival days).

Tractate Nedarim. Tractate of the Mishnah, Babylonian Talmud, and Jerusalem Talmud. Deals with various types of vows.

Tractate Rosh Hashanah. Tractate of the Mishnah, Babylonian Talmud, and Jerusalem Talmud. Deals with fixing the months and years, blowing the *shofar* (ram's horn), and the Rosh Hashanah prayers.

Tractate Sanhedrin. Tractate of the Mishnah, Babylonian Talmud, and Jerusalem Talmud. Deals with various types of courts, criminal law, and principles of faith.

Tractate Shabbat. Tractate of the Mishnah, Babylonian Talmud, and Jerusalem Talmud. Deals with the laws of the sabbath.

Tractate Shevu'ot. Tractate of the Mishnah, Babylonian Talmud, and Jerusalem Talmud. Deals with oaths.

Tractate Sotah. Tractate of the Mishnah, Babylonian Talmud, and Jerusalem Talmud. Deals with the laws concerning an adultress, murder in which the perpetrator is unknown, and war.

Tractate Yoma. Tractate of the Mishnah, Babylonian Talmud, and Jerusalem Talmud. Deals with the sacrifices and fast on Yom Kippur.

Tur ("Row"). Reference to the Arba'ah Turim ("Four Rows"), a codification of Jewish law written after Rambam's Mishneh Torah (see Mishneh Torah) by Jacob ben Asher (c. 1270-1340), the son of Asher ben Yehiel (see Rosh). Joseph Caro relied heavily upon the Arba'ah Turim in composing his law codes (see Beit Yosef and Shulhan Arukh).

Tur Hoshen Mishpat (literally, "The Breastplate of Judgement"). One of the four sections of the Arba'ah Turim. Deals with civil jurisprudence and legal procedure.

TZahal (צה"ל). Acronym for *tzava hagana l'Yisrael* (צבא הגנה לישראל), Army for the Defense of Israel, known in the West as the Israel Defense Forces or IDF.

Vayishlakh. See Parashat Vayishlakh.

Writings, the. The third section of the Hebrew Bible, after the Torah (the Five Books of Moses or "Humash") and the prophets. Contains various books, including the Psalms, Proverbs and other "Wisdom Books," the "Five Scrolls," and the Chronicles.

Yalkut. See Yalkut Shim'oni.

Yalkut Shim'oni ("Shimon's Compilations"). A comprehensive compilation of midrash and halakhah, following the biblical text in its entirety, composed in Germany in the early 13th century by Rabbi Shimon Rava, known as Rabbi Shimon ha-Darshan ("The Preacher").

Yehudah Hanassi. Son of Rabban Simeon ben Gamliel, Yehudah (referred to in the Talmud simply as "Rabbi"), whose life spanned the second and third centuries CE, was the redactor of the Mishnah (see Mishnah).

Yonatan ben Uziel. See Targum Yonatan.

Yoreh De'ah. See Shulhan Arukh, Yoreh De'ah.

Yosef ben Mattityahu HaCohen.. See Flavius Josephus.

Yossi. See Rabbi Yossi.

Zuckerman edition (of Tosefta Sotah). M.S. Zuckerman published the first critical edition of the Tosefta, mainly according to the Erfurt Manuscript, in 1881.

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