

**Preaching and Politics: A Critical Analysis of the Use of *Hilkhot  
Milchamah* in Reform Sermons on the Second Iraq War**

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# **Preaching and Politics: A Critical Analysis of the Use of *Hilkhoh Milchamah* in Reform Sermons on the Second Iraq War**

## **DIGEST**

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As their predecessors have for generations, contemporary Reform rabbis occasionally use their sermons to make social critiques on the most pressing moral and political issues of the day. In doing so, they may choose to cite classical Jewish texts in order to substantiate their arguments and infuse them with a measure of religious authority. Given the rabbi's role as the primary or sole mediator of tradition for many Reform congregants, it is of the utmost importance that the rabbi presents the textual sources transparently, so as not to misrepresent the tradition to congregants who may lack the training to know otherwise. To gain insight into how today's Reform rabbis approach this task, this thesis examines the ways in which a sample of twelve sermons use one particular textual rubric, *hilkhoh milchamah* (the laws of war), to address one of the most prominent political and moral issues of recent years, America's second war in Iraq.

Chapter One outlines the key elements of *hilkhoh milchamah* as they are presented in the classical sources and surveys alternate halakhic paradigms for evaluating war. Secondly, it provides an overview of secular Just War Theory, which proves to be an important influence on Reform thinking about war. Finally, the chapter provides a close reading of a 2002 CCAR *teshuvah* on the Iraq war, which serves as a primary source for Reform preaching on the issue.

Chapter Two engages in a close reading of the twelve sermons themselves, examining their treatment of *hilkhot milchamah*'s key elements in light of how the classical sources and the CCAR *teshuvah* understand them.

Chapter Three looks at the role of the sermon in the contemporary Reform context, and considers how the use of Jewish textual citations can strengthen the sermon as an educational tool, as a means of demonstrating Judaism's continued relevance to modern life, and as a vehicle for making a social critique on the basis of Jewish teachings.

Chapter Four examines the sermons as functionaries in the arena of public discourse. To aid in this endeavor, the chapter looks closely at a 2007 URJ resolution on the Iraq war, which presents *hilkhot milchamah* in much the same way that the sermons do and, like the sermons, seeks to impact the secular political community. Given these similarities, the chapter examines both the resolution and the sermons as forms of public discourse in a liberal society, and considers their consistency with the Reform movement's professed commitment to the separation of religion and state.

The Conclusion highlights four key issues for future consideration regarding the use of classical Jewish text in Reform discourse.

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## INTRODUCTION

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### I. Overview of the Project

*"I believe that, in applying traditional Jewish sources to complex current issues, one must add many political, social, and economic assumptions. My impression is that many rabbis don't bring those assumptions into the open, and make it seem as if their opinions flow directly from the Bible or Talmud."*

—Rabbi George Barnard, Northern Hills Synagogue, Cincinnati, Ohio<sup>1</sup>

By virtue of their learning and ordination, members of the clergy, it is safe to say, are regarded by their congregants or parishioners as credible spokespeople for their respective religious traditions. When a rabbi, for example, states his understanding of Judaism's teachings regarding a particular issue, he should expect that his audience will receive his pronouncement as an accurate and authoritative representation of Jewish tradition, if for no other reason than they believe that his knowledge of Jewish sources and thought is, in the main, greater than theirs.

This is certainly the case in the contemporary Reform community, in which what twentieth century Orthodox Rabbi Morris Adler termed "the Jewish lag"<sup>2</sup> – i.e., the deficiency of Jewish knowledge among otherwise highly educated individuals – is particularly pronounced. Because many Reform congregants receive little, if any, Jewish instruction outside the synagogue walls, their rabbi's interpretation of Judaism may be the only one to which they are ever exposed. Consequently, by default if not by choice, many Reform congregants may come to accept their rabbi's presentation of the tradition as the definitive Jewish view; to wit, whatever the rabbi teaches them that the tradition says may be, as far as many congregants are concerned, what the tradition says.

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<sup>1</sup> As quoted in an email to this author, 14 January 2007

<sup>2</sup> As quoted in Freidenberg, 110

Therefore, Reform rabbis, in teaching and preaching Judaism, bear significant responsibility, as Rabbi George Barnard suggests, to do so transparently and with awareness of the need to provide necessary contextual information, so as not to inadvertently misrepresent the tradition to listeners who lack the training to know otherwise.

While rabbis teach Jewish tradition in a variety of forums, including adult education classes, Torah study sessions, and informal discussions, none may be as important as the sermon. Perhaps because sermons tend to reach more congregants at any one time than most other forms of rabbinic communication, Reform rabbis, for generations, have used the sermon not only to teach Judaism, but also to demonstrate the tradition's relevance to contemporary life and to make religious critiques on the most pressing political and social issues of the day, from labor and civil rights to the Vietnam war. Though the rabbi's role as preacher has evolved over time, many Reform rabbis continue to use the sermon to address contemporary issues in Jewish terms and, in so doing, to inspire their listeners to take action on the basis of Jewish principles.

Because their credibility to speak to secular issues from the pulpit flows from their perceived knowledge of Jewish teachings, rabbis may choose to cite Jewish textual sources in their sermons in order to substantiate their arguments and infuse them with a measure of religious authority. Given the rabbi's role as the sole or primary mediator of tradition for many Reform congregants, it is of particular interest to explore the ways in which Reform rabbis use Jewish textual references in their sermons. To that end, this thesis will examine the use of classical Jewish text in a selection of Reform sermons on a prominent contemporary secular issue, America's second war against Iraq, which

commenced in March 2003. While this study could examine sermons on any contemporary issue, it has chosen to focus exclusively on those addressing the Iraq war because, put simply, the war is one of the most prominent moral and political issues of the twenty-first century.

It is not this study's purpose to advocate for a particular position on the Iraq war on the basis of Jewish texts. Rather, it is concerned only with how the sermons use text to educate congregants about Jewish views on war and to influence their thinking about the current situation. Specifically, this study will consider the following issues:

- **Text selection.** All of the sermons that this study will examine use the same textual rubric to address the Iraq war. Why do they use this particular rubric and what are the issues surrounding its use?
- **Context.** How do the sermons' representations of the textual rubric comport with the rabbinic literature's conception of it?
- **Interpretation.** How do the sermons interpret and apply the rubric to the Iraq war? If their interpretations differ from those in the classical literature, how do outside concepts and circumstances influence the way the sermons present the textual tradition?
- **Religious Authority.** How does the use of text enhance a sermon's religious authority? How do rabbis use this authority to impact the thinking and actions of

their congregants? What are the implications of this use of religious authority for the relationship between religion and state?

## **II. The Sermons: Acquisition and Nature of the Sample**

While curiosity about how Reform rabbis may have used text to preach about the Iraq war was the genesis of this study, it began with no preexisting knowledge of whether or not such sermons existed. To assess the feasibility of this project, a letter was sent via email by this study's author to Hebrew Union College's (HUC) list of rabbinic alumni explaining the aims of the study and asking rabbis to submit any sermons they may have delivered which (1) treat the Iraq war as the primary topic of discussion and (2) use classical Jewish text in addressing the issue.<sup>3</sup> While it is not known how many rabbis received the email, this initial solicitation generated approximately one hundred responses. More than fifty percent of those who responded indicated that they had not delivered a sermon about the Iraq war, a statistic that may reveal much about the willingness of contemporary Reform rabbis to address controversial political topics from the pulpit. (While this phenomenon is beyond this study's scope, it would be a fascinating topic of future examination.) Approximately forty-one sermons were received in response to this initial email. A second request, posted on an HUC alumni listserv by Dr. Gary P. Zola, Executive Director of the Jacob Rader Marcus Center of the American Jewish Archives, generated one additional sermon.<sup>4,5</sup>

Considering the number of currently practicing Reform rabbis who may have preached about the Iraq war but, for one reason or another, chose not to participate in this

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<sup>3</sup> This solicitation letter is included as an appendix to this study.

<sup>4</sup> Zola's letter is included as an appendix to this study.

<sup>5</sup> All 42 sermons are part of a special collection on the Iraq war at the American Jewish Archives.

study, the relatively small sample of forty-two sermons is not a statistically significant one. Moreover, because these sermons were collected from a self-selecting group of rabbis rather than via a scientific method of sampling, they cannot be considered necessarily representative of Reform Iraq war preaching on the whole. Still, the sample is significant anecdotally, in that it represents a snapshot of what some Reform rabbis have said about the Iraq war. As such, an analysis of how they use text to preach about the war can be quite instructive in illuminating various homiletical strategies that are current in certain quarters of the Reform movement.

Not all forty-two sermons were usable for purposes of this study. Some of them include no textual citations at all. Others that do contain some textual references do not use them in direct relation to a discussion of the Iraq war. Still others, which deal with more than one topic and treat the Iraq war only briefly, do not lend themselves to the kind of substantive analysis in which this study engages. By contrast, approximately twenty-four (fifty-seven percent) of the submitted sermons deal with the Iraq war extensively and by using classical text; as such, these were deemed to be usable for this analysis. While these sermons address the war in disparate ways, most of them pursue one of two discrete thematic approaches:

- (1) **Liberation.** Some of the sermons base their discussions on the theme of liberation, and attempt to relate the biblical Israelite experience and Jewish teachings on liberation to the Iraq war, approaching it as a humanitarian intervention for the purposes of liberating the Iraqi people from Saddam Hussein.

Sermons that take this approach constitute approximately one-third of the total sample of forty-two.

(2) **Halakhic War/Just War.** A number of sermons base their discussions on *hilkhot milchamah* (“the laws of war”), a legal rubric that governs the wars waged by the halakhic Jewish state in *Eretz Yisrael*. On the basis of this rubric, these sermons attempt to establish Jewish criteria for evaluating various facets of the Iraq war, from pre-war debate and diplomacy to the initiation of hostilities and the conduct of battle. The sermons suggest that these criteria can be used to determine whether or not the war in Iraq is “legitimate” and “just.” The twelve sermons that take this approach constitute approximately one-third of the total sample.

Though the two thematic groups are roughly equal in number, the liberation sermons use a variety of textual references, from the Exodus narrative to the Pesach Hagaddah and the daily liturgy, while the “halakhic war/just war” sermons all use the same textual rubric, *hilkhot milchamah*, to frame their discussions. As such, more sermons use *hilkhot milchamah* to discuss the Iraq war than use any other single textual paradigm. Because of this strategy’s prominence among the sermons received and because, as will be demonstrated, the application of *hilkhot milchamah* to a secular war raises a host of contextual and interpretive issues, this study will focus exclusively on examining the use of text in the twelve “halakhic war/just war” sermons (henceforth referred to as the “*hilkhot milchamah* sermons” or, simply, “the Reform Iraq war sermons”).



### III. Methodology

In his book *Witness from the Pulpit*, Rabbi Marc Saperstein, a noted homiletics scholar, identifies six “constituent elements of a sermon”: (1) the written record of what was said; (2) the rabbi’s delivery, e.g., his diction, pace, emphases, etc.; (3) the personality, reputation, and perceived credibility of the preacher; (4) the knowledge and expectations that the audience brings to the sermon; (5) the physical setting in which the sermon is delivered; and (6) “the unique historical moment in which all of the above is conjoined: what from the outside world imposes its presence into the serenity of the synagogue service and demands to be addressed.”<sup>6</sup>

It is important to note that, in the context of this study, the *hilkhot milchamah* sermons will be analyzed with knowledge only of the first and the sixth of these elements. The written sermons were, of course, provided by the preachers themselves, and it is known that they were delivered at various points of import in the lead-up to, and during the conduct of, the Iraq war. Indeed, a significant percentage of them were delivered between August 2002 and March 2003, as the country and the Congress debated a potential strike against Iraq or soon after the launch of the war in March 2003. Two others were delivered as national elections approached, one in November 2002 and one in October 2004. Several others were delivered at the High Holidays, when the rabbis would presumably have been able to reach their largest audiences.

This study pursues its analysis without knowledge of the other key constituent elements, all of which are essential to a full understanding of the sermon. Equally importantly, it is not known whether any of the participating rabbis supplemented their

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<sup>6</sup> Saperstein, H., 16

sermons with adult education seminars, written material, or other means of teaching congregants about *hilkhot milchamah*. To reiterate, all that is known about the sermons are (a) what is written on the pages and (b) the nature of the particular historical moment in which they were delivered. The aim of this study, therefore, is to examine the sermons' use of *hilkhot milchamah* only on the basis of the available information. While insight into the various rabbis' reputations, listeners' background knowledge, and the extent to which *hilkhot milchamah* was or would be discussed in other forums would certainly enhance the analysis of the sermons, it is hoped that this study will nevertheless prove fruitful for what it reveals about how some Reform rabbis interpret and present this halakhic rubric to their congregants.

In addition to the twelve sermons themselves, this study will also examine (a) the classical sources' discussions of *hilkhot milchamah*; (b) a *teshuvah*, authored by the Central Conference of American Rabbis' (CCAR) Responsa Committee, that applies the halakhic rubric to the Iraq war and serves a primary source for a number of the sermons; and (c) various materials published by the Union for Reform Judaism, including a 2007 resolution that uses *hilkhot milchamah* to advocate for a change in U.S. policy on Iraq. The ensuing analysis will subject all of these various texts to a "close reading," which, as pursued by this study, involves careful scrutiny of a text's context, language, phrasing, and argumentation in order to gain insight into aspects and implications of that text which may not be apparent on a surface reading.

As applied to the sermons specifically, the close-reading method seeks to identify the interpretive techniques, implicit concepts and themes, unarticulated assumptions, key inclusions and omissions of information, and other factors – embodied in the broad

homiletical framework as well as in the subtleties of individual statements and phrases – that shape a sermon’s analysis. Put another way, this method of reading aims to highlight those aspects of a sermon that together create a particular understanding of *hilkhot milchamah*, which, in turn, may ultimately influence listeners’ thinking about the Iraq war in a Jewish context.

#### **IV. Roadmap of the Study**

This study is comprised of four chapters and a conclusion. Chapter One introduces *hilkhot milchamah* and surveys the rubric’s various elements which are utilized by the sermons, i.e., the definitions of halakhic war categories and laws governing the authorization of war, pre-war peace initiatives, military service, and the army’s conduct in battle. After examining the classical sources, the chapter surveys alternate halakhic paradigms used by contemporary Orthodox and Conservative thinkers to evaluate secular war. In addition, it provides an overview of secular Just War Theory, which proves to be an important influence on Reform interpretations of *hilkhot milchamah*. Finally, the study performs a close reading of the CCAR’s 2002 *teshuvah* on “Preventive War.”

In Chapter Two, the study engages in a close reading of the twelve *hilkhot milchamah* sermons. Its aim is to examine the sermons’ interpretations and applications of the rubric in light of how the traditional sources and the CCAR *teshuvah* understand it. The chapter looks at how the sermons explain their selection of this particular paradigm to evaluate the Iraq war, explores their treatment of each of the key elements outlined above, and considers the importance of the CCAR *teshuvah* as a source.

Once it has been shown how the Reform Iraq war sermons use *hilkhot milchamah*, Chapter Three looks at the role of the sermon in the contemporary Reform context. It also considers how the use of Jewish textual citations can strengthen the sermon as an educational tool, as a means of demonstrating Judaism's continued relevance to modern life, and as a vehicle for making a social critique on the basis of Jewish teachings.

Following this discussion of the textual sermon's aims, Chapter Four examines the sermons as functionaries in the arena of public discourse. To aid in this endeavor, the chapter looks closely at the 2007 URJ resolution on the Iraq war, which presents *hilkhot milchamah* in much the same way that the sermons do and, like the sermons, seeks to impact the secular political community by influencing the thinking and actions of its audience. Given these similarities, the chapter examines both the resolution and the sermons as forms of public discourse in a liberal society, and considers their consistency with the Reform movement's professed commitment to the separation of religion and state.

The Conclusion highlights four key issues for future consideration regarding the use of classical Jewish text in Reform discourse.

## **V. A Word About the Participants**

The rabbis who voluntarily participated in this study by submitting their sermons for scrutiny are owed a debt of gratitude. They wrote their sermons to educate and inspire a lay audience, not to be published in an academic journal. In this sense, perhaps it is not entirely reasonable to expect that their presentation of complex halakhic material should be able to withstand the intense scrutiny that a close reading entails. It is

important to acknowledge that, because the authors of these sermons surely face the demanding schedules characteristic of the modern Reform rabbinate, their time for researching and writing sermons is no doubt limited. This study's conclusions regarding their sermons should be read with this reality in mind.

Though, to be sure, this analysis is often critical of their work, it is apparent that the participating rabbis prepared their sermons with the sincerest of intentions and with deep love for Judaism. To the extent that this study critiques their work, it does so with the belief that such critiques can help provide valuable insight into the complex issues involved in the interpretation and application of classical texts to contemporary political topics. It is the hope of this study that these rabbis' generosity in subjecting their work to close scrutiny will benefit all of their present and future colleagues in the Reform rabbinate.

## CHAPTER ONE

### *Hilkhot Milchamah: Textual Background and a Reform Interpretation*

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#### I. Introduction

In his novel *Mila 18*, Leon Uris laments “the organized art of murder known as war.”<sup>7</sup> A brutal endeavor, war inevitably involves the killing of innocent people: for example, civilians are sometimes caught in military crossfire, whole villages may be destroyed in an operation to weed out enemy combatants, or an unsuspecting night janitor might be killed when the military complex where he works is bombed. Given this reality, the Torah’s law against murder (Exodus 20:13) would seem to preclude the halakhic state from fighting war; yet the Tanakh recounts numerous Jewish wars, from the Israelites’ wars in the wilderness and Joshua’s wars of conquest in Canaan to Judah’s wars against foreign invaders.

On the basis of these biblical accounts, the rabbinic tradition expounds *hilkhot milchamah* (the laws of war) as a distinct legal institution. Within this framework exclusively, the state is permitted to wage war even though innocents will certainly die in the process. To wit, killing within the context of halakhic war is not murder. However, to prevent the Jewish state from acting recklessly, *hilkhot milchamah* requires it to follow strict guidelines in the initiation and conduct of war. The Jewish state is forbidden from waging war outside the parameters of this discrete legal institution.

Because many Reform rabbis use *hilkhot milchamah* in their sermons on the Iraq war, it is necessary to examine this rubric in detail and consider its usefulness as a homiletical paradigm.

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<sup>7</sup> Uris, 93

## II. War as a Distinct Halakhic Institution

### A. *Hilkhot Milchamah*

Following the majority opinion of the Talmudic sages, Maimonides, in the *Mishneh Torah*, identifies two categories of war that the Jewish state may wage: 1) *milchemet mitzvah*, war that is commanded by God and is thus incumbent upon the Jewish state; and 2) *milchemet ha-reshut*, war that is discretionary in the sense that it is not commanded, so man, not God, is the initiator. Three kinds of war are considered *milchemet mitzvah*, commanded war<sup>8</sup>:

- (1) **War against the Seven Nations that occupied Canaan.** On the basis of Deuteronomy 20:17-18, Israel is commanded to exterminate these nations.<sup>9</sup> Maimonides maintains, however, that “the memory [of the Seven Nations] has already been obliterated,”<sup>10</sup> so, while the commandment to annihilate them technically remains operative should they reconstitute themselves, it is presently impossible to wage war against them.
- (2) **War against Amalek.** Israel is commanded to destroy Amalek on the basis of Deuteronomy 25:19.<sup>11</sup> However, authorities maintain that this commandment is presently inoperative<sup>12</sup>, and much of the rabbinic literature

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<sup>8</sup> *Mishneh Torah, Melakhim* 5:1

<sup>9</sup> *Sefer ha-Mitzvot*, pos. comm. 187

<sup>10</sup> *Mishneh Torah, Melakhim* 6:4

<sup>11</sup> *Sefer ha-Mitzvot*, pos. comm. 188

<sup>12</sup> *Sefer Mitzvot Gadol*, neg. com. 226

relates to Amalek as “a homiletical device, a symbol of irrational hatred and evil rather than the name of an actual people.”<sup>13</sup>

- (3) **War to assist Israel from an enemy that comes upon them.** This is understood as defensive war. Maimonides does not indicate his sources for this form of commanded war, nor do the commentaries to the *Mishneh Torah* elucidate them. Most likely, he derives this obligation from a Talmudic passage requiring Jews to defend their city against aggressors on Shabbat.<sup>14</sup>

Maimonides defines *milchamot ha-reshut*, discretionary wars, as consisting of two kinds of war.<sup>15</sup> These are wars fought with the Remaining Nations (i.e., not the Seven Nations or Amalek) to:

- (1) **Expand the borders of Israel.** Halakha permits the Jewish king to conquer lands outside *Eretz Yisrael* and incorporate them into his domain. According to Maimonides, “All the lands which Israel conquers...have the same status in every regard as *Eretz Yisrael* which was conquered by Joshua.”<sup>16</sup>

- (2) **Magnify the king’s greatness and reputation.** *Lechem Mishneh*, a sixteenth century commentary on the *Mishneh Torah*, understands the intent of such war to be “so that [other nations] will fear [the king] and not attack him” – in

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<sup>13</sup> CCAR Responsa Committee, 2

<sup>14</sup> *Eruvin* 45a

<sup>15</sup> *Mishneh Torah, Melakhim* 5:1

<sup>16</sup> *Mishneh Torah, Melakhim* 5:6 (Touger translation, 84, 86)



other words, preventive war in its broadest sense. However, on the basis of Maimonides' other writings, most scholars understand this form of *milchemet ha-reshut* more narrowly.<sup>17</sup>

Distinct laws govern *milchemet mitzvah* and *milchemet ha-reshut*, respectively. Guidelines regarding authorization for war, pre-war peace initiatives, military service, war tactics, and killing during combat, among other such matters, distinguish the two categories. Not surprisingly, *milchamot ha-reshut*, which are launched on man's initiative, are subject to more restrictive parameters than *milchamot mitzvah*, which are commanded by God.

Because God has already commanded the Jewish state to wage *milchamot mitzvah*, Maimonides contends that the king, Israel's chief executive, has sufficient authority to wage these wars on his own volition. (Nachmanides and Rashi, though, require the additional consent of the *urim* and *tumim*, the oracles embedded on the High Priest's breastplate.<sup>18</sup>) On the other hand, because *milchamot ha-reshut* lack the prior authorization of divine commandment, the king cannot wage them on his own; rather, he must first obtain the approval of both the Great Sanhedrin and the *urim* and *tumim*.<sup>19</sup> To wit, God's express authorization for war is *always* required: the Torah provides it for

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<sup>17</sup> This category of *milchemet ha-reshut* will be discussed in greater depth below, in the discussion of preventive versus preemptive war in Halakha.

<sup>18</sup> Nachmanides, *Hosafot to Sefer ha-Mitzvot*, substitute neg. comm. 17. Rashi's comment to Num. 21:27 states: "Even Joshua would need Elazar [the priest, before going out to war]." Because Joshua's wars against the Canaanite nations were all *milchamot mitzvah*, it seems that Rashi concurs that the consent of the *urim* and *tumim* are required for *milchemet mitzvah*.

<sup>19</sup> Nachmanides (ibid). Though Maimonides, in the *Mishneh Torah*, mentions the Sanhedrin but not the *urim* and *tumim*, he does write in the Introduction to *Sefer ha-Mitzvot* (*shores* 14): "It is known that war and the conquering of the cities cannot [occur] except with a king, the counsel of the Great Sanhedrin, and the High Priest," implying the necessity of the oracles.

*milchemet mitzvah*, while the *urim* and *tumim* provide divine consent for *milchemet ha-reshut*.

The Torah (Deuteronomy 20:10) requires that, before commencing military action, the Jewish king must give his enemy the option of accepting a peaceful settlement. Maimonides and Nachmanides require this in both *milchemet mitzvah* and *milchemet ha-reshut*.<sup>20,21</sup> However, Rashi and ibn Ezra contend that the king must propose peace only before waging discretionary war, but not in advance of commanded war.<sup>22</sup> At a minimum, then, the mandate applies in cases of *milchemet ha-reshut*, and the Jewish army may attack only if the enemy refuses the terms of peace.

In modern diplomacy, countries on the brink of war may reach a peaceful settlement on any terms they choose, but Halakha does not grant the Jewish state such latitude with its enemies. Rashi explains that the required terms of peace, which the king must offer and the enemy must accept in order to avoid war, are “tribute and subjugation.”<sup>23</sup> Maimonides expounds the details of these terms:

The subjugation they must accept consists of being on a lower level, scorned and humble. They must never raise their heads against Israel, but must remain subjugated, under their [rule]. They may never be appointed over a Jew in any matter whatsoever.

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<sup>20</sup> *Mishneh Torah, Melakhim 6:1*

<sup>21</sup> Nachmanides, *Commentary on the Torah*, Deut. 20:10

<sup>22</sup> Rashi, *Commentary on the Torah*, Deut. 20:10; Abraham ibn Ezra, *Commentary on the Torah*, Deut. 20:10. Both commentators derive this law on the basis of *Sifre (Shoftim 20, section 199)*. Nachmanides, who requires a peace offer in both *milchemet mitzvah* and *milchemet ha-reshut*, bases his ruling on an alternate interpretation of the same midrash (cf., Nachmanides, Deut. 20:10).

<sup>23</sup> Rashi (ibid.)

The tribute they must accept consists of being prepared to support the king's service with their money and with their persons; for example, the building of walls, strengthening the fortresses, building the king's palace and the like.<sup>24</sup>

In addition to subjugation and tribute, Maimonides requires the enemy nation also to agree to live by the seven Noachide commandments.<sup>25</sup> He applies this formula to *any* enemy – whether the Canaanite nations, Amalek, or one of the Remaining Nations – in both *milchemet mitzvah* and *milchemet ha-reshut*. Other authorities, however, contend that the requirement to accept the seven Noachide commandments applies only to Amalek and the Canaanite nations, but not to other enemies with whom Israel may negotiate.<sup>26,27</sup>

If the enemy nation refuses the king's peace proposal, then war commences. Military service is compulsory. The Torah (Deuteronomy 20) provides for a number of exemptions from wartime service; however, the Mishnah rules that these exemptions apply only in *milchemet ha-reshut*. In *milchemet mitzvah*, "all go forth, even a bridegroom out of his chamber and a bride out of her bridechamber."<sup>28</sup> It must be

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<sup>24</sup> *Mishneh Torah, Melakhim* 6:1 (Touger, 104)

<sup>25</sup> *Mishneh Torah* 6:1, 6:4. Summarizing Maimonides' position, *Minchat Chinukh*, commandment 527, s.v. "In *Milchemet Mitzvah*," states: "If [the enemy] desires to make peace, they need to accept upon themselves the seven [Noachide] commandments, and also [agree] to tribute and to be servants... If they do not want to accept all of these [terms], even if there is just one of [these terms] that they do not want to accept... it is as though they do not want to make peace at all."

<sup>26</sup> Ra'avad, a contemporary of Maimonides who commented on the *Mishneh Torah*, writes: "We demand nothing [of the enemy] in *milchemet ha-reshut* except tribute" (comment on *Melakhim* 6:1).

<sup>27</sup> In determining which nations are required to accept the seven commandments, Nachmanides makes a distinction based on the nation's proximity to *Eretz Yisrael*. He writes in his Torah commentary (Deut. 20:10): "It appears that regarding the terms of peace, there were differences [between what was offered 'the very far off cities' (Deut. 20:15) and what was offered to the Seven Nations], for, with reference to the distant cities, we ask that they make peace and become tributary to us and serve, but regarding 'the cities of [the Seven Nations]' (Deut. 20:16) we request of them peace, tribute and service, on the condition that they agree not to worship idols... [meaning] that they accept upon themselves the seven commandments in which the sons of Noah were commanded..." Chavel, 239-240.

<sup>28</sup> *M. Sotah* 8:7 (Danby translation, 303)

emphasized that military service, whether in commanded or discretionary war, is a matter not of choice, but of law.

In battle, too, the Jewish army must conduct itself in accordance with halakhic guidelines.<sup>29</sup> For instance, soldiers must not wantonly stop up a stream or destroy trees, buildings, garments, utensils, or food.<sup>30</sup> The army may not surround the enemy on all sides but, rather, it must leave one avenue of escape for those who do not wish to fight.<sup>31</sup> Within such parameters, however, the army should do what it takes to prevail. Rashi maintains that the Jewish army is permitted “even to starve [the enemy city] and to cause it thirst and to bring it death by disease.”<sup>32</sup>

The law also dictates who should be killed and who should be spared. In *milchemet ha-reshut*, according to Maimonides, “we are commanded to slay all the male population, young and old, and to take everything that belongs to them, including their women.”<sup>33</sup> On the other hand, in *milchemet mitzvah* against the Canaanite nations or Amalek, “not one soul of them may be left alive”<sup>34</sup>; “[we are] commanded...to destroy even the women and children.”<sup>35</sup>

To summarize, the following laws govern the wars of the halakhic Jewish state:

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<sup>29</sup> In addition to those that are mentioned here, there are a number of religious guidelines that govern war: For example, *milchemet ha-reshut* must begin at least three days before Shabbat (*Mishneh Torah, Melakhim* 6:11), soldiers may eat normally forbidden *demai* (6:13), and carrying from one domain to another within the camp is permitted, under limited circumstances, on Shabbat (6:13).

<sup>30</sup> *ibid.*, 6:8. Maimonides prohibits wanton destruction of trees, not only in war, but in all situations. He writes, however: “[A fruit tree] may be cut down if it causes damage to other trees, to fields belonging to others, or if a high price [could be received for its wood]. The Torah only prohibited cutting down a tree with destructive intent.” (Touger 116, 118)

<sup>31</sup> *Mishneh Torah, Melakhim* 6:7. Radbaz (*ad loc*) and Nachmanides (*Hosafot to Sefer ha-Mitzvot*, substitute pos. comm. 5) maintain that this requirement applies only in *milchemet ha-reshut*, but not in *milchemet mitzvah*.

<sup>32</sup> Rashi, *Commentary on the Torah*, Deut. 20:12

<sup>33</sup> *Sefer ha-Mitzvot*, pos. comm. 190 (Chavel translation, 204)

<sup>34</sup> *Mishneh Torah, Melakhim* 6:4 (Touger translation, 108)

<sup>35</sup> Nachmanides, *Commentary on the Torah*, Deut. 20:10 (Chavel translation, 239)

***Milchemet mitzvah:***

- Commanded wars are those waged against the Seven Canaanite Nations and Amalek, and wars to defend Israel against “an enemy that comes upon them.”
- Acting on prior instruction from God (via the Torah), the king may wage *milchemet mitzvah* on his own volition. (However, Nachmanides and Rashi require the king to receive additional divine consent via the *urim* and *tumim*.)
- The king need not offer the enemy terms of peace before waging war. (In a minority opinion, Maimonides and Nachmanides require the king to offer a peaceful settlement before attacking.<sup>36</sup>)
- Every adult Israelite must fight in *milchemet mitzvah*, “even a bridegroom out of his chamber and a bride out of her bridechamber.”
- In the course of battle, the army may not wantonly destroy trees or infrastructure. Otherwise, the army should do what it takes to win.
- In wars against the Canaanite nations and Amalek, the army should kill all the enemy nation’s citizens, including women and children.

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<sup>36</sup> See the summary of *milchemet ha-reshut*, below, regarding the required terms of peace according to each authority.

***Milchemet ha-reshut:***

- The king may wage discretionary wars against any of the Remaining Nations in order to “expand the borders of Israel” and “magnify his greatness and reputation.”
- The king may not wage *milchemet ha-reshut* on his own initiative; he must first receive permission from the Great Sanhedrin and from God, via the *urim* and *tumim*.
- Before attacking, the king must offer his enemy the chance to settle peacefully. To avoid war, the enemy must agree to pay tribute and subjugate itself to the Jewish king. (In a minority opinion, Maimonides also requires the enemy to accept the seven Noachide commandments.) The enemy must agree to all terms; if it refuses but one of them, the king must attack.
- Every adult Israelite must fight in *milchemet ha-reshut*, except for those specifically exempted by Deuteronomy 20:5-8.
- The army may not surround the enemy city on all sides but, rather, it must leave an avenue of escape for those who wish to flee.

- In the course of battle, the army may not wantonly destroy trees or infrastructure.
- The army should kill all the enemy nation's adult males, but spare the women and children.
- The army should plunder the enemy city. If they choose to do so, they may also take its women as captives.

### ***B. Defensive War***

The third form of *milchemet mitzvah*, defensive war, requires additional discussion. While the Scriptural sanctions for war against the Canaanite nations and Amalek are clear, Maimonides' basis for including war "to assist Israel from an enemy that comes upon them" as *milchemet mitzvah* is somewhat ambiguous. Though the Talmud does not use this phraseology, it does contemplate defensive war in the following passage about warfare on Shabbat:

Rav Yehudah said in the name of Rav: If foreigners attack an Israelite city [on Shabbat], we may not go out against them with weapons, and we do not profane Shabbat on their account...Regarding what [circumstances] was this said? When [the foreigners] come in the interest of money. But if they come in the interest of [taking] lives, we go out against them with weapons, and we profane Shabbat on their account. And in a case [where they attack] a border city, even if they do not come in the interest of [taking] lives, but rather

[only] in the interest of straw or stubble, we [still] go out against them with weapons, and profane Shabbat on their account.<sup>37</sup>

Though it cites no biblical source, this passage presumes the obligation to defend a Jewish city against attack, and therefore addresses only the question of whether this obligation is operative on Shabbat. Maimonides likely infers, on the basis of this Talmudic discussion, that defensive war is obligatory, and thus classifies it as *milchemet mitzvah*.<sup>38</sup>

While Maimonides does not explain what he means by “an enemy who comes upon them,” his Talmudic source-text provides more detail. When the enemy attacks with the intent to kill (presumably in a military invasion), the Jews are obligated to defend the city, even on Shabbat. Defensive war in response to a military assault is, therefore, an absolute requirement. However, the Talmud also requires Israel to wage war against an enemy intent only on stealing straw, if the attack is on a border city. The Schottenstein Talmud commentary explains:

The capture of a border city by the enemy would leave a hole in the frontier defenses and expose the interior of the country to invasion and loss of life. Such a danger justifies the most extreme defensive measures, even violating the Sabbath to defend the city from a raid by an enemy intent solely on seizing property.<sup>39</sup>

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<sup>37</sup> *Eruvin* 45a

<sup>38</sup> Bleich (“Preemptive War in Jewish Law,” 274) elucidates the *Eruvin* passage: “The Gemara must be understood as sanctioning such military activity in the guise of a *milchemet* [sic] *mitzvah* rather than as a *milchemet reshut* [sic] for two reasons: (1) A *milchemet reshut* requires a monarch, Sanhedrin, and the *urim ve-tumim*, none of which were available during the period of the Amora'im. (2) A *milchemet reshut* may not be initiated on the Sabbath.” In other words, defensive war became *milchemet mitzvah* by way of necessity, rather than because of an explicit biblical injunction.

<sup>39</sup> *The Babylonian Talmud*, Schottenstein Edition, *Eruvin* 45a<sup>2</sup>, n 21



On the Talmud's definition, an enemy commits an act of aggression against Israel when (a) it attacks Israel militarily or (b) it directly threatens Israel's security by violating its territorial integrity. War "to assist Israel from an enemy that comes upon them," then, is obligatory in response to any such aggression, whether military or non-military.

Though defensive war is a form of *milchemet mitzvah*, some of the laws of commanded war may not apply; in other respects, certain laws relating to *milchemet ha-reshut* may govern defensive war. For example, although Rashi and Nachmanides require the king to obtain divine consent for *milchemet mitzvah* via the *urim* and *tumim*, Bleich explains that defensive war requires no such authorization:

In light of the fact that the dictum recorded in *Eruvin* 45a sanctioning defensive war was expressed in absolute terms by R. Judah in the name of Rav at a time when the *urim ve-tumim* was no longer extant that statement may serve as a source for the conclusion that defensive war does not require prior dispensation of the *urim ve-tumim*.<sup>40</sup>

Moreover, the requirement that Israel kill all the enemy nation's citizens, including women and children, which is associated with *milchemet mitzvah* because of the Torah's commands regarding the Seven Nations and Amalek, may not apply in defensive wars against other nations. Rather, the laws of war with the Remaining Nations, otherwise associated with *milchemet ha-reshut*, may pertain instead. If so, the Jewish army would be required to kill the enemy's adult males but spare the women and

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<sup>40</sup> Bleich, "Preemptive War in Jewish Law," 275

children; it would also be obligated to plunder the city. Additionally, soldiers would be permitted to take its women as captives.

With this clearer understanding of defensive war, it is necessary to restate Maimonides three forms of *milchemet mitzvah*:

(1) War against the Seven Canaanite Nations

(2) War against Amalek

(3) Defensive war waged by Israel in response to an act of enemy aggression, which is defined as either (a) a military attack or (b) a non-military action that directly threatens Israel's security by violating its territorial integrity.

War of any other kind – including war to avert a potential, but not imminent, threat – is necessarily *milchemet ha-reshut*.

### ***C. Relevance to Modern America***

Because *hilkhot milchamah* provides comprehensive standards for the initiation and conduct of war, many Reform rabbis have found this rubric to be a useful paradigm for framing sermons on the Iraq war. However, since *hilkhot milchamah* functions within precise parameters, such applications can be problematic.

It is clear that *hilkhot milchamah*, in context, contemplates (a) a sovereign Jewish state with (b) particular political and religious institutions, i.e., a king, the Great

Sanhedrin, and the priesthood (which controls access to the *urim* and *tumim*). Hence certain limitations of the model are immediately evident. First, the United States is not a Jewish state. This fact alone would seem to render *hilkhot milchamah* inapplicable to the Iraq war. Some would counter, however, that the sources must be read in light of the Jewish people's present circumstances. On this view, *hilkhot milchamah* should be understood as equally relevant to a non-Jewish government, such as America's, under which Jews live. Accepting this premise for the moment, it is still necessary to address the model's other obvious limitation – i.e., the fact that the United States has none of the political and religious institutions that *hilkhot milchamah* requires; indeed, all of them have been defunct since the Second Temple's destruction in 70 C.E. Unlike the presumption of a Jewish state, the necessity of a king, Sanhedrin, and divine oracles cannot easily be set aside or modified to accommodate alternate circumstances, because of the unique role that each institution plays in the process of authorizing war.

Because only the king, as chief executive, can compel individual citizens to risk their lives in war, a monarch is necessary in order to raise an army for combat.<sup>41</sup> While the king has sufficient authority to wage divinely ordained *milchamot mitzvah*, the Great Sanhedrin – “the highest judicial tribunal [and] the ultimate legislative authority in the Jewish legal system”<sup>42</sup> – must grant its consent for the king to wage *milchamot ha-reshut*. Though non-Jewish states can reprise these executive and deliberative roles in comparable governmental institutions – e.g., the American president and Congress – none can replicate the *urim* and *tumim*, the ancient Jewish state's unique mechanism for

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<sup>41</sup> While the law of the pursuer requires individual Jews to save another Jew whose life is in imminent danger, this law does not require the individual to risk his own life in order to save his fellow. Bleich (“Preemptive War in Jewish Law,” 283) explains: “Jewish law endows the monarch with powers beyond those vested in society. The essence of monarchical power is the power of coercion.”

<sup>42</sup> Elon, 558

divining God's will. The problem, as Bleich explains, is that war cannot be halakhically legitimate without divine sanction:

Halakha, as it applies to Jews, recognizes that man has no right to make war against his fellow. War is sanctioned only when commanded by God, i.e., when divine wisdom dictates that such a course of action is necessary for the fulfillment of human destiny. Even a *milhemet reshut* [sic], or 'discretionary war' is discretionary only in the sense that it is initiated by man and does not serve to fulfill a divine commandment. But even a *milhemet reshut* requires the acquiescence of the *urim ve-tumim*; the message transmitted via the breastplate of the High Priest is a form of revelation granting divine authority for an act of aggression. Judaism sanctions violence only at the specific behest of the Deity.<sup>43</sup>

While the rabbinic tradition claims independence from divine intervention in most matters on the basis of the Talmudic principle *lo bashamayim hi* ("[The Torah] is not in heaven [but, rather, in our hands, here on earth]")<sup>44</sup>, the tradition, significantly, does not claim such autonomy with respect to waging war. On the contrary, when it comes to war, Halakha continues to require human leaders to obtain divine permission.

This requirement is neither moralistic nor arbitrary but, rather, pragmatic; indeed, *hilkhot milchamah* cannot function without it. Though the sources never say so explicitly, the mandates regarding the conduct of war presume one critical factor, namely, a military superiority that will guarantee Jewish victory in battle. For example, before waging war, the Jewish king must offer his enemy the chance to accept terms of peace,

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<sup>43</sup> Bleich, "War and Non-Jews," 160

<sup>44</sup> *Bava Metzia* 59b

but the law insists that, in order to avoid war, the enemy must accept, unconditionally, tribute and subjugation to Israel. Absent an ideological conversion to Judaism, an enemy would have no reason to surrender on terms wholly favorable to Israel unless it fears that war with Israel would bring certain military defeat. If the enemy does not fear Israel and so chooses war, *hilkhot milchamah* requires the Jewish army to besiege the enemy city, slaughter its adult males, and plunder the city for its wealth and women. Obviously, Israel can do this only if it is stronger militarily than its enemy. Since the rubric does not contemplate the possibility that the enemy could overpower Israel, it can be inferred that *hilkhot milchamah* bars Israel from initiating war unless its military superiority, and thus victory, is assured. According to the Torah, only one factor can guarantee a military victory for Israel: God must be on its side. Therefore, divine consent via the *urim* and *tumim*, indicating that God will ensure Israel's triumph, is indispensable to *hilkhot milchamah*.

The divine consent requirement also serves a practical political purpose. Because *hilkhot milchamah* presumes victory, a Jewish military defeat would undermine faith in the halakhic state and in the religion on which it is based, potentially leading to the collapse of both. By ensuring that the king cannot start a war that he might lose, the divine consent requirement safeguards the integrity and viability of the Jewish system. Furthermore, because the *urim* and *tumim* are the only means of obtaining a divine assurance of victory, the entire system depends on the credibility of the oracles and the institutions authorized to consult them.

Since only a king (or, in the post-monarchic period, the Sanhedrin) may instruct the High Priest to consult the *urim* and *tumim*<sup>45</sup>, the monarch and rabbinic council possess authority that no other political institution – Jewish or otherwise – can match. It is erroneous, therefore, to equate the U.S. president and Congress with the Jewish king and Sanhedrin because the American institutions cannot inquire of God and, therefore, cannot obtain a guarantee of military victory. Since *hilkhot milchamah* requires such an assurance, expressed in divine authorization for war, the rubric cannot function in the absence of the king, Sanhedrin, and *urim* and *tumim*.

Halakhic authorities have refused to accommodate *hilkhot milchamah* to alternate political structures, even though they could have done so. With the exception of the Mishnah, all the sources expounding *hilkhot milchamah* were composed long after the demise of the monarchy, the Sanhedrin, and the *urim* and *tumim*, yet all of them continue to require some combination of these defunct entities to authorize war. Not one authority reinterprets *hilkhot milchamah* to allow the various forms of war in the absence of all three institutions. On the contrary, Maimonides writes in the introduction to *Sefer ha-Mitzvot*:

It is known that war and the conquering of the cities cannot [occur] except with a king, the counsel of the Great Sanhedrin, and the High Priest...Therefore public acts...that

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<sup>45</sup> The Talmud (*Yoma* 73b) states that “one inquired [of the *urim* and *tumim*] only for a king.” Nachmanides (*Hosafot* to *Sefer ha-Mitzvot*, substitute neg. com. 17) broadens this dictum, ruling that “the king or the judge or whoever has authority over the people to take the army out to [fight] a war of permission or a commanded war – he should consult the *urim* and *tumim*, etc.” Citing *Sanhedrin* 16a, Nachmanides (*ibid.*) further implies that, upon the monarchy’s collapse, the king’s executive war powers passed to the Sanhedrin: “[The Talmud states,] ‘Perhaps it is the Sanhedrin whom the Divine Law instructs to inquire of the *urim* and *tumim*.’ And it remains so.”

[relate to]...the Sanhedrin, prophet and king, or *milchemet reshut*...are not incumbent [upon us] except when the Temple stands.<sup>46</sup>

To wit, Maimonides affirms the paradigm's limitations: working in the twelfth century, he maintains that *milchemet ha-reshut* is halakhically impermissible in his time.

Other sources also refuse to alter the paradigm to accommodate their own circumstances. *Minchat Chinukh*, a nineteenth century code, understands the entirety of *hilkhot milchamah* to be impertinent to the present world, taking for granted that its laws will apply only "in the future, when we re-conquer the Land, speedily in our days."<sup>47</sup> Similarly, Nachmanides contends that these laws "only apply in the Land promised to our forefathers."<sup>48</sup> Perhaps most significantly for this study, none of the classical sources mentions contemporary or past wars of non-Jewish states in its discussion of *hilkhot milchamah*. Clearly, then, Reform applications of *hilkhot milchamah* to modern warfare contravene centuries of halakhic precedent.

In sum, when considering how this paradigm might relate to the Iraq war, most categories of *hilkhot milchamah* can be immediately excluded. First, commanded wars against the Seven Nations and Amalek are presently moot and, in any case, they are incumbent only on Jews. Second, because *milchamot ha-reshut* require divine authorization, they cannot be waged without the *urim* and *tumim* – or without a king and/or Sanhedrin, which are the only entities authorized to consult the oracles. Only the third category of *milchemet mitzvah*, defensive war, may remain relevant because this kind of war does not require approval of the *urim* and *tumim*. However, the halakhic

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<sup>46</sup> *Sefer ha-Mitzvot, shorash* 14

<sup>47</sup> *Minchat Chinukh*, comm. 527, s.v. "A new conquest"

<sup>48</sup> *ibid.*, s.v. "In all wars"

sources are clear that even *milchemet mitzvah* requires a king to conscript an army.<sup>49</sup>

Since the tradition does not contemplate an executive entity after the Great Sanhedrin with the authority to wage war, it is clear that no modern state – Jewish or otherwise – can wage any kind of *milchemet mitzvah* or *milchemet ha-reshut*.

### III. Alternate Halakhic Paradigms

Because *hilkhot milchamah* is inapplicable outside of the defined parameters, various authorities have proposed alternate halakhic paradigms for considering secular war. Three such models in particular, two Orthodox and one Conservative, merit discussion here.

At a minimum, the tradition agrees that all states have the right to defend themselves and their citizens against military attack. Bleich finds this authority to wage defensive war in the Talmudic “pursuer principle,” which instructs an individual to save another human being from imminent mortal danger, even if he must kill the pursuer to do so.<sup>50</sup> In such a situation, the rescuer’s execution of the pursuer is not considered murder. While the pursuer principle is not mandatory for gentiles, as it is for Jews, halakhic sources contend that gentiles are *permitted* to kill an attacker in order to save the victim’s life.<sup>51</sup> Because the pursuer principle, which applies to individuals, “is, *mutatis mutandis*,

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<sup>49</sup> Bleich (“Preemptive War in Jewish Law,” 283) explains: “[D]espite the general obligation to preserve life and to render assistance to one whose life is in jeopardy, a king is necessary for the proper conduct even of a war ‘to deliver Israel from an enemy’ because, in the absence of a decree of the king committing the populace to war, no person is obligated to jeopardize his own life in order to save the life of his fellow.”

<sup>50</sup> *Sanhedrin* 72a: “The Torah says: ‘If one comes to slay you, arise and kill him [first].’”

<sup>51</sup> Maimonides (*Mishneh Torah, Melakhim* 9:4) states that “A Noachide who kills a person...is put to death...If [a Noachide] kills a pursuer when he could have rescued [the victim simply by maiming] one of [the pursuer’s] limbs, we execute him.” This ruling implies that if a Noachide kills a pursuer to save an individual, when the victim could not be saved any other way, the Noachide is not guilty of murder. *Minchat Chinukh* (comm. 296, s.v. “To save himself from a pursuer”) affirms the Noachide’s right to kill a pursuer if there is no other way to save the victim, but states that, while doing so is a commandment for



legitimate when undertaken by society as a whole as an aggregate of individual victims,”<sup>52</sup> it follows that Halakha allows secular states to respond militarily to an enemy attack.

However, while the pursuer principle permits limited defensive strikes to counter a mortal threat, it bars a state from taking military action that endangers the lives of innocent civilians.<sup>53</sup> Consequently, this halakhic principle cannot justify full-scale war, even in response to an attack. Seeing no halakhic authorization for more expansive warfare, some authorities maintain that secular states may fight only defensive wars. Indeed, Chatam Sofer, a nineteenth century Orthodox scholar, forbids secular states from waging any form of non-defensive warfare, on the basis of the Talmudic dictum “[Noachides] are not conquerors.”<sup>54</sup> Chatam Sofer contends that the right to conquer another nation is granted exclusively to the Jews, and solely for the purpose of conquering *Eretz Yisrael* in accordance with the divine will. Beyond the Jewish conquest of the Land, Halakha prohibits aggressive warfare by *any* state in *any* case.<sup>55</sup> On this view, any war waged by the United States that is not defensive in the strictest sense – i.e., a targeted response to a direct attack or an imminent mortal threat – would contravene Jewish law.

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Jews, “for Noachides, to whom the verse [“Do not stand idly by the blood of your neighbor” (Lev. 19:16)] does not speak, this is only *permitted*, but it is not a commandment.”

<sup>52</sup> Bleich, “Preemptive War in Jewish Law,” 278

<sup>53</sup> The pursuer principle limits the use of force in two significant ways: (1) only the pursuer – the person directly threatening the victim’s life – may be killed; and (2) the rescuer may not kill the pursuer if he can save the victim any other way, e.g., by using non-lethal force to maim or cripple him. If the rescuer can save the victim with non-lethal force but kills the pursuer anyway, the rescuer is guilty of murder. On the collective level, this principle allows the state’s army to combat enemy attackers, but soldiers may kill only when the invaders threaten their lives directly and they cannot save themselves any other way. Killing to safeguard a border or protect economic assets is absolutely prohibited. Moreover, because the rescuer may kill only the pursuer, the paradigm forbids even incidental killings of civilians that are inevitable in war.

<sup>54</sup> *Sanhedrin* 59a

<sup>55</sup> Sofer, *Teshuvah* no. 19

While Chatam Sofer represents the tradition's most restrictive position on modern warfare, Rabbi Naphtali Zvi Yehudah Berlin (Netziv), a nineteenth century Lithuanian halakhist, advances what may be the most permissive view. Netziv finds broad authorization for full-scale secular warfare in the Noachide code – namely, in Genesis 9:5, which states, “Of man, too, will I require a reckoning for human life, of every man for that of his fellow man.” Netziv accepts the normative understanding of this verse as the Noachide prohibition against murder; however, he makes an important distinction between murder, for which God requires blood reckoning, and permissible killing:

When is man punished? At a time when it is proper to behave in a brotherly manner.

When is this not so? In a time of war and a time of hate. Such is a time to kill, and there is no punishment for this at all – for on such is the world founded. It says in *Shevuot* 35b: “A government which kills only one out of six is not punished.” Even the king of Israel is permitted to wage a *milchemet ha-reshut*, even though many Israelites will be killed because of this.<sup>56</sup>

On Netziv's view, killing is murder – and therefore forbidden – only in times of peace; however, when relations between countries are disharmonious – i.e., “in a time of war and a time of hate” – governments are permitted to fight full-scale wars, even though innocent civilians will necessarily be killed. By noting that *even* the Israelite king is permitted to wage war in such circumstances, Netziv implies that non-Jewish states may certainly do so. Netziv thus finds in Genesis 9:5 a legal institution of war for gentiles parallel to *hilkhot milchamah* for Jews. However, while *hilkhot milchamah* requires that

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<sup>56</sup> Berlin, *Chumash Ha'amek Davar*, Gen. 9:5

the Jewish state conduct war according to certain protocols, Noachide law provides no such guidelines for the waging of secular war. Beyond requiring that secular states adhere to the seven Noachide commandments, the tradition leaves particular decisions about whether and how to wage war to the discretion of individual nations.

In contrast to Chatam Sofer and Netziv, contemporary Conservative scholar David Novak proposes a third approach to secular war that moves beyond the question of halakhic authorization. Assuming either that such authorization exists, or that secular states will wage war whether or not Jewish law permits it, Novak aims to identify a halakhic basis for Jews to critique secular wars on Jewish grounds. For such critiques to be legitimate, he maintains, there must be some halakhic connection between the individual Jew, who is bound by the dictates of Judaism, and the secular state, which is not. Novak finds that connection in the Noachide commandment of *dinin*, the requirement that gentile states establish a justice system to administer society. Since even secular states are obligated to *dinin*, Novak argues that

a non-Jewish society – in nonritual cases, of course – can be the context for Jewish action, provided that that society’s legal and political order is in basic conformity with the seven Noahide [sic] commandments... [this] is a *de jure* recognition that the state’s right to rule is grounded in a law directed to the conscience of man. As such, the specific policies of that state, at all times, require a judgment of conscience by its free and responsible constituents.<sup>57</sup>

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<sup>57</sup> Novak, 129

The implication of Novak's position is that, while the secular state is not bound by Halakha, the commandment of *dinin* empowers Jewish citizens to make moral judgments about government policies on the basis of Jewish religious standards. American Jews, for example, can and should search their tradition for guidance in evaluating the Iraq war. Moreover, because, in a secular context, the sources only inform the Jewish conscience and are not binding on the state, the halakhic distinction between Jew and gentile is irrelevant for purposes of a moral assessment. Therefore, while Novak opposes using *hilkhot milchamah* to evaluate American wars, he does so not because it applies exclusively to Jews but, rather, because the rubric governs the decision-making of the *state*, and "the moral decision here is that of the individual Jew."<sup>58</sup> Consequently, Novak maintains that a proper assessment of an American war must use a halakhic principle that relates to Jewish and/or Noachide moral decision-making on an individual level.<sup>59</sup>

Novak warns against applying a halakhic paradigm to a modern situation without first considering the model's context. Absent such consideration, he explains, "any sources cited might be equivocal, that is, relevant by appearance, but irrelevant as the basis for any inference of specific conclusions from general statements."<sup>60</sup> When it comes to evaluating secular war, it seems that *hilkhot milchamah*, because of its precise parameters, is an "equivocal" source. Given the consistency of traditional views on this rubric and the existence of alternate halakhic paradigms in contemporary Jewish thought, it is significant that a substantial number of Reform rabbis have used *hilkhot milchamah*

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<sup>58</sup> *ibid.*, 127

<sup>59</sup> To critique American policy in Vietnam, Novak uses as his benchmark the pursuer principle, which, as Bleich notes, applies equally to the individual and the state.

<sup>60</sup> Novak, 127

to frame their sermons on the Iraq war. Are they unaware of the paradigm's limitations vis-à-vis secular warfare? Or do they relate to the model in a way that transcends those limitations? It seems that, in contradistinction to Orthodox scholars, who relate to *hilkhot milchamah* strictly in its halakhic context, Reform thinkers (consciously or not) understand the halakhic rubric in relationship to other ideas in the broader culture. In order to discern why and how Reform rabbis use *hilkhot milchamah* to elucidate the Iraq war for their congregants, it is first necessary to consider one probable influence on their understanding of the halakhic material: secular Just War Theory.

#### IV. Secular Just War Theory

Just War Theory, which originated in Christian thought but became secularized in the medieval period, aims to provide a moral framework for the initiation and conduct of war. It stands in opposition to what Michael Walzer, a leading modern Just War theorist, terms the “realist” approach. Realism contends that law and behavioral norms are moot during times of war because, in such conditions, it is human nature to act inhumanely. Realists, then, are concerned not with morality, but only with victory. By introducing moral criticism into the otherwise animal-like realm of warfare, Just War Theory “makes actions and operations that are morally problematic *possible* by constraining their occasions and regulating their conduct.”<sup>61</sup>

In contrast to *hilkhot milchamah*, which is crystallized within a specific political and religious context, secular Just War Theory continues to evolve, even to the present day, to reflect the ever-changing realities of international relations, modern warfare, and the state of humankind. For example, Leventer notes that, up to the eighteenth century,

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<sup>61</sup> Walzer, *Arguing About War*, 22

Just War theorists “agreed that [prisoners of war] could be killed, and they could certainly be enslaved,”<sup>62</sup> but as conventional notions of human rights expanded, Just War Theory came to demand that captors treat war prisoners humanely. This evolution, which intensified after World War II, continues today as the world confronts non-state terrorism and guerilla insurgency.

Secular Just War Theory, as Walzer outlines it in his seminal work *Just and Unjust Wars*, begins with the premise that “any use of force or imminent threat of force by one state against the political sovereignty or territorial integrity of another constitutes aggression and is a criminal act.”<sup>63</sup> Responding militarily to aggression is considered a just cause for war, i.e., a defensive war is a just war. Given the realities of the modern world, however, Just War Theory also accords states a “right of anticipation,” the right to defend against a threat before that threat is imminent. When an enemy demonstrates “[1] a manifest intent to injure, [2] a degree of active preparation that makes that intent a positive danger, and [3] a general situation in which waiting, or doing anything other than fighting, greatly magnifies the risk,”<sup>64</sup> the threat, though not imminent, is considered “sufficient” to necessitate a defensive response. War in these circumstances is termed “preemptive war,” and is morally justified. On the other hand, war to counter a perceived threat absent these three conditions, termed “preventive war,” is not morally justified because, as Walzer explains,

It is inevitable...that political calculations will sometimes go wrong; so will moral choices; there is no such thing as perfect scrutiny...[In the case of preventive war,] the

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<sup>62</sup> Leventer, 57

<sup>63</sup> Walzer, *Just and Unjust Wars*, 61

<sup>64</sup> *ibid.*, 81

hostility is prospective and imaginary, and it will always be a charge against us that we have made war upon soldiers who were themselves engaged in entirely legitimate (non-threatening) activities.<sup>65</sup>

The secular model's notion of "aggression" is broader than the Talmud's, yet this idea, along with the preemptive/preventive distinction that flows from it, factors prominently into Reform thinking on the Iraq war.

Unlike *hilkhot milchamah*, which discusses war in terms that are foreign to contemporary American life, secular Just War Theory, as Walzer explains, uses "the ordinary language in which we argue about particular wars. It is the way most of us talk when we join political debates about whether to fight and how to fight."<sup>66</sup> For example, where *hilkhot milchamah* envisions a Jewish monarchy and divine oracles, Just War Theory contemplates modern states and international bodies. Where *hilkhot milchamah* permits the Jewish army "even to starve [the enemy city] and to cause it thirst and to bring it death by disease," and requires the army to slaughter its enemies *en masse*, Just War Theory is concerned with safeguarding the enemy's human rights. To wit, the halakhic paradigm reflects pre-modern circumstances and morality, while secular Just War Theory articulates a modern understanding of international relations and war's moral dimensions.

In sum, though *hilkhot milchamah* offers a Jewish paradigm for evaluating war, it may be an equivocal source in the context of modernity. Secular Just War Theory may be the more appropriate model for evaluating the Iraq war because:

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<sup>65</sup> *ibid.*, 80

<sup>66</sup> Walzer, *Arguing About War*, x

- (1) The secular model is not subject to the same political and circumstantial constraints as is *hilkhot milchamah*, so it can be applied to any modern state; and
- (2) The secular model reflects modern international relations norms and moral sensibilities, in contradistinction to *hilkhot milchamah*.

In the main, a sermon aims to teach something about “what Judaism says” regarding war; however, because of Reform Judaism’s disposition toward the interaction between Jewish tradition and modern culture, it stands to reason that Reform rabbinic views on war may be influenced (consciously or not) by secular Just War Theory. As will be demonstrated, such influence is evident not only in Reform rabbis’ sermons, but also in the CCAR Responsa Committee’s *teshuvah* outlining the Reform position on a possible war with Iraq.

## **V. CCAR *Teshuvah* on “Preventive War”**

### ***A. An Innovative Approach***

In 2002, as the United States government was debating possible military action against Iraq, the CCAR Responsa Committee was asked:

Does Jewish tradition countenance preemptive military action when there is suspicion, but no *prima facie* evidence exists, that a perceived enemy will attack?<sup>67</sup>

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<sup>67</sup> CCAR Responsa Committee, 1



The committee's *teshuvah*, which became an important source for many Reform sermons, bases its analysis, in part, on *hilkhot milchamah*. The choice to use this model is significant, since the tradition has consistently maintained that it is inapplicable to the modern world. As discussed above, Orthodox scholars tend to evaluate American wars using various other halakhic categories that, although not as comprehensive as *hilkhot milchamah*, are understood by the tradition to apply to secular states. The CCAR Responsa Committee explains its decision not to pursue a similar approach:

We could conclude that the traditional Jewish law of government and war bears no relevance at all to our question, which deals with a non-Jewish government that is not ruled by a king, Davidic or otherwise. We do not, however, draw that conclusion. We believe in a *torat chayim*, a living Torah. Though the literary sources of our tradition were written long ago in a very different time and place, we affirm that these texts, through proper and prayerful interpretation, address us as well, yielding teachings that have direct bearing upon our own day and our own lives.<sup>68</sup>

This argument is somewhat ambiguous. The classical halakhic authorities also believe in a *torat chayim*, yet they maintain that *hilkhot milchamah* can function only within the defined parameters. How, then, can the Reform authorities invoke *torat chayim* as the justification for abandoning those parameters? The *teshuvah* provides no further explanation, but a separate discussion by committee chairman Mark Washofsky provides some insight into how *hilkhot milchamah* could be made applicable to a secular state:

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<sup>68</sup> *ibid.*, 1

Reform Judaism affirms the moral equality of all humankind. The Bible and the rabbinic literature sometimes seem to restrict the field of their moral concern to the people of Israel... We, on the other hand, do not share in this narrow-minded view of Torah... Distinctions between Jews and non-Jews are appropriate in the area of ritual behavior... We reject them as most inappropriate, however, in the arena of moral conduct. Thus, Reform responsa hold that the standards of ethical behavior which our tradition demands of us apply to our dealings with Gentiles as well as Jews.<sup>69</sup>

Professor Washofsky reaches the same conclusion as David Novak does on the applicability of non-ritual Halakha to gentiles, but for a different reason: where Novak grounds his position in the Noachide commandment of *dinin*, Washofsky bases his on a modern notion that Jews and gentiles are morally equal as human beings. From his comments, it is clear that the Responsa Committee is sensitive to the importance of historical context in shaping Jewish worldviews. The *teshuvah* might have argued, for example, that the classical sources, in limiting the application of *hilkhot milchamah* to Jews only, reflect the chauvinism of their age and, in this regard, do not convey the inherent meaning of Torah. Modern thought makes no moral distinction between ethnic groups, so a Judaism that believes in *torat chayim* should not hold to an antiquated moral distinction between Jews and gentiles. Since *hilkhot milchamah* outlines a standard for the moral conduct of war, it should be understood as relevant to any state that wages war, including the United States.

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<sup>69</sup> Washofsky, xxiv

The same reasoning cannot be used, however, to obviate the necessity of a king, Sanhedrin, and *urim* and *tumim*, because the distinction between these and secular institutions is functional, not moral. Since only these entities can obtain the requisite divine authorization for war, they are not interchangeable with secular institutions. If *hilkhot milchamah* outlines the moral ideal for conducting war, then central to that ideal is the premise that man has no right to wage war without divine consent and assurance of victory. Tradition has continued to insist on this requirement even in times when obtaining God's consent is impossible – so it is difficult to see how it can now be abrogated on the grounds of *torat chayim*. Still, the analysis proceeds on the assumption that *hilkhot milchamah* is applicable even without a king, Sanhedrin, or *urim* and *tumim*.

However, the *teshuvah* draws on secular Just War Theory at least as much as, if not more so than, it relies on *hilkhot milchamah*. While it opens with a basic outline of the halakhic rubric in abstract terms, the *teshuvah* builds its formal analysis on the secular theory's distinction between preemptive and preventive war. The following excerpt demonstrates this strategy:

We want to distinguish between *preventive* war and a *preemptive* military strike, such as that initiated by Israel in 1967. A preemptive strike, as we use the term, is one launched against an enemy that has mobilized or engaged in obvious and active preparation for war. As our *sho'el* would put it, there is clear *prima facie* evidence that the enemy is planning to attack. Given this state of affairs, national security is definitely threatened, and it serves no moral purpose for the nation to wait for the enemy to strike before undertaking measures of self-defense...Our concern is with preventive war, initiated against a nation that may plausibly pose a threat to us in the future, even though it poses

no immediate or near-term threat and is not currently planning to attack us or, for that matter, any other nation. Can we understand a war such as this as a case of *milchemet mitzvah*, a war that a nation is morally entitled to fight?<sup>70</sup>

As this passage makes clear, the key questions at hand are: (1) would Iraq be a preemptive or a preventive war? and (2) are preemptive wars and/or preventive wars permitted? These are, of course, Just War questions; moreover, the *teshuvah*'s definitions of these terms appear to be taken directly from Just War Theory.<sup>71</sup> Thus a Just War analysis is entirely possible here: if an Iraq strike were deemed to be preemptive, it would be justified; if deemed preventive, it would not.<sup>72</sup> The *she'elah*, however, asks whether *Jewish tradition* would countenance a strike on Iraq, so the *teshuvah* uses the halakhic model to address the primary questions. Still, those questions remain *Just War questions*, not halakhic ones. To wit, *hilkhot milchamah* is used as an illustration in performing what is fundamentally a Just War analysis.

The *teshuvah* argues that, although the halakhic sources do not use the modern terms "preemption" and "prevention," *hilkhot milchamah* does contemplate these concepts in its discussions of "war to help Israel from an enemy that comes upon them" and "war to diminish the idolaters, so that they will not come upon [Israel]."<sup>73</sup> The former is, of course, Maimonides' third form of *milchemet mitzvah*, i.e., defensive war in

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<sup>70</sup> CCAR Responsa Committee, 3

<sup>71</sup> Indeed, Walzer, like the *teshuvah*, suggests that the now-accepted right of a state to wage preemptive war derives, at least in part, from the experience of the Six Day War; certainly the classical halakhic sources could not have conceived of the particular kind of aggression that Israel confronted.

<sup>72</sup> Walzer performed this exact analysis in a 2003 essay, which is printed in his book *Arguing About War* (160-162). Walzer concludes that the Iraq war is a preventive, and therefore unjust, war: "Though disarming Iraq is a legitimate goal, morally and politically, it is a goal that we could almost certainly have achieved with measures short of full-scale war...And a war fought before its time is not a just war." (160)

<sup>73</sup> *Sotah* 44b

response to enemy aggression. Rabbi Yehudah proposes the latter in the Talmud as a third category of war (in addition to *milchemet mitzvah* and *milchemet ha-reshut*) that is “obligatory” for the state to fight, even though it is not divinely commanded. The Sages, however, reject Rabbi Yehudah’s position and maintain that “war to diminish the idolaters” falls under the category of *milchemet ha-reshut*.<sup>74</sup> In a critical hermeneutical maneuver, the *teshuvah* interprets these two halakhic categories in light of the secular model.

First, it maintains that the halakhic category of defensive war contemplates the secular notion of preemption. As noted previously, Maimonides’ understanding of defensive war is based on the Talmudic definition of “aggression,” which includes either (a) a military attack or (b) a non-military action that directly threatens the state’s security. To illustrate the latter, the Talmud posits a situation in which an enemy invades a border city to steal straw. Although this action does not immediately threaten Jewish lives, if allowed to stand it could leave Israel vulnerable to future invasions and loss of life. It is therefore considered an act of aggression against Israel, and the Torah commands the state to wage defensive war to counter it. The precise nature of this hypothetical action is essential to the halakhic definition of aggression: because an invasion to steal straw constitutes a direct breach of Israel’s boundaries, the Talmud contemplates defensive war only at the point that Israel’s sovereignty is violated.

Just War Theory defines aggression more broadly: instead of requiring a state to wait until its sovereignty is violated to strike, the theory permits it to act militarily when

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<sup>74</sup> Interpretation of this kind of war is complicated by the fact that Maimonides does not mention it in his code. As noted above, *Lechem Mishneh* contends that Maimonides includes “war to diminish the idolaters” as a form of defensive war, which would make it *milchemet mitzvah*. However, this is a minority view. Most sources, including the Reform *teshuvah*, contend that the law in this case follows the Sages, and “war to diminish the idolaters” should be classified as *milchemet ha-reshut*.

an enemy demonstrates a clear *intent* to attack but has not yet done so. This is the very meaning of preemption, and it is evident that the Talmud does *not* contemplate such action as a form of defensive *milchemet mitzvah*. The *teshuvah* can classify preemptive war as *milchemet mitzvah*, then, only by using the secular definition of aggression rather than the halakhic one.<sup>75</sup> This is perhaps the most poignant illustration of the Responsa Committee's view of *torat chayim*.

Second, the *teshuvah* equates preventive war with "war to diminish the idolaters." Although this interpretation, too, frames the halakhic category in terms of secular Just War Theory, it does not necessitate a redefinition of *milchemet ha-reshut*: after all, as noted above, any war, waged in the context of *hilkhot milchamah*, that is not fought against Amalek, the Seven Nations, or in response to aggression as the Talmud defines it is, necessarily, *milchemet ha-reshut*. On the view that preemptive war is *milchemet mitzvah* and preventive war is *milchemet ha-reshut*, the *teshuvah* concludes that the tradition's view of an Iraq war depends on the nature of the threat Iraq poses to the United States. If the intelligence about Iraq's weapons programs is correct, the committee maintains in 2002, then an American strike against that country would be preemptive/*milchemet mitzvah* and, therefore, justified according to Jewish tradition. If, on the other hand, the threat is not as imminent as the government contends, an American invasion would be preventive/*milchemet ha-reshut* and, as such, unjustified.

This conclusion mirrors the secular model's position that preemption is a just cause for war while prevention is not, though the *teshuvah* does not make this argument.

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<sup>75</sup> Indeed, the *teshuvah* maintains: "[In a case where] there is clear prima facie evidence that an enemy is planning to attack...national security is definitely threatened, and it serves no moral purpose for the nation to wait for the enemy to strike before undertaking measures of self-defense. A preemptive strike can in fact shorten the war and thus save many lives that would have been lost in a protracted conflict."

Instead, its conclusion is based on the contention that Jewish tradition permits defensive *milchemet mitzvah* but does not allow *milchemet ha-reshut* in the modern world. The *teshuvah* thus takes the same position on *milchemet ha-reshut* as the traditional halakhic authorities and contemporary Orthodox scholars do, although for different reasons. The classical sources bar *milchemet ha-reshut* in post-Temple times because there is no longer a king, Sanhedrin, or *urim* and *tumim* to authorize it. Since this constraint is not operative in the Reform analysis, the *teshuvah* holds that tradition technically permits the state to wage discretionary war. However,

although the Torah allows the king to engage in war for reasons other than national defense, it most certainly does not advocate that he do so. Jewish law offers but grudging approval of the state's military regime, and it places significant roadblocks in the path of the king who wishes to embark on discretionary war... These regulations [e.g., the military service exemptions and the requirement that the king obtain the Sanhedrin's consent], which make it much less likely that the king will engage in war unless it is absolutely necessary to do so, act as a significant brake upon his militaristic impulses...

[T]he Torah's permit for the king to engage in war "to increase his greatness and reputation" is a political justification of such a policy but not a *moral* justification of it.<sup>76</sup>

That is to say, the *teshuvah* assumes a distinction between halakhic permissibility and moral justifiability. Therefore, whether or not Halakha permits *milchemet ha-reshut* is necessarily irrelevant to its reasoning; what matters is whether this kind of war is

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<sup>76</sup> CCAR Responsa Committee, 2

*morally* justified. This, too, is a Just War question – indeed, *the* Just War question – rather than a halakhic one. Demonstrating further that this is fundamentally a Just War analysis, the *teshuvah* adds the following caveat to the halakhic model:

The concession to the *realpolitik* of the ancient Near East cannot blind us to the reality of war as it is fought today, to the horrific price it exacts of soldiers and non-combatants alike, and to the prospect of massive and unfathomable destruction that its armaments have placed in our hands. If the Torah's teaching of peace means anything to us, in the context of our time, it means that such is too high a price to pay for the enhancement of a state's material interests...A war fought *today* for anything other than defensive purposes must therefore be viewed as an *unnecessary* evil, as a transgression of the message of the Torah, and as a repudiation of our most cherished values and commitments.<sup>77</sup>

The *teshuvah* thus implies that, regarding the prohibition against *milchemet ha-reshut* in the modern world, Halakha is in accordance with morality. This agreement, however, is only incidental: while the *teshuvah* draws cues from *hilkhot milchamah*, its conclusion that *milchemet ha-reshut* is morally unjustifiable today ultimately rests on moral concerns – e.g., the high costs of war and the potential for terrible destruction – that are external to the halakhic rubric. To wit, *hilkhot milchamah* is moral only insofar as it comports with the modern standards of morality embodied in secular Just War Theory.

In sum, the CCAR *teshuvah* represents a unique Jewish approach to secular war. Although the classical sources contend that *hilkhot milchamah* is inapplicable to the

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<sup>77</sup> *ibid.*, 3



modern world, Professor Washofsky maintains that the rubric's essential purpose is to teach how the ideal moral state should wage war. The literature represents that ideal state as Jewish only because its authors are Jewish, but the moral standards they contemplate apply universally. Evaluating American wars against the benchmark of *hilkhot milchamah*, then, is the best way for American Jews to bring their religious values to bear in their present context.<sup>78</sup> Washofsky explains, however, that

while our responsa seek to uphold traditional halakhic approaches whenever fitting, we reserve to ourselves the right to decide when they do not fit. When even the most liberal interpretation of the texts and sources yield answers that conflict with our moral and religious commitments as liberal Jews, we will modify or reject those interpretations in favor of others that better reflect our religious mind and heart.<sup>79</sup>

That is to say, *morality*, and not Halakha, is the ultimate Reform standard for evaluating war. Because secular Just War Theory articulates modern thought regarding the moral conduct of war most comprehensively, that model provides the basis for the Reform committee's analysis. The *teshuvah* thus subjects *hilkhot milchamah* to moral-ethical criticism on the basis of Just War Theory: it includes in the analysis those aspects of *hilkhot milchamah* that are consonant with Just War Theory, but excludes those that contravene it. For example, the *teshuvah* maintains that "the Torah instructs that before undertaking any war, commanded or discretionary, we must reach out to our foes and offer them peace." On the other hand, it ignores the halakhically mandated terms of peace, i.e., tribute and subjugation: such demands are imperialistic and modern Just War

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<sup>78</sup> Professor Washofsky expressed these views in a conversation with this study's author.

<sup>79</sup> Washofsky, xxv

Theory forbids imperialism. Nor does the *teshuvah* contend that the United States should kill all Iraqi adult males, or that American soldiers may take Iraqi women as captives, as mandated by the laws of war with the Remaining Nations: these provisions, too, offend modern sensibilities and, as such, are incompatible with Just War Theory.

### ***B. Problems with the Reform Approach***

The Responsa Committee's approach is problematic in three significant ways. First, the committee does not adequately situate the *teshuvah* within the context of traditional thought. Though Professor Washofsky describes Halakha as "an ongoing conversation through which we arrive at an understanding...of what God and Torah require of us,"<sup>80</sup> the *teshuvah* simply ignores much of the tradition's conversation about war. For example, while it examines in some detail the foundational sources on *hilkhot milchamah*, the *teshuvah* does not confront, let alone mention, the position of numerous authorities that the rubric cannot apply to a modern secular state; nor does it discuss the alternate halakhic paradigms that various authorities have proposed for evaluating secular war. Given the weight of precedent, the *teshuvah*'s justification for using *hilkhot milchamah* rather than one of the alternative models – i.e., that "we believe in a *torat chayim*" – is inadequate. The CCAR committee would have done better to present the halakhic paradigms advanced by Chatam Sofer, Netziv, Bleich, and Novak, and explain why *hilkhot milchamah* is the better model for evaluating the Iraq war in a Reform context. Though the committee is surely aware of these precedents, the *teshuvah* outlines its position on war as though these halakhic conversations among classical authorities and contemporary scholars had never taken place. Consequently, uninformed readers –

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<sup>80</sup> Washofsky, xxiii

which may include rabbis as well as lay people – might misunderstand the tradition's views on war.

Second, the *teshuvah*'s premise that morality is distinguishable from Halakha not only has no basis in tradition, but is actually antithetical to tradition. Judaism has always understood Halakha to be inherently moral and, indeed, the ultimate (divine) standard of morality. Modern Orthodox scholar Norman Lamm explains that

Separating Halakha from morality does violence to both, turning Halakha into a codex of rigid and sometimes heartless rules and morality into a kind of unstructured and emotionally driven method, as imprecise as it is subjective, of deciding upon one's conduct.<sup>81</sup>

Acknowledging that Halakha may sometimes seem to clash with modern moral standards, Lamm maintains that serious Jews are obligated to resolve that apparent conflict within the framework of traditional halakhic reasoning:

We are not free to arrogate to ourselves the right to invent new ethical or moral doctrines in opposition to Torah, but we are free, indeed compelled, to use our creative moral and halakhic reasoning to reveal the latent moral judgments of the Torah that may contradict what we have previously accepted as the only doctrine in Torah.<sup>82</sup>

The CCAR *teshuvah* rejects Lamm's approach: rather than starting with *hilkhot milchamah* as the authoritative baseline and searching for new meaning within it, the

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<sup>81</sup> Lamm, 208-209

<sup>82</sup> *ibid.*, 207

*teshuvah* abandons the halakhic model in favor of the secular, “moral” one. By adopting secular Just War Theory as the ultimate standard for evaluating modern warfare, the Reform *teshuvah* holds as authoritative an ethical doctrine that, in Lamm’s terms, stands “in opposition to Torah.” This approach certainly places the Reform *teshuvah* outside the bounds of mainstream halakhic discourse.

Third, the *teshuvah* advances a self-contradictory argument regarding the applicability of *hilkhot milchamah* to a modern secular state. On the one hand, the *teshuvah* applies the rubric to America despite the traditional view that *hilkhot milchamah* pertains only to a halakhic state in *Eretz Yisrael*. As noted previously, this reasoning appears to be based on Professor Washofsky’s position that Reform Judaism makes no moral distinction between Jews and gentiles. This argument is also consistent with the Novak model, which considers all of non-ritual Halakha to be applicable to gentiles since the law of *dinin* provides a moral nexus between Jewish citizens and the non-Jewish state. On the other hand, the *teshuvah* critiques the morality of *hilkhot milchamah* on the grounds that it represents “a concession to the *realpolitik* of the ancient Near East.” The *teshuvah*’s argument is, therefore, oxymoronic: even as it dismisses *hilkhot milchamah* as morally irrelevant to the modern world, it applies the “moral” aspects of the rubric far more broadly than the classical sources envision (i.e., to a secular state)!

These problems with the Reform *teshuvah* open the door (1) for uninformed readers to misunderstand the tradition’s teachings about war, (2) for critics to dismiss the Reform approach to halakhic reasoning as outside the mainstream, and (3) for rabbis to misapply classical texts in teaching and preaching about the Iraq war. This is not to say

that the Responsa Committee does not have legitimate reasons for its approach, but it could have guarded against these potential pitfalls by more transparently explaining how it understands and uses halakhic texts.

## VI. Conclusion

While *hilkhot milchamah* provides the most comprehensive Jewish guidelines for the initiation and conduct of war, tradition has consistently limited its application to (a) a Jewish state that is (b) governed by a king and/or Sanhedrin, which (c) must obtain divine authorization for war from either the Torah (*milchemet mitzvah*) or the *urim* and *tumim* (*milchemet ha-reshut*). On the traditional view, *hilkhot milchamah* cannot apply to modern American wars because all of these conditions are absent. Consequently, Orthodox and Conservative scholars use various alternate halakhic models to judge American wars according to Jewish standards.

In contrast, the CCAR Responsa Committee of the Reform movement, in a 2002 *teshuvah* on a potential war with Iraq, uses *hilkhot milchamah* as its model despite the rubric's clear limitations. In contradistinction to the traditional view, the *teshuvah* assumes that *hilkhot milchamah* can and should be adapted to the modern American context. The respective Orthodox and Reform positions are, therefore, somewhat ironic: the Orthodox contention that the classical model cannot apply in the modern world is typically associated with religious liberalism, while the Reform attempt to make the classical paradigm fit modern circumstances is generally associated with religious conservatism!

The Reform committee's apparent "conservatism" has little impact, however, since the *teshuvah* ultimately bases its conclusions not on *hilkhot milchamah* but, rather, on secular Just War Theory. As this chapter has demonstrated, the *teshuvah* is concerned primarily with the question of whether an Iraq war is *morally justifiable*. Since it views "morality" as a standard that is distinct from, and superior to, Halakha, the *teshuvah* uses secular Just War Theory rather than *hilkhot milchamah* to answer that question. Though it purports to base its conclusions on the halakhic rubric, the *teshuvah* in fact uses *hilkhot milchamah* only to illustrate secular Just War principles. The halakhic guidelines are accorded authority only insofar as they concur with the secular model, and elements of *hilkhot milchamah* that contradict secular morality are ignored.

The CCAR *teshuvah* provides important insight into the Reform sermons that use *hilkhot milchamah* to frame their discussions of the Iraq war. Many of them rely on the *teshuvah* directly; others cite only the classical texts. Whatever their sources, these sermons, in the main, demonstrate a common approach: most maintain that *hilkhot milchamah* is relevant to America but subject it to moral-ethical criticism on the basis of modern moral standards. In short, they, like the *teshuvah*, pursue a hybrid strategy of applying *hilkhot milchamah* within the framework of secular Just War Theory.

## CHAPTER TWO

### A Close Reading of the Reform Iraq War Sermons

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#### I. Introduction

To understand how Reform rabbis use *hilkhot milchamah* in preaching about the Iraq war, it is necessary to engage in a “close reading” of their sermons, as that method is defined in the introductory chapter. In doing so, the ensuing analysis will examine the sermons’ treatment of the key elements of, and issues relating to, the halakhic rubric, as set forth in the previous chapter. The first part of the chapter (Section II) will explore the sermons’ selection of *hilkhot milchamah* as the paradigm for evaluating secular war despite the traditional limitations on its applicability. This section will consider (a) the sermons’ various arguments for the rubric’s relevance to the American context and (b) the particular importance and function of the CCAR *teshuvah* as a source for many of the sermons. The second part (Section III) will examine the sermons’ applications of *hilkhot milchamah* in their analyses of the Iraq war, specifically with regard to five of the rubric’s key components: (a) the categories of war, i.e., *milchemet mitzvah* and *milchemet ha-reshut*; (b) authorization for war; (c) military service; (d) pre-war peace initiatives; and (e) the conduct of war. To aid a close reading of the sermons, summations of both the traditional understanding of, and the CCAR *teshuvah*’s approach to, each issue or halakhic element will be provided at the start of each subsection.

Throughout, the analysis will focus on the various sermons’ transparency regarding their use of sources, explanation of interpretive strategies, conflation of halakhic and secular concepts, and the influence of modern political and moral norms on their presentations of *hilkhot milchamah*. By parsing them in this way, this chapter seeks

to assess how lay congregants who are unfamiliar with *hilkhot milchamah* might come to perceive the tradition's view of war on the basis of hearing these sermons preached in the synagogue.

## **II. Selection of *Hilkhot Milchamah* as the Paradigm for Evaluating Secular War**

### ***A. Relevance to America***

Since traditional halakhic thought understands *hilkhot milchamah* to be operable only within certain parameters, any application of the rubric beyond those bounds necessitates explanation. It is of primary interest, therefore, to examine how the Reform sermons that utilize *hilkhot milchamah* deal with the constraints on the rubric's applicability, and how they adapt the model to fit the American context.

On the normative view, it will be recalled, *hilkhot milchamah* is inapplicable to the United States for two primary reasons:

**(1) *Hilkhot milchamah* governs the wars of the halakhic Jewish state exclusively.**

Since the United States is not a Jewish state, let alone a halakhic one, its wars are not within the scope of this halakhic rubric.

**(2) *Hilkhot milchamah* requires divine consent for war.** Such consent, which amounts to a guarantee of victory, can be obtained only by Torah command or via the *urim* and *tumim*. Only the Jewish monarch and Sanhedrin are empowered to instruct the High Priest to consult the oracles. Because the United States (a) is not addressed by Torah and (b) lacks all three necessary political institutions, it



cannot obtain the requisite divine authorization for war. Consequently, it is impossible for the United States to wage war under the auspices of *hilkhot milchamah*.

In using *hilkhot milchamah* to evaluate the Iraq war, the Reform sermons ignore the divine consent requirement completely. (As will be discussed further on, the sermons' failure to address this key aspect of *hilkhot milchamah* results in faulty equations between halakhic and modern secular institutions.) To the extent that the sermons demonstrate awareness of the paradigm's contextual limitations, they do so strictly with regard to the first constraint, i.e., the fact that the United States is not a Jewish state.

In the main, the various sermons make one of three arguments, implicitly or explicitly, for the paradigm's relevance to a war waged by a secular state: (1) that the particular war norms articulated by *hilkhot milchamah* are universal; (2) that the lessons of Torah are timeless and, as such, speak to contemporary circumstances – i.e., the CCAR *teshuvah*'s notion of *torat chayim*; and (3) that *hilkhot milchamah*, while not immediately pertinent to the present context, is relevant as a referential model for considering modern warfare. Each of these arguments will be considered in turn.

### **1. Argument: *Hilkhot Milchamah* is Relevant Because it Expresses Universal War Norms**

The first argument, that *hilkhot milchamah*'s norms are universal, is the predominant one that the sermons use to justify applying the paradigm to the Iraq war.

The argument begins with the contention that *all* states, Jewish and secular alike, have the right to wage war in response to an attack – a principle that is supported by both Halakha and modern notions of just war. However, in contradistinction to Halakha, the sermons equate the *right* to wage defensive war with the *obligation* to do so – maintaining, consequently, that the halakhic category of defensive *milchemet mitzvah* applies with equal force to Jewish and non-Jewish states.

For instance, Rabbi Leonard B. Troupp, a member of the CCAR Responsa Committee, contends in a September 2004 sermon that

Our tradition notes two kinds of war: “commanded war” and “discretionary war.” A “commanded war” is a war of self-defense. It acknowledges the right that *any people* [emphasis added] [has] to defend itself against armed attack.<sup>83</sup>

Rabbi Barbara Goldman-Wartell goes a step further, explaining that

We consider self-defense to be a human need; it’s not something that relates only to the Jews. Nor does it relate only to one’s own nation. The need to defend an ally, or a nation, or a group of people who lie defenseless in the grip of powerful enemies who seek to destroy them – that too can be a *milchemet mitzvah*, a case of obligatory war, a war of defense.<sup>84</sup>

Such universalistic conceptualizations of *milchemet mitzvah*, which are unfounded in tradition, may reflect one or more of three implicit interpretive phenomena,

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<sup>83</sup> Troupp, 4

<sup>84</sup> Goldman-Wartell, 1

which, as homiletical expositions, are decidedly not applications of existing law or halakhic precedent. Firstly, it may indicate the conflation of two distinct halakhic concepts – i.e., secular defensive war, which is a *right* conferred upon Noachides, and defensive *milchemet mitzvah*, which is an *obligation* imposed by divine command upon Israel alone.

Secondly, this radical redefinition of *milchemet mitzvah* might reflect the principle, articulated by Responsa Committee Chairman Washofsky, that Reform Judaism makes no moral distinction between Jews and gentiles. On this view, *hilkhot milchamah*, as moral (i.e., non-ritual) law, would be universally applicable.

Thirdly, the notion of *milchemet mitzvah* as universal, particularly as embodied in Goldman-Wartell's insistence that the category encompasses wars to defend allies and prevent humanitarian disasters, may reveal the conflation of traditional halakhic concepts with modern secular Just War norms – a phenomenon that exists both in the CCAR *teshuvah* and, in many respects, throughout the sermons.

Whether or not these factors are at work is a matter of speculation, however, since none of the sermons explains its interpretive basis for defining *milchemet mitzvah* in universalistic terms. In any case, this notion of defensive *milchemet mitzvah* creates a nexus between *hilkhot milchamah* and the secular state – and it is on this basis that many sermons apply the halakhic rubric as a whole to the Iraq war.

They do so, however, with varying degrees of transparency. Some sermons, for example, simply apply *hilkhot milchamah* to the Iraq war directly, without either contextualizing the rubric or providing any indication of the constraints limiting its applicability. A sermon by Rabbi Mark Bloom entitled “Preaching War” demonstrates

this approach. After citing a number of rabbinic sermons on various wars in American history to illustrate the point that “Judaism has no definitive view on war,” Bloom explains that

Jewish law does indeed provide for the possibility of war. If your life is threatened and the other side will not negotiate you are not only permitted, but required, obligated, to defend yourself and your people. Therefore Judaism developed two categories, *milchemet reshut* [sic], permissible war, and *milchemet chova*, obligatory war. Clearly, when the Nazis were trying to make Europe Judenrein, free of Jews, that was *milchemet chova*, obligatory war. Most would argue that the War of Independence in 1776 was *milchemet reshut*, permissible war. Most of us would probably also argue, I imagine, that the Vietnam conflict was neither. So what is Iraq? And what does Judaism have to say about this one?<sup>85</sup>

Most noteworthy here is that Bloom does not question the halakhic model’s applicability, nor does he suggest any reason that it *should* be questioned. On the contrary, he simply assumes the paradigm’s relevance on the premise that defensive *milchemet mitzvah* is a universal, rather than a particularist, principle. As such, he presents *hilkhot milchamah* and its component categories as timeless value concepts, devoid of any context, which can and should be used as the Jewish standard for gauging the legitimacy of secular wars such as World War II, the Revolutionary War, Vietnam, and the Iraq war. Though Bloom contends initially that he cannot determine whether the

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<sup>85</sup> Bloom, 4-5

Iraq war would be *milchemet mitzvah* or *milchemet ha-reshut* because the question is a matter of political assessment, he goes on to state that

As a rabbi, I can only say that if there is no evidence that Saddam Hussein has nuclear power or the intent or capability of using it, then war is not permissible at all. If a dictator like him does have the power and may use it, we go to the other extreme, and Jewish law would declare it *chovah*, obligatory.<sup>86</sup>

Bloom's sermon lacks transparency in two significant regards: (1) it does not explain how or why the rubric is being used to evaluate the Iraq war, and (2) it neglects to convey to listeners any sense that this application of the rubric amounts to a radical departure from the traditional view.

Rabbi Avi M. Schulman, in his January 2003 sermon "Going to War," uses *hilkhot milchamah* in a similar, though slightly more subtle, manner. Schulman introduces the halakhic rubric in abstract terms, explaining that

Wars of Survival are deemed *Milchamot Mitzvah* in Judaism. Wars of Self Defense are obligatory; mandated by God that we might exist...The concept of a war for self-defense is comprehensible by most civilized people. Defending the physical welfare of your family, your friends, your city, your nation justifies going to war. A willingness to die so that the ideals of freedom and democracy may flourish justifies making a supreme sacrifice.<sup>87</sup>

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<sup>86</sup> *ibid.*, 5

<sup>87</sup> Schulman, 2

Like Bloom, Schulman presents *hilkhot milchamah* as relevant to the Iraq war on the grounds that the halakhic concept of defensive *milchemet mitzvah* pertains equally to all nations. However, where Bloom identifies *milchemet mitzvah/chova* and *milchemet ha-reshut* as distinctly Jewish categories which can be applied to secular wars, Schulman describes *milchemet mitzvah* as though it has no particular Jewish character whatsoever; rather, he presents it merely as “Judaism’s” term for defensive war. Rabbi Richard Agler, in a September 2003 sermon, does likewise when, in reference to the Dalai Lama’s position that violence is warranted in the war on terror, he states: “If [the Dalai Lama] was speaking in Hebrew, he would have used the term *Milchemet Mitzvah*.”<sup>88</sup>

In redefining *milchemet mitzvah* as simply a Jewish way of expressing a universal principle, Schulman strips the halakhic paradigm of its meaning. He does this implicitly, however, without explaining his interpretive approach. Consequently, listeners who have not studied *hilkhot milchamah* in detail could have no way of knowing either that *milchemet mitzvah* connotes much more than ordinary defensive war, or the extent to which Schulman has diluted the paradigm.

Several other sermons are slightly more transparent than the aforementioned in that they take care to contextualize *hilkhot milchamah* even as they apply it directly to the Iraq war. A sermon by Rabbi Michael A. Weinberg, delivered in November 2002, illustrates this approach. In his introduction to the halakhic rubric, Weinberg accurately outlines the three forms of *milchemet mitzvah* and the two forms of *milchemet ha-reshut*, and properly defines these categories as relating to the conduct of the Jewish state. In contradistinction to Troupp, Bloom, and others, Weinberg does not overtly define

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<sup>88</sup> Agler, 2

defensive *milchemet mitzvah* in universalistic terms; rather, speaking about the Jewish state, he explains that the third type of commanded war is

a war of national self-defense and survival, when the nation is under attack. A *milchemet hova* [sic] could be declared unilaterally by the King and every Israelite was obligated to fight in such a war.<sup>89</sup>

After contextualizing the paradigm, however, Weinberg proceeds to apply it to the Iraq war directly and without qualification, asserting that

It is helpful and instructive to apply these categorical distinctions from our Jewish tradition to our country's current involvement and potential war with Iraq by asking: Into which category would this year's war fall?<sup>90</sup>

Weinberg does not explain why this halakhic model, which he previously explained as referring to a Jewish state governed by a king and a Sanhedrin, is pertinent to the United States; instead, like the foregoing sermons, he simply assumes it to be so. This assumption seems to be based on the notion that *milchemet mitzvah* – in all its forms – is applicable to Jews and gentiles alike, as the following passage demonstrates:

Shall we say that [the Iraq war] would be a *milchemet hova* [sic], an obligatory war? If so, we would then ask, of what type? Clearly...it would not be a war of national self-defense wherein our borders are under attack. It also could not be a war to conquer the

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<sup>89</sup> Weinberg, 2

<sup>90</sup> *ibid.*, 3

seven nations in order to secure the Land of Israel. Those nations were conquered long ago and have not existed for centuries. But shall we say that Mr. Bush's war against Saddam Hussein could be considered analogous to a war against Amalek?<sup>91</sup>

Though Weinberg ultimately concludes that the Iraq war is not a war against Amalek, he does so not because the obligation to destroy Amalek is incumbent upon Israel alone, and not because that obligation is delayed until the messianic period, as tradition maintains – but, rather, because Saddam Hussein, repugnant though he may be, is not so evil as to merit the label “Amalek”! Weinberg's willingness to consider the possibility that the United States could engage in an obligatory war against Amalek, along with his implication that an American war of self-defense is *milchemet mitzvah*, demonstrates his understanding of *hilkhot milchamah* as universal. While this is apparently the basis on which Weinberg deems the halakhic model relevant to the present situation, his reasoning remains implicit in the sermon and, most likely, indecipherable by listeners who are not attuned to the nuances of *hilkhot milchamah*. Indeed, on its face, the sermon suggests that the paradigm is directly translatable into any context.

Rabbi Jonathan A. Stein, in his August 2002 sermon “Jewish Perspectives on War,” similarly contextualizes *hilkhot milchamah* for his listeners, citing the classical sources – such as the *Mishneh Torah*, Nachmanides, and the *Shulkhan Arukh* – in some detail. Like Weinberg and Moskowitz, he carefully outlines the various forms of war and properly defines the categories as relating to the halakhic Jewish state. For example, after explaining the *milchamot mitzvah* against the seven nations and Amalek – and accurately discussing the present status of those commandments – Stein states that

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<sup>91</sup> *ibid.*



The third category [of *milchemet mitzvah*] is fighting a defensive war when the Jewish nation is threatened. This category is based on the general notion of not only the permissibility but also the responsibility of self-defense.<sup>92</sup>

Despite this contextualized presentation of *hilkhot milchamah*, however, Stein neglects to address the question of the model's relevance to the contemporary world; on the contrary, he proceeds to "apply these principles to the various situations that we are currently facing in our world today"<sup>93</sup> without explaining his rationale for doing so. It appears that Stein's presumption of the paradigm's relevance, too, is based on a notion of defensive *milchemet mitzvah* as universally applicable. For one thing, his assertion that "this category is based on the general notion of not only the permissibility but also the responsibility of self-defense" suggests a relationship between the rubric and commonly accepted war norms. His conclusions similarly reflect this assumption:

I do believe...that one can make a legitimate Jewish argument that the concept of *Milchemet Mitzvah*, an obligatory war, and specifically the responsibility to engage in self-defense could be applied...in the U.S. war on terrorism. One might even argue that the tradition would affirm a preemptive strike as self-defense by the U.S. against Iraq if it can be proven that there is sufficient trustworthy evidence that an Iraqi attack against the U.S. or Israel is planned or impending.<sup>94</sup>

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<sup>92</sup> Stein, "Jewish Perspectives on War (with the Palestinians and with Iraq)," 2

<sup>93</sup> *ibid.*

<sup>94</sup> *ibid.*, 3

Unfortunately, Stein does not share his interpretive reasoning with his listeners.

Consequently, his sermon suggests that, although *hilkhot milchamah* technically refers to wars waged by a halakhic Jewish state, this fact has no bearing on its applicability to a modern secular war.

Of those that apply the model directly to the Iraq war, a December 2002 sermon by Rabbi Steven Moskowitz is among the most forthright in acknowledging the relevancy problem. After outlining the elements of *hilkhot milchamah* in a reasonably comprehensive manner, Moskowitz explains that, on the question of whether tradition would countenance the Iraq war,

Jewish literature is unclear. Why [is it] unclear? [The] rabbis [were] writing when [there was] no Jewish power. [They] did not imagine [a] Jewish state except one established by God in messianic times. And [they] certainly did not mention our situation – where we live in a country that is not Jewish yet where we still have a voice.<sup>95</sup>

In this brief passage, Moskowitz' sermon elucidates the applicability problem, with respect to the fact that the United States is a secular state, more clearly than do any of the others. His analysis would seem to affirm the traditional view, as expressed by Maimonides and others, that *hilkhot milchamah* is inapplicable in the modern world because it contemplates specific political and religious conditions that are no longer extant. In the next paragraph, however, Moskowitz inexplicably ignores the problem he just raised and attempts to apply the rubric to the Iraq war directly, stating that

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<sup>95</sup> Moskowitz, 2

The current situation is at best murky. Is the impending war with Iraq [*milchemet ha-reshut*] or [*milchemet*] *mitzvah*?...You must decide. It is no doubt [*milchemet ha-reshut*] but [it is] unclear if [it is *milchemet*] *mitzvah*.<sup>96</sup>

Despite the contextual limitations he so cogently describes, Moskowitz seems to consider *hilkhot milchamah* to be relevant on the basis of a notion of defensive *milchemet mitzvah* as universal. Moskowitz defines the third form of *milchemet mitzvah* simply as a “war of clear and immediate defense against an attack already launched, according to Maimonides.”<sup>97</sup> From this formulation, it is unclear whether Moskowitz understands the category as applicable to Israel only or, more broadly, to all states. However, his later contention that “it seems clear that the war against Al-Qaeda is a *milchemet mitzvah*”<sup>98</sup> indicates his view that the category contemplates the right of any state, including the United States, to respond militarily to an attack. While Moskowitz deserves commendation for forthrightly presenting one of the model’s key limitations, his subsequent failure to confront the applicability problem is puzzling.

Finally, of those sermons which apply *hilkhot milchamah* directly to the Iraq war on the basis of a conception of the rubric as universal, Rabbi Peter J. Rubinstein’s is the only one that both (a) presents the halakhic rubric in context and (b) offers an affirmative explanation, however vague, for why the paradigm is relevant to the modern context. Outlining some of *hilkhot milchamah*’s constitutive elements, though not as thoroughly as do some others, Rubinstein explains in his September 2006 sermon that “Any war

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<sup>96</sup> *ibid.*, 2-3

<sup>97</sup> *ibid.*, 2

<sup>98</sup> *ibid.*, 3

fought in immediate defense of Israel the people or the nation is an obligatory war.”<sup>99</sup> In marked contrast to his colleagues, he then addresses the problem posed by the fact that this definition contemplates Israel exclusively and says nothing about the United States: “And by extension,” he continues, “I suggest that any war fought in immediate defense against an attack on *this nation* [emphasis added] would be considered an obligatory war.”<sup>100</sup>

Rubinstein deserves credit both for presenting *hilkhot milchamah* in a way that indicates its limited applicability and for addressing the relevancy problem directly rather than assuming it away. His solution, like that of so many others, centers on a redefinition of defensive *milchemet mitzvah* in universalistic terms. His explanation of that solution, however, is less than adequate: though he claims that it is relevant “by extension,” he gives no indication of the basis for such an extension; rather, it seems as though Rubinstein pronounces the rubric to be relevant “by extension” strictly on his own authority. If his argument for relevance is rooted in sound reasoning or principle, such as Washofsky’s notion of universal morality, the sermon does not make this clear. On the other hand, Rubinstein does indicate quite clearly that, without the extension, the rubric would not be relevant to the Iraq war. His transparency in this regard empowers curious listeners to research the topic and determine for themselves whether or not the rabbi’s extension is justifiable.

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<sup>99</sup> Rubinstein, 2

<sup>100</sup> *ibid.*

## 2. Argument: *Hilkhot Milchamah* is Relevant Because the Lessons of Torah are Timeless

A second argument for *hilkhot milchamah*'s relevance is the one advanced by the CCAR *teshuvah*, i.e., that the lessons of Torah transcend time, place, and circumstance and, "through proper and prayerful interpretation, address us as well, yielding teachings that have *direct bearing* [emphasis added] upon our own day and our own lives."<sup>101</sup> This argument suggests that relating to the halakhic literature strictly within its context produces too narrow an understanding of Torah and obscures its timeless wisdom. In some sense, the contention that *hilkhot milchamah* is relevant to America because it expresses universal war norms flows from this broader notion of Torah's applicability to modern life. In any case, this view of "*torat chayim*," as the *teshuvah* puts it, provides a rationale for applying the rubric to the Iraq war directly.

Only one sermon, however, invokes this argument as justification for its use of *hilkhot milchamah* to assess the current war. Rabbi Shawna Brynjegard-Bialik contends in that sermon that, at a time of war, American Jews should ask: "What does Judaism tell us about taking up arms, and how can that inform our opinions and understanding of what is going on in our world today?"<sup>102</sup> She then explains that

Jewish texts on war tend to focus on kings and the Davidic monarchy... While it is a bit of a stretch to apply biblical notions of kingship and governance to the modern state of Israel we make that stretch because Israel has a mostly Jewish government and is the same land that the Bible is talking about. But what about a war outside Israel? Can Torah teach us about how the United States should conduct itself? As Reform Jews we

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<sup>101</sup> CCAR Responsa Committee, 1

<sup>102</sup> Brynjegard-Bialik, 1

believe that the lessons of Torah are relevant and applicable to modern life, especially in times of doubt and indecision; Torah can teach us about the standards for our leaders and government.<sup>103</sup>

In this introduction to Jewish thought on war, Brynjugard-Bialik clearly identifies the applicability problem which arises from the fact that the United States is not a halakhic Jewish state. Moreover, like Rubinstein but in sharp contrast to most of her colleagues, she confronts that problem directly, providing an affirmative explanation for why the paradigm is applicable to the United States.

Her explanation, it must be noted, follows the CCAR *teshuvah*'s reasoning quite closely. While there is reason to conclude, based on *teshuvah* author Washofsky's other writings, that the *teshuvah*'s relevancy argument is rooted in the principle that Reform Judaism makes no moral distinction between Jews and gentiles, it is not possible to determine whether or not the same principle informs Brynjugard-Bialik's reasoning. She neither expresses this view in her sermon nor provides any explanation for why "the lessons of Torah are relevant and applicable to modern life," other than to say that "as Reform Jews, we believe" this to be true. This assertion, combined with her argument's consistency with that of the *teshuvah* and the sermon's numerous citations of the CCAR document, suggests that Brynjugard-Bialik grounds her application of *hilkhot milchamah* in what she perceives to be the authority of the *teshuvah*, which she describes as "[serving] as a kind of Reform halakha."<sup>104</sup> To wit, her sermon seems to suggest that the *teshuvah* provides sufficiently authoritative support both for this particular conception of

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<sup>103</sup> *ibid.*

<sup>104</sup> *ibid.*

*torat chayim* and for applying *hilkhot milchamah* to the Iraq war directly, so that further explanation is unnecessary.

Whatever it is that informs her thinking, Brynjegard-Bialik's sermon deals more transparently than most others with the issue of the rubric's applicability. While greater elucidation of her claim regarding Torah's timeless relevance would add to that transparency, Brynjegard-Bialik's assertion that, despite its contextual constraints, *hilkhot milchamah* remains a relevant standard for evaluating war in a Reform context, invites listeners to consider the unasked questions – e.g., Does she mean by this that other streams of Judaism *do not* believe that these lessons of Torah are relevant today? And if not, why not?

### **3. Argument: *Hilkhot Milchamah* is Relevant Strictly as a Referential Model**

A third approach to the relevancy question – and unquestionably the most transparent – is to argue that while *hilkhot milchamah*, because of its contextual constraints, cannot be applied to the Iraq war directly, the rubric is relevant as a referential model for considering various issues surrounding modern warfare. Only one sermon, however – Rabbi Dena Feingold's submission from March 21, 2003, just days after the war began – pursues this line of argumentation.

In her introduction to the rubric, Feingold presents both an accurate description of the halakhic categories and a straightforward acknowledgement of the paradigm's limitations vis-à-vis its applicability in the modern world:

Generally speaking, a commanded war was about conquering and defending the Biblical land of Israel. A permitted war was a war of territorial expansion, undertaken by King

David and others. *Most scholars agree* [emphasis added] that these types of war applied only to the period of ancient Israel and only to the situation of a Jewish country led by a Jewish king who was advised by a Jewish court or Sanhedrin.<sup>105</sup>

This forthright explanation of the rubric's limitations stands out among the Reform sermons. While a number of others, as demonstrated, note in some way or another that *hilkhot milchamah* contemplates a Jewish state, few indicate that this fact presents a problem in applying the model to America's war in Iraq. Even the CCAR *teshuvah*, which notes that using the rubric to assess a modern war "poses some serious difficulties," suggests that such complexities arise only because "our sacred texts *tend to speak* [emphasis added] to the political context of the ancient Jewish commonwealth under the leadership of a Davidic monarch."<sup>106</sup> Feingold is the only one who informs her audience that, according to the prevailing halakhic view, *hilkhot milchamah* decidedly *does not apply* to the modern world.

Unlike the classical and contemporary Orthodox thinkers, however, Feingold does not hold that the contextual parameters render the model totally irrelevant to the current war; on the contrary, she explains, "these definitions of war lay out some important distinctions that can be used to evaluate the moral validity of *other types of war* [emphasis added], including the war in which our nation is now engaged."<sup>107</sup> By defining the Iraq war as one of those "other types of war" which is not contemplated by *hilkhot milchamah*, Feingold indicates to her listeners that she intends to use the halakhic model for referential purposes only, i.e., as an instructive, though not immediately pertinent,

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<sup>105</sup> Feingold, 2

<sup>106</sup> CCAR Responsa Committee, 1

<sup>107</sup> *ibid.*



resource for thinking about issues relating to modern warfare. This distinction, subtle though it may be, creates latitude for Feingold to identify certain principles which *hilkhot milchamah* expresses in relation to halakhic wars, and apply *those principles* to the Iraq war as she sees fit. Feingold's transparency about how she uses the paradigm is especially important given that she, like the CCAR *teshuvah* and all of her colleagues, interprets certain aspects of *hilkhot milchamah* in ways that diverge significantly from traditional halakhic thought.

### ***B. The CCAR Teshuvah as an Authoritative Source***

In the end, it is perhaps most noteworthy that, whichever relevancy argument a sermon uses, it does so in support of an analytical approach that is completely foreign to mainstream halakhic discourse, i.e., the application of *hilkhot milchamah* to a modern secular war. Moreover, none of the sermons demonstrates any awareness of the fact that various scholars have posited alternate halakhic models for assessing secular war; rather, all of them regard *hilkhot milchamah* as the definitive Jewish paradigm for considering war, even if their methods of applying it vary.

Though it is impossible to determine with certainty why so many Reform rabbis understand Jewish thought on war in this way, despite overwhelming precedent contradicting this viewpoint, the consistency of this approach likely reflects the influence of the CCAR *teshuvah* on Reform rabbis' thinking and preaching. Perhaps it should not be surprising that Reform rabbis rely on the CCAR analysis more so than they do on the classical texts; what is remarkable, though, is the way in which they utilize the *teshuvah* in preaching about war.

Professor Washofsky explains that Reform *teshuvot*, in contrast to traditional responsa, are not authoritative but, rather, “advisory” documents that “[emphasize] the right of [their] readers to reject or to modify the answers as they see fit.”<sup>108</sup> Nevertheless, the sermons accord the *teshuvah* significant authority: some cite it as their only Jewish source, while others reference the classical texts directly but read them through the *teshuvah*’s distinct lens. Moreover, no sermon rejects the *teshuvah*’s analysis, challenges its approach to halakhic reasoning, or demonstrates cognizance of traditional views of *hilkhot milchamah* beyond what is articulated in the CCAR document. On the contrary, despite the *teshuvah*’s intended advisory nature and the Reform movement’s emphasis on autonomous interpretations of tradition, many of the sermons present the *teshuvah*’s unique reading of *hilkhot milchamah* as the normative Jewish view of war. As the ensuing section will show, the various ways in which the rubric’s particular elements are defined and applied further demonstrate the extent to which the CCAR *teshuvah* serves as an authoritative model for Reform sermons on the Iraq war.

### III. Applications of *Hilkhot Milchamah*

In the main, the sermons present and apply *hilkhot milchamah* in a manner that is highly consistent with that of the CCAR *teshuvah*. While the reason for this similarity is obvious in cases where the *teshuvah* is cited directly, the CCAR analysis also seems to be an important influence on those sermons which do not reference it explicitly (although such sermons cannot be said with certainty to have used the *teshuvah* as a source).<sup>109</sup>

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<sup>108</sup> Washofsky, *Jewish Living*, xxiii

<sup>109</sup> It must be noted that Rabbi Steven Moskowitz, the only rabbi to provide a bibliography in the text of his sermon, does not cite the CCAR *teshuvah* as a source. However, he does list an essay by Gunther Plaut entitled “The Conduct of War,” which is published in Plaut’s volume *The Torah* (1310) and takes an

Like the *teshuvah*, all of the sermons interpret *hilkhot milchamah*, to some extent, in light of modern secular war norms, and do so implicitly, without explaining this strategy to listeners. As such, many define the halakhic categories and requirements in terms of modern political and moral norms and secular Just War concepts, and frequently use the halakhic and secular terminologies interchangeably. Moreover, many sermons implicitly subject *hilkhot milchamah* to moral-ethical criticism, selectively ignoring those aspects of the rubric which are morally offensive, and diluting others so as to reconcile them to modern sensibilities and war norms. In that vein, many sermons also presume a distinction between halakhic permissibility and moral justifiability: though none articulates this distinction overtly – let alone explains the basis for it – these sermons, like the *teshuvah*, ground their analyses in the premise that “morality,” and not Halakha, is the ultimate standard for gauging a war’s legitimacy.

Consequently, a redefined *hilkhot milchamah* functions in many sermons just as it does in the *teshuvah*, i.e., not as an authoritative legal paradigm but, rather, in one rabbi’s description, as “Jewish just war theory.”<sup>110</sup> This reading of *hilkhot milchamah* is further demonstrated by another sermon’s contention that, in outlining the halakhic rubric, “Maimonides...expounded three fundamental *moral* principles about war [emphasis added]”<sup>111</sup>: to wit, the desire to present the rubric as a moral, rather than a legal, paradigm is so strong that this sermon, perhaps inadvertently, recasts Maimonides as a Reform Jew. That is to say, while Maimonides understands Halakha as an authoritative and binding system of law, the sermon implies that he relates to it strictly as a body of moral-ethical

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approach to *hilkhot milchamah* that is similar to the *teshuvah*’s. Given such similarity, Plaut’s analysis may demonstrate that the particular interpretive strategy used by the *teshuvah* and the sermons war actually pre-dates the Iraq war.

<sup>110</sup> Goldman-Wartell, 5

<sup>111</sup> Rubinstein, 2

guidelines – a disposition which is, of course, a unique innovation of modern liberal Judaism.

Collectively, these several interpretive strategies shape the sermons' approaches to *hilkhot milchamah*'s key elements: (a) the categories of war, i.e., *milchemet mitzvah* and *milchemet ha-reshut*; (b) authorization for war; (c) military service; (d) pre-war peace initiatives; and (e) the conduct of war. To illustrate how the Reform sermons understand and apply the halakhic rubric, their treatments of each component must be examined in turn.

#### ***A. Presentations of Milchemet Mitzvah and Milchemet ha-Reshut***

##### **1. Defining the Categories: Halakhic versus Secular Definitions of “Enemy Aggression”**

It will be recalled that there are three forms of *milchemet mitzvah*: (1) war against the seven Canaanite nations; (2) war against Amalek; and (3) “war to assist Israel from an enemy that comes upon them,” i.e., defensive war. In addition, the tradition outlines two forms of *milchemet ha-reshut*: (1) war to expand the borders of Israel; and (2) war to magnify the king's greatness and reputation, which, according to at least one authority, the *Lechem Mishneh*, is war waged to cause enemy nations to fear the Jewish monarch and thus refrain from attacking Israel. On the traditional view, any war waged under the auspices of *hilkhot milchamah* which is not one of the three forms of *milchemet mitzvah* is, by definition, *milchemet ha-reshut* and, therefore, subject to the various parameters, including certain authorization requirements, which govern that category. As explained in the previous chapter, both *milchemet mitzvah* and *milchemet ha-reshut* may be waged

only by a halakhic Jewish state in *Eretz Yisrael*, which is governed by a monarch and/or the Great Sanhedrin and the priesthood,

In the main, the sermons acknowledge that the commanded wars against the Canaanite nations and Amalek are not pertinent to the present situation. Regardless of whether they do so overtly or simply by omitting those wars from their introductions to *hilkhot milchamah*, all of the sermons, in the end, maintain that defensive war is the sole type of *milchemet mitzvah* that is relevant to an assessment of the current war. At the same time, the sermons contend that *milchemet ha-reshut*, which some describe in detail and others present simply as “discretionary war,” remains pertinent to the modern world. Consequently, the sermons, like the *teshuvah*, suggest that the fundamental question that must be asked is: is the Iraq war an instance of *milchemet mitzvah* or *milchemet ha-reshut*?

Given the parameters restricting *hilkhot milchamah*’s applicability to a narrowly defined political and religious context, the notion that either category is relevant to the Iraq war constitutes a monumental departure from traditional halakhic thought; nonetheless, the premise that the Iraq war can be classified as one or the other form of halakhic war guides every sermon’s analysis. As such, all of the Reform sermons, like the CCAR *teshuvah*, fundamentally misuse *hilkhot milchamah*; therefore, it must be noted that the remainder of this chapter will examine the sermons’ application of *hilkhot milchamah* to the Iraq war notwithstanding – but with full consciousness of – this violation of the traditional paradigm.

Consideration of the sermons’ governing question – i.e., is the Iraq war *milchemet mitzvah* or *milchemet ha-reshut* – necessitates, of course, clear definitions of those

categories, most especially the former, since, as most sermons present the rubric, any war which is not *milchemet mitzvah* is necessarily *milchemet ha-reshut*. The sermons' initial question thus becomes: what constitutes a defensive war? Or, more precisely, what circumstances warrant defensive military action? In short, a sermon's definition of *milchemet mitzvah* – and, therefore, also of *milchemet ha-reshut* – depends entirely on how it understands the concept of “enemy aggression.”

As explained in the foregoing chapter, Maimonides apparently derives “war to assist Israel from an enemy that comes upon them” from a Talmudic passage which delineates Israelites' obligation to defend their cities against attackers on Shabbat. There the Sages conclude that defensive war is mandatory in two instances: when an enemy (1) “comes in the interest of [taking] lives,” or (2) attacks a border city “in the interest of stealing straw or stubble.” From this statement, it was determined that the Talmud defines enemy aggression as (a) a military attack or (b) a non-military action that directly threatens Israel's security by violating its territorial integrity. On this definition, defensive *milchemet mitzvah* is narrowly construed as a war waged in response to an attack that has *already been launched*.

Of all the sermons surveyed for this study, only one demonstrates consciousness of this traditional notion of aggression. In that sermon, Rabbi Steven Moskowitz accurately defines *milchemet mitzvah* as “war of clear and immediate defense against an attack *already launched* [emphasis added] – according to Maimonides.” Given the category's clear parameters, Moskowitz goes on to question whether the war against Iraq, a country which had not attacked the United States, can legitimately be classified as *milchemet mitzvah*:

[The] central question [is]: [Is a] preventive or preemptive attack obligatory war or permitted war?...The current situation is at best murky. Is the impending war with Iraq [*milchemet ha-reshut*] or [*milchemet mitzvah*]? It seems clear that the war against Al-Qaeda is a *milchemet mitzvah* but what of a war against Iraq?...You must decide – it is no doubt [*milchemet ha-reshut*] but [it is] unclear [if it is *milchemet mitzvah*].<sup>112</sup>

Moskowitz' ambivalence about how to categorize the Iraq war is puzzling. It would seem that, based on his definition of *milchemet mitzvah*, he would deem the Iraq war conclusively to be non-defensive and, therefore, an instance of *milchemet ha-reshut*. While the reason for his unwillingness to do so is unclear, his sermon nevertheless stands out for its reluctance to expand *hilkhot milchamah*'s classical notion of aggression.

In contrast to the halakhic model, secular Just War Theory, arguably accounting for recent historical phenomena such as the Six Day War, accords modern states the right of “anticipation,” i.e., the right to defend against a threat before that threat is imminent. As explained in the previous chapter, Walzer maintains that when an enemy demonstrates “[1] a manifest intent to injure, [2] a degree of active preparation that makes that intent a positive danger, and [3] a general situation in which waiting, or doing anything other than fighting, greatly magnifies the risk,” the threat, though not imminent, is considered “sufficient” to necessitate a defensive response. War in these circumstances is termed “preemptive war,” and is considered to be “morally justified.” On the other hand, war to counter a perceived threat when these conditions are absent, termed “preventive war,” is

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<sup>112</sup> Moskowitz, 2-3

not morally justified. On this broader definition of aggression, in contradistinction to the Talmudic notion, a defensive war may be initiated *before* an enemy attack is launched.

Though none of the remaining sermons indicates awareness of the distinction between the two notions of aggression, the overwhelming majority of them superimpose the secular definition onto the halakhic model. *Milchemet mitzvah* thus necessarily comes to encompass preemptive war against a threat that is sufficient but not yet manifest, in direct contravention of tradition. In all cases, this reinterpretation occurs implicitly: no sermon explains how the adoption of the secular definition of aggression alters the meaning of the halakhic category; on the contrary, all of them present this redefined version of defensive *milchemet mitzvah* as the authentic traditional formulation. However, as in regard to other issues as well, they do so with varying degrees of transparency.

For example, Rabbi Richard Agler uses strictly halakhic language to convey the Just War meaning of defensive war, asserting that

if a nation is attacked or if it is *demonstrably about to be* [emphasis added] – a war of self-defense can be fought. We call this a *Milchemet Mitzvah* – a commanded or obligatory war.<sup>113</sup>

Uninitiated listeners may have no way to know that this definition of *milchemet mitzvah* is inconsistent with the traditional conception, since Agler cites no source in his sermon other than *hilkhot milchamah* for his view. Consequently, the rabbi's claim that Jewish

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<sup>113</sup> Agler, 2



law obligates states to take preemptive action in self-defense risks appearing to the listener as straightforward and accurate.

Rabbi Jonathan Stein similarly defines *milchemet mitzvah* as inclusive of preemptive war, although, in contrast to Agler, he grounds his assertion in a classical halakhic source. Stein explains that

The *Shulkhan Arukh* (*Orach Chaim* 329:6 and *Ramah* [sic] commentary)...says that even a preemptive attack, merely anticipating an upcoming attack by the enemy, can be considered self-defense.<sup>114</sup>

Rabbi Moses Isserles' commentary, to which Stein alludes here, explains that the Talmudic requirement to wage defensive war even on Shabbat applies "even if [the enemies] have not yet come but they intend to come." While Rema's comment, on its face, appears to support Stein's position, contemporary Orthodox scholar David Bleich offers an alternate reading, which is more sensitive than Stein's to the context of Rema's ruling. Noting that Rema makes his comment in the context of laws relating to Shabbat, Bleich maintains that Rema "sanctions only violation of Sabbath restrictions," such as transporting arms and supplies to the front in order to intimidate the enemy, but that "nowhere does he sanction actual warfare in the absence of overt hostilities."<sup>115</sup>

While it is possible that Stein's reading of the Rema text may stand up to halakhic scrutiny, Stein does not elucidate his rationale for generalizing the permissibility of preemptive action beyond the context of the breach of Shabbat laws in which Rema

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<sup>114</sup> Stein, 2

<sup>115</sup> Bleich, "Preemptive War in Jewish Law," 272

articulates his view. It is also possible, especially given Bleich's analysis, that Stein has interpreted Rema, consciously or not, in light of modern war norms – a phenomenon which, as will be demonstrated, is more obviously at work in other sermons. Indeed, the fact that Stein uses the technical Just War terms “anticipation” and “preemption” without citing the secular paradigm may illustrate the extent to which the secular concepts and terminology have been incorporated into common parlance. In addition, Stein's use of this language may indicate the influence of the CCAR *teshuvah*, even though he does not reference it directly. In this regard, it is noteworthy that, while the *teshuvah* cites the same *Shulkhan Arukh* section, it does not affirm Stein's reading of that text; on the contrary, the *teshuvah* cites the passage only as a source on the precept of self-defense and *not* to substantiate the claim (which the *teshuvah* does make on other grounds) that preemptive war is a form of defensive *milchemet mitzvah*.<sup>116</sup>

In any case, Stein's sermon is more transparent than those which ground their explanations of the halakhic categories strictly in “Judaism” or “Jewish tradition.” By informing listeners of the source for his view, he empowers them to locate and research the text to determine whether or not Stein's reading is plausible.

While the aforementioned sermons implicitly link the halakhic and secular war categories through their definitions of defensive *milchemet mitzvah*, a number of other sermons explicitly equate preemptive war with defensive *milchemet mitzvah* and preventive war with *milchemet ha-reshut*. For example, Rabbi Michael Weinberg explains that *milchemet ha-reshut* is “a preventive war against those who might someday attack Israel.”<sup>117</sup> While Weinberg does not indicate the source for this definition, other

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<sup>116</sup> CCAR Responsa Committee, footnote 10, 5

<sup>117</sup> Weinberg, 3

rabbis make similar claims on the basis of the CCAR *teshuvah*. Rabbi Barbara Goldman-Wartell, for instance, asserts that

[T]here is a difference between preventive and preemptive war. A preemptive strike is an example of self-defense...[P]reventive war, remember, is fought against somebody who isn't planning to attack you now, but might someday down the line do that. That, we said, was an example of *milchemet ha-reshut*. *Milchemet mitzvah*, a war of self-defense, can cover pre-emptive strikes. You don't have to wait to be attacked first...<sup>118</sup>

Similarly, Rabbi Leonard B. Troupp, explaining the Responsa Committee's thought process, explains that

A "preemptive war" was considered a "commanded war" because there was a clear and present danger that the enemy was about to attack, imminently threatening national security, and that there was no purpose in waiting for the inevitable and immediate attack to occur. Such were the circumstances of the Israeli preemptive attack against Egypt in 1967.

On the other hand...a "preventive war" is one which is initiated against a nation that poses no immediate clear and present danger, but might pose a real future threat. Such a war is not considered defensive. It is considered by our tradition a "discretionary war" ...<sup>119</sup>

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<sup>118</sup> Goldman-Wartell, 2

<sup>119</sup> Troupp, 4

Rabbi Dena Feingold provides a somewhat fuller picture of the *teshuvah*'s basis for linking the secular principles with *hilkhot milchamah*. She explains that the *teshuvah* deems Rabbi Yehudah's notion of "war to diminish the gentiles so that they will not attack" (B. *Sotah* 44b) to be what today is known as "preventive war." She then notes that "The [*teshuvah*] writers pointed out that in assessing this preventive type of war, the Sages...of the Talmud ultimately came down against its being commanded." Having thus established for her readers why the *teshuvah* considers preventive war to be a form of *milchemet ha-reshut*, Feingold applies this notion of *milchemet ha-reshut* in her analysis of the Iraq war. She goes on to define *milchemet mitzvah* purely in Just War terms, stating that

A preemptive war [against an enemy that has been stockpiling weapons of mass destruction and intends to use them in the near future] can be categorized, in Jewish law, as a war of self-defense, which according to the [*teshuvah*] "more closely resembles a commanded war than a discretionary one."<sup>120</sup>

Whereas the *teshuvah* carefully calibrates its statement, noting that preemptive war "*more closely resembles* a commanded war than a discretionary one," Feingold presents this conclusion as definitive, asserting that preemptive military action "can be categorized, in Jewish law, as a war of self-defense..." While this constitutes a significant interpretive leap, Feingold does not explain how she achieves it; that is to say, she does not indicate to listeners how or why she determines, on the basis of the *teshuvah*, that preemptive war does not merely *resemble* defensive *milchemet mitzvah*

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<sup>120</sup> Feingold, 3

but, rather, is actually a halakhically recognized form of it. On the contrary, she represents her interpretation to listeners as the Reform *teshuvah*'s own conclusion. It may be unfair, however, to fault Feingold for this; after all, apart from this one carefully phrased statement, the *teshuvah* implies quite strongly that *hilkhot milchamah* does indeed contemplate preemptive war as a form of defensive *milchemet mitzvah*. Consequently, it is difficult to regard Feingold's interpretation as intentionally misleading, let alone as completely off the mark.

Each of these three sermons' presentations constitutes a wholesale redefinition of the halakhic categories in accordance with the principles of secular Just War Theory. Not only do they impute the secular definition of aggression to the halakhic model, but, by using the secular terms and ideas so aggressively, they strip the halakhic categories of their particular character and present them merely as "Jewish" expressions of Just War concepts. Given the extent to which they evince the influence of the secular paradigm, it is noteworthy that these sermons make no mention of Just War Theory; indeed, they provide no indication whatsoever to listeners that the principles which form the basis of their analyses flow from anything other than the halakhic tradition.

Still, these sermons, in contrast to some of those mentioned previously, clearly identify their source – i.e., the CCAR *teshuvah* – and apply it forthrightly; indeed, their definitions of *milchemet mitzvah* and *milchemet ha-reshut* are entirely consistent with those outlined by the *teshuvah*. It is ironic, then, that by applying the *teshuvah* directly and transparently, the sermons present as "tradition" or "Jewish law" a version of the halakhic categories that contravenes the traditional formulation. This paradox reveals a key problem associated with using the *teshuvah* as an authoritative source – a problem

which is likewise manifest in the sermons' treatments of *hilkhot milchamah*'s other elements.

## **2. Determining War's Legitimacy: Halakhic Permissibility versus Moral**

### **Justifiability**

On the traditional view, any war permitted by and waged within the context of *hilkhot milchamah* is necessarily legitimate and "just," since Halakha is inherently moral. As such, defensive war, as defined by the classical model – i.e., one waged by the halakhic state in *Eretz Yisrael* in response to (a) a military attack against it or (b) a non-military action that violates its territorial integrity – is a legitimate and just war. Should the halakhic monarch wish to wage any other war which cannot be categorized as *milchemet mitzvah* – for example, a preemptive strike against an enemy that has not yet attacked – he must subject his proposal to the halakhically mandated authorization process. If the Sanhedrin approves the war policy and God grants divine consent for it via the *urim* and *tumim*, then the proposed war is deemed to be permissible as *milchemet ha-reshut* and is, therefore, legitimate and just. On the other hand, if the Sanhedrin and/or God refuse to approve the king's military initiative, the proposed war cannot be classified as *milchemet ha-reshut*, which, by definition, requires such authorization. Barred by Halakha, such a war is necessarily illegitimate and unjust; were the king to wage it anyway, he would do so outside the bounds of *hilkhot milchamah* and incur the divine wrath, most immediately by losing the war. In short, any war that qualifies as *milchemet ha-reshut* is, by definition, a just war.

On the traditional understanding of *hilkhot milchamah*, however, no modern state can possibly wage either *milchemet mitzvah* or *milchemet ha-reshut*, since both categories relate exclusively to wars waged by the halakhic Jewish state in *Eretz Yisrael*. *Milchemet mitzvah*, in any form, arises strictly from divine command, and requires a halakhic monarch to execute it; absent these criteria, even defensive *milchemet mitzvah* is impossible. Therefore, defensive *milchemet mitzvah* should not be confused with permissible defensive war under the Noachide code, which is a right that Halakha accords to non-Jewish states. Likewise, *milchemet ha-reshut* requires Sanhedrin approval and divine consent via the *urim* and *tumim*, and a monarch to implement the policy; absent any of these criteria, *milchemet ha-reshut* is impossible. As noted in the previous chapter, Maimonides and other authorities rule that the category of *milchemet ha-reshut* is inoperative in the modern world because all of the requisite institutions are presently defunct. Therefore, *milchemet ha-reshut* should not be confused with a non-defensive war waged by a modern state.

In summary, the traditional view equates legitimacy with halakhic permissibility: any war waged according to the dictates of *hilkhot milchamah* is necessarily a just war. However, both *milchemet mitzvah* and *milchemet ha-reshut* are halakhically impermissible and impossible in the modern world because (a) these categories relate only to a halakhic Jewish state in *Eretz Yisrael* and (b) it is presently impossible to obtain the requisite authorization for war under the auspices of *hilkhot milchamah*. Consequently, the question of whether the Iraq war should be considered to be *milchemet mitzvah* or *milchemet ha-reshut* is a nonsensical one according to traditional halakhic thought.

Secular Just War Theory's standard of legitimacy, by contrast, is "moral justifiability," a concept which, in traditional halakhic discourse, is encompassed in the notion of halakhic permissibility. Since Just War Theory considers self-defense in response to enemy aggression to be a moral action, it deems defensive war to be legitimate and just. Given its particular definition of enemy aggression, the secular model considers preemptive military action to be a form of defensive war; as such, preemptive war is morally justifiable and, therefore, legitimate. Conversely, the secular paradigm considers wars that are neither defensive (of self or allies) nor precisely targeted humanitarian interventions to be immoral and, therefore, illegitimate and unjust. For instance, the theory teaches that imperialism is immoral, so it deems wars of conquest to be unjust wars. Likewise, because of the inevitable destruction that war brings and the potential for error in assessment, Just War Theory considers preventive strikes aimed at countering a perceived, though insufficient, threat to be morally unjustifiable and, as such, illegitimate. In sum, "preemptive" wars, as defensive actions, are morally justifiable and legitimate, while "preventive" wars, as non-defensive actions, are morally unjustifiable and illegitimate.

Although the CCAR *teshuvah* uses the halakhic terminology in its analysis, its standard for determining a war's legitimacy has nothing to do with halakhic permissibility. As discussed in the previous chapter, the *teshuvah* contends, in marked opposition to the traditional view, that defensive *milchemet mitzvah* and *milchemet ha-reshut* remain operative categories in the modern world. It explains that, while the *milchamot mitzvah* against the Seven Nations and Amalek "do not apply to our day and time,"



[T]he third kind of “commanded war” – the war “to assist the Jews against enemies who have attacked them” – sadly retains its relevance, reminding us that threats against our national existence continue to plague us...

Though the word “*mitzvah*” has a particularly Jewish connotation, there is no reason to believe that the Jews are the only people that is entitled to self-defense. Every nation must possess the right to take up arms if necessary to protect itself and its citizens against military attack...a nation has every *moral justification* to take up arms for defensive purposes [emphasis added].<sup>121</sup>

The *teshuvah* adds further that

Discretionary war, too, is still with us, for states continue to fight wars in order to expand their borders and their power, “to increase their greatness and reputation.” Given that Jewish law, as we have seen, *permits* the state to fight discretionary wars, we might draw the conclusion that it is *morally justifiable* for governments to wage such wars in our own day and time [emphases added]. We believe that this conclusion is erroneous...<sup>122</sup>

These claims regarding the ongoing relevance of *milchemet mitzvah* and *milchemet ha-reshut* are possible only because the *teshuvah* (a) interprets away the fact that *hilkhot milchamah* applies only to a Jewish state, as previously discussed, and (b) redefines the rubric’s authorization requirements, as will be explained in the following

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<sup>121</sup> CCAR Responsa Committee, 2-3

<sup>122</sup> *ibid.*, 2

section. In the meantime, it is important to note that the *teshuvah*, in contravention of traditional halakhic thought, distinguishes between halakhic permissibility and moral justifiability. The above statements express the *teshuvah*'s position that, although defensive *milchemet mitzvah* and *milchemet ha-reshut* are *halakhically permissible*, that does not necessarily mean that they are *morally justifiable*; rather, the *teshuvah* evaluates the respective categories' moral justifiability against the standards expounded by secular Just War Theory.

As indicated above, the *teshuvah* considers defensive *milchemet mitzvah* to be morally justifiable, and therefore legitimate, because *all* states have a right to self-defense (thus confusing that halakhic category with the Noachide right to defensive war). Conversely, the *teshuvah* maintains that, although *milchemet ha-reshut* is technically permissible, Halakha itself considers that form of war to be morally unjustifiable in any context, but particularly in the modern world. This is evinced, according to the *teshuvah*, by the fact that *hilkhot milchamah* mandates a more stringent authorization process for *milchemet ha-reshut* than for *milchemet mitzvah* and, by imposing requisite military service exemptions, forces the monarch to fight *milchemet ha-reshut* with a smaller army. Furthermore, the *teshuvah* deems *milchemet ha-reshut* to be a "concession to the *realpolitik* of the ancient Near East [which] cannot blind us to the reality of war as it is fought today, to the horrific price it exacts of soldiers and non-combatants alike, and to the prospect of massive and unfathomable destruction that its armaments have placed in our hands."<sup>123</sup> Indeed, of one Jewish king who waged *milchamot ha-reshut*, the *teshuvah* says: "David's aggressive nature was incompatible with the teaching that 'one who saves

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<sup>123</sup> *ibid.*

a single human life has saved an entire world.”<sup>124</sup> Consequently, the *teshuvah* determines that, although *milchemet ha-reshut* is halakhically permissible in the modern world, it is morally unjustifiable and, therefore, illegitimate.

In sum, the *teshuvah* uses secular Just War Theory’s standards of moral justifiability, rather than the halakhic criteria of permissibility, to evaluate the legitimacy of the Iraq war. At the culmination of its analysis, the *teshuvah* concludes that

If we perceive a [U.S.] military strike against that nation [Iraq] as a case of “preventive” war, then the weight of our tradition would counsel against it. Yet...Let us suppose that intelligence experts are fairly certain that Saddam Hussein’s regime is building and stockpiling weapons of mass destruction...If this is the case, then there is also good reason to believe that this regime, which has compiled a record of aggression against other countries and against its own citizens, continues to harbor aggressive intentions. We would therefore judge Iraq to be a threat to peace and security, if not today or tomorrow then surely at some point in the realistically near future. Under these circumstances, we would be justified in viewing an attack upon Iraq as a *preemptive* war, as a strike against a real enemy engaged in the early stages of a planned military offensive, rather than as a *preventive* war against a nation that *might* one day pose a threat but which does not do so now. As we note above, a preemptive strike in the legitimate cause of self-defense more closely resembles a commanded war than a discretionary one. We deem such a strike to be morally justifiable.

Despite the circumspect statement that a preemptive strike “*more closely resembles* a commanded war than a discretionary one,” the rest of the *teshuvah*’s

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<sup>124</sup> *ibid.*

discussion regarding the applicability and morality of *milchemet mitzvah* and *milchemet ha-reshut* implies that its conclusions flow directly from *hilkhot milchamah*. That is to say, the *teshuvah* seems to suggest that (a) because defensive *milchemet mitzvah* (which, on the secular definition of aggression, includes preemptive war) is morally justifiable, Jewish law considers it to be legitimate in the modern world; and (b) because *milchemet ha-reshut* (which includes preventive war) is morally unjustifiable, Jewish law considers it to be illegitimate in the modern world. This constitutes a radical reinterpretation of the halakhic rubric, which considers both categories to be inherently legitimate but possible only in a narrowly defined context.

Perhaps because the *teshuvah* neither explains its interpretive strategy nor provides readers any indication of its departure from traditional halakhic thought, the sermons that rely on the *teshuvah* as a primary source follow it in deeming *milchemet mitzvah* to be legitimate and *milchemet ha-reshut* to be illegitimate in the modern world on the basis of *moral justifiability*. A number of other sermons also reach the same conclusion, but because they do not cite the *teshuvah* directly, it cannot be determined conclusively whether or not the CCAR analysis influenced their reasoning.

The sermons are split in their approaches to evaluating a war's legitimacy. Some determine legitimacy according to halakhic permissibility, although it must be noted that all of those that do so operate, like the *teshuvah*, on the premise that both defensive *milchemet mitzvah* and *milchemet ha-reshut* are halakhically permissible in the modern world. For example, Rabbi Richard Agler explains that

In Jewish law there is a distinction between mandatory wars and optional wars, between wars of self-defense and wars that are fought for other reasons...[I]f a nation is attacked

or if it is demonstrably about to be – a war of self-defense can be fought. We call this *Milchemet Mitzvah* – a commanded or obligatory war... But if it is not a war of self-defense, if it is a war for some other political or strategic aim, it is, as the Talmud calls it, a *Milchemet Reshut*, an optional war. And here things are not so automatic. Ancient Jewish Law required the support of the Sanhedrin, the High Court, before such a war could be fought.... Then as now, the decision to go to war was the ultimate national decision. With its high cost in human life, property, health and wealth, if an optional war was going to be fought, it had better be declared wisely and society had better be behind it. The principle still holds.<sup>125</sup>

Because Agler equates defensive war with *milchemet mitzvah*, as discussed previously, he maintains that any modern state may wage this form of halakhic war. At the same time, his statement implies that *milchemet ha-reshut* is also permissible in the modern world, provided that it receives the proper authorization.<sup>126</sup> Indeed, he contends that “If we are going to go, if we are going to fight... *especially if it is a war of choice* [emphasis added], we had better, as we stand before God, be sure that it is justified.”<sup>127</sup> Strictly in regard to the determining standard for legitimacy, then, Agler follows the traditional mode of halakhic thinking: because Halakha allows both commanded and discretionary wars, both are inherently legitimate.

Rabbi Steven Moskowitz takes a similar approach to the question of legitimacy. After outlining the forms of *milchemet mitzvah* and *milchemet ha-reshut*, he explains that

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<sup>125</sup> Agler, 1-2

<sup>126</sup> Agler's discussion of authorization will be discussed in greater detail in the ensuing section on that subject.

<sup>127</sup> Agler, 2

Jewish literature allows for wars fought only at the behest of the king (or queen). It seeks only to regulate the conduct of such a war...Although war is the reality of both biblical times and the present, it is not the ideal...In the Jewish tradition it is not holy war, but wars made holy.<sup>128</sup>

Asserting that the Iraq war “is no doubt [*milchemet ha-reshut*] but [it is] unclear if [it is *milchemet*] *mitzvah*,” Moskowitz maintains that President Bush’s decision to seek United Nations support for his policy was “critical” because it fulfilled the halakhic requirement to offer the enemy peace before waging war. This unorthodox interpretation of the peace requirement will be discussed in more detail in the section below dealing with that topic. In the meantime, it is important to note that Moskowitz, like Agler, holds that “Judaism’s” sanction for *milchemet mitzvah* and *milchemet ha-reshut* inherently renders both kinds of war legitimate; thus the Iraq war, whether it is commanded or discretionary (according to Moskowitz’ understanding of the halakhic categories), would be legitimate so long as it meets the other criteria set forth by *hilkhot milchamah* (as Moskowitz interprets them).

In the same vein, Rabbi Mark Bloom, as noted above, contends that the war to prevent the Nazis from destroying European Jewry is an example of *milchemet chovah/mitzvah* and the American Revolutionary War is an instance of *milchemet ha-reshut*, while the Vietnam War cannot be considered either commanded or discretionary.<sup>129</sup> Though he does not say so explicitly, Bloom quite clearly considers both World War II and the Revolutionary War – as *milchemet mitzvah* and *milchemet ha-*

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<sup>128</sup> Moskowitz, 2-3

<sup>129</sup> Bloom, 5

*reshut*, respectively – to be legitimate wars and the Vietnam War – as one that does not meet the halakhic standards of war – to be illegitimate. The implication, then, is that wars sanctioned by *hilkhot milchamah* (as Bloom interprets the categories) are inherently legitimate, while those waged in violation of the rubric’s standards are not.

In contradistinction to these three sermons, the majority diverges from this traditional disposition and adopts the CCAR *teshuvah*’s approach to determining legitimacy; that is to say, they evaluate a war’s legitimacy not against the halakhic standard of permissibility but, rather, against the secular Just War Theory standard of *moral justifiability*. These sermons’ analyses, like the *teshuvah*’s, are predicated on two assumptions: (1) that Halakha and “morality” are discrete concepts, and (2) that “morality” is superior to Halakha as a standard for gauging the legitimacy of war. While some of these sermons deal with the legitimacy question slightly more transparently than do others, the differences are marginal; in the main, all of them present “moral justifiability” as the ultimate *Jewish* standard for determining whether or not a given war is legitimate.

Rabbi Avi Schulman’s sermon is perhaps the most oblique in this regard. As noted previously, he maintains that

Wars of Survival are deemed *Milchamot Mitzvah* in Judaism. Wars of Self Defense are obligatory; mandated by God that we might exist. The Yom Kippur War of 1973 was also a *Milchemet Mitzvah*; a war of survival, fought against implacable enemies who

wished to kill Jews and destroy the Jewish state. The concept of a war for self-defense is comprehensible by most civilized people.<sup>130</sup>

As Schulman presents it here, *milchemet mitzvah* is a legitimate form of war; however, it is legitimate not (only) because Halakha permits it but, rather, because defensive war is *morally justifiable* according to the view of “most civilized people.” Though Schulman, unlike the *teshuvah* and some of his colleagues, does not invoke “morality” explicitly, it is clear from his subsequent comments that the question of moral justifiability lies at the heart of his analysis. Regarding a potential war against Iraq, he asks:

Is it a war of self-defense? Only in the most abstract sense can we say that Iraq threatens Americans or our way of life... What justifies the radical shift in United States foreign policy from fighting wars of self-defense, or to defend democracy, to launching a war to compel another country to comply with an international treaty? When did we forsake fighting wars when our own way of life is at stake and instead be willing to stage preemptive attacks on another country because of a presumed threat?<sup>131</sup>

Clearly, the implication is that defensive war – i.e., *milchemet mitzvah* as Schulman defines it – is morally justifiable and, therefore, legitimate, while war waged for purposes other than self-defense is morally unjustifiable and, as such, illegitimate. Though Schulman uses the halakhic term *milchemet mitzvah*, his assessments regarding the legitimacy of the Yom Kippur War and the Iraq war have little to do with halakhic permissibility and everything to do with moral justifiability. This is most likely

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<sup>130</sup> Schulman, 2

<sup>131</sup> *ibid.*, 3



unapparent to the untrained listener, however, because the sermon seems to *equate* halakhic permissibility with moral justifiability.

Rabbi Peter J. Rubinstein, in contrast, overtly distinguishes between these two concepts. Rubinstein, who cites the *Mishneh Torah* as his primary source, casts Maimonides as a modern thinker who relates to *hilkhot milchamah* not as law but, rather, as “moral principles about war [emphasis added].”<sup>132</sup> After defining *milchemet mitzvah* as defensive war and *milchemet ha-reshut* as “voluntary war,” he asserts that

Voluntary wars were not fought to destroy an attacking army but were launched by a king or a leader for territorial expansion or the extension of national hegemony. Voluntary wars, according to our tradition, better served the reputation or self-interest of the king than the welfare of the people.”<sup>133</sup>

While Rubinstein’s summation of Maimonides’ two forms of *milchemet ha-reshut* is essentially accurate, his characterization of the permissible wars to expand Israel’s territory or magnify the king’s reputation is misleading: by suggesting that such wars “better served the reputation or self-interest of the king than the welfare of the people,” Rubinstein implies that *milchamot ha-reshut* are inherently opprobrious and, as such, condemnable in the eyes of Jewish tradition. Indeed, he goes on to contend that “Maimonides affirms that voluntary wars were permissible but morally repugnant while defensive wars were obligatory and principled.”<sup>134</sup>

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<sup>132</sup> Rubinstein, 2

<sup>133</sup> *ibid.*

<sup>134</sup> *ibid.*

Rubinstein's presentation is problematic in two significant ways. First, the notion that *milchemet ha-reshut* is "permissible but morally repugnant" is oxymoronic, since, in traditional Jewish thought, any war that is sanctioned by *hilkhot milchamah* is necessarily considered to be legitimate and moral; indeed, *milchemet ha-reshut*, by definition, is endorsed, via the *urim* and *tumim* by God, the ultimate source of morality. Rubinstein's characterization of Maimonides' attitude toward commanded and discretionary war thus constitutes a radical reinterpretation of the *Mishneh Torah* in accordance with modern sensibilities. Second, Rubinstein does not explain that the distinction he draws between halakhic permissibility and moral justifiability is anathema to traditional halakhic thought; on the contrary, he suggests that this distinction is grounded in Jewish tradition. In support of his claim that *milchamot ha-reshut* are morally unjustifiable, Rubinstein points out that

The great King David was forbidden to build the holy Temple because the wars he led were voluntary wars and he had irresponsibly spilled the blood of his countrymen. God considered David's behavior reprehensible.<sup>135</sup>

Although Rubinstein does not cite the CCAR *teshuvah* in his sermon, this statement echoes the *teshuvah*'s argument, cited above, that God's condemnation of David's aggressive behavior demonstrates the immorality of *milchamot ha-reshut*. While the statement about David is accurate – God does, in fact, bar David from building the Temple because of his involvement in war – in this context it implies a dimension to the determination of a war's legitimacy that is foreign to the traditional understanding of

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<sup>135</sup> *ibid.*

*hilkhot milchamah* – namely, that a war which is halakhically sanctioned can be deemed to be immoral and, therefore, illegitimate.

Several other sermons that distinguish between halakhic permissibility and moral justifiability do so apparently on the basis of the CCAR *teshuvah*, which they cite extensively. For example, Rabbi Dena Feingold, as discussed previously, holds preemptive war to be a form of defensive *milchemet mitzvah*, which is traditionally deemed to be legitimate by virtue of the fact that it is divinely ordained. Noting that defensive war “is accepted as obligatory in Jewish law today,”<sup>136</sup> she adds that “the [*teshuvah*] writers classify this type of war [i.e., preemptive war] as *morally justifiable* [emphasis added].” In this way, the halakhic permissibility of defensive *milchemet mitzvah* appears to support its moral justifiability.

However, after explaining that the Talmudic Sages, in their debate with Rabbi Yehudah, determine that “war to diminish the idolaters, so that they will not come upon [Israel]” – which, following the *teshuvah*, Feingold deems to be “preventive war” – is a form of *milchemet ha-reshut*, Feingold contends that “In Biblical times, [the *teshuvah* writers] concluded, the King of Israel might have been allowed to fight a preventive war, but in later times, it did not seem justifiable.”<sup>137</sup> This statement belies the notion that, in Feingold’s analysis, halakhic permissibility has any bearing on moral justifiability. That is to say, by maintaining that *milchemet ha-reshut*, although permissible, is not morally justifiable in the modern world, Feingold indicates that whether or not a war is halakhically permissible is incidental to its legitimacy. The true standard for determining legitimacy is moral justifiability.

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<sup>136</sup> Feingold, 2

<sup>137</sup> *ibid.*, 3

Having drawn this distinction between halakhically permissible wars – which include both *milchamot mitzvah* and *milchamot ha-reshut* – and morally justifiable wars – which exclude *milchamot ha-reshut* – Feingold concludes that

Those who support the current war believe Iraq is poised to attack now. If they are right, then *according to Jewish teaching* [emphasis added], this is a preemptive war, and it is a just and necessary war. But if Saddam Hussein is merely a distant threat, then this is a preventive war and it is not morally justifiable.<sup>138</sup>

In claiming that the moral justifiability of preemptive war and the moral unjustifiability of preventive war is a matter of “Jewish teaching,” Feingold’s conflation of *hilkhot milchamah* with secular Just War Theory is complete. This hybrid approach to evaluating war could not be apparent to the untrained listener, however, because Feingold does not explain the influence of the secular model on her reasoning; rather, it remains an implicit force in the sermon’s analysis. Moreover, since she overtly bases her argumentation on the CCAR *teshuvah*, it is unclear whether, or to what extent, Feingold herself is aware of the degree to which her presentation of *hilkhot milchamah* is shaped by modern secular Just War Theory.

Rabbi Shawna Brynjegard-Bialik likewise maintains, on the basis of the *teshuvah*, that defensive *milchemet mitzvah*/preemptive war is morally justifiable and, therefore, legitimate even today, while *milchemet ha-reshut*/preventive war is morally unjustifiable and, consequently, illegitimate in the modern world. Following the *teshuvah*, she claims that the stricter standards governing *milchemet ha-reshut*, as opposed to those that

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<sup>138</sup> *ibid.*

regulate *milchemet mitzvah*, act as “deterrents to discretionary war [which] can be interpreted as God’s way of discouraging these sorts of engagements.”<sup>139</sup> While this statement strongly suggests that traditional Jewish thought condemns *milchemet ha-reshut* as immoral, even as it permits this kind of war on certain occasions, Brynjegard-Bialik goes on to explain that

Judaism places great value on peace, and our awareness of the destructive nature of war leads very easily to the idea that the damage done is not worth the gains in reputation and glory; for that reason, the [*teshuvah*] explains that discretionary wars are quite soundly condemned by *contemporary Reform Judaism* [emphasis added].<sup>140</sup>

Although she, too, fails to elucidate the basis for her distinction between halakhic permissibility and moral justifiability, Brynjegard-Bialik stands alone among her colleagues in explaining to listeners that the modern condemnation of *milchemet ha-reshut* as morally unjustifiable is a position espoused specifically by Reform Judaism. While she does not say whether traditional Judaism shares this view, the clarity of her statement invites curious listeners to investigate the question.

Rabbi Jonathan Stein, who does not cite the *teshuvah* explicitly in his sermon, is perhaps the most transparent in explaining why he considers *milchemet ha-reshut* to be morally unjustifiable in the modern world even though, on his view, it is technically permissible. Stein maintains that

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<sup>139</sup> Brynjegard-Bialik, 2

<sup>140</sup> *ibid.*

It strikes me as very difficult to argue that...the United States has the moral right to engage in a *Milchemet Reshut*, an optional war intended to expand our territory, or even our influence. We live in a different age than did our ancestors and international standards of proper relations between nations with recognized borders precludes the purposeful taking of another country's territory for its own sake.<sup>141</sup>

Though Stein does not mention secular Just War Theory specifically, this statement unambiguously conveys to listeners his view that certain aspects of *hilkhot milchamah* require reconsideration in light of modern international relations norms. Unlike some of his colleagues, Stein does not imply that traditional Judaism considers *milchemet ha-reshut* to be permissible but immoral; on the contrary, he provides a clear explanation for why a war that Halakha permits and thus legitimates may be deemed, in light of modern morality, to be immoral and, therefore, illegitimate today.

In sum, a significant number of the sermons, whether or not they rely on CCAR *teshuvah* explicitly, mirror the *teshuvah* in their approach to outlining the two categories of halakhic war. First, in addition to maintaining that *hilkhot milchamah* is relevant to a secular state, most of the sermons, like the *teshuvah*, superimpose the secular definition of aggression onto the halakhic model. In so doing, they redefine the halakhic categories in terms of modern Just War concepts: overtly or implicitly, many classify “preemptive war” as a form of defensive *milchemet mitzvah* and “preventive war” as a form of *milchemet ha-reshut*. Second, the majority of the sermons assess the legitimacy of war according to the secular Just War standard of moral justifiability, rather than the halakhic standard of permissibility. As such, they hold preemptive war/defensive *milchemet*

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<sup>141</sup> Stein, “Jewish Perspectives on War,” 2

*mitzvah* to be morally justifiable and legitimate, and preventive war/*milchemet ha-reshut* to be morally unjustifiable and illegitimate. Reinterpreting *hilkhot milchamah* along these lines thus enables the sermons to ask the question: is the Iraq war a preemptive war/*milchemet mitzvah* and, thus, legitimate, or is it a preventive war/*milchemet ha-reshut* and, therefore, illegitimate? This mode of assessing a modern secular war, which is anathema to traditional halakhic discourse, arises from the hybrid halakhic-Just War approach which is the unique innovation of the CCAR *teshuvah*.

### ***B. Authorization for War: Interpretation in Accordance with Modern Norms***

However they define the respective categories, many sermons apply *hilkhot milchamah*'s authorization requirements in their evaluations of the Iraq war. Before examining their treatments of the authorization question, however, it is necessary to recall the guidelines as they are outlined in both the classical sources and in the CCAR *teshuvah*.

Because *milchamot mitzvah* are, by definition, ordained by divine command – either explicitly in the biblical text or, in the case of defensive war, by Talmudic inference – Maimonides rules that the Israelite monarch may wage such wars on his own volition. By contrast, the king cannot wage *milchamot ha-reshut* on his initiative alone, since, by definition, such wars lack prior divine sanction; rather, he must first obtain the consent both of the Great Sanhedrin, the supreme rabbinic body, and of God, via the *urim* and *tumim*. The fundamental premise of *hilkhot milchamah*, therefore, is that *all* halakhic wars – both *milchamot mitzvah* and *milchamot ha-reshut* – require divine consent and the assurance of victory that comes with it. While the king and Sanhedrin play key political

roles in implementing war policy, those roles can be reprised by other executive and deliberative bodies; as the only institutions possessing the ability to obtain divine sanction for war, however, the monarch and rabbinical council are irreplaceable.

The CCAR *teshuvah* presents the authorization process quite differently. Most importantly, it eliminates from the halakhic framework the divine consent requirement, without which *hilkhot milchamah*, as understood traditionally, cannot function. Ignoring God's indispensable role in legitimating halakhic war, the *teshuvah* informs readers only that

the king must consult with and receive the approval of the Sanhedrin before fighting a discretionary war; no such confirmation is required for a *milchemet mitzvah*, which the king "wages on his own initiative." (*Mishneh Torah, Melakhim 5:2*)<sup>142</sup>

With the divine consent requirement in force, only two conclusions are possible regarding the application of *hilkhot milchamah* to an American war:

- (1) *Hilkhot milchamah* cannot apply to an American war, since the United States is neither addressed by Torah command nor has access to the *urim* and *tumim*; or
- (2) Since the United States has no means of obtaining God's approval for war, *hilkhot milchamah*, if applied, would bar that nation from waging any war except a purely defensive one (i.e., in response to an attack already launched), which authorities agree necessitates no separate divine authorization.

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<sup>142</sup> CCAR Responsa Committee, 1



As such, the divine consent requirement would complicate the *teshuvah*'s effort to produce a politically palatable Jewish evaluation of the Iraq war. Were it to determine that *hilkhot milchamah* is inapplicable to the United States, the *teshuvah* would have to assess the war in the context of Noachide law, as understood either by Chatam Sofer or Netziv. On Chatam Sofer's view, which bars secular states from waging any war except in response to a direct attack, the *teshuvah* would have to conclude that Jewish tradition unequivocally forbids a strike against Iraq, which had not attacked the United States. On the other hand, were it to adopt Netziv's position, the *teshuvah* would have to conclude that Jewish tradition authorizes the United States to wage war against Iraq but is silent on issues of authorization, pre-war peace initiatives, military service, and the conduct of war. Perhaps the *teshuvah* writers sought to produce a more nuanced assessment which neither of these approaches could provide, though that is a matter of speculation; in any case, however, the *teshuvah* notably excises the divine consent requirement from the halakhic rubric without explanation.

By omitting that requirement, the *teshuvah* recasts the halakhic authorization process as one that modern governments can emulate, thereby aiding its claim that *hilkhot milchamah* is immediately relevant to contemporary life. In so doing, however, the *teshuvah* opens the door to certain interpretive problems, both in its own analysis and in the analyses of those sermons which rely on it as a source.

For example, the *teshuvah*'s failure to explain that the monarch and the Sanhedrin are unique political institutions, inasmuch as they alone have the ability to inquire of

God, leads some to erroneously equate the halakhic entities with modern American institutions. Indeed, the *teshuvah* itself maintains that

As our tradition calls upon the king to consult with the Sanhedrin before embarking upon any war other than a *milchemet mitzvah*, so it is essential that the leaders of the American government consult with the Congress and with the representatives of other governments in order to convince them that this war is clearly necessary for the defense of this nation and of others.<sup>143</sup>

As this statement indicates, the *teshuvah* assumes that the United States may wage *milchemet ha-reshut* so long as its decision to do so is endorsed by Congress and, perhaps, also by other governments and/or international institutions. Given Maimonides' and other traditional authorities' insistence that it is presently impossible to obtain the necessary approval for *milchemet ha-reshut*, the *teshuvah*'s claim constitutes a radical redefinition of *hilkhot milchamah*. The *teshuvah* thus resurrects *milchemet ha-reshut* by replacing the divine consent requirement with an earthly consent requirement. In so doing, it forsakes *hilkhot milchamah*'s essential principle that Israel may wage war only when military victory is guaranteed by God. Ironically, then, even as the *teshuvah* emphasizes that "Peace, and not war, is our primary aspiration,"<sup>144</sup> it abandons the element of *hilkhot milchamah* that, more than any other, limits the waging of war.

Several of the sermons follow the *teshuvah*'s lead in this regard. For instance, one explains that

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<sup>143</sup> *ibid.*, 4

<sup>144</sup> *ibid.*, 2

Almost everyone agrees that there has to be some form of just authority who authorizes the war. In the Jewish context, that meant the approval of the Sanhedrin, Jewish Court, or a non-obligatory war, for a discretionary war. For an obligatory war, the commander-in-chief, the king, was able to make the decision alone. The question is – the way we structured our Congressional decision, I don't think it met that criteria. I don't think the halakha or the Sanhedrin would simply give blanket authorization for the king to make the war on the king's own choice somewhere down the road.<sup>145</sup>

Like the *teshuvah*, this sermon implies that “tradition” speaks specifically about a king and Sanhedrin, as opposed to other executive and legislative institutions, only because those were the political entities of the time, and not because the king and Sanhedrin *per se* are integral to the halakhic system. As such, it suggests to listeners that the king and Sanhedrin are interchangeable with the American president and Congress. The sermon strengthens that claim by referring to the halakhic monarch by the American appellation “commander-in-chief.” Any indication that God plays a role in authorizing war and assuring victory is completely absent from the sermon, as it is from the *teshuvah*.

In a similar vein, Rabbi Michael Weinberg asserts that

Jewish tradition requires the King to seek the permission and consent of the Sanhedrin before engaging in *milchemet r'shut* [sic], an optional/discretionary war. President Bush has been given the approval of the Congress but has indicated that he seeks the approval and support of the American people as well. In my judgment he has yet to make a convincing case.<sup>146</sup>

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<sup>145</sup> Goldman-Wartell, 5

<sup>146</sup> Weinberg, 5-6

Beyond equating the U.S. president with the king and Congress with the Sanhedrin, Weinberg suggests that the halakhic authorization requirement might be extended, on the king/president's volition, to necessitate public approval for war. Although Weinberg does not maintain that public consent is mandatory, Rabbi Jonathan Stein contends that

[O]f course, you also need to get permission to fight this type of war [i.e., *milchemet ha-reshut*]. This is proving to be most difficult for...President Bush...in both the court of public opinion and the legislature.<sup>147</sup>

Stein thus reinterprets *hilkhot milchamah*'s authorization requirement in light of modern democratic norms. Though the claim that public consent for war is unfounded in tradition, it reflects contemporary notions of the American government's role vis-à-vis the citizenry. That is to say, this interpretation expresses, in some sense, the American principle that effective government requires the consent of the governed.

Rabbi Richard Agler likewise imputes the role of authorizing war to the American people, asserting that

[I]n a democracy war is ultimately a citizens' responsibility. It is done in our name, with our consent, either active or passive.<sup>148</sup>

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<sup>147</sup> Stein, "Jewish Perspectives on War," 2-3

<sup>148</sup> Agler, 1

He further implies, somewhat more aggressively than do the aforementioned sermons, that the democratic concept of popular consent for war – or something like it – originates in the halakhic tradition itself, maintaining that

Ancient Jewish Law required the support of the Sanhedrin, the High Court, before such a war could be fought. And we understand why. Then as now, the decision to go to war was the ultimate national decision. With its high cost in human life, property, health and wealth, if an optional war was going to be fought, it had better be declared wisely and *society had better be behind it* [emphasis added].<sup>149</sup>

All of these arguments for the importance of popular consent in authorizing war are possible only when the traditional divine consent requirement is removed from the halakhic framework. While the sources for these claims are uncertain in some cases, in many instances it is evident that the sermons base such assertions on the CCAR *teshuvah*. In any case, this reinterpretation of the halakhic authorization process is, in many ways, quintessentially American, and, as such, illustrates the influence of contemporary secular thought on the sermons' presentations of *hilkhot milchamah*.

Both *hilkhot milchamah* and the Reform sermons approach war with significant caution. Not surprisingly, the halakhic system, which is rooted in belief in God's supreme authority, requires God's consent for war; nor, perhaps, should it be surprising that a Reform *teshuvah* and Reform sermons produced in the American context, which reveres democracy, implicitly replace the divine consent requirement with a popular consent requirement for war. Tradition maintains that Israel cannot win in battle without

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<sup>149</sup> *ibid.*, 2

God's approval; in the modern context, it might be said that America cannot prevail without popular support for the war. It is perhaps this notion that is reflected in Rabbi Jonathan Stein's September 2006 call for the U.S. to withdraw from Iraq because "I am convinced that President Bush has...lost the consent of the country."<sup>150</sup> If such views regarding democracy do indeed underlie these redefinitions of the halakhic rubric, however, none of the sermons explains this to listeners; on the contrary, they imply that Jewish tradition contemplates these notions directly.

While this approach is predominant among the sermons that address the authorization requirement, two sermons do subtly demonstrate awareness of the importance of divine consent in a Jewish assessment of war. Rabbi Barbara Goldman-Wartell, for instance, citing "Christian war rules" – the closest any sermon comes to mentioning secular Just War Theory – addresses the Just War notion that, in order for a state to wage war, "there has to be a viable chance for success":

In my understanding of modern halakhic writers writing on this, I see that some argue that that's built into the halakhic system – that you don't do things that have no chance of succeeding, and clearly, that is a determining factor. If you see that as one of the factors, then the lack of planning for after the war, to really succeed in our goals, really would have undercut a moral decision that this was the time to go to war without having made those preparations.<sup>151</sup>

The statement that an evaluation of the potential for success is built into the halakhic system is, of course, accurate: *hilkhot milchamah* requires divine consent for war because

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<sup>150</sup> Stein, "The Ethics of War," 5

<sup>151</sup> Goldman-Wartell, 6

God's approval assures victory. Thus Israel will necessarily prevail in any war that it undertakes within the context of *hilkhot milchamah*; were God to disapprove of a potential war, thereby ensuring Israel's defeat, that message would be conveyed to the priest via the *urim* and *tumim*. Though Goldman-Wartell secularizes this notion by placing the burden on political leaders to plan appropriately for war, she does convey, perhaps unknowingly, a vague sense of the role of divine consent in *hilkhot milchamah*.

Only one rabbi, however, seems to incorporate the divine consent requirement into his analysis, even if he does so unconsciously. After outlining the contours of *hilkhot milchamah*, Rabbi Mark Bloom expresses a reluctance to render judgment on the Iraq war, stating, quite humbly, that "Unfortunately, only God has the answers."<sup>152</sup>

### ***C. Pre-War Peace Initiatives: Moral-Ethical Criticism and Redefinition in Accordance with Modern Norms***

As discussed previously, the Torah requires that the Jewish monarch, before commencing war, must offer his enemy the opportunity to make peace. There is some disagreement among the classical authorities as to the circumstances in which this requirement pertains: Maimonides and Nachmanides hold that the king must propose peace prior to waging either *milchemet mitzvah* or *milchemet ha-reshut*, while Rashi and Ibn Ezra maintain that it is mandatory only in instances of *milchemet ha-reshut*. At a minimum, then, all authorities concur that the king must offer peace before launching *milchemet ha-reshut*.

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<sup>152</sup> Bloom, 6

As explained previously, the king is not permitted to make peace on whatever terms he chooses; rather, *hilkhot milchamah* mandates the terms which he must offer and the enemy nation must accept in order to avoid war:

(a) **Tribute.** As Maimonides explains, “The tribute they must accept consists of being prepared to support the king’s service with their money and with their persons; for example, the building of walls, strengthening the fortresses, building the king’s palace and the like.”

(b) **Subjugation.** According to Maimonides, “The subjugation they must accept consists of being on a lower level, scorned and humble. They must never raise their heads against Israel, but must remain subjugated, under their [rule]. They may never be appointed over a Jew in any matter whatsoever.”

If the enemy refuses even one of these terms, Israel must attack.

In outlining this requirement for its readers, the CCAR *teshuvah* explains only that

In its abhorrence of bloodshed, the Torah instructs that before undertaking any war, commanded or discretionary, we must reach out to our foes and offer them peace.<sup>153</sup>

This presentation of the peace requirement is particularly noteworthy for two reasons: First, the *teshuvah* presents as definitive halakha Maimonides’ and Nachmanides’

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<sup>153</sup> CCAR, 2



position that Israel must propose peace to its enemy before initiating *any* war, without noting that other classical authorities dispute this view. Its lack of transparency in this regard is especially significant since the adoption of the Maimonidean position bears directly on the *teshuvah*'s disposition toward the Iraq war: because the *teshuvah* considers preemptive war to be a form of *milchemet mitzvah*, Maimonides' ruling enables it to maintain that a modern state must first seek a peaceful resolution before striking preemptively to counter a security threat. Indeed, the *teshuvah* asserts that

[S]o long as it has made every sincere effort to reach a peaceful solution, a nation has every moral justification to take up arms for defensive purposes....When diplomacy fails, when our foes spurn the offer of peace that our tradition bids us to make them, when they are clearly bent upon their aggressive course, then the time to initiate preemptive action is sooner rather than later.

The implication, of course, is that, even if the potential war against Iraq is deemed to be preemptive – and, therefore, an instance of *milchemet mitzvah* – Jewish tradition obligates the United States government to propose terms of peace to Saddam Hussein before initiating military action. As will be demonstrated, a number of sermons, several of which rely on the *teshuvah* as their primary source, espouse this position overtly.

Second, the *teshuvah* omits the halakhically mandated terms of peace from its presentation of the pre-war peace requirement. This omission likely indicates that the *teshuvah* authors subjected this element of *hilkhot milchamah* to moral-ethical criticism on the basis of modern sensibilities and war norms. The halakhic requirement that Israel must demand tribute, servitude, and subjugation from its enemy as the only means of

avoiding war is imperialistic; indeed, *hilkhot milchamah* not only permits wars of conquest but mandates them in certain instances. In this regard, Halakha stands in opposition to secular Just War Theory and modern international relations standards, both of which condemn imperialism as immoral or illegitimate. The *teshuvah* resolves this tension simply by purging the halakhic peace requirement of its morally offensive elements, thus transforming it from a non-military tool of imperialism into a general injunction to seek peace first and turn to war only as a last resort – a sentiment with which modern Reform Jews can sympathize. Moreover, by excising these more bellicose elements, the *teshuvah* recasts the peace requirement to support its overarching claim that “Peace, and not war, is our primary aspiration.”<sup>154</sup> However, the ambiguity of the peace requirement, as redefined by the *teshuvah*, leads some rabbis to interpret it in accordance with their own notions of what it means to “offer [our foes] peace,” and to attribute their individual interpretations to “Jewish law.”

Those sermons that include the peace requirement in their analyses take an approach similar to the *teshuvah*’s; that is to say, all of them use implicit moral-ethical criticism to redefine the requirement in a manner that is consistent with modern sensibilities and international relations norms. Rabbi Jonathan Stein, for example, asserts that

In general...war is permitted in Judaism, but only under certain specific conditions...[One such condition is that] terms for peace must be sincerely offered and seriously considered before any attack may commence.<sup>155</sup>

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<sup>154</sup> *ibid.*

<sup>155</sup> Stein, “The Ethics of War,” 3

Like the *teshuvah*, Stein implicitly accepts Maimonides' position that peace must be proposed prior to the initiation of any war, without explaining that this is not a consensus view. Also mirroring the *teshuvah*, he makes no mention of the halakhically required terms of peace, tribute and subjugation. (Moreover, if his analysis is indeed based on an independent reading of the *Mishneh Torah*, as the sermon implies, then it is also noteworthy that Stein neglects to cite Maimonides' third mandatory peace term, namely, acceptance of the seven Noachide laws.) Thus, while Stein's statement is not technically erroneous, it is incomplete; as such, it implies that, while Halakha permits war in certain cases, it prefers peace and contains a mechanism – the peace requirement – to enforce that preference.

This insinuation regarding the aim of the peace requirement is misleading: in context, that requirement functions not as a bulwark against war but, rather, as a *tool* of war, i.e., a non-military means of imposing Israel's will on an enemy nation; its purpose is not to achieve a settlement that preserves the enemy's sovereign integrity but, instead, to effect something akin to Germany's Anschluss of Austria. Because the sermon selectively ignores aspects of the halakhic requirement, however, it implies that *hilkhot milchamah* requires the (Jewish) state, before waging war, to seek reconciliation with its enemy on terms agreeable to both parties. While this idea may resonate with modern listeners who value peaceful coexistence among nations, it constitutes a fundamental redefinition of the halakhic peace requirement.

Rabbi Peter J. Rubinstein likewise cites the *Mishneh Torah* in presenting the peace requirement, explaining that

Maimonides asserts that the thrust towards peace must be the goal prior to, during, and after any war. Peace must be pursued with all available means, energy and purpose.

‘Prior to attacking a town,’ the Torah requires, ‘you must offer terms for peace.’

Maimonides reminds us, ‘When Joshua conquered the land of Israel, which had been promised, he sent the Canaanite nations who dwelt there three letters urging them not to fight, but to accept peace and avoid the loss of life.’<sup>156</sup>

While Rubinstein’s citation of *Melakhim* 6:5 is reasonably (but not entirely) accurate, he frames it in a way that completely transforms its meaning. Nowhere in the *Mishneh Torah* does Maimonides assert “that the thrust towards peace must be the goal” or that “peace must be pursued with all available means.” However, by attributing his own interpretation of Maimonides’ disposition to the sage himself, Rubinstein represents the *Mishneh Torah* as expressive of *modern* morality and international relations norms. That is to say, the sermon implies that Maimonides views war strictly as a means of attaining some abstract peace, in which all nations coexist harmoniously – certainly a notion that most Reform congregants can accept. It gives no indication that the “peace” Maimonides actually envisions is one in which the enemy is utterly subjugated to Israel, bound to physical and monetary servitude, and forced to accept the seven Noachide laws.

In regard to the peace requirement, then, Rubinstein recasts Maimonides as a man of the modern world. Indeed, Maimonides’ reference to Joshua as an example of one who properly proposed peace before attacking takes on new meaning in Rubinstein’s reframed version of the *Mishneh Torah* passage: no longer a conqueror who invited his

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<sup>156</sup> Rubinstein, 3

enemies, in not so many words, to “surrender or die,” Joshua is recast here as the quintessential twenty-first century statesman. All of this, however, occurs implicitly in the sermon; due to its lack of transparency in this regard, listeners may well misconstrue the *Mishneh Torah* as mandating that the United States must exhaust all “peaceful” alternatives before taking military action against Iraq. While this view was certainly prominent in the American conversation about the Iraq war, it is simply not part of the traditional halakhic discourse.

As noted above, when the halakhic peace requirement is stripped of its mandatory terms, it becomes an ambiguous principle open to unconstrained interpretation. Consequently, some sermons provide their own interpretations of what it means to “offer peace.” For instance, Rabbi Steven Moskowitz asserts that

The decision to go the United Nations was critical. Why? Not because I trust or have faith in the U.N., but because Jewish law insists that one must first offer terms of peace before making war. Maimonides insists that even in the case of *milchemet mitzvah* one must first offer terms of peace. Deuteronomy 20:10 [says:] “When you approach a town to attack it, you shall offer it terms of peace...”<sup>157</sup>

Although Moskowitz presents the halakhic peace requirement as binding on the United States, he does not maintain that the American government must demand that Iraq subjugate itself to President Bush and pay tribute to the U.S. Treasury. Rather, he implicitly replaces *hilkhot milchamah*’s imperialistic terms with a pseudo-requirement – i.e., “[going] to the United Nations” – which reflects the modern notion that sovereign

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<sup>157</sup> Moskowitz, 3

states should work through international bodies in deciding issues of war and peace. Moreover, Moskowitz presents Maimonides and the Tanakh in such a way that they seem to support this radical redefinition of the peace requirement: although his citations are technically accurate, they are sufficiently ambiguous to accommodate Moskowitz' suggestion that the United States can comply with the halakhic requirement to "offer [the enemy] terms of peace" by asking the United Nations to enforce the Iraq disarmament resolutions rather than attempting to do so itself, and by seeking United Nations approval for war against Iraq, rather than acting on its own initiative. By recasting the peace requirement as a generalized mandate, the sermon is able to present these quintessentially modern policy positions as matters of "Jewish law."

Rabbi Barbara Goldman-Wartell, who cites the CCAR *teshuvah* throughout her sermon, likewise presents the halakhic peace requirement in general terms, leaving room for her own interpretation of what it means to "offer peace." Contrasting "Christian and Jewish just war theory," she explains that

Christian theory talks about exhausting all alternatives. And one of the reasons Christians have come down so hard on this war is the feeling that we didn't exhaust all alternatives. Jewish law argues for a good-faith effort to reach peace, give the other side a chance to surrender. The halakhic authorities argue that there have to be three attempts. Others say, one attempt, but you have to wait three days to see the answers. Others argue for a longer period of time. But the basic idea is that there are limits to that, that you don't have to exhaust all possibilities...<sup>158</sup>

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<sup>158</sup> Goldman-Wartell, 5-6

Although she provides a bit more detail about the peace requirement than do her other colleagues – stating explicitly, for example, that Halakha does not require that the state exhaust all peaceful avenues before initiating war – Goldman-Wartell nevertheless omits the mandatory peace terms, thus implying that the United States may pursue peace with Iraq in any number of ways, as long as it makes a “good-faith effort.” She then attempts to fit current political realities into the framework of the redefined peace requirement, contending that

I think an argument can be made that the President met the halakhic criteria, made a good-faith effort – didn’t do a very good job necessarily – but made a good-faith effort in terms of Colin Powell’s presentation at the UN, going back to the UN twice, et cetera.<sup>159</sup>

This statement is problematic in several ways. For one thing, the suggestion that the President of the United States has an obligation to meet “the halakhic criteria” misrepresents *hilkhot milchamah*, since, of course, the rubric does not govern the actions of a secular state. That aside, Goldman-Wartell, like Moskowitz, seamlessly substitutes “going to the United Nations” for the mandate to demand tribute and subjugation from the enemy. In so doing, she implicitly drains the halakhic peace requirement of its intrinsic meaning and refills the empty shell with a modern notion of diplomacy that is wholly unrelated to *hilkhot milchamah*.

In sum, the CCAR *teshuvah* adopts Maimonides’ and Nachmanides’ position that the halakhic peace requirement is operative in both *milchemet mitzvah* and *milchemet ha-reshut*, though it does not indicate that this view is controversial. Moreover, the *teshuvah*

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<sup>159</sup> *ibid.*, 6

implicitly uses moral-ethical criticism to rid the halakhic peace requirement of its bellicosity and imperialism, both of which contradict contemporary Just War norms and may offend modern sensibilities. In so doing, the *teshuvah* redefines the requirement as a generalized mandate to seek a peaceful solution to conflict in order to avoid war except in the direst circumstances, thus reconciling the halakhic obligation to modern notions of war and peace. The sermons that incorporate the peace requirement into their analyses take the same approach, though it cannot be determined with certainty whether all of them rely on the *teshuvah* as a source. By recasting the halakhic requirement in general terms, the sermons imply to listeners that, before initiating war against Iraq, the United States is obligated by Jewish tradition to offer peace to Saddam Hussein. Some speak abstractly, leaving it to listeners to determine what it means to “offer peace,” while others proactively fill in the blanks. In all cases, though, the sermons transform the peace requirement from a tool of imperialism into an obligation that expresses modern values; all of them accomplish this, moreover, without providing any indication to listeners of the complex reinterpretation that has occurred.

#### ***D. Military Service: Interpretation in Accordance with Modern Norms***

As discussed previously, *hilkhot milchamah* requires all Israelites to fight in *milchemet mitzvah* – “even a bridegroom out of his chamber and a bride out of her bridechamber” – and exempts them, for the duration of their service, from the obligation to perform other commandments. In contrast, certain mandatory service exemptions, outlined in Deuteronomy 20, apply in *milchemet ha-reshut*; moreover, those who do fight



remain obligated to perform other commandments during their tours of service.<sup>160</sup> It must also be reiterated that in all instances of halakhic war, military service is a matter not of choice, but of law.

While the CCAR *teshuvah* outlines the military service prescriptions in a straightforward manner, it interprets them in a way that supports the *teshuvah*'s conclusions regarding the legitimacy of the two halakhic war categories. The *teshuvah* contends that the fact that *hilkhot milchamah* "grants" exemptions from military service in *milchemet ha-reshut* "means that the king must fight his war with a significantly reduced army, forcing him to think again about the advisability of initiating the conflict." The service exemptions, together with the more stringent authorization requirement for *milchemet ha-reshut*, "make it much less likely that the king will engage in war unless it is absolutely necessary to do so [and therefore they] act as a significant brake upon his militaristic impulses."<sup>161</sup> This explanation of the military service exemptions' underlying purpose is a key component of the *teshuvah*'s argument that Halakha itself considers *milchemet mitzvah* to be morally justifiable and *milchemet ha-reshut*, though technically permissible, to be immoral. To wit, through its interpretation of the military service laws, the *teshuvah* imputes to *hilkhot milchamah* the modern secular distinction between halakhic permissibility and moral justifiability.

A relatively small number of the sermons deal with the military service issue; those that do, however, demonstrate two distinct approaches to this facet of *hilkhot milchamah*. Several of them simply present the service laws as part of the halakhic rubric without rendering judgment as to their meaning. For instance, Rabbi Steven Moskowitz

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<sup>160</sup> *Sotah* 44b

<sup>161</sup> CCAR Responsa Committee, 2

notes that “Jewish literature...limits who may fight [in *milchemet ha-reshut*], i.e., a bridegroom is excused from fighting in a permitted war but obligated if [the war is] obligatory.”<sup>162</sup> Likewise, Rabbi Michael Weinberg explains that “every Israelite was obligated to fight in [*milchemet hova* [sic]]...[but] not every Israelite was obliged to fight in a *milchemet r'shut* [sic].”<sup>163</sup> Beyond these factual statements, these two rabbis say nothing further about military service.

In contrast, several other sermons offer interpretations of the military service requirements that, like the *teshuvah*'s, support their broader theses. For example, Rabbi Shawna Brynjegard-Bialik – who, as previously noted, overtly uses the *teshuvah* as an authoritative source – explains that

The exemptions granted during a discretionary war could serve as a powerful deterrent to a king, who would have to think twice about fighting a war with a reduced army. This *de facto* discouragement of discretionary wars lends support to contemporary disdain for them...Our tradition views God's preference as avoiding discretionary wars; with that understanding there is no way to justify a discretionary war in modern times.<sup>164</sup>

Brynjegard-Bialik thus follows the *teshuvah* almost exactly in characterizing the military service laws as built-in halakhic deterrents to *milchemet ha-reshut*; as such, this interpretation bolsters her sermon's overarching argument that discretionary war – which includes preventive military action – is immoral and, as such, illegitimate in the modern world.

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<sup>162</sup> Moskowitz, 2

<sup>163</sup> Weinberg, 2

<sup>164</sup> Brynjegard-Bialik, 2

Two other sermons, which provide interpretations of the military service laws that are *not* advanced by the CCAR *teshuvah*, redefine this aspect of *hilkhot milchamah* in light of modern democratic notions of government. After outlining the military service requirements, Rabbi Peter J. Rubinstein explains that

When the cause was just, said Maimonides, the entire citizenry should support it with their own flesh and blood...Loyal citizens mobilize in partisan defense of their people or their nation when they are committed to the cause for which their nation is fighting...Maimonides insinuates that people vote on the righteousness of a war with their personal military service. When endangered, people step forward. When ambivalent, they don't.<sup>165</sup>

This is a radical interpretation of the *Mishneh Torah*'s treatment of the military service laws. Maimonides, of course, insinuates no such thing: his rulings do not contemplate individual choice – let alone support for a given war – as a factor in military service; rather, as noted above, army service in halakhic war – as outlined by Maimonides and other traditional authorities – is strictly a matter of law.

Furthermore, *hilkhot milchamah* operates on the premise that any war waged by the Jewish state within the context of that rubric is divinely sanctioned. As such, there is no room in the halakhic system for individual citizens to voice their approval or disapproval of the state's war policies in the way that Rubinstein suggests; after all, it is forbidden to deliberately contravene the will of God. His presentation of the military service requirements indicates, rather, that he has read the *Mishneh Torah* through the

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<sup>165</sup> Rubinstein, 2-3

lens of American democracy, in which ultimate authority is vested in the people. His sermon, however, does not make this strategy explicit to listeners; consequently, some may come away thinking that Maimonides does, in fact, determine the legitimacy of war on the basis of the extent to which individuals voluntarily enlist in the armed forces. Indeed, Rubinstein argues this explicitly, maintaining that “By inference, the question we should ask ourselves about any war is whether we would go.”<sup>166</sup> The sermon thus implies that this thoroughly modern criterion for assessing the legitimacy of war flows directly from the halakhic tradition.

Rabbi Jonathan Stein likewise imputes democratic ideas to the halakhic model. He asserts that, given the halakhic requirement that the Sanhedrin approve *milchemet ha-reshut*,

no Jewish leader can fight an expansionary war on his own without the explicit support of the community. In addition, the soldiers who fight in a *Milchemet Reshut* must be volunteers; they cannot be conscripted against their will.<sup>167</sup>

In fact, the opposite is true: while *hilkhot milchamah* exempts certain individuals from service in *milchemet ha-reshut*, all those who are not exempt are *required* to fight. Indeed, as explained in the previous chapter, outside the context of *hilkhot milchamah*, no Jew can be compelled to risk his life for any cause, even to save a life; therefore, a king is essential to the functioning of *hilkhot milchamah* because he alone is empowered to conscript an army. To wit, conscription is an indispensable element of all forms of

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<sup>166</sup> *ibid.*, 2

<sup>167</sup> Stein, “The Ethics of War,” 2-3

halakhic war. Stein's sermon therefore constitutes a recasting of the military service requirement to suit modern American norms, setting voluntary enlistment as a criterion for determining a war's legitimacy. He then applies this new standard – which the sermon presents as inherent in *hilkhot milchamah* – to the Iraq war, explaining in September 2006 that

Until now the Marines have relied on volunteers, but now some call-ups will be mandatory. With this act, I am convinced that President Bush has in effect lost the consent of the country. If our volunteer armed forces cannot attract enough recruits to fulfill our country's commitments, then something is wrong with those commitments. Remember that a *Milchemet Reshut*, a war that needs permission, needs the permission of both the people's representatives (in our case, Congress) as well as volunteer soldiers, not involuntary conscripts. With the institution of this compulsory service, I add my voice to those who hope that we will withdraw our troops from Iraq soon...<sup>168</sup>

In short, Stein redefines not only the military service laws, but also the entire halakhic category of *milchemet ha-reshut*, in accordance with contemporary democratic ideas: whereas, on the traditional view, proper authorization for discretionary war consists of rabbinic and divine approval, in Stein's formulation, it means democratic consent via the people's elected representatives and individual citizens' willingness to serve in the army. Though at other points in his sermon, as noted previously, Stein transparently explains why the halakhic rubric demands reconsideration in light of

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<sup>168</sup> *ibid.*, 4-5

modern norms, his sermon implies, on the particular matter of military service, that voluntary enlistment is a *Jewish* measure of a war's legitimacy.

In summary, the CCAR *teshuvah* interprets *hilkhot milchamah*'s military service requirements as demonstrative of a moral disposition in the halakhic system toward *milchemet mitzvah* and *milchemet ha-reshut*, respectively: the *teshuvah* maintains that, although both types of war are technically permissible, the mandatory universal military service in *milchemet mitzvah* indicates that the tradition considers commanded war to be morally justifiable, while the imposed service exemptions in *milchemet ha-reshut* indicate the tradition's attitude that discretionary war is immoral. While some sermons adopt this line of argumentation, others go beyond it and interpret the military service requirements in their own ways. In all cases, however, the sermons (a) present their interpretations of the military service guidelines as flowing directly from the halakhic rubric and (b) use their interpretations to support an overarching argument for the legitimacy of defensive *milchemet mitzvah* and the illegitimacy of *milchemet ha-reshut* in the modern world. Though not all the sermons cite the CCAR *teshuvah* explicitly, its influence in these particular regards is unmistakable.

#### ***E. Conduct of War: Moral-Ethical Criticism***

In addition to evaluating the legitimacy of the Iraq war against the standards of *hilkhot milchamah*, a number of sermons also incorporate into their discussions some of the rubric's requirements and restrictions regarding the conduct of war. *Hilkhot milchamah*, it will be recalled, bars the Jewish army from wantonly stopping up a stream and from destroying trees, buildings, garments, utensils, or food; moreover, the army

must leave open an avenue of escape for those citizens of the enemy nation who do not wish to fight. Provided that it operates within these constraints, however, the Jewish army is empowered to do what it takes to win the war; indeed, Rashi contends that the army is permitted “even to starve [the enemy city] and to cause it thirst and to bring it death by disease.”<sup>169</sup>

Furthermore, Halakha instructs the Jewish army that, in *milchemet ha-reshut*, it must kill the entire male population of the enemy nation and plunder its wealth and women; in *milchemet mitzvah*, by contrast, the army is obligated to slaughter all citizens of the opposing nation, including women and children. In defensive *milchamot mitzvah*, which may be fought against any of the “Remaining Nations,” – i.e., nations other than Amalek and the seven which occupied *Eretz Yisrael*, whom Israel is commanded to destroy – the laws regulating killing and plunder that otherwise pertain in *milchemet ha-reshut* may apply instead of those governing the other forms of *milchemet mitzvah*. As such, in a defensive war against any Remaining Nation, the Jewish army would be obligated to slay the entire male population and plunder the nation’s wealth and women.

While the CCAR *teshuvah*, at the conclusion of its discussion, mentions certain regulations governing the conduct of war, its presentation of these regulations is substantively different than those of the classical sources. The *teshuvah* explains that

[The government]...bears a heavy responsibility for its conduct of the war, no matter how justified that war may be. In the words of a former chief rabbi of the Israel Defense Forces: “Even though the *mitzvah* to fight wars is laid down in the Torah, we are commanded to show mercy to the enemy. Even during wartime, we are permitted to kill

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<sup>169</sup> Rashi, *Commentary on the Torah*, Deut. 20:12

only in self-defense or in pursuit of legitimate military objectives. We are forbidden to harm a non-combatant population, and we are surely prohibited from striking at women and children who take no part in battle.” We know that civilian deaths are inevitable in war, no matter how carefully it is waged. That inevitability, however, does not exempt those who prosecute war from the task of keeping its collateral damage to the absolute minimum.<sup>170</sup>

In contradistinction to its presentation of other issues, such as the authorization and pre-war peace requirements, the *teshuvah* does not simply provide its own interpretation of the war conduct regulations; rather, it quotes the statement of a respected halakhic authority, Rabbi Shlomo Goren. However, the *teshuvah*’s citation of Goren’s statement, out of its context, is somewhat misleading. For example, it is true that the Jewish army “is commanded to show mercy to the enemy,” but that mandate is not a general one relating to all aspects of war. Rather, *hilkhot milchamah* imposes certain requirements that may, in fact, be seen as merciful – such as those to offer the enemy the opportunity to avoid war by surrendering, to leave open an avenue of escape, and not to wantonly destroy their infrastructure – and others that are decidedly *not* merciful, such as the mandate to slaughter the entire male population.

In that vein, the assertion that “we are permitted to kill only in self-defense or in pursuit of legitimate military objectives” is also misleading because it does not explain that killing the entire male population of a Remaining Nation that attacks Israel, or the entire population – men, women, and children – of Amalek or one of the Seven Nations is considered to be a “legitimate military objective,” since doing so fulfills a halakhic

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<sup>170</sup> CCAR Responsa Committee, 5



dictate. Finally, the assertion that “we are forbidden to harm a non-combatant population, and we are surely prohibited from striking at women and children who take no part in battle” apparently reflects the fact that, since the army must leave an avenue of escape for those who wish to flee, those who remain are, by definition, combatants and must therefore be killed. Because the *teshuvah* does not explain this, however, it implies that *hilkhot milchamah* requires the Jewish army, once it is engaged in battle, to shield the civilian population and target only those enemy citizens who are actively engaged in combat.

The *teshuvah*’s decision to use Goren’s statement in order to elucidate the halakhic regulations of the conduct of war, without contextualizing his remarks, indicates that the writers subjected this component of *hilkhot milchamah* to extensive moral-ethical criticism. In short, it selectively presents only those aspects of the war conduct regulations that are consonant with modern sensibilities – or interprets them in such a way that accomplishes the same goal – but excludes those elements that may be seen as morally offensive, such as the requirements to kill and plunder. Most importantly, the *teshuvah* applies this criticism implicitly, thus giving readers no indication that it has suppressed certain aspects of the halakhic rubric.

Only several of the sermons deal with issues related to the conduct of war; those that do, moreover, do not cite the CCAR *teshuvah* directly. Still, all of them pursue the same strategy as does the *teshuvah*, implicitly subjecting the war conduct regulations to moral-ethical criticism on the basis of modern sensibilities. For instance, Rabbi Jonathan Stein notes only that “the environment must be protected.”<sup>171</sup> Perhaps his decision to mention this requirement and ignore all the others, even those which are morally

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<sup>171</sup> Stein, “Jewish Perspectives on War,” 2

palatable, reflects simply a desire for brevity. Whatever the reason, Stein's statement reveals the influence of moral-ethical criticism: while *hilkhot milchamah* forbids the *wanton* blocking of streams and destruction of trees, these actions are permitted if they serve a necessary purpose.<sup>172</sup> Because he does not explain this, however, the sermon conveys the impression that Jewish tradition is fundamentally concerned with preserving the environment even in war – a notion that surely resonates with many Reform listeners.

Rabbi Peter J. Rubinstein similarly mentions only one element of the war conduct regulations, namely, the mandate to leave open an avenue of escape for those who do not wish to fight. Citing the *Mishneh Torah*, he explains that

[Maimonides]...adds that "sensitivity to human life...must be present even in war. A Jewish army is not permitted to surround an enemy on all four sides. Those who want to run away must be permitted to do so," thereby preventing the unnecessary loss of life. (*Hilkhot Melakhim* 6:7)<sup>173</sup>

Again, Rubinstein frames this citation of the *Mishneh Torah* with his own interpretation of Maimonides' intentions: though his claim that the requirement to leave open an avenue of escape demonstrates Maimonides' "sensitivity to human life" may be based on a reasonable reading of the text, Maimonides does not overtly express this sentiment. As noted previously, Maimonides is concerned strictly with law, with what must and must

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<sup>172</sup> Maimonides states: "Nevertheless, a [fruit tree] may be cut down if it causes damage to other trees, to fields belonging to others, or if a high price [could be received for its wood]. *The Torah only prohibited cutting down a tree with destructive intent* [emphasis added]. It is permissible to cut down any fruitless tree, even if one has no need for [the lumber or the space it takes up]. Similarly, one may cut down a fruit tree that has become old and produces only a slight yield which does not warrant the effort [required to care for it]. (*Mishneh Torah, Melakhim* 6:8-9 [Touger translation, 116, 118])

<sup>173</sup> Rubinstein, 3

not be done; Rubinstein's suggestion that Maimonides' ruling on this matter reflects a moral concern is the result of reading the *Mishneh Torah* through the lens of modern sensibilities. In any case, Rubinstein's decision to mention this particular requirement and ignore all the others is significant for two reasons: (1) it reveals an implicit moral-ethical critique of the halakhic rubric, and (2) this requirement, in particular, provides support for Rubinstein's broader characterization of Maimonides – and, therefore, the tradition – as committed to the principle that “the thrust towards peace must be the goal prior to, during, and after any war.”<sup>174</sup>

Rabbi Steven Moskowitz likewise employs implicit moral-ethical criticism when he explains that “the inevitable killing and destruction is more severely curtailed in *milchemet reshut* [sic].” This statement is, of course, an accurate one; however, Moskowitz does not explain that the reason for this is because *hilkhot milchamah* requires the Jewish army to kill only the males rather than the *entire* population – men, women, and children – as is mandated in *milchemet mitzvah*. Absent this essential frame of reference, it may seem to listeners that Jewish tradition simply requires the army to be more restrained and careful about killing in the context of discretionary war. The reality, of course, is grimmer and surely less likely to resonate with Reform congregants.

In sum, the sermons' treatment of the war conduct regulations is emblematic of their overarching approach to evaluating war: although the sermons use halakhic terminology and apparently subject the Iraq war to *hilkhot milchamah*, their ultimate – though implicit – standard for evaluating war is modern secular “morality.” Like the *teshuvah*, the sermons subject the war conduct laws to moral-ethical criticism on the basis of contemporary norms; therefore, they include in their discussions only those elements

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<sup>174</sup> *ibid.*

that resonate with modern sensibilities, while simply ignoring those which are not: various sermons are comfortable noting, for example, that Halakha requires the army to leave an escape route for citizens who wish to flee, that the army must protect the environment during its invasion, or that there are more restrictions on killing in discretionary war, but none suggests that Jewish law instructs the United States military to massacre the entire Iraqi male population, plunder the country's wealth, or forcibly take its women as wives. Consequently, the rubric's war conduct regulations, as the sermons present them, are entirely consistent with modern standards of morality. None of the sermons, however, explains this interpretive strategy to listeners; on the contrary, all of them perform this fundamental redefinition of the halakhic rubric implicitly.

#### **IV. Conclusion**

##### ***A. Summary of Findings***

As the foregoing analysis has demonstrated, the Reform sermons that assess the Iraq war on the basis of *hilkhot milchamah* employ a number of strategies to recast the halakhic rubric as a timeless, ethical – as opposed to a legal – model that is not only relevant to the American context, but is also consonant with contemporary secular norms and sensibilities. Given the clearly defined parameters that form the contours of the rubric and the strict legal requirements that constitute its substance, the sermons' redefinition of *hilkhot milchamah* can be accomplished only by removing the rubric from its natural context; indeed, all of them, in some way, reinterpret *hilkhot milchamah* in violation of the traditional understanding of the paradigm. This analysis, therefore, has sought to discern (1) how the sermons reshape the halakhic model and (2) the degree to

which they do so transparently, i.e., by explaining their interpretive approach to listeners. While some are more transparent than others, in the main the sermons' redefinitions of *hilkhot milchamah* occur implicitly. Consequently, all of them, in some way or another, convey to listeners misimpressions about traditional Jewish thought on war.

In the first place, all of the sermons maintain that *hilkhot milchamah* is the relevant and proper Jewish paradigm for evaluating secular war. This premise contravenes consistent halakhic precedent, which holds that the rubric (a) applies exclusively to the wars waged by a Jewish state in *Eretz Yisrael*, and (b) requires divine consent for war, via Torah command or the *urim* and *tumim*. While all of the sermons, like the CCAR *teshuvah*, ignore the second constraint, they use one of three arguments to explain why *hilkhot milchamah* is applicable to a non-Jewish state.

The first and predominant argument is that the rubric is relevant to America because it expresses universal war norms. By conflating two halakhic categories – (1) the *right* of secular states, under Noachide law, to wage defensive war and (2) the *obligation* of the halakhic state to wage defensive *milchemet mitzvah* – these sermons maintain that the halakhic category of defensive *milchemet mitzvah* obligates *all* states to wage war in response to an enemy attack, thus rendering *hilkhot milchamah* relevant to the United States. While this conflation of categories is essential to the relevancy argument, none of the sermons that use this argument elucidates the conflation for listeners; on the contrary, it remains implicit in all of them. Moreover, while several of the sermons identify *hilkhot milchamah*'s contextual constraints, just two affirm the applicability problem and only one overtly attempts to resolve it; the others simply

assume the paradigm's relevance without providing any indication to listeners that this premise contravenes centuries of halakhic precedent.

The second argument, made by only one sermon, is that the lessons of Torah transcend time, place, and circumstance and, as such, are relevant to life in any context. Following the CCAR *teshuvah* closely, this sermon notes the contextual constraints that technically limit *hilkhot milchamah*'s applicability, but suggests that relating to the rubric strictly within its context obscures its deeper, timeless meaning. This view of "*torat chayim*" thus provides a rationale for applying *hilkhot milchamah* to the Iraq war.

The third argument, likewise invoked by just one sermon, is that while *hilkhot milchamah* is not directly applicable to a secular war due to its constraints, it is nevertheless relevant for the insights it can provide into issues surrounding modern warfare. This sermon, alone among all the submissions, informs readers that prevailing halakhic opinion deems the rubric to be inapplicable to a modern secular war, and clearly notes its intention to use *hilkhot milchamah* strictly as a referential model. However, while it provides the most transparent treatment of the relevancy problem, the sermon goes on to redefine other aspects of *hilkhot milchamah* without explaining its interpretive strategies.

While each of these arguments aims to resolve the problem of *hilkhot milchamah*'s applicability to a non-Jewish state, no sermon addresses the traditional divine consent requirement. Due to this key omission, none successfully disproves the traditional position that *hilkhot milchamah* is impertinent to the modern world. Nevertheless, all present the paradigm as relevant, and apply it, in some way, to the Iraq war. In so doing, the sermons use a variety of interpretive strategies to reshape *hilkhot*

*milchamah* in accordance with contemporary ideas. This analysis has performed a close reading of the sermons with respect to their treatment of five of the rubric's key elements: (a) the categories of war, i.e., *milchemet mitzvah* and *milchemet ha-reshut*; (b) authorization for war; (c) military service; (d) pre-war peace initiatives; and (e) the conduct of war.

In the main, the sermons, like the CCAR *teshuvah*, redefine the two categories of halakhic war, *milchemet mitzvah* and *milchemet ha-reshut*, in accordance with modern secular Just War Theory. They do so both with respect to the definition of "enemy aggression," which bears directly on the meaning of defensive war, and in regard to the standard for determining a war's legitimacy.

Firstly, whereas *hilkhot milchamah* defines enemy aggression as (a) a direct military attack or (b) a non-military attack that violates Israel's territorial integrity, mandating defensive *milchemet mitzvah* to counter such aggression, Just War Theory posits a broader definition of aggression, allowing states to wage preemptive war to defend against an attack that has not yet been launched. Nearly all of the sermons superimpose the secular definition of aggression on to the halakhic model, thereby casting defensive *milchemet mitzvah* as contemplating preemptive war. In so doing, they fundamentally redefine the halakhic model, making it consonant with modern war norms as embodied in secular Just War Theory. All of this is done implicitly, however; while some of the sermons use the halakhic and secular terminology conjunctively, none explains to listeners the difference between the two models' definitions of aggression, or informs them that this conception of defensive *milchemet mitzvah* is inconsistent with the traditional understanding of that category.

Secondly, most sermons, like the *teshuvah*, break with traditional Jewish thought by holding that “halakhic permissibility” and “moral justifiability” are distinct concepts. Because traditional Judaism understands Halakha to be inherently moral, any war sanctioned by *hilkhot milchamah* is necessarily legitimate and just. For most of the sermons, however, halakhic permissibility is not adequate, in and of itself, to legitimate a war; rather, the ultimate legitimacy criterion is contemporary secular “morality.” To wit, only those wars which can be deemed “morally justifiable” are legitimate, regardless of whether or not they are halakhically sanctioned.

Because the sermons ignore the divine consent requirement, they hold that both defensive *milchemet mitzvah* and *milchemet ha-reshut* are halakhically permissible in the modern world. While several assume that both forms are therefore legitimate, most of the sermons judge these kinds of war against the standards of secular morality. Since, on the secular definition of aggression, defensive *milchemet mitzvah* includes preemptive war, and preemptive war is deemed by Just War Theory to be morally justifiable, these sermons maintain that defensive *milchemet mitzvah* is morally justifiable. Conversely, because Just War Theory considers preventive war to be immoral, and preventive war is deemed to be a form of *milchemet ha-reshut*, the sermons maintain that *milchemet ha-reshut* is not morally justifiable. On the basis of this hybrid halakhic-secular model, the sermons establish the guiding question of their analyses: is the Iraq war preemptive/*milchemet mitzvah* and, therefore, legitimate, or preventive/*milchemet ha-reshut* and, as such, illegitimate? This is the same analytical model that is utilized by the CCAR *teshuvah*.



Also like the *teshuvah*, most of the sermons redefine the authorization requirements for halakhic war in accordance with modern concepts of government. Most importantly, as already noted, none of the sermons mentions the fact that *hilkhot milchamah* requires divine consent for war, via either Torah command or the *urim* and *tumim*; nor do they explain that the king and Sanhedrin are essential to the system because they alone are able to seek God's approval. By excising these key elements from the rubric, the sermons present the halakhic authorization process as one that can be implemented by modern secular governments. Some sermons erroneously equate the Jewish monarch and Sanhedrin with the American president and Congress, providing no sense that the halakhic institutions' functions are unique and cannot be reprised fully in a secular system. In so doing, the sermons, like the *teshuvah*, abandon the key halakhic principle that God's consent and assurance of victory is necessary in order to legitimate war; in its place, they propose the thoroughly modern idea that democratic consent by the people or their elected representatives is required to legitimate war. To wit, the sermons forego the divine consent requirement in favor of an earthly consent requirement; all do so implicitly, moreover, thereby representing this democratic principle as a matter of Jewish teaching.

Similarly, the sermons redefine *hilkhot milchamah*'s requirement to propose peace before waging war in accordance with modern international relations norms and moral sensibilities. Like the CCAR *teshuvah*, the sermons adopt the Maimonidean position that the pre-war peace requirement pertains in *all* instances of war, whether *milchemet mitzvah* or *milchemet ha-reshut*, without explaining that this position is disputed by many authorities. This enables them to assert that, whichever category

applies to the Iraq war, the United States must propose to make peace with Saddam Hussein before launching an attack. However, the sermons – again, like the *teshuvah* – omit from their presentations the halakhically mandated terms of peace, i.e., tribute and subjugation. Because these demands are imperialistic and secular Just War Theory condemns imperialism as immoral, the sermons' excision of them indicates their use of implicit moral-ethical criticism to reshape the peace requirement in consonance with contemporary norms.

By omitting the mandated terms of surrender, the sermons present the halakhic requirement as a general injunction to pursue peace first, and to turn to war only as a last resort. This vague conception of the requirement enables some rabbis to provide their own definitions of what it means to propose peace. Several, for example, argue that the halakhic peace requirement compels the United States to seek United Nations support for its Iraq policy, thus imputing modern notions of international relations to the halakhic model. In short, by using moral-ethical criticism, the sermons transform the halakhic peace requirement from a bellicose, non-military tool of imperialism – which forces enemies to surrender on Israel's terms or face certain destruction – into a gentler, general obligation to exhaust all peaceful avenues before resorting to war.

Like the CCAR *teshuvah*, many sermons interpret *hilkhot milchamah*'s military service laws in a way that implies that Halakha itself distinguishes between permissibility and moral justifiability. Because *hilkhot milchamah* exempts certain individuals from military service in *milchemet ha-reshut* while compelling all to serve in *milchemet mitzvah*, the sermons argue that, although Jewish tradition permits discretionary war, it does so reluctantly, regarding such war as immoral. This interpretation aids the argument

that if the Iraq war is preemptive/*milchemet mitzvah*, then it is legitimate and just, but if it is preventive/*milchemet ha-reshut*, then it is illegitimate and unjust. Some sermons go even further, maintaining, in direct contravention of *hilkhot milchamah*, that military service in *milchemet ha-reshut* is voluntary, rather than a matter of law; as such, they argue that a war's legitimacy is determined by the willingness of citizens to voluntarily enlist in the armed forces. In all cases, the redefinitions of the military service laws in accordance with secular notions of morality or modern democratic principles occur implicitly.

Finally, the sermons' treatment of the halakhic requirements and restrictions regarding the conduct of war evinces the use of moral-ethical criticism to recast the tradition as consonant with contemporary sensibilities. One sermon notes, for example, the halakhic mandate to preserve the environment while waging war, but does mention that cutting down trees is permissible for financial purposes. Another explains that tradition seeks to limit the amount of killing in discretionary war, but does not explain that this is so because *hilkhot milchamah* instructs the army to slaughter *all* enemy citizens in *milchemet mitzvah*, while obligating it to kill only the male population in *milchemet ha-reshut*. No sermon, in fact, maintains that Jewish tradition requires the United States military to massacre the Iraqi male population or plunder the country for its wealth and women, even though mandatory killing and plunder are components of *hilkhot milchamah*. By selectively presenting certain war conduct laws that are morally palatable and ignoring those that are not, the sermons' treatment of these laws demonstrates that modern secular morality, and not Halakha, is their ultimate standard for how war should be conducted.

### ***B. The Importance of the CCAR Teshuvah***

Of the sermons submitted for this study, more of them – approximately 25 percent of the sample – use *hilkhot milchamah* to address the Iraq war than use any other single textual model or reference. That so many Reform rabbis selected this particular paradigm is significant, given the consistent halakhic position that the rubric is inapplicable to the modern world. Reform rabbis seeking guidance from the tradition on how to preach about modern war would have been hard-pressed to find a precedent for doing so on the basis of *hilkhot milchamah*. None of the classical halakhic sources, in their extensive discussions of the rubric, apply it to the wars of their own day; they repeatedly maintain, rather, that these laws apply only to the once and future halakhic state in *Eretz Yisrael*. Perhaps more importantly for the contemporary Reform rabbi, in a recently published collection of thirty-six Jewish sermons on war from 1800-2001, only *one* references *hilkhot milchamah*.<sup>175</sup>

The CCAR Responsa Committee's 2002 *teshuvah* on "Preventive War," by contrast, does employ this paradigm in its analysis of the Iraq war. Its influence on Reform rabbis' preaching about the war cannot be overstated. Fully one-third of the *hilkhot milchamah* sermons surveyed for this study explicitly base their analyses on the *teshuvah*. Regarding the remaining two-thirds, there are two possible explanations for their consistency with the *teshuvah* in this regard: either (1) they rely on the *teshuvah* even though they do not reference it explicitly, or (2) the consistency reflects a common "Reform" approach to understanding and applying halakhic text, which coincidentally manifests itself in assessments of the Iraq war based on *hilkhot milchamah*. Given the

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<sup>175</sup> Saperstein, M., *Jewish Preaching in Times of War*

high degree of correlation between these sermons and the *teshuvah* – not only in their choice of the same halakhic paradigm, but also in their interpretations and applications of the rubric – the former seems to be the more plausible explanation. This is only speculative, however, because the sermons themselves provide no definitive answers.

Among the sermons that do draw on the *teshuvah*, what is most noteworthy is the way in which they use it. As discussed in Section I(B) of this chapter, Professor Washofsky's stated intention is that CCAR *teshuvot* be used as "advisory" documents that "[emphasize] the right of [their] readers to reject or to modify the answers as they see fit." In a word, they are meant to be used as study guides – starting, not ending, points for research into the *she'elot* that they address. Indeed, the 2002 *teshuvah* on the Iraq war is meticulously footnoted, enabling any reader with access to the classical sources to read those texts directly and consider them in context. Based on Washofsky's statement, the *teshuvah* writers hope that the reader, using the knowledge he or she acquires through such study, will then come to his or her own conclusion about both the *she'elah* and the *teshuvah*. In short, Reform *teshuvot* are not written as authoritative rulings.

As this study has demonstrated, however, Reform rabbis, in the main, do not use the 2002 *teshuvah* as a study guide; they use it, rather, as an authoritative source. This is evinced, for one thing, by the fact that they use *hilkhot milchamah* as the paradigm for evaluating secular war. Had these rabbis looked to the *Mishneh Torah*, tracing the *teshuvah*'s source citations, they would have found that the commentaries to that text explain the precise circumstances that must exist in order for *hilkhot milchamah* to apply. Had they turned from there to *Sefer ha-Mitzvot*, they would have found Maimonides' explicit ruling that *milchemet ha-reshut* is impossible in the modern world due to the

inability to obtain divine consent. Had they read contemporary academic articles on Jewish views of war, they would have found that scholars consistently maintain that *hilkhot milchamah* is not relevant to modern American wars. If their choice to use the paradigm came only after such study, it would seem that the sermons would address the applicability problem more extensively and more clearly than they do; however, no sermon says anything about *hilkhot milchamah*'s relevance beyond what is articulated in the *teshuvah*.

Furthermore, those sermons that cite the *teshuvah* directly reinterpret the various aspects of *hilkhot milchamah* in exactly the same way that the *teshuvah* does. Just as the *teshuvah* integrates the halakhic rubric with secular Just War Theory – using the terms “preemptive war” and “preventive war,” and distinguishing between halakhic permissibility and moral justifiability – so, too, do the sermons. The same is true of their common use of moral-ethical criticism to make the rubric more palatable to modern listeners, and of their similar redefinitions of the authorization and peace requirements in accordance with modern notions of governance. Even those sermons that do not reference the *teshuvah* directly use the same interpretive strategies and, consequently, recast the halakhic rubric just as the *teshuvah* does. Had the rabbis studied the sources independently, as the Responsa Committee envisions, such interpretive consistency would seem impossible – particularly since their interpretations diverge so dramatically from traditional halakhic thought.

In the end, then, it is quite clear that even if the Responsa Committee designed the *teshuvah* to be a study guide, many Reform rabbis relate to it as an authoritative source on Jewish teachings about war. As such, these rabbis present to their congregants all or

some of the *teshuvah*'s unconventional interpretations of *hilkhot milchamah* as concepts that are inherent in Jewish tradition. While the *teshuvah*, at points, is perhaps more cautious than the sermons are about representing its conclusions as matters of Jewish teaching, it does not sufficiently articulate its interpretive strategies or explain its rationales for departing so dramatically from the traditional view on certain issues. Consequently, despite its efforts to remain circumspect, the *teshuvah* may be read – particularly by the casual or untrained reader – as implying that its conclusions flow directly from traditional thought. Indeed, from the sermons analyzed above, it is unclear whether, or to what extent, the rabbis who used the *teshuvah* as their primary source did so with full understanding of the Responsa Committee's innovative approach to *hilkhot milchamah* or the problems associated with it. In any case, the foregoing analysis has demonstrated the problems that arise when the *teshuvah* is used as an authoritative source, rather than as a study guide.

## CHAPTER THREE

### The Role of the Textual Sermon in the Reform Context

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#### I. Introduction

Now that it has been shown how the various Reform sermons interpret and apply *hilkhot milchamah*, the next logical question is: to what end? That is to say, why do these Reform rabbis preach about the Iraq war in the first place? Moreover, why do they use classical Jewish text to do so, rather than widely accessible secular sources – such as newspaper articles, government reports, and other such materials – which are directly pertinent to the Iraq war and are not bound to the same contextual constraints as *hilkhot milchamah*? To elucidate these questions, this chapter will consider (a) the role of the rabbi and the function of the sermon in the Reform context, and (b) the function of Jewish textual citations in sermons.

#### II. The Role of the Rabbi and the Function of the Sermon

The sermon, according to the renowned twentieth century Orthodox preacher Rabbi Joseph Lookstein, is “first and foremost a religious homily – the word of God that comes from a divinely inspired emissary.”<sup>176</sup> If few Reform rabbis would characterize their own preaching in such terms, Lookstein’s dramatic statement may capture something of how Reform synagogue-goers relate to their rabbis and the pronouncements they make from the pulpit. This is not to say that every Reform congregant would overtly claim that the rabbi has the capacity to channel God or that his sermons are divinely inspired; however, as Rabbi Robert I. Kahn, a leading twentieth century Reform

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<sup>176</sup> As quoted in Freidenberg, 125



preacher and homiletics lecturer, explains, a perception of the rabbi as “a surrogate of God” may nevertheless be embedded within the Reform psyche:

We [rabbis] may disclaim this, we may insist again and again that there is no ecclesiastical caste nor priestly intercession in Judaism, but in our people's hearts there is. A child will come home from your Sabbath services and tell his father: “I saw God. He wore a black robe and he smiled at me.” Or a man sitting beside his cancer-doomed wife will cry out: “You are a man of God; tell me why!”<sup>177</sup>

Whether or not all congregants view him in this manner, at the very least, maintains the eminent Reform orator and scholar Rabbi Solomon B. Freehof, “the rabbi represents the ethical and spiritual ideals of his heritage.”<sup>178</sup> Because the rabbi, by virtue of his ordination and position in the community, possesses such inherent authority, the sermon is something more than an ordinary speech or lecture, and its message transcends the literal words that are preached and heard. Though congregants, according to Kahn, expect the rabbi “to follow his heart and speak out his convictions,”<sup>179</sup> he must remember that, as far as many of them are concerned, the rabbi speaks not only for himself but also – and more importantly – for Jewish tradition. Since many of his listeners will perceive his preachments, in some way or another, as religiously authoritative, the rabbi is duty-bound to ensure that the sermon is true to the tradition from which it flows.

While the sermon is a form of religious instruction, it may function in ways that the classroom lecture and the adult education seminar do not. Rabbis and homiletics

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<sup>177</sup> Kahn, 101

<sup>178</sup> Freehof, “The Literary Lecture,” 139

<sup>179</sup> Kahn, 106

scholars maintain that the sermon's purpose, in the broadest sense, is not only to challenge listeners' minds, but also to lift their spirits, strengthen their religious worldviews, and inspire them to Jewish living. "Let the sermon of the rabbi, the lectures of the teachers of religion bring blessing and joy along with solace and hope, teaching, and edification,"<sup>180</sup> proclaims Leopold Zunz, the renowned nineteenth century German scholar and preacher. Similarly, Rabbi Israel Bettan, who headed the homiletics department at Hebrew Union College from 1922-1957, teaches that the purpose of the sermon is "to admonish rather than to legislate, to edify rather than to instruct, to appeal to the imagination rather than to the sense of obedience and conformity...to build an exegetical scaffolding to buttress and sustain a sound religious outlook."<sup>181</sup> In striving to accomplish these overarching, abstract aims, however, the sermon may serve a variety of more immediate and tangible purposes, such as (1) educating listeners about Jewish tradition and values, (2) demonstrating Judaism's relevance to modern life, and (3) providing a social critique on the basis of Jewish teachings. It is evident that the Reform sermons on the Iraq war surveyed in this study pursue, each in its own way, all three of these goals.

Some rabbis and scholars contend that, even as the sermon aims to inspire, its primary function – particularly in a modern progressive context, where the average congregant's Jewish knowledge is relatively minimal – is, quite simply, to teach listeners about Judaism. This was especially true during the middle decades of the twentieth century, explains Rabbi Marc Saperstein, when adult congregants "still looked to the sermon as a primary access point to contemporary Jewish issues and traditional Jewish

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<sup>180</sup> As quoted in Plaut, *The Rise of Reform Judaism*, 160

<sup>181</sup> Bettan, 9

knowledge.”<sup>182</sup> While its dominance as an educational medium may be slightly lesser today as a growing number of Reform congregants learn about Judaism from increasingly popular adult education classes, the sermon nevertheless remains the sole or primary source of Jewish knowledge for the vast majority of casual synagogue-goers. In order for a Reform sermon to successfully inspire religious feeling and action in listeners, therefore, it must first lay the foundation of Jewish knowledge necessary to facilitate such inspiration. This can be a difficult task to accomplish in the limited amount of time which is typically allocated for a sermon in today’s Reform services. Consequently, writes British Rabbi Louis Jacobs, “While the note of exhortation is never entirely absent from the sermon, many preachers, nowadays, prefer to use the sermon chiefly as a means of instruction, imparting information about Jewish faith, history and teachings.”<sup>183</sup>

Beyond educating listeners about the basic Jewish principles which are pertinent to the topic at hand, a second purpose of the sermon, as Rabbi Abraham Cohen contends, is “to demonstrate that [the old Faith] is not antiquated, but can be as forceful and inspiring in the modern world as it was in the past.”<sup>184</sup> While the liturgy and Scriptural readings, which use a foreign language and idiom to speak about concepts that seem other-worldly, remain unchanging from week to week and year to year, the sermon, delivered in the vernacular, is tailored to the particular circumstances and needs of the moment. As Freehof explains,

The sermon was the one living, unfixed element in the Jewish religious service. That meant that the sermon always touched the life of the people as it was lived and dealt with

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<sup>182</sup> Saperstein, H., *Witness from the Pulpit*, 13

<sup>183</sup> Jacobs, 9

<sup>184</sup> Cohen, 73

the problems as they arose and related all those problems with all the solutions of the past. Thus through the sermon the past was kept alive and the living united with history and thus the average Jew became the eternal Jew.<sup>185</sup>

The sermon, therefore, functions as the linchpin of the service by “[uniting] the timely with the timeless”<sup>186</sup> and by translating the abstract into something concrete; to wit, it aims to make Judaism *relatable* for the average congregant. While scholars note that this has been a primary purpose of the sermon since its advent in the classical period, this function may be all the more important in the contemporary Reform context, where congregants tend to be culturally assimilated and struggle to maintain their Jewish identity. In such a milieu, the rabbi’s homiletical challenge may be no less than to persuade congregants that Judaism is something worth preserving. In practical terms, his success in demonstrating the tradition’s relevance to modern life may make the difference between an active membership and empty pews.

Thirdly, a rabbi may use the sermon to make a social critique and to call for action to redress some social injustice. This homiletical form has been associated especially, though not exclusively, with the Reform pulpit. “[T]he emphasis of Reform upon the mission of Israel,” Kahn writes, “called for a kind of prophetic preaching which was critical of the social and political conditions of the day.”<sup>187</sup> He maintains, however, that, in making a social critique from the pulpit, the Reform preacher must be particularly conscious of his rabbinic authority; the rabbi must be careful to ground his critique in the tradition he represents, and not to use the pulpit “for partisan purposes or rabble

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<sup>185</sup> Freehof, *Modern Jewish Preaching*, 39

<sup>186</sup> *ibid.*, 40

<sup>187</sup> Kahn, xv

rousing.”<sup>188</sup> Therefore, the social-critique sermon necessarily serves the two aforementioned functions as well: first, it must educate listeners about the Jewish principles on which the critique will be based; second, it must demonstrate that those principles are applicable to the social issue at hand. Only by first accomplishing both objectives can the sermon make a responsible and effective social critique capable of rousing listeners to action. However, the problem, as will be discussed, is that it may be impossible to achieve all three aims in the context of one sermon.

All of the sermons surveyed for this study are social-critique sermons in that they endeavor to provide a Jewish basis for either supporting or opposing the Iraq war. To that end, all of them pursue the homiletical course outlined above: (1) they attempt to educate listeners about *hilkhot milchamah*, the Jewish paradigm that will serve as the basis for a critique of the war – although, as the previous chapter demonstrated, such explanations are frequently selective and non-transparent; and (2) they seek to demonstrate – by simple assumption, by interpretive creativity, or by direct argument – that the classical paradigm is relevant to the Iraq war. In explaining to listeners what “Judaism says about war,” some state explicitly that the Iraq war is either justified or not; others charge listeners with rendering their own judgment. Either way, all of the sermons convey the same message: if the Iraq war meets the Jewish standards as they are presented by the rabbi, then the war is justifiable and merits congregants’ support; conversely, if it does not meet those standards, then Jewish tradition suggests that the war is unjustifiable and should be opposed.

This message is surely a powerful one when preached from the pulpit, given the nature of rabbinic authority. It is noteworthy, however, that these rabbis do not rely

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<sup>188</sup> *ibid.*, 22

exclusively on their reputation or on their personal credibility with congregants to make their case; rather, all of them base their Iraq war critiques on extensive and somewhat detailed citations of classical Jewish text. To this point, this study has examined *how* these sermons use text to frame their critiques of the war; it turns now to the question of *why* they do so.

### III. The Functions of Text in Sermons

The textual sermon is an ancient Jewish tradition. Since the classical rabbinic period, Jewish preachers have expounded sacred text in order to uncover hidden meanings in the weekly Scriptural reading, to elucidate its lessons for daily life, or, in the words of one fifteenth century preacher, “to demonstrate the greatness of the Torah, by showing that ideas seemingly new are already present in it by allusion.”<sup>189</sup> While Reform rabbis frequently have used, and continue to use, alternate forms of preaching, such as the literary lecture and the non-text-based topical sermon, in order to teach Jewish themes and principles, the textual sermon remains for many an important homiletical tool. This may be so not only because of the textual sermon’s traditional significance, but also because a sermon based on sacred Jewish text serves distinct purposes which are critical in the contemporary Reform context. This section will examine what those purposes are and how the textual sermon serves them.

Before doing so, however, something must be said about the nature of the sermons which this study has analyzed. While all of the sermons are textual in that they utilize *hilkhot milchamah* as a framework for evaluating the Iraq war, they are – to

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<sup>189</sup> Spanish preacher Isaac Aboab, speaking around the time of the expulsion from Spain, as quoted in Saperstein, M., *Jewish Preaching*, 63

combine terms used independently by Solomon Freehof and Marc Saperstein – “non-Scriptural, topical sermons.” That is to say, rather than drawing their text and subject matter from the weekly Torah reading, these sermons begin with a topic, the Iraq war, and then choose a text from the corpus of Jewish literature to use in addressing that topic. This phenomenon raises certain questions that can elucidate the functions of text in Reform sermons. For example, while the need to cite text when preaching about the weekly Torah portion is obvious, what need is there to do so when addressing a contemporary secular issue such as the Iraq war? Why do these sermons explain *hilkhot milchamah* in such detail rather than make general, abstract statements about Jewish values and war? Furthermore, since the topic does not arise in the context of the Jewish liturgical cycle, why do these Reform rabbis preach about the Iraq war in the first place?

As rabbis and homiletics scholars note, incorporating text into a sermon can aid in the accomplishment of the three homiletical objectives outlined above by (1) bolstering the sermon’s value as an educational tool; (2) strengthening the argument that Judaism and the rabbi are relevant to modern life; and (3) enhancing the social critique by demonstrating the rabbi’s authority to speak about a given issue and by augmenting the credibility of his argument. Each of these reasons for using text, which are directly relevant to the Reform Iraq war sermons, will be considered in turn.

#### ***A. Using Text to Enhance a Sermon’s Educational Value***

As discussed above, the sermon is the primary access point to Jewish knowledge for most adult Reform congregants. Given its importance as a teaching tool, Reform rabbis may choose to incorporate Jewish texts into a sermon in order to expose listeners

to sources which they may otherwise never encounter. In that vein, Rabbi Abraham Cohen advises preachers that, whenever possible, “a Hebrew source should be given preference [in their sermons], if only for the reason that it enlarges knowledge of Jewish literature.”<sup>190</sup> In this way, the inclusion of text enhances a sermon’s educational value.

A sermon might also use text as a way to make abstract ideas concretely and distinctly Jewish, and to help listeners relate to those ideas as such. Consider, for example, two hypothetical sermons, both of which argue that a nation has the right to wage war to defend itself against an attack – a principle which is articulated in Jewish law. The first sermon argues the point without referencing a Jewish source: though it may resonate with listeners, the sermon provides them with no concrete basis for relating to its argument as a Jewish one; indeed, they may have heard a political leader or an academic argue the point in a similar manner. The second hypothetical sermon, by contrast, frames its argument using a Jewish textual source: by situating the argument in a Jewish context, this sermon paves the way for listeners to receive it as a distinctly Jewish perspective, even if they have heard the same point argued differently in another setting. As this example demonstrates, text can serve to construct a Jewish framework for considering a contemporary issue like war. A sermon that uses text in this way enhances its educational value by teaching listeners how to think about the issue in a Jewish manner, and by giving them the knowledge and the vocabulary to converse about that issue in distinctly Jewish terms.

Though it is impossible to discern definitively the intentions of the sermons surveyed for this study, their use of text may be, at least in part, educationally motivated; that is to say, they indicate a desire to give congregants some knowledge of Jewish

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<sup>190</sup> Cohen, 169



literature on war and to teach them how to use that knowledge in thinking about the Iraq war. For all the problems with the sermons' interpretations and applications of *hilkhot milchamah*, perhaps, in using that paradigm, they aim not to provide an authoritative halakhic analysis of the war but, rather, only to teach congregants that it is possible and worthwhile to think about contemporary issues in Jewish terms. Even as they express ideas about war that are ultimately secular in nature, these sermons, by using terms such as *milchemet mitzvah* and *milchemet ha-reshut* and talking about what "Jewish law requires," convey to listeners a sense that they are learning something uniquely Jewish which they could not learn anywhere else. In the end, maybe the sermons simply seek to inject a modicum of traditional Jewish vocabulary and thinking into the liberal religious milieu, where Halakha and classical Jewish texts tend to inform daily living only minimally or not at all.

In any case, rabbis who use text in their sermons for educational purposes must, as Kahn maintains regarding sermons in general, do so responsibly and with great care because of the perceived authority of rabbinic statements from the pulpit. Kahn's admonition is all the more poignant given what Rabbi Morris Adler, a noted twentieth century Orthodox preacher, terms "the Jewish lag,"<sup>191</sup> i.e., the gap between Jewish illiteracy and secular knowledge among educated, worldly American Jews. The "Jewish lag," according to scholars, is a relatively modern phenomenon; until the Enlightenment period, most Jews

knew and regarded the literal meaning of the ancient texts. But listeners did not come to the *derashah* for an exegesis of the Bible in order to understand it better. That could be

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<sup>191</sup> As quoted in Freidenberg, 110

accomplished at home by studying well-known biblical and Talmudic commentaries. It was expected that the *derashah* would show the contemporary relevance of the ancient texts.<sup>192</sup>

The modern Reform rabbi, by contrast, cannot on rely on such assumptions about congregants' preexisting knowledge or independent study of Jewish texts. Rather, he must account for the fact that his congregants come to the synagogue with little Jewish knowledge; in the main, a significant percentage – if not the entirety – of what knowledge they do possess has and will continue to come from his instruction. He must further consider that, for most congregants, the bulk of their Jewish instruction will come from his sermons.

Given this reality, the modern sermon plays a different educational role than did the classical or medieval *derashah*: because the sermon may provide the listener with his only encounter with a particular text or corpus of text, when teaching that literature the modern preacher must, according to Cohen, “be careful to avoid misunderstanding or incomplete comprehension.”<sup>193</sup> While taking classical texts out of context and interpreting them according to modern concepts are time-honored Jewish homiletical techniques,<sup>194</sup> Cohen's warning must be taken seriously in the age of “the Jewish lag.” As the foregoing analysis of the Reform Iraq war sermons demonstrated, using classical text creatively and selectively to teach congregants about Jewish thought, without

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<sup>192</sup> Encyclopedia Judaica, “Homiletic Literature,” 950

<sup>193</sup> Cohen, 166

<sup>194</sup> Encyclopedia Judaica's article on “Homiletic Literature” explains (949): “At a time when a biblical verse could be interpreted in as many ways as the preacher wished, it was usual for statements by early medieval thinkers to be taken out of context and brought as proof of an idea which that thinker would not have accepted...Even ancient ideological conflicts were forgotten so that the preacher might use the sayings of both sides to demonstrate his own concept which might differ from either earlier theory.”

explaining the relevant contextual issues or underlying interpretive strategies, can inadvertently misrepresent the tradition to unsuspecting listeners. In sum, while text can enhance a sermon's educational value in the Reform context, this can be accomplished only when the text is taught transparently.

### ***B. Using Text to Demonstrate the Relevance of Judaism and the Rabbi***

"I feel compelled," states Rabbi Michael Weinberg in his November 2002 Iraq war sermon, "to suggest to you that Jewish teachings about war can guide our analysis of the news and perhaps inspire our thinking and actions."<sup>195</sup> Why does he feel *compelled* to suggest this? Though Weinberg does not elaborate, his statement reveals much about the burden on the American Reform rabbi to demonstrate continually to his congregants Judaism's relevance to modern life.

In American liberal Jewish communities today, Judaism must compete with any number of other "extra-curricular" activities for the attention of its adherents. The problems which, according to Saperstein, plagued mid-twentieth century Reform congregations, i.e., "radical assimilation, denial of Jewish identity, [and] opting to keep nothing at all [of Judaism],"<sup>196</sup> continue to confront Reform communities today, even if to a somewhat lesser degree. Filling the pews and maintaining congregational participation levels remains a top challenge for many Reform rabbis. Congregations can no longer count on a sense of religious obligation to bring people to the synagogue; on the contrary, in today's marketplace, the Reform congregation, like any organization,

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<sup>195</sup> Weinberg, 1

<sup>196</sup> Saperstein, H., *Witness from the Pulpit*, 15

must convince its target audience that its product – Judaism – is worth “buying,” so to speak, i.e., that Judaism has something to offer *them* and can meet *their* needs.

According to rabbis and scholars, one such need among Reform Jews is to receive guidance from their religious tradition in understanding current events and political issues. Given its homiletical nature and the potential extent of its reach, the sermon is a potent tool for meeting this need; moreover, Saperstein explains, there is some desire and, indeed, expectation among congregants that the sermon will provide such guidance. For example, he reports that on the Shabbat following President John F. Kennedy’s assassination “synagogues throughout the country [were] filled to overflowing with Jews who expected and needed to hear some articulation of the meaning of this disaster from the pulpit.”<sup>197</sup> The same was also true in September 2001, when Reform congregants came to Rosh Hashanah eve services expecting their rabbis to say something about the terrorist attacks on New York and Washington, which had occurred only days earlier. This desire, or need, among American Reform congregants for Judaism to address contemporary events and issues surely stems from the fact that secular society is the primary focus of their daily lives; in the main, American and world events and the issues that dominate secular discourse tend to occupy their attention and define their concerns. Consequently, a Reform rabbi who does not speak to these concerns risks rendering both Judaism and himself, as a spokesman for the tradition, obsolete in his congregants’ minds. The need to demonstrate relevance, then, is likely a key reason why Weinberg – and other Reform rabbis for whom he no doubt speaks – felt “compelled” to preach about

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<sup>197</sup> Saperstein, M., *Jewish Preaching in Times of War*, 7 (manuscript)

the Iraq war, particularly at times when the issue was most salient in the American consciousness.<sup>198</sup>

Using classical Jewish text in his sermons can aid the rabbi in the effort to demonstrate Judaism's relevance to modern life. Not only do textual citations give concrete expression to abstract ideas and help construct a distinctly Jewish framework for considering a contemporary issue, as discussed previously, but they can also serve to illustrate the timelessness of the tradition. This is an important function of *hilkhot milchamah* in the Reform Iraq sermons; through their creative presentations of the rubric, the sermons aim to convince listeners both (a) that Jewish tradition contemplates the same issues relating to war with which the United States is presently grappling, and (b) that the tradition provides unique insight into the political and moral dimensions of those issues that can and should inform American thinking regarding the Iraq war.

For instance, by outlining the halakhic categories of *milchemet mitzvah* and *milchemet ha-reshut* as they do, the sermons demonstrated that Judaism provides a helpful way to think about the debate, current in American public discourse, about whether Iraq was a war of necessity or a war of choice. Amidst the debate over whether or not the president should obtain congressional approval before striking Iraq, the sermons showed that Jewish law provides guidelines for determining when the executive can initiate war on his own authority and when he needs additional sanction from another branch of government. As U.S. and international policymakers discussed the extent to

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<sup>198</sup> It is no surprise that, as noted in the Introduction to this thesis, "a significant percentage of the sermons analyzed for this study were delivered between August 2002 and March 2003, as the country and the Congress debated a potential strike against Iraq, or soon after the launch of the war in March 2003. Two others were delivered as national elections approached, one in November 2002 and one in October 2004. Several others were delivered at the High Holidays, when the rabbis would presumably have been able to reach their largest audiences."

which diplomatic avenues should be pursued, the sermons explained the halakhic requirement to offer the enemy peace terms before launching an attack. Though their representations of these elements of *hilkhot milchamah* tend to be flawed, the sermons' use of this rubric enable them to show concretely Judaism's pertinence to the Iraq war specifically and to contemporary American life in general. Rabbi Barbara Goldman-Wartell makes this argument explicitly, stating in the introduction to her sermon that

The first issue for me is the very important conversation about *milchemet hareshut* [sic], discretionary war, and *milchemet mitzvah*, obligatory war, which so impressed me that the rabbis really were looking at the same issues that were being aired on NPR before we entered Iraq and really crystallized the concerns that we had as a country over the potential of waging war. It definitely made clear that our texts are timeless and they teach us every day.<sup>199</sup>

Indeed, the ability to draw such close parallels between Jewish tradition and contemporary circumstances may have contributed to the decision to use *hilkhot milchamah*, rather than some other halakhic war paradigm, in the first place; after all, none of the alternate halakhic models for evaluating war deals in such detail with the various political and moral questions that were and remain at the forefront of the Iraq war debate. In short, it is possible that both the CCAR *teshuvah* and the various Reform sermons chose to use *hilkhot milchamah* first and foremost because that particular paradigm can most effectively demonstrate Judaism's relevance to modern life.

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<sup>199</sup> Goldman-Wartell, 1

In any case, the Reform Iraq war sermons illustrate how text can be used to strengthen a sermon's claim of Judaism's ongoing relevance and enhance its ability to meet congregants' need for religious guidance on contemporary issues. In using text for this purpose, however, rabbis would do well to be mindful of "the Jewish lag" and of the potential pitfalls associated with presenting creative homiletical interpretations of classical sources to listeners who lack significant Jewish knowledge. The dual task which the Iraq war sermons seek to accomplish – i.e., (1) teaching *hilkhot milchamah* and (2) demonstrating how the rubric is relevant to modern America – may, in fact, be too great to achieve effectively in one sermon. As the previous chapter's analysis demonstrated, the sermons too often come up short in this regard, using text in ways that inadvertently convey misimpressions about the tradition's views of war.

### ***C. Using Text to Enhance the Rabbi's Credibility and Ability to Make a Social Critique***

Robert Freidenberg, in his book on modern Jewish preaching entitled "*Hear, O Israel*," writes that

The effectiveness of any speech is at least in part, and often in very great part, dependent upon the credibility of the speaker. To the extent that the speaker seems personally involved with the ideas being expressed and totally conversant and fluent with them, he will be perceived as credible.<sup>200</sup>

The modern Reform rabbi thus confronts a challenging paradox: on the one hand, the need to demonstrate Judaism's contemporary relevance demands that he address current

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<sup>200</sup> Freidenberg, 130

events and issues from the pulpit; on the other hand, as Linn notes, no individual can be an authority on every issue, and “The opinions of a preacher whose information is necessarily limited are little respected.”<sup>201</sup> Moreover, the modern Reform rabbi preaches to a congregation of informed and intelligent people, who are just as capable as he is of forming their own opinions about a given event or political issue. If his sermon on a particular secular issue – such as the Iraq war, for example – is to be credible and effective, the rabbi must demonstrate to his audience his authority to speak to that issue; if he cannot do so, not only may his sermon be ill-received, but it could generate resentment against him among certain congregants, perhaps most especially those who disagree with his perspective.

Using classical Jewish text in his sermon is one way in which the rabbi can resolve this paradox. According to rhetoric historian George Kennedy, citing outside sources is a classic rhetorical technique used to illustrate the speaker’s erudition and thus to enhance his credibility with his audience.<sup>202</sup> While references to poetry, novels, academic studies, and newspaper articles can, and often do, serve in sermons to showcase the rabbi’s general knowledge and to make his sermon more compelling, using Jewish text can demonstrate his authority to speak about a secular topic in ways that citations of non-Jewish sources simply cannot. Citing the Talmudic dictum “*al yithalel chacham b’chochmato*,”<sup>203</sup> the eminent Reform sermonizer Rabbi Isaac M. Wise insists that “No

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<sup>201</sup> Linn, 12

<sup>202</sup> Kennedy, 3. While Kennedy speaks about this as a rhetorical device used in the art of writing, the principle seems equally relevant to speechmaking. He writes: “Secondary rhetoric...contributes to accomplishing the purpose of the speaker or writer, but indirectly or at a secondary level. It provides a way of emphasizing ideas or making them vivid. It enlivens the page and relieves the tedium of the reader. It may demonstrate the writer’s education, eloquence, or skill, and it thus often makes the writer more acceptable to an audience.”

<sup>203</sup> *Arakhin* 10b



preacher of religion must parade his own wisdom before a congregation”<sup>204</sup>; one who does so, Wise writes, risks losing his congregants’ confidence. Wise maintains, therefore, that it is essential to cite Jewish sources in a sermon in order to substantiate the rabbis’ claims and indicate clearly to listeners that the views he expresses are rooted in Jewish tradition, not in his own opinion. As discussed previously, textual citations can serve to frame a secular topic in distinctly Jewish terms; therefore, by grounding his sermon in text, the rabbi can transfer an issue such as war from the sphere of politics and national security, in which he is not regarded as an expert, to the sphere of Judaism, in which he is perceived to be knowledgeable. In addition to supporting the rabbi’s arguments, then, textual citations also serve to signal listeners that he speaks to them not as an ordinary citizen, but specifically as a *rabbi*, an authoritative representative of Jewish tradition. As such, his sermon, regardless of what topic it addresses, is more likely to be deemed appropriate for the pulpit, as Rabbi Abraham Feldman explains:

[W]hen you speak as a Rabbi people may disagree with you – which is their right and [privilege], but they will not challenge your right to hold forth and they will respect you. But if you presume to editorialize in the pulpit on all kinds of subjects without reference to Jewish content, you must be prepared to produce credentials of competency in science, psychiatry, psychoanalysis, sociology, economics, etc., etc., [and] produce them to people in your congregation who may know more about these disciplines than you ever will.<sup>205</sup>

In addition to demonstrating the rabbi’s bona fides to address a contemporary event or issue, using text as the basis for a sermon can also provide political cover for a

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<sup>204</sup> Wise, “Some Rules on Preaching Sermons,” 4

<sup>205</sup> Feldman, 10-11

rabbi seeking to make a social critique. Throughout the history of modern preaching, reports Saperstein, various rabbis and congregants alike have cautioned against speaking about non-religious matters from the pulpit. Given the rabbi's lack of credentials to preach authoritatively about secular issues, those who hold this view maintain that the risk of offending congregants is too great. Wise, for example, warns that the rabbi who "discuss anything in the pulpit which has no direct connection with the religion he preaches...lowers his position to that of an ordinary talker or merry-maker."<sup>206</sup> The rabbi, he and others maintain, should stick to what he knows: Judaism. Such sentiment among the laity, to the extent that it still holds, can present a problem of conscience for the rabbi who sees it as his responsibility to raise social critiques from the pulpit. By conveying the message to listeners that his critique is based on Jewish tradition, incorporating text into his sermon enables the rabbi to play the prophet, speaking words not his own to rebuke the people. In practical political terms, the text gives the rabbi cover to respond to those who might take offense at his sermon: "I am only telling you what the tradition says; it comes from the Torah, not from me."

In sum, Jewish textual citations can uniquely enhance the authority of the rabbi to speak to a particular issue, strengthen the credibility of his argument, and provide political cover for him to make prophetic social critiques on contemporary issues and events, such as war, which are generally regarded as beyond the scope of his expertise. Though it is impossible to discern the Reform rabbis' motivations, it is quite likely that those who use *hilkhot milchamah* to preach about the Iraq war do so, consciously or not, at least in part for these purposes. From the time that a potential war with Iraq began to be debated in 2002 until the present, the war has been a controversial issue; as in all

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<sup>206</sup> Wise, "Some Rules on Preaching Sermons," 4

segments of the American population, there are both supporters and opponents of the war in the Reform community. A number of the sermons examined in this study not only acknowledge such division within the congregations they address, but also make an explicit effort to validate the legitimacy of both positions. For example, in an aptly titled sermon "Profound Ambivalence: Jews and the War with Iraq," Rabbi Dena Feingold explains that although

most of the Jews I have talked with about this war are *against* it, as am I...In reality, the Jewish community is not in agreement about this war at all...Although, as individuals, some Jews have no ambivalence about where they stand with respect to this war, it is curious that the Jewish community as a whole is so divided. It may be that we are divided about the wisdom of this war because we have different understandings about the purpose of the war.<sup>207</sup>

Feingold goes on to explain that she opposes the war because she sees it as an instance of *milchemet ha-reshut*, which, on her view, is morally unjustifiable in the modern world. Her use of text therefore enables Feingold to claim that her opposition to the war is based not on her personal views but, rather, on an objective Jewish analysis of the situation. At the same time, though she contends that both support for and opposition to the war are legitimate Jewish positions depending on whether one sees it as a case of *milchemet mitzvah* or *milchemet ha-reshut*, Feingold's sermon may tacitly guide listeners toward her particular view simply by asking them to render a judgment on the basis of *hilkhot milchamah* as Feingold herself defines it. Other sermons use the textual model

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<sup>207</sup> Feingold, 1

similarly: because most listeners' knowledge of Jewish views on war is likely limited to what the rabbi tells them in the sermon, the rabbi – by virtue of his authority and through his particular presentation of the tradition – is able influence his congregants' thinking in a credible but relatively benign way, without having to make a stinging personal rebuke against those who may disagree with him. In short, text can uniquely facilitate an effective and politically palatable social critique. Given its immense rhetorical power, rabbis would do well to heed the admonitions of Kahn, Freehof, and Cohen about the need to cite Jewish text carefully and transparently so as not to unwittingly use the authority of the pulpit to convey misimpressions about the tradition.

#### **IV. Conclusion**

In summary, rabbis and scholars adduce three primary functions of the modern sermon in a Reform context, all of which may be aided by the incorporation of Jewish text into the sermon. First, the sermon can serve as an educational tool. Given the general lack of Jewish knowledge among American Jews, particularly in Reform communities, many rabbis use the sermon as a means of teaching congregants basic information about Jewish principles, history, and faith. Indeed, since World War II, the sermon has served as the primary source of adult education for a great many American Jews.<sup>208</sup> Given the sermon's importance as a teaching tool, a rabbi can add to his congregants' knowledge of Jewish literature and concepts by including text in his sermon. For example, quoting the laws of war from the *Mishneh Torah* and other classical sources is an excellent way to expose congregants to texts which they may otherwise never encounter, to teach them principles which they may otherwise never

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<sup>208</sup> Freidenberg, 107

learn, and to give them the basic knowledge and vocabulary to discuss war in Jewish terms. In communities where Jewish knowledge is relatively low, the sermon may first and foremost need to educate if it is to have a chance of accomplishing any other goal.

Second, a sermon may seek to demonstrate Judaism's relevance to contemporary life; indeed, this concern may be paramount in modern liberal communities, where cultural assimilation has prevailed and religious duty is no longer the force it once was in compelling synagogue attendance. In order to compete in the modern intellectual and cultural marketplace and avoid becoming obsolete, the rabbi may need to show that Judaism has something unique and valuable to say about the events and issues which congregants confront in their daily lives as assimilated Americans. Given its broad reach, the sermon is a powerful tool for accomplishing this goal. Using text can strengthen the sermon's ability to demonstrate the tradition's relevance by giving concrete Jewish expression to abstract ideas and by constructing a distinctly Jewish framework within which to think about the issue at hand. By using *hilkhot milchamah* to preach about the Iraq war, the sermons surveyed for this study are able to draw close parallels between the classical tradition and the issues surrounding the present situation. Though such parallels stem from flawed interpretations of the halakhic rubric, they lend credence to the sermons' claims that Jewish tradition has something important to say about the Iraq war.

Third, in addition to showing that Judaism is pertinent to modern life, a sermon may seek to go further and, in the tradition of the Hebrew prophets, make a social critique on a hot-button issue such as the Iraq war. Jewish textual citations can facilitate and enhance such critiques in several important ways. Firstly, they can serve to demonstrate the rabbi's erudition and qualification to speak, from a religious perspective, about an

issue on which he is otherwise not regarded as an expert. Secondly, textual citations serve to substantiate the rabbi's assertions and convey to listeners that his arguments are rooted not in his personal opinion but, rather, in Jewish tradition, thus making them more credible. This, in turn, may provide the rabbi with needed political cover to criticize or support the war in ways he could not if congregants believed him to be speaking for himself.

While the ideal Reform sermon may seek to serve all three functions – teaching Judaism, demonstrating the tradition's relevance, and making a social critique – the task is nearly impossible given the limited time allocated for a sermon and “the Jewish lag” among the Reform laity. A sermon cannot adequately demonstrate Judaism's pertinence to the Iraq war nor effectively critique the war if its audience has no knowledge of Jewish teachings about war. Therefore, before a sermon can attempt to show relevance or make a social critique, it must first educate; it is for this reason that the Reform Iraq war sermons attempt to teach listeners the basics of *hilkhot milchamah* before applying it to the present situation. The task, however, is too immense to accomplish in a half-hour or less; as the foregoing chapters have shown, the literature on *hilkhot milchamah* is far too vast and complex to teach in such a short time – let alone to do so comprehensively enough in order to then transition from education to application. To attempt to educate, demonstrate relevance, and critique the war on the basis of *hilkhot milchamah* all in one sermon is a recipe for failure; not only can all three objectives not be accomplished effectively, but the risks of misinforming and misleading listeners is significant, as the analyses of the Reform sermons has shown.

Moreover, there exists a fundamental tension between education and prophetic advocacy that makes it impossible for one sermon to serve both functions simultaneously. To educate is to impart information *about* something, e.g., to explain *hilkhot milchamah* – its historical and intellectual context, the components of the rubric, the debates over the fine points, the evolution of thought from the classical period to the present, etc. Education is about imparting facts and is necessarily objective and dispassionate. Prophetic advocacy is quite the opposite; it is emotional and passionate, and seeks to persuade its audience of a particular viewpoint. The Hebrew prophets are critics; their prophecy presumes knowledge of God's teaching and rebukes the people for not living up to it. In short, education and prophetic advocacy are two distinct and incompatible forms of discourse. Consequently, any attempt to engage in both in the context of one sermon is essentially doomed to failure from the start.

Despite the immensity of the task – or perhaps in ignorance of it – the Reform Iraq war sermons attempt to be both educational and prophetic, using the CCAR *teshuvah* as the vehicle for accomplishing both. In so doing, they fundamentally misunderstand and misuse the *teshuvah*. Reform *teshuvot*, as explained previously, are written to be study guides; as non-binding quasi-legal rulings, they provide not only the Responsa Committee's considered opinion on a given *she'elah*, but also the background information and source-citations necessary to facilitate independent research and decision-making by the reader. The sermons, however, do not utilize the *teshuvah* as a teaching resource per se, e.g., by researching its citations, outlining the various key texts for listeners, and objectively instructing them in the complexities of *hilkhot milchamah* – an endeavor which would be more suited, of course, to an adult education class than to a

sermon. On the contrary, they use it as the basis for prophetic advocacy, preaching the *teshuvah* as the authoritative voice of the tradition. It is this confusion of genres which, at the root level, results in the sermons' mischaracterization of Jewish teachings about war for listeners who, in the main, do not know otherwise.



## CHAPTER FOUR

### A Corroborating Source: The URJ Iraq War Resolution and the Sermons' Role in Public Discourse

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#### I. Introduction

Thus far this study has focused on the questions of how and why the Reform sermons use textual citations to address the Iraq war. It has been shown that textual references can enhance a sermon's educational value, strengthen rabbinic claims that Judaism is relevant to modern life, and bolster the rabbi's credibility and ability to preach about the war from the pulpit. In short, it has been determined that the use of *hilkhot milchamah* may make the sermons' social critiques of the war more compelling for listeners. This having been established, the study now turns to the question of what the sermons seek to accomplish by critiquing the war. Is this simply an intellectual exercise on the part of Reform rabbis, a way to satisfy congregants' need for Jewish insight into contemporary issues? Or do the rabbis, like the prophets in whose footsteps they endeavor to tread, hope that their sermons will impact their listeners more broadly and summon them to action of some kind? If, as homiletics scholars maintain, the sermon's overarching purpose is to inspire its audience, then it is necessary to ask regarding the Iraq war sermons: what, exactly, do they seek to inspire in listeners?

In the main, the Reform sermons explain their motivations either obliquely or not at all. Those that do articulate their intentions speak in general, abstract terms, stating, for instance, that evaluating the Iraq war against the standards of *hilkhot milchamah* can help "inform our opinions and understanding of what is going on in our world today,"<sup>209</sup>

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<sup>209</sup> Brynjegard-Bialik, 1

provide guidance that may “inspire our thinking and actions,”<sup>210</sup> or help people who are ambivalent about the war “take a stand.”<sup>211</sup> Though none of the sermons calls on listeners to take a specific position or action, such statements indicate that, in bringing their particular interpretations of *hilkhot milchamah* to elucidate the present situation, the sermons aim to provoke action indirectly. If they succeed in influencing the way listeners think about the Iraq war, the sermons may inspire congregants to participate in protests or rallies, for example, or to lobby their congressional representatives in support for or opposition to the war. At a minimum, to the extent that they do inform listeners’ thinking, the sermons may affect the way congregants converse with other people about the war and the way they vote in elections. Therefore, by virtue of their religious authority, which is augmented by the use of *hilkhot milchamah*, these sermons are likely to make some impact on secular society; indeed, impacting the society beyond the synagogue walls is the social-critique sermon’s primary purpose. Consequently, the Iraq war sermons necessarily raise questions about the intersection of religion and state, an issue which is of particular concern to the Reform movement. Before exploring this matter in detail, however, it is first necessary to say something about the place of these particular Iraq war sermons in the context of Reform discourse about the war.

As noted in the introduction to this study, the twelve sermons that have been examined in these pages do not constitute a scientific sample of Reform preaching on the Iraq war. For one thing, the sample consists of sermons submitted by a self-selecting group of rabbis. Secondly, the size of the sample is quite small relative to the number of practicing Reform rabbis who may have preached about the war but chose not to submit

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<sup>210</sup> Weinberg, 1

<sup>211</sup> Feingold, 1

their sermons. Furthermore, while more of the sermons use *hilkhot milchamah* to assess the Iraq war than use any other single textual paradigm, a significant number of the submitted sermons base their discussions not on this model but, rather, on a variety of other textual sources. For these reasons, it is impossible to conclude, on the basis of the sermons collected for this study, that using *hilkhot milchamah* to preach about the Iraq war is a prevalent Reform strategy; indeed, it would seem possible that the *hilkhot milchamah* sermons are actually *unrepresentative* of mainstream Reform discourse on the Iraq war. Two factors, however, militate against this conclusion. First, as has been thoroughly demonstrated, the sermons mirror the approach taken by the CCAR *teshuvah*. Second, a resolution adopted in 2007 by the Union for Reform Judaism's Executive Committee likewise uses *hilkhot milchamah* to address the Iraq war, following the same interpretive and analytical patterns employed by the *teshuvah* and the sermons. Because the URJ resolution, like the sermons, is an advocacy tool, an analysis of its use of *hilkhot milchamah* can be instructive in understanding both the sermons' objectives in making a social critique based on the halakhic rubric and the issues their critiques raise in regard to the relationship between religion and state.

The ensuing sections will (1) examine the resolution's use of *hilkhot milchamah* and its stated purposes in doing so; (2) outline two philosophical models of discourse in a liberal society, such as the United States; and (3) apply those two models in order to elucidate the view of the relationship between religion and state that is embodied in both the resolution and the Reform sermons.

## II. URJ Resolution on the War in Iraq, 2007

On January 10, 2007, President George W. Bush announced that the United States would deploy more than 20,000 additional troops to Iraq. The president's announcement prompted the Reform movement, which had previously taken public positions on the Iraq war on at least three separate occasions, to speak out once again on the issue, this time in opposition to the new "surge" strategy. The URJ Executive Committee adopted a resolution on March 12, 2007, calling on President Bush and Congress to oppose increasing the number of American troops deployed in Iraq and to set a timetable for withdrawing U.S. forces from that country. In addition to the rising number of American casualties and the burgeoning financial cost of the war, the URJ resolution cites, as a reason why withdrawal is necessary, the "significant abuses and failures of Jewish just war standards"<sup>212</sup> – i.e., *hilkhot milchamah*, as the resolution defines it – perpetrated by the U.S. government. This assertion that the U.S. government should adhere to halakhic standards is, of course, problematic. Before exploring that issue in detail, however, it is first necessary to survey, in relatively brief fashion, the resolution's presentation and application of *hilkhot milchamah*.

### A. *Hilkhot Milchamah in the URJ Resolution*

The resolution consists of an action section, in which it calls on the president and Congress to oppose troop increases and to set a withdrawal timetable, and five background sections (Sections I-V) explaining the reasons for its position. Of primary interest to this analysis is Section III, entitled "Jewish Values Regarding Rules of War." This section makes a series of critiques of United States policy on the basis of

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<sup>212</sup> URJ Executive Committee, "Resolution on the War in Iraq 2007," 4

specifically Jewish arguments. In Section IV, the resolution provides additional policy critiques which are not based on religious arguments; however, it must be emphasized that it is the incorporation of Jewish textual citations in Section III that gives the resolution a Jewish character and imputes it with a measure of religious authority, lending sanction from the tradition to the resolution's non-religious arguments.

Substantively, the resolution interprets and applies *hilkhot milchamah* in much the same way as the *teshuvah* and the sermons do. Like many of the sermons, the resolution simply assumes *hilkhot milchamah*'s relevance to the Iraq war; though it intends to inform an audience of both Jews and non-Jews, the resolution says nothing about the rubric's contextual constraints or the consensus halakhic view that the rubric cannot pertain to a modern secular war. From the start, then, the resolution conveys to its readers – which may include lawmakers and secular news media as well as Reform Jews – a fundamental misrepresentation of Jewish tradition.

Moreover, the resolution, like the sermons, presents *hilkhot milchamah* as a set of ethical guidelines as opposed to a corpus of law, recasting the rubric in secular terms as “Jewish just war theory.” In doing so, however, the resolution uses secular Just War terminology that neither the *teshuvah* nor any of the sermons employs, stating that “Jewish tradition...offers ethical analysis as to the causes justifying the use of force (‘just cause’), the authority to wage war (‘right authority’), and the ‘just means’ for fighting war.”<sup>213</sup> Indeed, these categories, which are entirely foreign to halakhic thought, form the overarching framework within which the resolution defines and applies *hilkhot milchamah*. Through this subtle blending of secular and halakhic terminology, the resolution sets the stage for an analysis which, like the *teshuvah*'s and the sermons', uses

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<sup>213</sup> *ibid.*, 2

*hilkhot milchamah* not as an authoritative legal model but, rather, as a Jewish illustration for secular Just War principles.

After asserting that Judaism provides ethical guidance for assessing the initiation and conduct of war, the resolution explains that

the tradition distinguishes between two basic types of war: *milchemet mitzvah*/*milchemet chova* (obligatory wars including wars of self-defense) and *milchemet reshut* [sic] (wars of permission such as offensive wars – and, most Jewish authorities would hold, preemptive wars.)<sup>214</sup>

The resolution's classification of preemptive war as *milchemet ha-reshut* appears to contradict the *teshuvah*'s position. It will be recalled that the *teshuvah* categorizes preemptive war, which is waged to counter an imminent threat before an actual attack has been launched, as a form of defensive *milchemet mitzvah*, following the secular Just War definition of enemy aggression. By contrast, the resolution, in deeming preemptive war to be *milchemet ha-reshut*, seems to hold to the classical halakhic definition of enemy aggression, under which a defensive war is one waged only in response to a direct attack. While their different classifications of preemptive war may constitute a disagreement between the *teshuvah* and the resolution, a close reading of the resolution reveals that the documents' respective positions are substantively, if not technically, quite similar.

Using the terminology of Just War Theory, the *teshuvah* distinguishes between "preemptive war," on the one hand, and "preventive war" – i.e., war to counter a potential, though not imminent, future threat – on the other. While the resolution makes

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<sup>214</sup> *ibid.*

the same distinction between war to counter an imminent threat and war to counter a potential threat, it uses the term “preemptive war” in reference to both types of anticipatory action. In the above passage defining *milchemet mitzvah* and *milchemet ha-reshut*, the resolution presents “wars of self-defense” and “preemptive wars” as distinct concepts, implying that preemptive wars are not defensive wars. As the term is used here, “preemptive war” seems to refer to the type of military action which the *teshuvah* calls “preventive war.” At the same time, the resolution maintains that “The [halakha] suggests that a preemptive war against those intending to do you harm, if there is evidence of imminent threats, is justifiable.”<sup>215</sup> This statement indicates a definition of “preemptive war” that is consistent with the *teshuvah*’s definition of the term, i.e., as a legitimate anticipatory action taken in self-defense. In short, the resolution uses the term “preemptive war” to encompass both kinds of anticipatory wars – i.e., preemptive and preventive – envisioned by the *teshuvah*.<sup>216</sup>

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<sup>215</sup> *ibid.*

<sup>216</sup> Given that the resolution was written specifically for the arena of political discourse, its broader definition and usage of the term “preemptive war” may be related to the fact that “preemption” is the term that administration officials, lawmakers, and commentators have consistently used in reference to the Iraq war and the policies of the Bush Administration; the term “preventive war” simply has not been a prominent part of the Iraq war debate parlance. Indeed, the 2002 National Security Strategy of the United States of America states that

The United States has long maintained the option of *preemptive* actions to counter a sufficient threat to our national security. The greater the threat, the greater is the risk of inaction— and the more compelling the case for taking *anticipatory action* to defend ourselves, even if uncertainty remains as to the time and place of the enemy’s attack. To *forestall* or *prevent* such hostile acts by our adversaries, the United States will, if necessary, act *preemptively*... The purpose of our actions will always be to eliminate a *specific* threat to the United States or our allies and friends. [All emphases added] (The White House, Section V).

This document, commonly referred to as “The Bush Doctrine,” arguably subsumes the concepts of preemption and prevention into one overarching category of “preemptive action,” meaning, simply, one taken prior to the launch of an enemy attack. While it is beyond the scope of this study to perform a textual analysis of the National Security Strategy, it is possible to conclude that the way in which the term “preemption” has been used in common political discourse may have influenced the way in which the URJ resolution uses it. Therefore, it would be erroneous to make too much of the terminological discrepancy between the resolution and the *teshuvah*.

Despite this terminological difference, the resolution is substantively consistent with the *teshuvah*: both, in their own ways, hold that anticipatory war to counter an imminent threat is justifiable, while anticipatory war to forestall a potential – though not imminent – future threat is unjustifiable. Though it is unclear whether the resolution considers the former to be *milchemet mitzvah* or *milchemet ha-reshut*, what is certain is that the resolution, like the *teshuvah*, deems war waged to forestall a distant threat to be a form of discretionary war. It is this latter category which is relevant to the resolution's analysis of the Iraq war. After stating definitively that Jewish tradition would categorize the Iraq war as *milchemet ha-reshut*, the resolution asserts that

The clear evidence of the 9/11 Commission that Saddam was not close to developing or obtaining nuclear or biological weapons, that his chemical weapon capacity was almost entirely eliminated, and that he did not cooperate with Al Qaeda in attacks on the U.S., mitigates any arguments of imminence.<sup>217</sup>

Given the resolution's prior contention that the only justifiable anticipatory wars are those waged when there is clear evidence of an imminent threat, this statement paves the way (a) for the resolution to claim that the Iraq war is unjustifiable in the eyes of Jewish tradition and (b) to call for withdrawal on that basis.

Noting that, in comparison to *milchamot mitzvah*, *milchamot ha-reshut* "have stricter requirements in terms of right authority and just means,"<sup>218</sup> the resolution proceeds to apply its particular interpretations of those requirements to the Iraq war.

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<sup>217</sup> URJ Executive Committee, "Resolution on the War in Iraq 2007," 2-3

<sup>218</sup> *ibid.*, 2



After explaining that the king must obtain approval from the Sanhedrin for *milchemet ha-reshut*, the resolution, like the *teshuvah* and several of the sermons, implicitly reinterprets the authorization requirement in accordance with contemporary norms of governance and international relations. Equating the halakhic monarch and Sanhedrin with modern American institutions, the resolution cites the authorization requirement as the basis for its view, espoused in the URJ's 2002 position statement, that the president must obtain congressional approval before sending troops into Iraq.<sup>219</sup> Furthermore, it maintains that

in our contemporary world, there is a strong argument that "right authority" for international intervention requires legitimate international authority – something the U.S. recognized in bringing its case to the U.N. But the lack of support from the U.N. Security Council and NATO denied that right authority.<sup>220</sup>

Thus the implicitly redefined halakhic authorization requirement provides religiously authoritative support for the resolution's argument that the United States' war in Iraq was initiated improperly and should therefore be discontinued.

Also like the *teshuvah* and a number of the sermons, the resolution presents the requirement to offer the enemy peace before initiating war, but makes no mention of the halakhically mandated peace terms, tribute and subjugation. Rather, the document asserts that "The [halakha] is clear about the need to pursue vigorously peaceful options before

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<sup>219</sup> In the "Executive Committee Decision on Unilateral Action by the U.S. Against Iraq" (September 23, 2002), the URJ leadership stated that "The President should not act without Congressional approval of the use of force including any unilateral military action taken by the U.S." Though no textual sources were cited in that document, the 2007 resolution explains that "This model of cooperative decision-making [i.e., the requirement that the king obtain Sanhedrin consent for *milchemet ha-reshut*], balanced between the various branches of government, led the URJ in 2002 to support congressional efforts to require the President to come back to the Congress for approval before actually deploying troops." (URJ Executive Committee, "Resolution on the War in Iraq 2007, 3)

<sup>220</sup> URJ Executive Committee, "Resolution on the War in Iraq 2007," 3

the use of force could be justified (Maimonides, *Mishneh Torah, Melachim* [sic] 6:1).<sup>221</sup>

This amounts to a fundamental redefinition of the peace requirement in accordance with contemporary moral sensibilities and international relations norms; by omitting the mandatory terms, the resolution, like the *teshuvah* and the sermons, implies quite strongly that Jewish tradition requires simply that the government must seek a peaceful resolution to the conflict and that war must be a last resort. Although this is a fantastic misrepresentation of the tradition, the parenthetical citation of the *Mishneh Torah* lends official credence to the resolution's explanation of the peace requirement, particularly for readers untrained in *hilkhot milchamah*. The redefined requirement thus provides religious substantiation for the resolution's argument that the Iraq war is unjustified in part because the 9/11 Commission determined that the United States had failed to pursue all reasonable peaceful solutions before initiating military action.

Finally, the resolution, like the *teshuvah* and the sermons, selectively presents certain halakhic requirements regarding the conduct of war which are consistent with modern moral sensibilities, but makes no mention of those which are not. As an example of what it calls "just means" laws, the document explains that, according to Maimonides, the Talmudic principle of *bal tashchit* requires that

war should be fought in a manner so as to allow normal civilian life to resume after the war...Fighting wars in a way that allows for the return to peace and normal life must always be the goal."<sup>222</sup>

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<sup>221</sup> *ibid.*

<sup>222</sup> *ibid.*

While this characterization of *bal tashchit* may resonate with modern readers, it neglects to mention that Maimonides prohibits only wanton destruction of the environment and infrastructure, but permits the cutting down of trees, for example, for monetary or other utilitarian purposes. The resolution also asserts that

Central to Jewish just means doctrine is the need to protect innocent civilians (MT *Melachim* [sic] 6:11).<sup>223</sup> The alarming devastation wrought [in Iraq] has been damaging for the civilian population.<sup>224</sup>

This statement is likewise misleading. Presumably it refers to the fact that while the Jewish army is required to slay the entire enemy population in *milchemet mitzvah*, in *milchemet ha-reshut* it is instructed to kill only the adult male population. To characterize *milchemet ha-reshut*'s more limited killing requirement as an injunction to "protect innocent civilians" is, to say the least, a creative interpretation; however, the "official" parenthetical citation of the *Mishneh Torah*, once again, makes the resolution's statement seem credible. As such, the textual reference lends religious authority to the resolution's argument that the war in Iraq is unjust in part because so many civilians have been harmed or killed during the operation.

In sum, the URJ resolution's presentation and application of *hilkhot milchamah* is very similar to those of the CCAR *teshuvah* and the Reform sermons. Like the *teshuvah* and the sermons, the resolution implicitly redefines the rubric in accordance with secular

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<sup>223</sup> The resolution apparently cites the wrong *Mishneh Torah* paragraph, as *Melakhim* 6:11 articulates the requirement to initiate war at least three days before Shabbat. While it is impossible to know for sure which paragraph the document means to cite, since the *Mishneh Torah* says no such thing about protecting innocent civilians, it is possible that it refers to *Melakhim* 6:4, which specifies that "neither women nor children should be killed" in *milchemet ha-reshut*.

<sup>224</sup> URJ Executive Committee, "Resolution on the War in Iraq," 3

Just War Theory principles, modern notions of governance and international relations, and contemporary moral sensibilities. Although many of its characterizations of the halakhic war norms fundamentally misrepresent the tradition, the textual citations in the body of the resolution give its claims an appearance of authenticity and credibility. Consequently, the resolution's use of text lends a measure of religious authority to its arguments against the Iraq war.

The fact that the URJ resolution – an official statement of the Reform movement – uses *hilkhot milchamah* to evaluate the Iraq war, employs the same interpretive strategies that the sermons do, presents the halakhic paradigm in much the same way that the sermons present it, and uses the rubric to make many of the same arguments regarding the Iraq war that the sermons make, demonstrates that the twelve sermons surveyed for this study are no outliers in the realm of Reform discourse. On the contrary, they appear to be representative of a mainstream Reform approach to applying text and tradition to the issue of modern secular war. Moreover, the fact that the resolution follows the sermons chronologically demonstrates the gradual extension of this interpretive strategy, over the period of five years, from the *teshuvah*, which ostensibly functions only within the private Reform community, through the sermons, which function partially in the internal Reform community and partially in the public sphere, to the URJ resolution, which functions primarily in the public arena. While the sermons, in the main, are vague about their purposes in bringing *hilkhot milchamah* to bear on the Iraq war debate, the resolution can perhaps elucidate the aims of this common Reform approach to the issue.

### ***B. The Aims of the Resolution***

Unlike the sermons, the URJ resolution explicitly outlines its objectives and aggressively seeks to impact secular society. Articulating its *raison d'être* in the introductory section, the resolution states that the Reform movement has spoken out on the Iraq war in the past and chooses to do so again because

the prophetic tradition, so central to Judaism, calls on us to address the great moral issues of our day. And no issue raises more urgent and challenging moral considerations for our nations [i.e., the United States and Canada]...than does the war in Iraq.<sup>225</sup>

In the press release announcing the resolution's adoption, URJ Board of Trustees Chairman Robert Heller echoes this statement of purpose, asserting that the movement passed the resolution "in keeping with our prophetic obligation to speak truth to power."<sup>226</sup> These statements demonstrate quite clearly that the Reform movement sees it as its religious duty not only to bring Jewish values, as it understands them, to bear on matters of public debate, but also to do so publicly, in the manner of the prophets. To wit, the resolution is written not as an intellectual exercise or to satisfy the spiritual needs of Reform Jews, but, rather, to raise a social critique in the public sphere and move those in power to act.

Lest this motivation be in doubt, the resolution addresses the United States and Canadian governments directly, imploring them to implement certain policies on the

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<sup>225</sup> *ibid.*, 1

<sup>226</sup> URJ, "Union for Reform Judaism Adopts Resolution on Iraq War," 1

basis of the resolution's arguments. In the concluding section, the document calls on President Bush and Congress to

Set and announce a clear timetable for the phased and expeditious withdrawal of United States troops from Iraq [and to] Include the estimated cost of the war in the annual budget and not through emergency supplemental bills.<sup>227</sup>

The resolution further calls upon both national governments and the international community to

Encourage Iraq Prime Minister Nuri Kamal al-Maliki to resume reconciliation talks with the full range of Iraq's political leaders [and to] Actively support a dialogue between Iraq and all its neighbors, especially in regards to helping to stop civil strife and terrorism and helping finance Iraqi job programs and reconstruction.<sup>228</sup>

Though many American and international policy-oriented groups have pressed the government to take similar actions, the obvious questions in regard to the URJ resolution are: what particular standing does a religious organization have to speak about national security policy and why should its recommendations be heeded? Indeed, this is the same problem faced by congregational rabbis whose credentials may be questioned should they endeavor to preach about the war from the pulpit. While the URJ and the Reform rabbis could attempt to demonstrate their credibility to speak about the issue by basing their critiques on secular news sources, government reports, and other similar material, the use

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<sup>227</sup> URJ Executive Committee, "Resolution on the War in Iraq 2007," 9

<sup>228</sup> *ibid.*

of classical Jewish text, as discussed in the previous chapter, may be more effective in this regard. Using *hilkhot milchamah* in their resolution and their sermons – instead of, or in conjunction with, secular sources – has the important effect of giving their secular policy arguments a distinctive religious character and authority. This, in turn, makes the arguments appear credible coming from a religious organization or cleric.

This use of *hilkhot milchamah* has an additional and consequential effect: by injecting arguments of this nature into the public sphere, the resolution and the sermons necessarily bring the values and teachings of a particular religious tradition to bear on the workings of secular government and society. On the one hand, the resolution indicates that it intends to do precisely that in accordance with its prophetic responsibility. Given that the sermons use text and represent the tradition in an almost identical way, it seems reasonable to infer that this is the sermons' subtle aim as well, even if only indirectly, by influencing the thinking of listeners who will then go out into secular society and converse with friends, vote, and possibly lobby the government based on what they heard in synagogue. Indeed, this may be, in part, what Rabbi Michael Weinberg means when he tells listeners that he feels "compelled" to suggest that Jewish tradition can guide their thinking and actions relating to the Iraq war. On the other hand, the Reform movement, which terms its brand of religion "liberal Judaism," professes a strong and sincere commitment to the separation of religion and state. Are these two values – (1) the prophetic duty to "address the great moral issues of our day" and (2) the commitment to the separation between religion and state – compatible, or do the resolution and the sermons, in seeking to uphold the one, necessarily violate the other? In attempting to answer that question, it is helpful to consider some ideas from academic political

philosophy regarding the bounds of proper discourse in a liberal society such as the United States.

### **III. Political Liberalism and Models of Liberal Discourse**

“Liberalism” is an umbrella term encompassing various schools of political philosophy that envision a society in which each individual citizen can freely pursue his own ends without others seeking to impose upon him a conception of “the good life” (or “the good”). To safeguard against coercion that undermines such freedom, liberalism insists that public discourse in a liberal society must take place within certain rhetorical boundaries, which exist in principle if not in law. However, the precise contours of those boundaries, which determine those forms of language and argumentation that are appropriate for the public sphere and those forms that are inappropriate, is a point of debate among liberal philosophers. One key issue of contention is the propriety of religious argumentation in public discourse. Because a religion advances a particular notion of the good which is based on a belief system not shared by non-adherents, some liberal thinkers maintain that religious argumentation in the public sphere constitutes an undue imposition of a particular idea of the good on non-believing citizens. Others, by contrast, hold that barring religious discourse from the public sphere undermines what should be the overarching aims of the liberal society. In order to facilitate an assessment of the URJ resolution and the Reform sermons against the principles of liberalism, it is helpful to outline the broad concepts of classical liberal theory and then consider, in relative brevity, two distinct philosophical models of liberal society: (1) Michael Sandel’s communitarianism, which rejects certain key premises of the classical model; and (2)



Ronald Dworkin's "integrated community" model, which aims to incorporate communitarian elements into a modified version of the classical paradigm.

#### ***A. Classical Liberalism: An Overview***

The concept of justice is essential to classical liberal theory. According to the classical view, the only just society is the one which protects each individual citizen's freedom to pursue his own idea of the good without interference or coercion by other citizens or the state. In order to facilitate an environment in which such freedom can exist, society must adopt a governing concept of justice that is prior to the good; that is to say, the governing justice concept must be blind to, and uninfluenced by, citizens' particular desires and biases. If this is not the case – i.e., if the governing justice concept is not *prior* to the good but, rather, *influenced* by one or more particular ideas of the good espoused by societal members – then that justice concept would necessarily infringe on the freedom of citizens who do not share those ideas. In a word, such a society would not be truly just.

This principle that a society cannot be just unless its governing justice concept is untainted by the predispositions of its citizens appears, on its face, to be paradoxical; after all, what is the source of a justice concept if not the members of society who, as human beings who exist in the real world, necessarily possess some prior idea of the good? In other words, it seems unreasonable to suggest that human beings could organize a society without bringing their own particular ideas of the good life to bear on their decision-making. Conceiving a justice concept that is prior to the good, therefore, seems to be impossible.

Classical liberal theory argues otherwise. Its foundations lie in the philosophy of Immanuel Kant, who maintains that the concept of justice, or the “moral law,” is innate to humans as rational beings. The moral law, then, does not exist *independently* of human reason; rather, it flows *from* human reason. Therefore, the Kantian position suggests that human beings are capable of organizing a just society on the basis of their innate rationality.

John Rawls, the renowned twentieth-century Harvard University political philosopher, departs from Kant’s view in his contention that justice must be founded in something that is external to the human self. Rawls argues that society should be organized on the basis of what he calls “the original position.” This model requires citizens to determine society’s governing principles from behind a “veil of ignorance,” meaning that they must approach the task by acting as though they do not know what their respective lots in society might be; that is to say, they should make decisions about societal justice as if they do not know whether, once they move from this “original position” to a real position in society, they would be wealthy or poor, healthy or sickly, white or black. Rawls terms this ideal decision-maker the “unencumbered self,” which Sandel describes as “a self understood as prior to and independent of purposes and ends.”<sup>229</sup> Rawls maintains that this process alone can produce a justice concept that does not presuppose any idea of “the good.” This objective justice concept would then be enshrined in the laws and political procedures of the liberal state, which, according to classical liberal theory, functions primarily to protect each citizen’s unfettered right to pursue his own idea of the good. The classical liberal model envisions each individual as an isolated atom; one individual’s freedom ends where another’s begins.

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<sup>229</sup> Sandel, 18

### ***B. Michael Sandel: A Communitarian Model***

In his article "The Procedural Republic and the Unencumbered Self," Michael Sandel, a contemporary political philosopher and Harvard University government professor, rejects both the Kantian and Rawlsian models of liberalism, contending that both are unrealistic; human beings, he argues, can never attain the ideal of the unencumbered self. Sandel explains that while the individual's various experiences and communal attachments – e.g., familial, religious, national, and ethnic – constitute the essence of who he is as a human being, "the liberal ethic puts the self beyond the reach of its experience, beyond deliberation and reflection."<sup>230</sup> That is to say, the liberal insistence that the individual must sever himself from his identity and stand behind a veil of ignorance in order to participate in public discourse is not only fanciful, but alienating as well. The crux of Sandel's argument is that classical atomistic liberalism suppresses the aspects of humanity that, if embraced, could contribute to the creation of a healthy society.

Moreover, he contends that, in its zealous concern for protecting each citizen's right to pursue his own ends, classical liberalism fosters isolated individualism at the expense of community. Though citizens interact regularly with each other on a non-political level, their interactions in public discourse, in accordance with liberalism's narrowly defined boundaries, occur only through the laws and institutions of the liberal state. This "procedural republic," as Sandel terms the liberal society in practice, undermines both community and democracy.

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<sup>230</sup> *ibid.*, 24

Sandel, therefore, proposes an alternative to classical liberalism. Rather than organize society around an unrealistic notion of justice that is untouched by any particular concept of “the good,” he envisions a communitarian society and discourse that embraces its citizens’ diverse experiences, identities, and visions of the good life. Rather than idealize the unencumbered self, who checks his humanity at the door, Sandel’s communitarian society would invite each citizen to bring his particular idea of the good to the public arena and subject it to the marketplace of ideas. By relating to their fellow citizens as whole persons from whom they can learn, rather than as distant individuals from whom they need protection, societal members could draw on diverse viewpoints in a collective effort to create the best possible community. In short, Sandel’s communitarian society is concerned primarily not with the individual’s right to pursue his own ends but, rather, with the community’s right to pursue the common good.

### ***C. Ronald Dworkin: The Integrated Community***

Ronald Dworkin, another leading contemporary political philosopher and New York University law professor, likewise recognizes that individuals’ various experiences and communal associations shape who they are as human beings, and that severing themselves completely from those attachments is both unrealistic and undesirable. Unlike Sandel, however, Dworkin rejects the communitarian contention that liberalism is incompatible with community. He maintains that, on the contrary, communitarian discourse can flourish only in a society that preserves liberal rights. Dworkin argues that

“liberalism supplies the best interpretation of [a certain] concept of community,”<sup>231</sup> which he calls the “integrated community.”

The integrated community model allows for communitarian discourse within the bounds of a liberal framework. In this model, citizens recognize that “the lives of individual people and that of their community are integrated, and that the critical success of any one of their lives is an aspect of, and so is dependent on, the goodness of the community as a whole.”<sup>232</sup> Therefore integrated citizens – or “civic republicans,” as Dworkin terms them – act both individually and collectively to advance the good of the community. As in the communitarian model, the community is prior to the individual.

Dworkin distinguishes, however, between two conceptions of the integrated community: (a) the metaphysical view and (b) the practice view. The metaphysical view “supposes that a communal life is the life of an outsize person, that it has the same shape, encounters the same moral and ethical watersheds and dilemmas, and is subject to the same standards of success and failure, as the several lives of the citizens who make it up.”<sup>233</sup> A citizen who holds this view will approach his community holistically; since there is no difference between the community’s needs and his own, this individual – whom Dworkin identifies as the “altruistic citizen” – will equate his particular idea of the good, in every aspect of life, with the good of the community. He will, therefore, promote his personal vision of the good among the various members of his community; he knows no boundaries.

The practice view, by contrast, relates to the community more narrowly, as an entity defined by the particular practices in which it collectively engages. The

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<sup>231</sup> Dworkin, 206

<sup>232</sup> *ibid.*, 207

<sup>233</sup> *ibid.*, 208

community's idea of the good is defined by the community as a whole, in terms accessible to, and agreed upon, by every member. Individuals associate with the integrated community voluntarily because they share with the community some common sense of "the good." In the integrated community model, the civic republican advocates for his conception of the good only as it relates to relevant communal acts; when members' actions do not bear directly on communal acts, he respects their boundaries. Promoting a vision of the good that is not directly relevant to the community's practice transgresses the line between civic republicanism and altruism.

To illustrate the practice view, which forms the basis for his hybrid liberal-communitarian model, Dworkin brings the example of an orchestra. An orchestra's communal act is the production of music, and the community's idea of the good, all members can agree, is to maximize the quality of music that the orchestra produces. Within this integrated community, members may advocate for their ideas of the good insofar as those ideas advance the *communal* good. For example, one violinist may urge another to purchase a more expensive bow, which he believes enhances sound quality. Even if the violinist receiving the counsel disagrees and chooses not to accept it, the advice is nevertheless legitimate discourse because it relates to the communal acts of the orchestra. If, on the other hand, the violinist urges his colleague to eat less red meat in order to reduce his cholesterol, his advice is altruistic. In promoting his own conception of the good on this matter, the violinist may believe he is aiding the well-being of his colleague; however, because the advice does not relate to the practices of the integrated community, it is illiberal discourse according to the Dworkin model.

In sum, Dworkin envisions a society in which communitarian discourse is possible within clearly defined boundaries. Participants in political discourse must be conscious of the nature of their community. While Dworkin allows individuals the freedom to draw on their experiences and unique identities in advocating for the good within the integrated community, he contends that such advocacy is permissible only with regard to the particular acts that define the community. Moreover, it must be presented in terms that are accessible to all community members.

#### **IV. The Resolution and the Sermons as Functionaries in American Public Discourse**

As discussed above, the URJ resolution and the Iraq war sermons evidently seek not only to influence the internal Reform community, but also to make an impact upon secular American society as well. While the resolution overtly addresses both communities simultaneously, the sermons approach the task more subtly, seeking to impact the broader American political community indirectly by influencing the thinking and, potentially, the actions of listeners. Because they share common aims despite this slight rhetorical (or tactical) difference, both the resolutions and the sermons must be regarded as functioning, at least in part, within the realm of American political discourse. As such, it is possible to apply the Dworkin and Sandel paradigms in order to discern which model of discourse the resolution and the sermons more closely represent. This, in turn, may shed light on the relationship between religion and the public sphere in Reform culture. This is a potentially informative exercise, given the Reform movement's longstanding emphasis on the necessity of a clear separation between religion and state in American society.

***A. The American Political Community: Its Nature, Communal Acts, and Idea of the Good***

In order to assess the resolution and the sermons against the Dworkin and Sandel models, it is first necessary to say something about the nature of the American political community in which they function. Both philosophers agree that the United States is organized as a liberal society. The Declaration of Independence famously asserts that

all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed...

This foundational statement suggests that the state's *raison d'être* is to guarantee every individual citizen's right to pursue his own ends without interference from others. This mission is enshrined in the nation's laws, which mediate all formal public interactions among the citizenry. While Sandel laments that this "procedural republic" form of societal organization suppresses the individual and undermines community in America,<sup>234</sup> Dworkin maintains that American political society has the characteristics of an "integrated community," in which community can flourish within appropriately defined parameters of discourse.

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<sup>234</sup> Sandel (14) writes: "[D]espite its philosophical force, the claim for the priority of the right over the good ultimately fails. And...despite its philosophical failure, this liberal vision is the one by which we live."



On Dworkin's model, the nature of proper discourse in a liberal society is determined according to (a) the nature of the community, (b) the communal acts which define the community, (c) how constituent members participate in communal acts, (d) its communal idea of the good, and (e) the communal vocabulary of discourse. Dworkin explains that the communal acts of the American political community are "the acts of its government through its legislative, executive, and judicial decisions," and that the community is "composed of those who play some role in those decisions and who are most directly affected by them."<sup>235</sup> All communal acts – both by the government as communal agent and by individual public citizens as communal members – should serve the communal idea of the good, which, as articulated by the Preamble to the Constitution, is "to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity..." To illustrate how the American political community functions according to Dworkin's integrated community framework, it is helpful to return to the example of the orchestra:

**(a) The nature of the community** – Whereas the orchestra is comprised of musicians, the American political community is comprised of individual public citizens.

**(b) The communal act(s)** – Whereas the orchestra's communal act is producing music, the American political community's communal acts are those taken by its government.

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<sup>235</sup> Dworkin, 212-213

**(c) Constituent members' participation in the communal act(s)** – Whereas the orchestra's musicians participate in the communal act by playing their instruments, America's public citizens participate in the communal acts by voting and advocating in the public sphere.

**(d) The communal idea of the good** – Whereas the orchestra's communal idea of the good is to maximize the quality of the music it produces, the American political community's idea of the good is to realize the vision articulated by the Constitution.

**(e) The communal vocabulary of discourse** – Whereas the orchestral community speaks in commonly accessible terms relating to music, the American political community speaks in commonly accessible terms relating to public policy.

***B. The Resolution and the Sermons: Their Idea of the Good and the Nature of Their Discourse***

As noted previously, the URJ resolution occasionally argues on secular grounds for withdrawal from Iraq. For example, in Section IV it states that

Notwithstanding limited progress, the level of sectarian violence and casualties, both Iraqi and American has risen sharply... In addition to the human cost of the war, the

economic price of the war continues to divert much-needed funds away from domestic U.S. concerns...[This] will require future generations to pay the cost as a result of concurrent tax cuts coupled with spending of substantial levels of borrowed funds...A wide array of military and policy experts have pointed out that the financial burden also diminishes the ability of the U.S. military to respond to other threats and acts as a barrier to U.S. cooperation with the international community on other issues.<sup>236</sup>

If, in the context of war and foreign policy, it is possible to conceive of the communal idea of the good as the promotion of a safe, fiscally healthy, and internationally effective United States, then it is reasonable to conclude that the above arguments are rooted in that vision. In this passage, the resolution urges the United States to withdraw its forces from Iraq because the prospects of risking the further loss of life, spending more money in a futile fight, weakening America's defense capabilities, and diminishing its standing abroad, undermines, rather than advances, the interests of the state. While it is possible for citizens to disagree with the resolution's arguments, the important point is that the arguments are articulated in the American political community's common vocabulary. Therefore, all community members can relate to these arguments and debate their merits in the public sphere.

In Dworkin's integrated community model, it will be recalled, appropriate public discourse is only that which (1) relates to the practices that define the community, (2) promotes the communal idea of the good, and (3) utilizes the common parlance so as to be accessible to all members. The resolution's argumentation in the above passage (and throughout Section IV) is consistent with these criteria. As such, the advancement of

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<sup>236</sup> URJ Executive Committee, "Resolution on the War in Iraq," 5

these arguments in the public sphere, through the publication of this resolution, constitutes, in Dworkin's terms, an act of "civic republicanism" by the URJ. To wit, these arguments, taken alone, are appropriate to liberal public discourse according to Dworkin's integrated community model.

Complications arise, however, because the arguments in Section IV cannot be taken alone; they exist, rather, in the broader context of a resolution, which, as outlined previously, uses extensive religious argumentation to make its case. Indeed, it is arguably the religious language which gives the resolution its force. As already discussed, the URJ, as a religious organization, has no credibility to make national security arguments *qua* national security arguments in the public sphere; though it may certainly try, government officials would have no reason to heed such arguments coming from an organization whose specialty is religion rather than foreign policy. The resolution can be credible only insofar as it frames its arguments in terms of the URJ's particular area of expertise. The Jewish argumentation in Section III, therefore, is the linchpin of the resolution in that it serves (in appearance if not in actuality) to justify *all* of the document's assertions, even those which do not directly reference Jewish teachings. In short, since the resolution's ability to impact secular society stems from its religious argumentation, the particular conception of the good articulated in that section is of primary concern.

It has already been shown how the resolution interprets *hilkhot milchamah* to make the rubric relevant to the Iraq war and to establish distinctly Jewish grounds for its policy positions. Through its presentation of the halakhic paradigm, the resolution informs its readers that Judaism (a) considers the Iraq war to be a war of choice rather

than a war of necessity, (b) requires congressional approval for a war of this kind, (c) mandates that the United States pursue peaceful solutions to the conflict on its own and through international institutions before initiating war, and (d) requires that the United States army adequately preserve the Iraqi environment and infrastructure and minimize casualties among innocent civilians during combat. The sermons, in the main, use *hilkhot milchamah* to communicate the same message to their listeners. By using their perceived religious authority to establish these particular parameters for evaluating the actions of the United States government, both the resolution and the sermons embark on a critique of the Iraq war which is based not on the American political community's idea of the good, but, rather, on a distinctly *Jewish* vision of the good.

The resolution pursues this line of critique overtly and aggressively, arguing for withdrawal from Iraq on unambiguously religious grounds. As noted above, the resolution asserts that because, according to its interpretation of the 9/11 Commission's report, the threat posed by Iraq was not an imminent one, the war must be conducted in accordance with the requirements governing the halakhic category of *milchemet ha-reshut*. As such, the resolution maintains, Jewish tradition requires not only congressional authorization for war, but also "vigorous and effective Congressional oversight of the way the war has been prosecuted...something that has been *woefully lacking* [emphasis added]." <sup>237</sup> Similarly, after explaining that "the [halakha] is clear about the need to pursue vigorously peaceful options before the use of force could be justified," the resolution goes on to contend that "This was a requirement that the 2002 URJ Executive committee decision called for and one that the 9/11 Commission found

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<sup>237</sup> URJ Executive Committee, "Resolution on the War in Iraq," 3

we had *failed to achieve* [emphasis added].”<sup>238</sup> While the arguments that Congress has failed to provide adequate oversight and that the Bush Administration rushed into war before exhausting all diplomatic solutions are commonplace in the public sphere, what is unusual and remarkable here is the resolution’s particular rationale for these criticisms: whereas those who make such arguments tend to condemn Congress and the Administration for causing the needless loss of lives, taxpayer money, and international goodwill toward the United States, the resolution condemns the government for failing to meet the standards of *hilkhot milchamah*. This line of argumentation is rooted in the premise that Halakha, as the URJ interprets it, is the ultimate expression of the good; as such, the resolution implies, not so subtly, that the aim of the American political community – and of the government, as the agent of communal action – should be to adhere to the Reform movement’s particular version of Jewish law.

In the same vein, after explaining that Maimonides’ exposition of the *bal tashchit* principle requires “that war should be fought in a manner so as to allow normal civilian life to resume after the war,” the resolution goes on to contend that

The failure of the U.S. government to secure the civilian infrastructure in the aftermath of the successful invasion and the failure in the following three years to rebuild effectively *ignores these values* [emphasis added] and is cited as a major failure in our limited success by the Baker-Hamilton Report.<sup>239</sup>

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<sup>238</sup> *ibid.*

<sup>239</sup> *ibid.*

Here, too, the resolution casts its particular interpretation of Halakha as the consummate measure of the good. While the criticism of the United States' failure to rebuild Iraq's infrastructure is one that is also raised by secular critics, including the Baker-Hamilton Commission, the resolution makes this critique for a decidedly different reason: whereas others contend that this failure harms American security and national interests, the resolution condemns it as a violation of *hilkhot milchamah* as the URJ interprets the rubric. The document makes this reasoning all the more explicit at the end of Section III, stating that

In conclusion, our failure to pursue all reasonable alternatives to war, to mobilize the kind of broad-based international cooperation we had in the first Gulf War, the array of faulty justifications for war offered, the woeful lack of planning for the aftermath of the invasion, the disgraceful failure to protect the civilian infrastructure (*bal tashchit*), the abuses of prisoners, the alarming devastation wrought on civilians – all these and more raise significant abuses and failures of Jewish just war standards.<sup>240</sup>

As this statement indicates quite clearly, the resolution urges the president and Congress to oppose the troop “surge” and to set a timetable for withdrawing American forces from Iraq in large part because, in initiating and conducting the war, the United States government has repeatedly violated Halakha. In short, the resolution brings a particular Jewish conception of the good to bear in the sphere of American public discourse, and contends that the pursuit of that good necessitates withdrawal from Iraq.

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<sup>240</sup> *ibid.*, 4

The Reform sermons exhibit a similar brand of public discourse, although, in contrast to the resolution, they do not address the United States government directly. Instead, they seek to influence the thinking of congregants who, as public citizens, have the ability to act in the American political community by voting, conversing with others about the war, participating in protests, and lobbying lawmakers. Both the resolution and the sermons establish the same framework for evaluating the Iraq war, i.e., a particular interpretation of *hilkhot milchamah* shaped by secular Just War Theory, contemporary notions of governance and international relations, and moral-ethical criticism on the basis of modern morality. In addition, both the resolution and the sermons imply that the war is justifiable only if it meets the halakhic criteria as they present them. However, whereas many of the sermons leave it to listeners to reach their own conclusions about the war in light of its presentation of *hilkhot milchamah*, the resolution draws definitive conclusions about the war and calls for specific actions on the basis of the *same* paradigm. Indeed, in so doing, the resolution highlights the fact that these conclusions are the only plausible ones given the way in which both it and the sermons characterize the halakhic rubric. For instance, their presentations of the authorization requirement can only lead to the conclusion that congressional approval (and oversight) is mandatory for the Iraq war. Their articulations of the peace requirement clearly conveys the message that the United States government must pursue (or should have pursued) all reasonable diplomatic solutions before initiating war against Iraq. The unavoidable conclusion – which many sermons only imply, but which the resolution makes explicit – is that if the government does not follow these halakhic standards (or because it did not follow them), then the Iraq war is illegitimate and morally unjustifiable. Because the resolution takes



the additional step of concretely stating these conclusions, it highlights what the sermons seek to do implicitly, i.e., to use the rabbi's religious authority to make the case, in the public sphere, for specific political positions on the basis of a particular *Jewish* conception of the good.

As such, both the resolution and the sermons violate the boundaries of liberal discourse as Dworkin's integrated community model defines them. The idea of the good that they advocate, i.e., adherence to a Reform interpretation of Halakha, relates neither to the American political community's defining communal practices nor to its common conception of the good; indeed, following Jewish law has never been an express aim of the American political community. Moreover, because the resolution and the sermons use particular Jewish language which is inaccessible to non-Jewish citizens, rather than the common vocabulary of communal discourse, their arguments cannot be dissected and debated by all participants in the public arena. By contending that the United States government should initiate and conduct the Iraq war in accordance with the standards of *hilkhot milchamah*, both the resolution and the sermons equate their own Jewish vision of the good with the good of the community as a whole; and by promoting this particular religious idea of the good in the realm of general public discourse, the resolution and the sermons function altruistically. For all these reasons, their advocacy constitutes illiberal discourse according to the Dworkin model.

By contrast, Sandel's communitarian model does not insist that, in order to participate in public discourse, an individual/organization must ground his/its arguments in a commonly accepted idea of the good. On the contrary, the Sandel model encourages individuals and groups to bring their own particular conceptions of the good, formed by

their unique experiences and communal identifications, to the realm of public discourse. Rather than undermining freedom, such diversity of voices and viewpoints, Sandel maintains, contributes to the betterment of society. Both the resolution and the sermons embody this communitarian approach to discourse. By using halakhic texts, as opposed to secular sources, to evaluate the justifiability of the Iraq war, they suggest that the Reform community cannot, and need not, divorce itself from Judaism or the idea of the good that flows from it. Rather than attempt to participate in public debate over the war as some mythical unencumbered self, both the URJ and the Reform rabbis present their particular conception of the good for scrutiny and discussion in the marketplace of ideas – believing, presumably, that the intellectual and emotional force of their arguments will persuade the majority of their virtue. Considered in the context of Sandel’s model, this form of communitarian discourse is entirely appropriate for the public arena.

## **V. Communitarianism versus the Integrated Community: A Tension in Reform Discourse**

To summarize, both the URJ resolution and the Reform sermons seek to impact upon the American political community; they do so by advocating in the public sphere for specific Iraq war policies on the basis of a particular Jewish conception of the good. By using *hilkhot milchamah* to frame their arguments as distinctly religious, both the URJ and the Reform rabbis establish their authority, as religious leaders, to weigh in on national security matters, on which they otherwise would not be viewed as credible commentators. Moreover, by interpreting and presenting the halakhic rubric as they do, largely without explaining their interpretive strategies or the relevant contextual issues,

the resolution and the sermons convey the impression that their policy positions – whether they espouse them overtly or implicitly – flow not from their personal political views but, rather, from an authoritative religious tradition. Finally, as an official statement of the Reform movement, the resolution confirms that the sermons embody not only a distinct Reform approach to textual interpretation, but also a communitarian approach to public discourse that is within the mainstream of Reform culture.

As noted above, the resolution explains that its purpose in critiquing the Iraq war is to meet its prophetic responsibility to speak out on the pressing moral issues of the day. In a similar vein, several of the sermons tell listeners that Jewish teachings about war can help guide them in their thinking and actions regarding the Iraq war; even those sermons which do not say this explicitly imply it by virtue of the fact that they bring *hilkhot milchamah* to bear in discussing the war. How, then, does this communitarian impulse square with the Reform movement's avowed commitment to the separation of religion and state? To reiterate the question posed earlier in this chapter, does the religious duty to speak prophetically exist in inherent conflict with the value of maintaining the separation of religion and state? Evidence exists that the Reform movement is aware of this tension in the abstract, although it is not necessarily conscious of the fact that the same tension exists in relation to the movement's own discourse and actions.

On the one hand, the Reform movement overtly espouses communitarianism, at least with regard to itself. For example, the CCAR's 1937 statement "The Guiding Principles of Reform Judaism," commonly known as the Columbus Platform, avers that "Judaism seeks the attainment of a just society by the application of its teachings to the

economic order, to industry and commerce, and to national and international affairs.”<sup>241</sup> The organization’s platforms of 1885, 1976, and 1999 contain similar declarations, and the URJ web site presently notes that “the Union has not hesitated to speak out on issues of the widest scope and significance, always seeking to elucidate current problems according to its interpretation of the voice of prophetic Judaism,”<sup>242</sup> a task which both the resolution and the sermons evidently pursue. Such statements indicate quite clearly that the Reform movement aims, without reservation, to bring its particular Jewish idea of the good to bear in the public sphere. Indeed, current URJ president Rabbi Eric Yoffie recently explained that the Religious Action Center of Reform Judaism (RAC), the movement’s political advocacy arm, exists “to influence Congress on the greatest moral issues about which our Movement had spoken...”<sup>243</sup>

All of this would seem to run counter to the Reform movement’s contention that a strong separation between religion and state is essential in order to ensure “the protection of religion from government and the protection of government from religion.”<sup>244</sup> In an implicit defense of the movement’s communitarian disposition, Rabbi Marla Feldman, Chairwoman of the movement’s Commission on Social Action, maintains that

The idea that people of faith have a mandate to bring their values into the public arena is not unique to the Reform Movement. There is a long tradition of faith groups “speaking truth to power” and advocating for social change, and every major religious organization in American life participates in this exercise. Religious voices have been central in the major social justice movements throughout our nation’s history, from the abolitionist

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<sup>241</sup> CCAR, “The Guiding Principles of Reform Judaism,” Section B

<sup>242</sup> URJ, “Adopted Resolutions”

<sup>243</sup> As quoted in Feldman, “Why Advocacy is Central to Reform Judaism”

<sup>244</sup> RAC, “Church State Issues and the Reform Jewish Movement”

movement to those involved with desegregation and civil rights. In the international arena as well, faith groups have led the way in advocating for nuclear disarmament, international aid and human rights around the world.<sup>245</sup>

Feldman's claim of a mandate for religious groups "to bring their values into the public arena" echoes Sandel, who maintains that such discourse fosters community and strengthens society. However, while Feldman touts various religious groups' key role in certain progressive political achievements as support for the communitarian model, she attempts to bolster that case by warning against the dangers posed by other religious voices in the public sphere:

[W]e are [presently] confronted by those who claim to speak in the name of faith, but who offer a different version of what God expects of us; those who proclaim themselves the upholders of family values yet who do not value individual rights or personal autonomy, and who have little respect for the Constitutional principles that have allowed religion to thrive in this country unfettered by government coercion or corruption...If we don't bring [our] progressive religious values into the public arena with us, we will abandon the public square to those offering a different view of religion and values.<sup>246</sup>

In short, Feldman presents a twofold case for communitarian advocacy by the Reform movement: (1) religious groups have a positive right – and the Reform movement a prophetic mandate – to bring their particular conceptions of the good into the public square, and doing so has often produced positive results; and (2) if the Reform movement

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<sup>245</sup> Feldman, "Why Advocacy is Central to Reform Judaism"

<sup>246</sup> *ibid.*

refrains from bringing its progressive views into the public arena, it will cede that ground to other religious groups which are already there and which advocate values that are anathema to Reform Judaism.

It is in relation to such groups that the movement demonstrates, on the other hand, an anti-communitarian disposition. For example, in a 2005 press release applauding a court ruling against supporters of intelligent design, RAC Director Rabbi David Saperstein asserts that

The scientific theory of evolution is being challenged in public schools and in our courts by those seeking to tear down the wall of separation between church and state by enshrining *one religious view* [emphasis added] into public school curricula. This campaign is dangerous, especially to those who cherish true religious liberty...Objective scientific processes and theories must never be subverted to serve religious, political or ideological goals...As Jewish Americans, members of a religious minority, we understand, as did the framers of our Constitution, that our government must serve Americans of all faiths and no faith.<sup>247</sup>

Saperstein's critique of intelligent design proponents as wrongly seeking to enshrine "one religious view" in government policy is noteworthy, particularly in light of the URJ Iraq war resolution, which advocates that the United States government make policy decisions regarding the war in accordance with one particular view of Jewish tradition. Do the resolutions and the sermons similarly endanger "those who cherish religious liberty"?

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<sup>247</sup> RAC, "Reform Jewish Leader Applauds Court Ruling in Intelligent Design Case"

The RAC also condemns those who favor a Constitutional amendment banning same-sex marriage, stating in a press release that

In a country created to protect the rights of all people, it is tragic that those who advocate on behalf of this amendment would codify in the Constitution the religious teachings of some rather than protect the freedoms of all.<sup>248</sup>

Likewise, a letter to members of Congress, authored by the RAC and signed by a number of religious organizations, argues against the Federal Marriage Amendment in part because "It is not the task of our government and elected representatives to enshrine in our laws the religious point of view of any one faith."<sup>249</sup> Again, these statements raise the question of why it is acceptable for the Reform movement to advocate for Iraq war policies that are grounded in its religious views while, at the same time, it is illegitimate for others to advocate for a Constitutional amendment that embodies their religious views on same-sex marriage.

A liberal, anti-communitarian impulse is also evident in the Reform movement even outside the context of confrontation with oppositional religious voices. For instance, in a washingtonpost.com column on the appropriate use of religious language in election campaigns, RAC Director Saperstein writes that

[I]n discussing policy, it is inappropriate to suggest that one should support or oppose a policy solely because of religious beliefs. Something that must be taken by faith alone does not allow itself to be tested in the free marketplace of ideas, a quality that is

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<sup>248</sup> RAC, "Reform Jewish Leader Reacts to President's Endorsement of the Federal Marriage Amendment"

<sup>249</sup> RAC, "Letter Regarding the Federal Marriage Amendment"

essential for democracy to work and for any kind of meaningful public policy debate to take place.<sup>250</sup>

Here, Saperstein argues for public discourse boundaries that are generally consistent with those articulated in Dworkin's integrated community model. While Saperstein does not exclude religious language from the public sphere entirely, he maintains that appropriate religious argumentation must adhere to certain guidelines. In this vein, he contends that it is improper to argue for a particular policy exclusively on the basis of a religious idea of the good, since neither that conception of the good nor the vocabulary in which the argument is articulated is accessible to all citizens. Perhaps this explains why the URJ Iraq resolution contains secular arguments for withdrawal in addition to its religious arguments. In any case, Saperstein's position here raises questions about the movement's aforementioned professed belief in communitarian discourse and reinforces the fractured nature of its outlook on the proper role of religious advocacy in the public sphere.

## **VI. Conclusion**

In conclusion, the Iraq war sermons and the URJ resolution demonstrate that, even as the movement emphasizes religion-state separation as a primary value and concern, Reform leaders continue to engage in communitarian discourse by bringing their particular religious ideas of the good to bear on the secular American political community. The irony, of course, is that official movement organs, rabbis, and lay Reform Jews alike frequently condemn others – particularly those on the “Religious Right” – for doing the same thing. While there are certainly good arguments for both the

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<sup>250</sup> Saperstein, D., “Guidelines for Candidates to Avoid Abusing Religion”



communitarian and integrated community models of discourse, it is not tenable for the Reform movement to continue to engage in the former and, at the same time, maintain that others, particularly those with whom the movement disagrees, must adhere to the latter. That is to say, it is not reasonable to argue that Reform Judaism has both the right and the prophetic duty to bring its values to the public square, yet insist that other religious groups which do the same are wrongly trying to impose a particular religious view on the rest of society. In addition to confronting and resolving this obvious tension, Reform leaders ought to consider how best – or even whether – to use their religious authority in the realm of American political discourse.

## CONCLUSION

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### I. Introduction

In the end, this study of how and why Reform sermons use classical Jewish text in their discussions of the Iraq war raises a number of issues pertaining to text-based Reform discourse in general. While it is impossible to identify and address all of them here, four such issues, in particular, merit some discussion: (a) the need for rabbis to use CCAR *teshuvot* as they are intended to be used, i.e., as study guides, rather than as authoritative halakhic rulings; (b) the need for transparency in presenting text to untrained audiences; (c) the need to use text in a way that is appropriate to the genre of a particular medium, such as a sermon or a policy statement; and (d) the need to address tensions relating to the Reform movement's involvement in public discourse. To conclude this study and, hopefully, to prompt further discussion, each of these will be considered briefly in turn.

### II. Four Issues for Consideration

#### A. *The Need for Rabbis to Use CCAR Teshuvot as Study Guides*

As has been shown, both the Iraq war sermons and the URJ resolution are premised on a highly unconventional interpretation of *hilkhot milchamah* that originates, at least in regard to the Iraq war, with the 2002 CCAR *teshuvah*. Whereas traditional authorities have consistently maintained that *hilkhot milchamah* pertains exclusively to the wars waged by a halakhic Jewish state in *Eretz Yisrael*, the *teshuvah* reinterprets the rubric in accordance with contemporary notions of universalism, just war, democracy,

international relations, and morality, and uses this redefined framework to assess the legitimacy of America's war in Iraq. While it does most of this implicitly, without explaining its interpretive strategies or identifying the secular influences on its reasoning, the *teshuvah* provides extensive documentation of its sources, inviting its readers to examine the classical texts directly and render their own judgments on the *teshuvah*'s analysis. Indeed, the 2002 *teshuvah*, like all CCAR *teshuvot*, was written not as an authoritative halakhic ruling, but, rather, as an educational resource to facilitate independent study of the topic at hand.

Despite the CCAR Responsa Committee's stated intentions, however, the Reform sermons surveyed in this study use the *teshuvah* as an authoritative source. Some cite the *teshuvah* as their primary source and quote from it extensively. Even those which cite the classical texts directly and make no reference to the *teshuvah* evidently read those sources through the *teshuvah*'s distinct lens. Most strikingly, none of the sermons calls the *teshuvah*'s unorthodox interpretation of the rubric into question; on the contrary, they all, to some degree or another, present (overtly or implicitly) the *teshuvah*'s unique understanding of *hilkhot milchamah* to listeners as the authoritative view of the tradition. By taking the *teshuvah* – which, as a study guide, does not provide all the answers but, rather, necessitates additional research to fill in the blanks – and using it as a definitive statement on the Jewish view of war, Reform rabbis present a partial picture of the tradition to their congregants without providing them with the necessary information to research the topic further. In short, by misusing an educational resource as a source for preaching, the sermons unwittingly convey a misimpression of Jewish tradition to unsuspecting listeners.

In part, the *teshuvah* itself is likely responsible for the rabbis' misuse of it. While some of its statements are carefully calibrated, individuals who are unfamiliar with the nuances of *hilkhot milchamah* may not be able to detect these subtleties in the *teshuvah*'s language. For the most part, the *teshuvah* seems to suggest that its analysis is wholly consistent with mainstream halakhic thought. Moreover, because it does not explicate its interpretive processes or identify its outside influences, the *teshuvah* implies strongly that its conclusions flow directly from the classical sources that it cites. Consequently, while Reform rabbis should know that CCAR *teshuvot* are meant to be study guides and not authoritative rulings, it is difficult to fault them entirely for taking the *teshuvah* at face value.

At the same time, the demands of today's Reform rabbinate are such that most rabbis likely have only a limited amount of time to research and write their sermons. If a CCAR *teshuvah* is available on the topic a rabbi intends to address, it would hardly be surprising if, for lack of time, he chooses to use the *teshuvah* as a "cheat sheet" of sorts, which provides him with adequate information to write an intelligent sermon without having to do extensive research. In other words, it may be fantasy for the Responsa Committee to expect rabbis to use *teshuvot* as study guides. If this is the case, perhaps the committee should consider tailoring its *teshuvot* to the practical needs of their users; for example, they may include more contextual information in the body of the *teshuvot* and explain their interpretive strategies clearly and explicitly.

### ***B. The Need for Transparency in Presenting Text to Untrained Audiences***

As demonstrated in Chapter Two, all of the sermons, to some extent, employ the same interpretive strategies as the *teshuvah* does, redefining *hilkhot milchamah* in accordance with contemporary notions of just war, democracy, international relations, and morality. While they do so with varying degrees of transparency, all of the sermons perform a significant amount of this reinterpretation implicitly. In the main, the sermons do not adequately inform their listeners of the significant contextual issues surrounding the application of *hilkhot milchamah* to the Iraq war, nor do they sufficiently explain that their characterizations of Jewish war standards constitute radical departures from traditional halakhic thought. Consequently, the sermons inadvertently misrepresent the tradition to congregants who, because they are untrained in *hilkhot milchamah*, are unlikely to know the difference. Moreover, since congregants generally regard the rabbi as an authoritative spokesperson for the tradition, they will likely assume that his presentation of the tradition is accurate.

The failure to present text and tradition transparently, therefore, can have significant and adverse consequences. Because of their perceived religious authority, sermons and URJ resolutions have the power to influence its listeners' thinking and actions. Some congregants, for example, may decide to vote for a particular candidate or choose to participate in a war protest based on what they learn from the rabbi's sermon. Similarly, a U.S. congressman or senator may choose to support or oppose legislation in light of what he reads in the URJ resolution. A sermon or a resolution that presents a particular interpretation of text without explaining the essential contextual and interpretive issues may mislead unwitting individuals who sincerely seek to act in

accordance with Jewish principles, prompting them to think and act in ways that they may otherwise not if they understood the tradition more fully. In order to avoid the consequences of misrepresenting tradition, transparency is essential in the presentation of Jewish texts to an audience that is untrained in those sources.

### ***C. The Need to Use Text in a Way that is Appropriate to Genre***

As discussed in Chapter Three, a sermon may seek to educate listeners about Judaism, to demonstrate Judaism's relevance to contemporary life, or to make a social critique on the basis of Jewish principles. While textual citations can enhance a sermon's effectiveness in each regard, problems may arise when a rabbi aims to accomplish all of these objectives in the context of one sermon. This is because education and social critique (i.e., prophetic advocacy) are two distinct and incompatible genres of discourse. To educate is to impart information *about* something with the aim of increasing knowledge. A sermon seeking to educate listeners about *hilkhot milchamah*, for example, would explain the rubric's historical and intellectual context, the various components of the rubric, the debates and disagreements over matters of law, etc. Prophetic advocacy, by contrast, is passionate and emotional, and seeks to persuade the listener of a particular viewpoint. Whereas an educational tool aims to increase knowledge, a prophetic critique presumes knowledge and rebukes its audience on the basis of that knowledge. Therefore, educational and prophetic sermons necessitate fundamentally different uses of text.

Complications arise from the Reform sermons because they attempt to educate and make a prophetic critique at the same time, using the CCAR *teshuvah* as the textual

basis for doing so. Although the *teshuvah* is written as an educational resource, it should not be read independently of the sources it cites; rather, to be used effectively, the *teshuvah* must be presented along with additional information gleaned from independent research. This task alone is difficult to accomplish in the twenty minutes allotted for one sermon, and the Reform Iraq war sermons do not make much of an attempt to do so. Instead, they provide perfunctory and inadequate education about *hilkhot milchamah* and then use the *teshuvah* as the basis for a prophetic critique, preaching it as the authoritative voice of tradition. For all the reasons stated in Section A above, this strategy leads to misrepresentations of the Jewish teachings about war. As such, the Iraq war sermons illustrate the need to confine a sermon's goals to what can be reasonably accomplished, and to select textual references that are appropriate to the sermon's genre.

#### ***D. The Need to Address Tensions Relating to the Reform Movement's Involvement in Public Discourse***

While the Reform movement proudly terms its brand of religion "liberal Judaism," it is difficult to determine, on the basis of Reform leaders' various actions and statements, the precise brand of liberalism it espouses. On the one hand, Reform Judaism claims a prophetic mandate to speak out on the pressing moral issues of the day and to bring its religious values to bear in the public arena. The Iraq war sermons and the URJ resolution embody this communitarian form of discourse.

On the other hand, the Reform movement maintains a strong commitment to the separation of religion and state, and frequently condemns religious groups, particularly those on the "Religious Right," for advocating for policies – such as intelligent design

and a ban on same-sex marriage – on the basis of their religion. Those who do so, Reform leaders contend, are guilty of trying to enshrine one particular religious view in the nation’s laws and of seeking to undermine other citizens’ religious liberty. In stark contrast to the movement’s aforementioned communitarian impulse, this viewpoint argues for clearly defined boundaries of discourse in the public sphere, in accordance with Dworkin’s “integrated community” model of liberalism.

As discussed in Chapter Four, it is not tenable for the Reform movement to continue to claim that it has a prophetic mandate to bring its particular religious views to bear in the public sphere, while simultaneously insisting that those who hold views that are anathema to Reform Judaism have no right to do the same. In addition to resolving this contradiction, the movement ought to consider the implications of its communitarianism. Can Reform Judaism be comfortable with a public discourse in which clerics and religious groups use their perceived authority to advocate for policies on the basis of their particular religious values? Is it possible to fulfill the prophetic mandate and, at the same time, uphold the separation of religion and state? Because these issues lie at the heart of the Reform movement’s identity, this tension between communitarianism and integrated-community liberalism demands to be addressed.

### **III. Conclusion**

This study’s examination of the twelve sermons has revealed a noteworthy progression of Reform discourse on the Iraq war. First, the CCAR *teshuvah* developed a highly unconventional interpretation of *hilkhot milchamah* and used it to elucidate issues surrounding the Iraq war for an internal Reform audience. While it is impossible to know



how many readers actually used the *teshuvah* as a guide in conducting their own independent study, those readers did have access to the necessary information to do so if they wished.

Rather than using the *teshuvah* as a study guide, however, some Reform rabbis presented its unconventional interpretation of *hilkhot milchamah* in to a lay audience without providing them with critical background information or the necessary resource material to do their own research.<sup>251</sup> Consequently, this radical reinterpretation of *hilkhot milchamah* – previously a particular reading which could be investigated using the documentation provided by the *teshuvah* – took on new life as the authoritative Jewish view of war in the minds of listeners, who likely could not have known how dramatically it diverges from the traditional position. Moreover, because the sermons operate in both the private sphere (the synagogue community) and the public sphere (the American political community), they inject this unconventional version of Jewish tradition into public discourse without providing any means of substantiation or refutation.

Finally, the URJ resolution completes the progression from private to public sphere by calling on the U.S. government to implement Iraq war policy changes on the basis of this fundamentally redefined version of Jewish tradition. Unlike the *teshuvah*'s readers or, to a lesser degree, the sermons' listeners, the resolution's target audience – i.e., the U.S. government – has almost no way of knowing how to verify the URJ's claims about Jewish teachings. Moreover, because of the URJ's perceived religious authority, the government officials who read the resolution have no reason to doubt that the

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<sup>251</sup> It is possible, of course, that some rabbis conducted adult education classes or provided background materials on *hilkhot milchamah* in conjunction with their sermons. This statement reflects only what is contained in the sermons' written texts.

resolution's characterization of Jewish teachings on war is accurate; as far as they are likely concerned, Jewish tradition does indeed mandate withdrawal from Iraq.

In short, the CCAR *teshuvah*, which initially sought to answer one Reform rabbi's question about what Judaism has to say about a war against Iraq, ultimately became a vehicle for movement leaders to argue for specific policy positions on the basis of a reading of *hilkhot milchamah* that is fundamentally inconsistent with traditional Jewish thought. Had adequate consideration been given to the intended function of the CCAR *teshuvah*, the importance of transparency in presenting text, the need to use text in ways that are appropriate to genre, and the issues associated with Reform involvement in public discourse, perhaps such misrepresentations of tradition could have been avoided. It is a profound hope that this study will inspire rabbis and movement leaders to explore, in the future, these and other key issues related to the use of classical Jewish text in Reform discourse.

## APPENDICES

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<i>Appendix A</i>	Brian Stoller, Letter to HUC Rabbinic Alumni Requesting Sermons
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## A. Brian Stoller

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January 5, 2007

Dear Future Colleague:

My name is Brian Stoller, and I am a fourth year rabbinic student at HUC-JIR in Cincinnati. I am conducting research for my rabbinic thesis, which will examine the use of classical Jewish texts in rabbinic sermons on the current Iraq war, and I am writing to ask if you would be willing to share with me any sermons you have written on this issue.

I am conducting my research in conjunction with the Center for the Study of Ethics and Contemporary Moral Problems, a joint project of HUC-JIR and the University of Cincinnati. I am working under the supervision of Dr. Jonathan Cohen, Director of the Ethics Center.

In addition, I am working with Dr. Gary P. Zola and the Jacob Rader Marcus Center of the American Jewish Archives. Dr. Zola and I share an interest in collecting your sermons because, simply put, the Iraq war is one of the most compelling moral and political issues of our time. Any sermons that you send to me will become part of a special collection on the Iraq war at the American Jewish Archives, which will serve future research on the Jewish community's response to this historical event. Indeed, a similar project was conducted in the wake of September 11, and it has already been a boon to historians.

To be clear, my purpose is not to advocate for any particular position on the war. Rather, I am concerned only with hermeneutics – i.e., how rabbis use text to preach and educate congregants on this particular issue. Sermons that will be most helpful to me are those that: 1) treat the Iraq war as the primary topic of discussion, and 2) utilize classical Jewish text in addressing the issue.

My goal is to submit a thesis proposal by the end of January, and your response will help me determine whether or not this project is viable. I realize that this is a tight deadline and that you are extremely busy, but if you could send to me, at your earliest convenience, whatever you have that is most easily accessible, I would be most grateful.

I assure you that I will treat your material with the utmost respect. I will personally notify you should I choose to include your sermon in my study, and in every instance that I cite or quote from your sermon, I will duly note your authorship and list your work in my bibliography.

You may send your sermons to me via email at [brian@abstoller.com](mailto:brian@abstoller.com), or by mail to: Brian Stoller, 2552 Madison Rd. #31, Cincinnati, OH, 45208. If I can answer any questions about my project, please do not hesitate to contact me by email, or by phone at 513-245-8161.

Thank you in advance for your help. I look forward to reading whatever sermons you are willing to share with me.

Sincerely,

A. Brian Stoller

## Appendix B: Dr. Gary P. Zola, Letter to Reform Rabbis Requesting Sermons

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Dear Colleague:

I would like to enlist your support for a very worthy project that will benefit the holdings of American Jewish Archives.

One of our future colleagues, Brian Stoller – a fourth year rabbinic student in Cincinnati – is beginning his thesis work under the direction of our colleague and friend, Professor Jonathan Cohen. Brian will be studying how American Reform rabbis use classical Jewish texts in their homilies pertaining directly to the current Iraq war. I am very interested in Brian's work, and I would like to assist him in collecting as many sermons as possible.

I am appealing to you for your interest and assistance.

Would you please send the American Jewish Archives a copy of any sermon or homily you have written on the current war in Iraq that, in your opinion, makes use of classical texts as part of your sermonic effort. You may submit your sermons electronically [insert correct electronic mailbox] or in hard copy (c/o Brian Stoller, AJA, 3101 Clifton Avenue, Cincinnati, Ohio 45220).

Please be assured that **every sermon that you submit will become part of a special collection at The Jacob Rader Marcus Center of the American Jewish Archives.** I am confident that future researchers will be thrilled to find this collection of sermons on the war in Iraq preserved as a distinctive holding at the AJA. As you may know, the AJA has a number of these unique collections of topical sermons that focus on September 11, the devastation caused by Hurricane Katrina, and so forth.

If you have delivered a sermon on the Iraq war and have not yet provide us with a copy, ***please*** send it to Brian's attention here at the American Jewish Archives. Should you give sermons on the war in the future, we would welcome receiving those as well.

I am sure you remember what it feels like to be starting your rabbinic thesis research! If you take a minute or two and send Brian and the AJA your sermons, it will make that task just a little less daunting!

Brian and I would be very grateful if you would send your sermons as soon as you can – but Brian will need them by **May 1, 2007** so that he can begin his analyses.

On behalf of both Brian and all of us at the American Jewish Archives, I thank you in advance for your support, concern, and assistance with this important and worthwhile endeavor.

With kindest personal regards, I am . . .

As always,  
Dr. Gary P. Zola

CCAR RESPONSA  
5762.8

Preventive War

*She'elah*

Does our tradition countenance preemptive military action when there is suspicion, but no prima facie evidence exists, that a perceived enemy will attack? My question presupposes that innocent lives will be lost in the event of such action. I would also note that Israel engaged in such an action when it bombed the Iraqi Osirak nuclear facilities in 1981. (Rabbi Benno M. Wallach, Houston, TX)

*Teshuvah*

We received this *she'elah* and composed our answer during a time of fierce national debate in the United States over the wisdom of initiating a war against Iraq. The goal of such a war would be to depose Saddam Hussein, the ruler of that country. The stated justification for this war is that Saddam Hussein's regime either possesses or is in the process of developing nuclear, chemical, and/or biological weapons of mass destruction, that it poses a threat to its neighbors, and that it someday may come to endanger the security of the United States itself. At the moment, as our *she'el* suggests, there is no prima facie evidence that Iraq is actively contemplating or planning a military attack upon any of its neighbors, much less the United States.

We should note that the question does not ask for our opinion as to the advisability of a military strike against Iraq. That is understandable, for we rabbis hardly qualify as experts in diplomacy and defense policy. We have been asked rather to discuss the teachings of Jewish tradition on the general (and hence more abstract) question of the permissibility of initiating a war under these circumstances. While rabbis are professionally competent to address that subject, it poses some serious difficulties of its own. Although Jewish tradition has much to say about the conduct of war, our sacred texts tend to speak to the political context of the ancient Jewish commonwealth (*malkhut yisrael*) under the leadership of a Davidic monarch. It is instructive that Maimonides in his *Mishneh Torah* codifies the Talmudic discussions of the rules of war under the heading *Milkhot Melakhim Umilchemoteihem*, "The Laws of Kings and Their Wars," and that the very first law he mentions is the Biblical commandment "to appoint a king over Israel." [1] We could conclude that the traditional Jewish law of government and war bears no relevance at all to our question, which deals with a non-Jewish government that is not ruled by a king, Davidic or otherwise. We do not, however, draw that conclusion. We believe in a *torat chayim*, a living Torah. Though the literary sources of our tradition were written long ago in a very different time and place, we affirm that these texts, through proper and prayerful interpretation, address us as well, yielding teachings that have direct bearing upon our own day and our own lives. It is in this spirit that the ancient Jewish law of government and war has been applied to the contemporary context of the state of Israel. [2] It is in this spirit as well that we Reform Jews have historically looked to the Bible and our other sacred texts for guidance in responding to the pressing social issues that face us today.

Let us consider, then, what our tradition has to say about the waging of a preventive war, one that is not fought in an immediate situation of national self-defense. Let us ask whether the lessons it teaches have a substantial application to situations such as that faced, at this writing, by the United States in its dealings with Iraq.

**Commanded and Discretionary Wars.** According to Maimonides, [3] the king of Israel is permitted to fight two distinct kinds of war. The first category is "commanded war" (*milchemet mitzvah*), which includes war against the seven Canaanite nations, war against Amalek, and wars fought "to assist the Jews against enemies who have attacked them." Only when he has completed these military tasks is he permitted to engage in "discretionary war" (*milchemet hareshut*), a war he fights "against other nations to expand Israel's borders and to enhance his greatness and reputation." [4] These wars differ from each other not only in their strategic purpose but also with respect to the rules that govern them. First, the king must consult with and receive the approval of the Sanhedrin before fighting a discretionary war; no such confirmation is required for a *milchemet mitzvah*, which a king "wages on his own initiative." [5] In addition, soldiers who participate in a *milchemet mitzvah* are exempt from the obligation to perform any positive commandment that may interfere with their military responsibilities; those fighting in a

*milchemet hareshut* enjoy no such exemption.[6] Finally, an individual might avoid service in a discretionary war if he qualifies for one of the exemptions mentioned in Deuteronomy 20:5-8 (one who has built a new home but has not yet lived in it; one who has planted a vineyard but has not yet redeemed it for his own use;[7] one who has betrothed a woman but has not yet consummated the marriage; one who is excessively fearful of battle). In the case of a commanded war, however, these exemptions do not apply; rather, all must go out to fight in a *milchemet mitzvah*, "even the groom from his chamber and the bride from her *chupah*." [8]

Many of these laws and teachings do not apply to our day and time. The seven Canaanite nations no longer exist,[9] and *milchemet hareshut* is a homiletical device, a symbol of irrational hatred and evil rather than the name of an actual people. Yet the third kind of "commanded war"—the war "to assist the Jews against enemies who have attacked them"—sadly retains its relevance, reminding us that threats against our national existence continue to plague us. It also teaches us that our tradition rejects pacifism as a policy of national defense. The Torah does not expect us to submit to armed aggression, to stand silently and passively when others seek to conquer and dominate us. The people of Israel have the right to defend themselves from attack. Indeed, we are commanded to do so: the obligation to defend and preserve our lives overrides virtually every other religious duty.[10] Though the word "*mitzvah*" has a particularly Jewish connotation, there is no reason to believe that the Jews are the only people that is entitled to self-defense. Every nation must possess the right to take up arms if necessary to protect itself and its citizens against military attack.

*Discretionary War In Our Time.* Discretionary war, too, is still with us, for states continue to fight wars in order to expand their borders and their power, "to increase their greatness and reputation." Given that Jewish law, as we have seen, permits the state to fight discretionary wars, we might draw the conclusion that it is morally justifiable for governments to wage such wars in our own day and time. We believe that this conclusion is erroneous, for two principal reasons.

First, although the Torah allows the king to engage in war for reasons other than national defense, it most certainly does not advocate that he do so. Indeed, the opposite is the case. Jewish law offers but grudging approval of the state's military regime,[11] and it places significant roadblocks in the path of the king who wishes to embark upon a discretionary war. Consider, for example, that he must obtain the permission of the Sanhedrin before initiating such a conflict. This requires him to appear before a prestigious legislative-judicial institution to make a compelling case for his war, and it raises the possibility that this case will fail to persuade. Consider, moreover, the exemptions from military service that are granted in a discretionary war. This means that the king must fight his war with a significantly reduced army, forcing him to think again about the advisability of initiating the conflict. These regulations, which make it much less likely that the king will engage in war unless it is absolutely necessary to do so, act as a significant brake upon his militaristic impulses.[12]

Second, although the Torah permits the state to resort to arms, it does not glorify war. Again, the opposite is the case. Peace, and not war, is our primary aspiration; we are commanded to seek peace and pursue it (Psalms 34:15). Our tradition teaches that *shalom*, "peace," is the Name of God and the Name of the Messiah.[13] It informs us that God does not rejoice at the downfall of the wicked; therefore, the angels were forbidden to join in the song that celebrates Israel's deliverance from the Egyptians.[14] It reminds us that war's weapons are incompatible with the Temple and the worship of God.[15] Our Biblical story recounts that King David, whose military career offers us the very paradigm for "discretionary war,"[16] was not permitted to build the Temple because "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" (I Chronicles 22:8).[17] To put this another way, David's aggressive nature was incompatible with the teaching that "one who saves a single human life has saved an entire world." [18] In its abhorrence of bloodshed, the Torah instructs that before undertaking any war, commanded or discretionary, we must reach out to our foes and offer them peace.[19] All this, we are taught, is because the blessing of peace is equal to all other blessings combined.[20]

From the Torah's exaltation of peace as a predominant social value and from the strict limitations it places upon the conduct of *milchemet hareshut*, we learn a somber lesson: war is at best a necessary evil, "necessary" perhaps but "evil" all the same. This lesson in turn leads us to conclude that the Torah's permit for the king to engage in war "to increase his greatness and reputation" is a political justification of such a policy but not a *moral* justification of it. This concession to the *realpolitik* of the ancient Near East cannot blind us to the reality of war as it is fought today, to the horrific price it exacts of soldiers and non-combatants alike, and to the prospect of massive and unfathomable destruction that its armaments have placed in our hands.[21] If the Torah's teaching of peace means anything to us, in the context of our time, it means that such is too high a price to pay for the enhancement of a state's material interests.[22] On the contrary: we are morally justified in waging war only when war is absolutely necessary and unavoidable. A war fought today for anything other than defensive purposes must



Therefore be viewed as an *unnecessary* evil, as a transgression of the message of the Torah, and as a repudiation of our most cherished values and commitments.

**Preventive War.** On the other hand, so long as it has made every sincere effort to reach a peaceful solution, a nation has every moral justification to take up arms for defensive purposes. We do not restrict "defensive purposes" to the nation's own defense. Governments may enter into mutual security pacts in which each pledges to come to the aid of the other if attacked. And at times-though all too infrequently-major powers go to war to protect smaller countries or helpless populations under attack from aggressor governments. Such wars are quite reasonably understood as wars fought for "defensive purposes" and are therefore morally justifiable.[23] A war undertaken in response to a direct attack by an enemy power is undoubtedly a "commanded" war. The issue here is whether a preventive war is included in this category. We want to distinguish between *preventive* war and a *preemptive* military strike, such as that initiated by Israel in 1967. A preemptive strike, as we use the term, is one launched against an enemy that has mobilized or is engaged in obvious and active preparation for war. As our *sho'e*l would put it, there is clear *prima facie* evidence that the enemy is planning to attack. Given this state of affairs, national security is definitely threatened, and it serves no moral purpose for the nation to wait for the enemy to strike before undertaking measures of self-defense. A preemptive strike can in fact shorten the war and thus save many lives that would have been lost in a protracted conflict. Our concern is with the preventive war, initiated against a nation that may plausibly pose a threat to us in the future, even though it poses no immediate or near-term threat and is not currently planning to attack us or, for that matter, any other nation. Can we understand a war such as this as a case of *milchemet mitzvah*, a war that a nation is morally entitled to fight?

The halakhic response to this question begins with *Mishnah Sotah* 8:7. Following an extensive treatment of the rules concerning the exemptions from service in warfare (Deuteronomy 20:5-8), the text presents the following dispute:

These exemptions apply to the case of discretionary war (*milchemet hareshut*). In a commanded war (*milchemet mitzvah*), however, all must go to the front, even the groom from his wedding chamber and the bride from her *chupah*.

Rabbi Yehudah says: these exemptions apply to the case of commanded war (*milchemet mitzvah*). In an obligatory war (*milchemet chovah*), however, all must go to the front, even the groom from his wedding chamber and the bride from her *chupah*.

The Talmud (*Sotah* 44b) offers two explanations as to the nature of this disagreement. According to Rabbi Yochanan, the dispute between the two opinions is purely a linguistic one: Rabbi Yehudah uses the term *mitzvah* to describe what the anonymous opinion (in the Talmud's language, that of "the Sages") calls a "discretionary" war and the term *chovah* to describe what the Sages call a "commanded" war. Rava, on the other hand, sees the dispute as more substantive:

Both opinions (in the *mishnah*) agree that Joshua's wars of conquest were obligatory (*chovah*) and that David's wars of expansion (*revachah*) were discretionary (*reshut*). They disagree, however, over the case of a war fought to weaken the Gentiles so that they will not attack. One view calls this "*mitzvah*," and the other calls it "*reshut*." The difference is that, if this war is one of *mitzvah*, the soldier who fights in it is exempt from the obligation to perform other *mitzvot*.

Rava's view, Rabbi Yehudah adds a third, "middle" category to the classification of wars. In between the wars that we *must* fight and the wars that we *may* fight is the type of conflict that we call preventive war, an offensive launched against another nation or nations to forestall the possibility of future attack. Rabbi Yehudah does not regard preventive war as "obligatory"; therefore, those normally exempt from military service are also exempt from serving in this war. At the same time, he does not regard preventive war as entirely "discretionary," for it might play an important role in the defense policy of the nation. In this sense, he sees preventive war as serving the purpose of "*mitzvah*," so that those who do take part in it are exempt from the obligation to perform other *mitzvot* that might interfere with their military service. (This exemption is based on the rule that "one who is engaged in the performance of a *mitzvah* is exempt from the obligation to perform other *mitzvot*." [24]) The Sages, for their part, do not add a "middle" category to the classification of war. They define preventive war as a form of discretionary war, *milchemet hareshut*; exemptions from military service apply and those who *do* serve in the war are not exempt from the performance of other *mitzvot*.

Though this text is not free of difficulty,[25] it is clear that the Sages do not view preventive war as an instance of

commanded" war. Maimonides rules accordingly.[26] In this, he follows the well-known decision-making principle that the *halakhah* is determined according to the majority position in a Talmudic dispute.[27] His ruling is also consistent with the substantive message of our tradition. The Torah, as we have seen, seeks to make it difficult for the state to wage wars that are not absolutely necessary. While a war fought in direct self-defense is clearly necessary and therefore "commanded," a war initiated against a nation that *might* attack some day does not fall into this category.[28] It is a "discretionary" war, a war that the Torah grudgingly allows the king to fight, but a war that, in the context of the history of our time, cannot be justified on moral grounds.

*The Present Situation.* How does all this illuminate the choices that the United States faces as it considers an offensive against Iraq? If we perceive a military strike against that nation as a case of "preventive" war, then the weight of our tradition would counsel against it. Yet it is not at all clear that this is the category we should apply in considering an attack against the Iraqi regime. Let us suppose that the arguments being made in favor of such an attack are in fact correct. Let us suppose that intelligence experts are fairly certain that Saddam Hussein's regime is building and stockpiling weapons of mass destruction. No hard evidence may exist to prove this assertion, but let us posit that the experts have good reason to believe that it is true. If this is the case, then there is also good reason to believe that this regime, which has compiled a record of aggression against other countries and against its own citizens, continues to harbor aggressive intentions. We would therefore judge Iraq to be a threat to peace and security, if not today or tomorrow then surely at some point in the realistically near future. Under these circumstances, we would be justified in viewing an attack upon Iraq as a *preemptive* war, as a strike against a real enemy engaged in the early stages of a planned military offensive, rather than as a *preventive* war against a nation that *might* one day pose a threat but which does not do so now. As we note above, a preemptive strike in the legitimate cause of self-defense more closely resembles a commanded war than a discretionary one. We deem such a strike to be morally justifiable.

We repeat: morally "justifiable," not necessarily morally *justified*. As rabbis, we are in no better position than anyone else to evaluate the military and diplomatic arguments for and against this contemplated war. Based upon what we know as we write these words, it lies beyond our competence to determine whether a strike against Iraq would fall into the category of preemptive rather than preventive war. We do not say that the war is justified but simply that it *can* be justified, that a case *can* be made that such an offensive is necessary for the defense of this nation and of others. The government has the right, and indeed the duty to make this case. As our tradition calls upon the king to consult with the Sanhedrin before embarking upon any war other than a *milchemet mitzvah*, so it is essential that the leaders of the American government consult with the Congress and with the representatives of other governments in order to convince them that this war is clearly necessary for the defense of this nation and of others.

We concede that it may be impossible for the government to prove its case beyond a reasonable doubt. We recognize that its decision may be based largely upon intelligence reports that cannot be revealed to the public. We know that there can be honest differences of opinion over the evaluation of evidence. We also know that governments are liable to make cynical use of the rhetoric of self-defense in order to justify wars that are in truth fought for other purposes. We cannot escape the shadows of uncertainty when considering questions of this nature. For example, to cite the case presented by our *sho'el*, we may never know with precision just how close Iraq had come to building a nuclear bomb before Israel's air force destroyed the reactor at Osirak. All we can say is that *if* the Iraqis were building a bomb there, then Israel was morally justified in attacking the facility in the name of national defense. When diplomacy fails, when our foes spurn the offer of peace that our tradition bids us to make them, when they are clearly bent upon their aggressive course, then the time to initiate preemptive action is sooner rather than later.[29] Ultimately, history will judge the morality of that action. In the meantime, we can demand that our leaders do not lie to us; if they cannot tell us everything they know, let them make their case as completely and as honestly as they can. Human beings assume a high moral responsibility when they propose to lead nations into war; let them accept that responsibility with the utmost seriousness.

*Conclusion.* Jewish tradition distinguishes between "commanded" and "discretionary" wars; while urging us to refrain from the latter, it permits us to engage in the former. A "commanded" war is a war fought in the name of national defense, against an enemy who is attacking us now or is engaged in plans to attack us in the future. While *preventive* war, war launched against a nation that *might* some day pose a threat, cannot be morally justified, a *preemptive* strike against a clear foe that is presently harming itself can be a legitimate act of self-defense. If the leader of a nation determines that a particular contemplated offensive is, in fact, an example of a preemptive rather than a preventive strike, and when that leader also determines that there is no way to avert the danger through non-violent, diplomatic means, then he or she must justify that assessment to the public, to the deliberative bodies of that country, and to the nations of the world. An attack may be morally justifiable, but the

Government bears the responsibility to do all that it can to make the case that it is in the right.

also bears a heavy responsibility for its conduct of the war, no matter how justified that war may be. In the words of a former chief rabbi of the Israel Defense Forces: "Even though the *mitzvah* to fight wars is laid down in the Torah, we are commanded to show mercy to the enemy. Even during wartime, we are permitted to kill only in self-defense or in pursuit of legitimate military objectives. We are forbidden to harm a non-combatant population, and we are surely prohibited from striking at women and children who take no part in battle." [30] We know that civilian deaths are inevitable in war, no matter how carefully it is waged. That inevitability, however, does not exempt those who prosecute war from the task of keeping its collateral damage to the absolute minimum.

May the One Who makes peace in the highest heavens grant peace to us, to all Israel, and to all the world.

## NOTES

1. Deuteronomy 17:15; *Yad, Melakhim* 1:1. By reading this verse as a *mitzvah*, a commandment, Rambam follows the opinion of Rabbi Yose and Rabbi Yehudah in *BT Sanhedrin* 20b: "Three commandments were imposed upon Israel as they entered their land: to set a king over them, to destroy Amalek, and to build the Temple." Another *baraita* in the text preserves an opposing view: "R. Nehorai said: 'this passage was stated only because of the complaints of the Jews,' i.e., the people would one day demand to be ruled by a king so that they could resemble all the other nations (I Samuel 8:5-6; see Rashi *ad loc.*, s.v. *lo ne'emrah parashah zo*). In other words, the people were permitted, but not commanded, to appoint a king. These positions appear with some minor variations in *Tosefta Sanhedrin* 4:2.
2. Rabbi Avraham Yitzchak Kook provides a famous example of such halakhic reasoning. He suggests that, in the absence of a Davidic monarch (*melekh*), the powers of the monarch (*malkhut*) do not disappear but rather revert to the people of Israel. The people can thereupon bestow those powers upon any person or institution they choose; that person or institution thus exercises the full governmental authority of the king (*Resp. Mishpat Kohen*, no. 144, section 14). On the basis of this insight (*chidush*), Rabbi Sha'ul Yisraeli develops a halakhic constitutional theory that authorizes the establishment and proper functioning of a modern, sovereign Jewish state (*Resp. Amud Hayemini*, chs. 7-9).
3. *Yad, Melakhim* 5:1.
4. See *M. Sotah* 8:7 and *BT Sotah* 44b. The Talmud, quoting Rava, offers illustrative examples of these two kinds of war: "all opinions regard Joshua's wars of conquest as *mitzvah*, and all opinions regard David's wars of expansion (*revachah*) as discretionary." Rambam apparently derives his illustrations of *milchemet mitzvah* directly from the Biblical text, which explicitly commands Israel to wage war against the Canaanites (Deut. 7:1-2 and 20:17) and Amalek (Deut. 25:19). On the other hand, the Torah never explicitly commands us to wage war "to assist the Jews against enemies who have attacked them." R. Shelomo Goren, in his treatise *Meshiv Milchamah* 3:372, derives the Toraitic basis for such a war from Lev. 19:16, "do not stand idly by the blood of your neighbor," which the Rabbinic tradition interprets as a positive duty to save the life of one who is in danger (*BT Sanhedrin* 73a).
5. *Yad, Melakhim* 5:2, from *M. Sanhedrin* 1:5 and 2:4.
6. *BT Sotah* 44b. The principle here is "one who is engaged in the performance of a *mitzvah* is exempt from the performance of other *mitzvoth*" (*BT Sukah* 25 a and 26a, but the concept exists elsewhere, as with the exemption of the bridegroom from the requirement to recite the Shema on his wedding night; see *BT Berakhot* 11a and 16a).
7. See Lev. 19:23-25.
8. *Yad, Melakhim* 7:1-4, from *M. Sotah* 8:1ff.
9. See *M. Yadayim* 4:4: Sennacherib, the king of Assyria, long ago destroyed the nations and blurred the ancient boundaries between them.
10. The rule of self-defense is derived from a number of citations in our literature. See principally *BT Yoma* 85b, where we learn that the saving of life (*pikuach nefesh*) takes precedence over the observance of Shabbat and sets aside its prohibitions. On the specific issue of defensive warfare on Shabbat, see *BT Eruvin* 45a, *Yad, Shabbat* 2:22, and *Shulchan Arukh Orach Chayim* 329:6-7.
11. In I Samuel 8, we read that the people demand that the prophet Samuel anoint a king "to rule over us, like all the other nations." Samuel (v. 11ff) informs the people of what they are truly asking, listing a number of oppressive measures, such as the creation of armies, that a king might undertake. He calls this *mishpat hamelekh*, "the royal constitution." The people accept it, despite Samuel's attempts to dissuade them. The Talmud preserves two important rabbinic opinions on this passage (*BT Sanhedrin* 20b). One view holds that "the king is permitted all powers enumerated in Samuel's list." Another suggests that Samuel's enumeration was intended solely to intimidate the

people, to dissuade them from demanding a king. These two viewpoints are, at bottom, not at all contradictory: yes, the king legitimately exercises all the powers enumerated in Samuel's "royal constitution" (*Yad, Melakhim* 4:1 and *Kesef Mishneh ad loc.*), but woe to the people whose king engages in warlike behavior. For an agadic description of the decision-making process leading to discretionary war, see *BT Berakhot* 2b.

12. A conclusion drawn explicitly by R. Chaim David Halevy, the late Sefardic chief rabbi of Tel Aviv-Yafo, in his *Resp. Aseh Lekha Rav* 3: 58 (at pp. 320-322). He writes: "we learn from this that those who believe that the Torah of Israel is militaristic are in serious error. On the contrary: in a world that was entirely militaristic, in which all problems were addressed by recourse to the sword, the Torah came to teach us that we must restrain such aspirations."
13. Tractate *Derekh Eretz Zuta, Perek "Hashalom."*
14. "My creatures are drowning in the sea and you want to sing?" (*BT Megilah* 6b and *Sanhedrin* 39b.) The question arises: if the angels were not permitted to rejoice, why did Israel celebrate the destruction of the Egyptians with the Song of the Sea? One explanation is that Israel did *not* sing. The verse (Exodus 15:1) begins with the words *az yashir mosheh*, "then Moses sang, etc." The verb, however, is written in the imperfect or future tense, allowing the Midrash to speculate that the song was in fact not sung at that time but will be sung in the World to Come (*Tanchuma*, ed. Buber, to Ex. 15:1; see also *BT Sanhedrin* 91b).
15. Exodus 20:22 (the prohibition against carving the stones of the altar with iron implements). Rashi *ad loc.*, from the *Mekhilta*: the altar was created to lengthen our lives, while iron comes to shorten them. It is therefore improper to allow iron to contribute to the building of the altar. The *Rokeach* (12th-13th cent. Ashkenaz) writes that this is the source of the custom to cover the knife during the recitation of *birkat hamazon*, since the table is compared to the altar (*BT Chagigah* 27a).
16. See *BT Sotah* 44b, where "David's wars of expansion" are cited as the example *par excellence* of *milchemet hareshut*.
17. See the commentary of R. David Kimchi (Radak) to the verse. He suggests that the blood referred to here recalls the innocent people (like Uriah) whom David executed or conspired to have killed. Nonetheless, Radak also points to the plain sense of the text, namely that David was a man of war and the Temple, by contrast, is a place of peace. Rambam, in his commentary to *Mishnah Avot (Shemonah Perakim)*, ch. 7 (Kafach ed., p. 394), writes that although David's wars may have been justified, his military exploits were evidence of a streak of cruelty in him that made him unworthy to build the Temple.
18. *M. Sanhedrin* 4:5. Some manuscripts of this mishnaic text read "whoever saves a single Jewish life (*nefesh achat meysisrael*)," while others omit the word *meysisrael* so that the meaning is "a single human life" without national distinction. See the *hashlamot* by R. Chanokh Albeck to his *Mishnah*, v. 4, p. 445, and *Dikdukei Soferim, Sanhedrin* 37a. We think that the reading in our text is superior, not only because of its substance, but also because the prooftext cited on behalf of this statement (Genesis 4:10) as well as the words of the Mishnah that immediately follow the citation of this verse ("therefore, only one human was created at the beginning...") suggest a universal context and not to a particularly Jewish one.
19. Deut. 20:10, according to the interpretation of Rambam (*Yad, Melakhim* 6:1), although the *Sifre* to the verse restricts the commandment to discretionary war. Nachmanides, in his commentary to the verse, offers a strategy for reading the *Sifre* as speaking to both commanded war and discretionary war.
20. Rashi to Lev. 26:6, from the *Sifra*.
21. "When God created the first human, God took him and showed him all the trees of the Garden of Eden. God said to him, 'Look at my creations! See How beautiful and pleasing they are! All this have I created for your sake. Take care, therefore, that you do not set upon a course of evil. Take care that you do not destroy My world. For if you destroy it, there is no one who can repair the damage you inflict'" (*Midrash Kohelet Rabah* to Ecclesiastes 7:13).
22. The tradition sees economic interest (*parnasah*) as the primary *causae belli* of the discretionary war. See the *agadah* describing the initiation of such a war in *BT Berakhot* 2b, as well as the comment in *BT Sotah* 44b that David fought his discretionary wars for *revachah*, a term that encompasses "expansion" and "profit."
23. The traditional Jewish doctrine of rescue, which imposes upon us the duty to save others whose lives are in danger, is relevant here. See Leviticus 19:16, *BT Sanhedrin* 73a, *Yad, Rotzeach* 1:14, and *Shulchan Arukh Choshen Mishpat* 426:1.
24. The formal rule-*ha'osek bamitzvah patur min hamitzvah*--is found in *BT Sukah* 25a and 26a.
25. For example, does Rava come to explain the words of Rabbi Yochanan, as Rashi suggests (*Sotah* 44b, s.v. *mitzvah derabanan*), or does he dispute him, as indicated by the parallel *sugya* in the Talmud Yerushalmi? And if we follow Rava's explanation, why do we not use the terms *chovah* and *reshut* to classify all wars? Why does Rambam, in other words, refer to the wars against the Canaanites and Amalek as *mitzvah* rather than *chovah* (see *Kesef Mishneh, Melakhim* 5:1)?
26. See his commentary to *M. Sotah* 8:7 (Kafach ed., p. 185) as well as *Yad, Melakhim* 5:1, where he does not mention preventive war at all. *Lechem Mishneh ad loc.* explains that Rambam includes preventive war in the category of wars

fought by the king "to enhance his greatness and reputation."

27. *Yachid verabim halakhah kerabim*; *BT Berakhot* 9a and many other places.
28. See *PT Sotah* 8:10 (23a): "a *milchemet reshut* is when we attack them; a *milchemet chovah* is when they attack us."
29. To take another example, if the British and French governments had reason to suspect Adolf Hitler's aggressive intent in 1936 when he marched his troops into the Rhineland, they would have been morally justified in taking action to stop him then and there. History teaches, sadly, that they had very good reason to suspect him, and the world paid dearly for their failure to take action at that time.
30. Goren, *Meshiv Milchamah*, 1:14-16. See also R. Avraham Shapira, former Chief Rabbi of Israel, in *Techumin* 4 (1983), 182.

If needed, please consult Abbreviations used in CCAR Responsa.

Rabbi Richard Agler  
Congregation B'nai Israel  
Boca Raton, FL

September 26, 2003  
1 Tishri, 5764  
Rosh Hashanah

## ON FREEDOM

*L'shana Tovah.*

During these High Holydays, we will address the themes of  
Faith, Forgiveness, Family and Friends tomorrow and next week.  
Tonight, we focus on *tikkun olam*,  
on our responsibility to look out into the world and help heal it.  
Let's account for ourselves as citizens of the world's mightiest nation  
as we contemplate the responsibilities of our Freedom.

We fought a war this year. No one here personally,  
no one that I know about anyway.  
Probably a very small number of people any of us know personally.  
But we fought it—"We the people."  
Because in a democracy war is the people's responsibility.  
Rosh Hashanah is the day on which we account for our actions  
Not only as individuals but as a nation as well.  
So it is appropriate to ask, "How did we handle this responsibility?  
Did we discharge it faithfully, thoughtfully, with due judgment?"  
I'm not speaking just of our leaders but of "we the people."  
It is a question we cannot ignore.

War, as we know, is fury unleashed.  
It changes the course of history  
It changes the land where the battles are fought  
It changes the land that sends the fighters.  
It changes every single life it touches, thousands, even millions of them,  
often catastrophically.  
And again, in a democracy war is ultimately a citizens' responsibility.  
It is done in our name, with our consent, either active or passive.  
So when it comes to war we have the obligation to ask. Questions like  
"Why are we waging this?" "For what reasons, and at what expense?"  
And our leaders, both elected and appointed, have the obligation to answer.  
Just so we know, Jewish tradition loves peace but it is not necessarily pacifist.  
It recognizes that some wars must be fought.  
But even when war is permissible  
we need to justify it—to ourselves and in the eyes of G-d.

It's a little hard to count, but let's say that America has fought four wars  
in just over a decade.  
In Kuwait, the former Yugoslavia, Afghanistan, and now Iraq.  
The previous three were widely, if not unanimously supported.  
The war in Iraq was different. And for good reason.  
The Talmud, of all things, explains why. In Jewish law there is a distinction  
between mandatory wars and optional wars

between wars of self-defense and wars that are fought for other reasons.  
Not to put too fine a point on it, if a nation is attacked  
or if it is demonstrably about to be--a war of self-defense can be fought.  
We call this a *Milchemet Mitzvah*—a commanded or obligatory war.

In all lands, throughout the ages, when you are attacked,  
you have the right to defend yourself. Everyone gets it.  
Just last week in fact, no less than the Dalai Lama was quoted as saying  
that in today's war against terrorism violence was warranted.  
If he was speaking in Hebrew he would have used the term  
*Milchemet Mitzvah*.

But if it is not a war of self-defense, if it is a war for some other political  
or strategic aim, it is, as the Talmud calls it, a *Milchemet Reshut*,  
an optional war. And here things are not so automatic.  
Ancient Jewish Law required the support of the Sanhedrin, the High Court,  
before such a war could be fought. And we understand why.  
Then as now, the decision to go to war was the ultimate national decision.  
With its high cost in human life, property, health and wealth  
if an optional war was going to be fought ,  
it had better be declared wisely and society had better be behind it.  
The principle still holds.

The cost of war is if anything higher now than it was then.  
Modern weapons cause more destruction  
than any the ancients could have imagined.  
And the boundary between soldiers and civilians,  
between combatants and non-combatants is often invisible.  
The decision to go to war carries as much moral weight  
as it ever has.

If we are going to go, if we are going to fight,  
or in a democracy if someone is going to do it in our name,  
especially if it is a war of choice,  
We had better, as we stand before G-d, be sure that it is justified.

The case was made that our three previous wars were  
more mandatory than optional. And by and large we accepted that.  
The first Gulf War was triggered by Saddam's conquest of Kuwait.  
As the first President Bush said, that "could not stand."  
Most of us agreed. It shouldn't. And it didn't.  
In Yugoslavia, Kosovo and the Balkans there was state-sanctioned genocide.  
They called it "ethnic cleansing."  
If the civilized world was going to continue to call itself civilized  
it was going to have to fight to rid the region of that atrocity. It did.  
And we fought in Afghanistan in the wake of 9/11 because of the  
Taliban's support and shelter of Al Qaeda.  
So we had three broadly supported wars in a relatively short period of time.  
Each had unwelcome complications  
and none turned out exactly as planned  
but each accomplished its primary goal.  
Saddam was thrown out of Kuwait; Milosevic and the Taliban were ousted.

**We lived to see another day.**

**The war in Iraq this year was not as clear cut.**

**Not to the citizens of the United States or the world**

**and to listen to some of their statements,**

**we could be forgiven for wondering how clear it was to our leaders.**

**They tried to convince us, and the rest of the world,**

**that it was a mandatory war—a *Milchemet Mitzvah*.**

**No surprise there. Leaders always try to make the case that a war they want is necessary.**

**We were told that we were in danger, even imminent danger**

**from terrorist attack, perhaps including WMD and**

**we needed to strike first, preemptively.**

**This would have made it a *Milchemet Mitzvah***

**They intimated that Saddam's regime was linked to 9/11**

**and was a factor in those attacks—which would have done the same.**

**But many people didn't buy it.**

**And the skepticism only grew as new explanations were offered.**

**It was to get rid of a murdering dictator, (though we used to support him.)**

**It was because he sheltered terrorists**

**(But he was hardly the only or even the most blatant one.)**

**It was to free the Iraqi people, (as if we suddenly cared after 28 years.)**

**It was to plant democracy in the Middle East. (Oh yes, nation-building.)**

**And there were the unspoken or softly spoken reasons:**

**It was to show the world who was in charge,**

**it was to secure access to oil, to remake the region in our image.**

**It was to make things better for Israel.**

**It was some of the above it was all of the above.**

**The rationales were not necessarily bad.**

**But they were far from convincing. Here and around the world,**

**people who supported the three previous wars opposed this one.**

**All the explanations, stated and unstated, did not satisfy.**

**Why would they? If there was one really clinching reason,**

**why did we need so many questionable ones?**

**If it really was a *Milchemet Mitzvah*, a mandatory war,**

**they could explain it in one sentence and most of the country,**

**even most of the world, would accept and understand.**

**But that didn't happen. And the doubts didn't go away.**

**We knew we could win the war and get rid of Saddam,**

**after all we're the superpower. And the world would be better off without him,**

**for sure. But people also asked, from early on,**

**"Then what? What happens the day after?"**

**"Not to worry," they told us.**

**"We'll be welcomed as liberators."**

**They'll shower us with love and flowers.**

**Their oil will pay for rebuilding their country.**

**We'll install a democracy, the first one in Arab history**



It will be the beacon of hope to the peoples of the region  
And countries like Saudi Arabia and Pakistan and Syria and Egypt  
will have no choice but to move towards freedom, democracy, greater  
acceptance of Israel and greater support for America in the process,  
because that's the way democracies act.

In reality, they may have been noble aims. And I believe the authors of the policy  
were sincere about them. I don't question their hearts.

I do and for the record I did question their judgment.

Lest you think I am Johnny come lately

I've been raising questions about the war from the pulpit throughout the year.

I also had tremendous doubts about whether those noble goals  
could be reached, which I didn't say from here.

I did say privately that I thought the chances of us doing what we said we  
were going to do on time and on budget were about 10%.

And now I regret that I didn't say that publicly.

But this is not about me. This is about all of us.

A lot of us had the same doubts. And now we have the same regrets.

And on Rosh Hashanah we need to face them.

Because on this day we need to account for our public selves  
as well as our private ones.

I know it's not over but what happened? Why didn't we didn't press the issues?

Please G-d it will all turn out all right. But...

We could see the problems, the difficulties, the complexities.

If we thought it was going to be simple and easy,  
that it was going to go more or less as advertised then we're forgiven.

We may be naïve, but we're forgiven.

But if we didn't buy it and we didn't open our mouths.

And we didn't--not nearly enough of us, not anywhere near strong enough.

We need to ask ourselves "Why not?"

War is not ancient history for Americans.

Even our youngest have lived through several. Maybe they were too easy.

Did we forget that war is so fraught

with unintended and unexpected consequences

that if the case for it isn't as close to open and shut as it can possibly be  
that we might be better off finding another way?

Maybe we citizens, like generals are so often accused of doing,

made the mistake of fighting the last war, or one of the last three.

After all our leaders were right those times,

they seem to know what they're talking about, they're on a roll,  
let's go along with them.

Maybe that was a part of it. If so, I trust we're wiser now.

Maybe we didn't speak up in part because there is no draft.

To me this may be the most disturbing.

If we happen to be well-educated or otherwise privileged, chances are  
it wasn't going to be our sons or daughters in harm's way.

If it had been our 18 – 25 year olds, do we doubt for a minute that we would

have been screaming bloody murder from coast to coast?  
 Heaven forgive us.  
 Maybe we didn't speak up because Israel was supportive.  
 Although they can be pretty clumsy in their own affairs,  
 we figure they know the neighborhood pretty well.  
 If they're okay with it why shouldn't we be?  
 Maybe it's because they told us it would be relatively easy--and cheap.  
 There was certainly no call for sacrifice.  
 or talk of other priorities or programs having to be set aside.  
 That's always good especially if it's a war of choice.  
 What else were we thinking? I don't know.

But how did we let this get away from us?  
 How did we let our questions, so many, so legitimate, so valid as it turned out,  
 be brushed aside?  
 Why were we so accepting of official explanations?  
 How did we, an educated, cultured, savvy, sensitive and peace-loving people  
 let this happen in our name?  
 These are questions the citizens of the most powerful nation on earth  
 need to answer.  
 A national *cheshbon ha-nefesh*—self examination is in order.  
 I trust our non-Jewish neighbors will do it in their time.  
 But this is our season.  
 I don't know if we can answer these questions completely or even satisfactorily.  
*Cheshbon Ha-Nefesh* is by definition a challenge.  
 But we need to attempt, that is for sure.

I invite you to continue on your own, because we all have to answer  
 but my own sense is that the chief culprits were  
 patriotism, partisanship and propaganda.  
 In war they are always close at hand.  
 None of them are evil. All have their value.  
 But they can be turned either positive or negative.

I wrote this next paragraph two weeks ago on September 11,  
 the second anniversary of the attacks on NY and Washington.  
 How pure our patriotism was then, in the aftermath of the tragedy.  
 We were attacked--by forces of evil, yes  
 and we stood united, proudly and properly.

Alas, such purity is hard to maintain, especially where patriotism is concerned.  
 It is almost impossible not to exploit and in time, it was.  
 By politicians, the media, by commentators and manufacturers,  
 by entertainers, even sports teams.  
 Some of it was relatively benign. Some of it wasn't.  
 It wasn't the first time and it won't be the last.  
 As time went on the appeals to patriotism--and there were many—had agendas,  
 subtle and not so subtle. And we were susceptible to them.  
 How could we not be?  
 Our national symbols and those who wrapped themselves in them

were everywhere.  
 Perhaps our patriotic spirit clouded our critical thinking and judgment skills.  
 Subconsciously maybe we thought, if it's wrapped in the flag it must be okay.  
 Worse, and this was the worst, somewhere along the way it became  
 almost unpatriotic to even ask the difficult and pointed questions.  
 In the United States of America of all places.  
 They passed legislation that limited civil liberties  
 The most un-American thing we've seen since the House Un-American  
 Activities Committee during the McCarthy years and called it,  
 what else, the "Patriot Act."  
 Our phone calls, e-mails, medical files, even what we ask for in our libraries  
 are today fair game for government investigators.  
 Much of it without a court order.  
 We won't know it until we hear the knock on the door.  
 And now they're working on "Patriot Act 2" which goes even further.  
 Most of us will not be directly effected by this I'm confident  
 but it takes courage, real courage to speak out in such a climate.  
 We can tell by how little speaking out there was.  
 People who had doubts, kept quiet.  
 Intimidated, overwhelmed, barreled over, often times none too subtly.  
 Even elected officials, even those of the "loyal opposition,"  
 which all but disappeared btw, were susceptible.  
 To be in opposition was to risk, and often to be called, disloyal.  
 And nobody wants to be called that, especially in patriotic times.  
 Can we say "chilling effect?" I think we can.  
 And what appeals to patriotism did not do,  
 partisanship and propaganda shrilly filled in.  
 Together they cowed us. Into acquiescence.  
 And if the shoe fits, and I acknowledge it fits me,  
 and I'm sure it fits plenty of us, we need to say *Al chet*.

Maybe we're out of practice when it comes to questioning authority.  
 If so we need to get back into it.  
 Maybe we think it's the leader's job to lead and the citizen's job to follow  
 Except once every four years when we cast a ballot  
 And this being Florida hope it gets correctly counted.  
 If anyone here does think this, allow me disabuse you of it.  
 Citizenship carries way more responsibility than that.  
 We have all seen enough history to know what happens  
 when either out of fear or intimidation  
 citizens give their leaders too long a leash.  
 Governments cannot be trusted without a check on them.  
 That's not my bias, that's Thomas Jefferson and the Founding Fathers.  
 "We the people" are the ultimate check on the misuse or arrogance of power .  
 And heaven help us if we don't use it.  
 We can delegate some of it to other institutions.  
 But ultimately it is our responsibility.  
 Perhaps some of us thought it was the press' job.

It is in part but they're not always so good at it.  
 They are often driven more by commercial considerations than truth finding.  
 And I know they are going to point the finger right back at us and  
 say they give the people what they want. Well it is our obligation to  
 make clear to them that what we want is not what they are giving us.  
 We want truth, we want toughness, we want feet held to the fire  
 over issues that matter. That's their job in a free society.  
 Because heaven help us if there is in-depth coverage for  
 sex scandals, election circuses and grisly murders but not when we're  
 debating the issues of war and peace, life and death.  
 But even if the press and the media blew it,  
 it does not take us off the hook.  
 We are still responsible.  
 Maybe we were worried someone would say to us,  
 "My country right or wrong" or "Love it or leave it"  
 and we wouldn't know how to answer.  
 I'll give you the comeback. Spoken by an American Patriot in 1899:  
 "Yes, my country right or wrong. When right to be kept right,  
 When wrong to be put right."--Carl Schurz (1829-1906)  
 Civil War general, U.S. Senator, Secretary of the Interior)  
 Friends, we did not question enough.  
 If we do not question, out of fear, out of intimidation, even out of laziness,  
 we are not free. And if we are not free, we are not America.  
 And if we are not America, heaven help us and the world.  
  
 As Jews, we face a similar challenge as supporters of Israel.  
 Israel, like America, needs our support.  
 But when we have issues with the Israeli government,  
 We should be making them known as well.  
 They too make misjudgments.  
 The rules are slightly different when it comes to Israel though.  
 Israel is under siege and under fire, in a way that the US is not.  
 Proportionate to population, Israel has suffered civilian deaths equivalent  
 to more than a dozen 9/11's in the past three years.  
 Unlike the US, Israel is fighting for her very survival,  
 Which is not yet assured after fifty-five and more years of war.  
 We can question the Israeli government as we question the American government  
 And we understand that questioning in the proper spirit is an act of patriotism  
 not disloyalty.  
 But with Israel it is important that we do it diplomatically  
 and in the proper forums, lest we be exploited by her enemies.  
 Just as our questions to America's leaders should spur them to be  
 the best they can be  
 We can likewise speak to Israel's leaders and demand that Israel be  
 the best that she can be.  
 We also demand from the world that Israel be given the opportunity  
 to live as every other nation demands to live,  
 in security, in peace and free from terror.

Heaven forbid the unthinkable should happen in Israel.  
Heaven forbid that on a future Rosh Hashanah  
we will have to ask ourselves why we did not do more or say more  
either to Israel directly or to the world around her.

When it comes to Israel, let us use our voice to make sure that everyone  
Understands the fundamental asymmetry of the conflict.  
That there is a moral difference between those who murder innocent  
civilians and those who punish murderers and conspirators.  
And that we will not tolerate the world's unbalanced condemnations.  
It may not look pretty on television, war seldom does  
but we are the people of justice not the people of image.  
So let us hold fast to this ideal, and hold the world to it as well  
That is our mission.

Again, one of the very best things we can do for Israel is to visit her.  
I was there again last June with members of our congregation  
as part of an international ARZA solidarity mission.  
I was given the honor of introducing our delegation  
to the President of the State  
I can't promise that on our next trip but I can promise it will be outstanding.  
Again, I know it sometimes looks bad on television. It is not as bad in real life.  
More than five million Israelis live life pretty much normally.  
I hope our Confirmation class parents will permit their children  
to go there next summer.  
I hope we will be able to bring a congregational group again then as well.  
Adults, children, B'nai Mitzvah families, grandparents, anyone, everyone.  
Let my office know if you might be interested. Mid-June 2004.  
Israel needs us and we need Israel. Both more than we realize.  
Let us not squander the historic gift of the modern State of Israel.  
Or the historic gift of freedom of the United States of America.

I know we sometimes have the feeling of powerlessness  
When it comes to matters such as these. We shouldn't.  
If I've learned anything remarkable in my years of public activity  
it is that the number of people who actually determine  
what happens is incredibly small.  
Perhaps as little as 5-10% of the population.  
And it is easier than we think to become one of these people.  
If you are registered to vote and you do vote,  
you're already in the top 25%. Amazing.  
To go beyond that, raise a thoughtful voice,  
get access to a leader through a published letter or  
membership in an advocacy group  
Join one you believe in. Send a check.  
Educate yourself as time goes on.  
The one thing we cannot do is stand idly by.  
Small groups of committed individuals can and do have great effect.

**Voices of conscience, properly expressed, do matter.  
This is America. Still.**

**From the time we crossed the Red Sea until now,  
The teaching that G-d wants His children to be free  
has been central to our faith.  
America, not coincidentally, was built on it.  
But freedom is as fragile as it is precious.  
If we do not want to lose it, we had better use it.  
Often, continually, with wisdom and with strength.  
*L'shana tovah.***

**P.S. The following morning I felt it appropriate to share the following words with the congregation.**

A few words about last night's talk and the role of the rabbi.

The Rabbi's mandate is not necessarily to speak in a way that will engender the most agreement. The rabbi is mandated to speak his conscience, hopefully with clarity and some degree of passion.

This is the tradition of our Hebrew Prophets, Rabbi Stephen S. Wise, (to whose synagogue and pulpit I was privileged to be called upon my ordination) and in our own day, our friend and teacher Rabbi David Saperstein, who dedicated this very sanctuary.

Rabbis are given freedom of the pulpit in order to fulfill this role.

On occasion, there will be disagreement, particularly when it is a controversial or difficult issue. That comes with the territory. It may help to remember that the rabbi does not presume to speak for the congregation, rather he speaks to the congregation. The pulpit is for conscience, and it was in this spirit that last night's remarks on the war and our responsibilities as free citizens were offered.

If you have thoughts you'd like to share with me on the subject, I'd be more than happy to dialogue. If you missed them, or are now suddenly curious, just ask and we'll be happy to send them to you. We'll try to have them online within the next few days as well. *L'shana tovah.*

**Rabbi Richard D. Agler, D.D.  
Congregation B'nai Israel  
September 27, 2003  
Rosh Hashana I**

## **PREACHING WAR**

Rabbi Mark Bloom

If this were 1776 you might be sitting at Congregation Shearith Israel in New York City listening to Gershom Mendes Seixas, the first native-born Jewish clergy member, preaching a sermon first praying for peace and then calling on the Jewish community to leave New York and stand with the revolutionaries.

We beseech you, O God, to save and prosper the men of these United States who have gone forth to war. Fight for and protect our patriot troops who serve on land and ship, as well as their rulers, their leaders and their allies.

If this were 1861 you might find yourself in New York City again, this time at Congregation B'nai Jeshurun (which today is famous for its 2000 singles that show up on a typical Friday night), but back then was famous for a controversial and offensive sermon by Rabbi Morris Raphall entitled "The Bible View of Slavery." He began by saying "I am sorry to find that I am delivering a proslavery discourse." He explained that he disliked the institution, but being pacifist in nature he didn't want to see our nation go to war against one another, and being a rabbi, didn't like to see the Bible misused and misquoted. In it he argued that slavery was not a sin, that Biblical law, with its mention of slaves, granted the right to own slaves.

He did distinguish between Biblical slavery and the southern system, since in the Bible the slave is a person, whereas in the South people were treating slaves as “things,” but the main thrust of his sermon was against the abolitionists and what he considered their misrepresentation of the Bible.

Speaking to Henry Ward Beecher, though not by name, he says:

I would therefore ask the reverend gentleman of Brooklyn and his compeers—How dare you denounce slaveholding as a sin when you remember that Abraham, Isaac, Jacob, Job, the men with whom the Almighty conversed, and to whom He vouchsafed to give the character of “perfect, upright, fearing God and eschewing evil” that all these men were slaveholders, does it not strike you are guilty of something very little short of blasphemy? And if you answer me, “Oh, in their time slaveholding was lawful, but now it has become a sin,” I in my turn ask you, “When and by what authority you draw the line?”

But you were just as likely to be at Har Sinai in Baltimore where David Einhorn responded to that sermon by saying Raphall had asked the wrong question. The question isn’t whether the Bible condemns slavery as a sin, but rather, is slavery a moral evil or not?

The Mosaic law here merely tolerated the institution in view of once-existing deeply-rooted social conditions, or, more correctly, evils, but never approved of or considered it pleasing in the sight of God. It therefore infuses in its legislation a mild spirit gradually to lead to its dissolution.”

Einhorn was threatened with his life, and fearing for his own safety and that of his family, he had to leave the city of Baltimore with such strong Confederate sympathies, moving further North of the Mason-Dixon line to K’nesset Israel in Philadelphia.



The question of whether we should sacrifice lives for a moral cause or stay out of war at all costs was clearly as troubling then as it is today. As an aside, most Jews, though anti-slavery were frightened by both the radical and fundamentalist Christian character of the abolitionist movement. Jewish experiences with religious fanatics who would make war over their beliefs had never been positive. If these people were willing to make war with their own Christian brothers, many of whom had just left the shores of Europe and its religious intolerance, most Jews could only imagine what these same people might think of and do to the Jews.

If this were December of 1941 you could find yourself at virtually any synagogue in America, where the rabbi would be giving a message of support for our troops, of prayers for the soldiers, or counseling patience and faith while America completes the task at hand of subduing evil enemies determined to annihilate both the Jewish people and democracy. Sitting in Pittsburgh, Pennsylvania at Rodeph Shalom you would have heard Rabbi Solomon Freehof declare:

Before the children of men can hope to attain Isaiah's dream of peace, our country and its allies must walk through the dark road of Joel's nightmare: Procaleim ye this among the nations. Prepare war; stir up the mighty men: beat your plowshares into swords." Now the tragic hour has come upon us. We cannot now evade the crisis of history. The fate of our nation, of its allies, and the future of man now depends upon courage, skill, discipline and endurance. We pray four our country, for its soldiers and sailors, for their leaders, military and civilian. May God shield them and strengthen their hearts. May He grant them a speedy victory, for it will be a victory for justice and kindness."

If this were 1967 you might find yourself in Chicago at Congregation KAM where Rabbi Jacob Weinstein who, even at the risk of offending the many World War II Veterans who populated his congregation, frequently and publicly voiced his early opposition to the Vietnam War.

We must continue to say of Vietnam that it is an undeclared war, an imperialistic intervention taken over from the French. We insist that our Administration has no clear mandate to police the internal political life of Far-Eastern peoples. We insist that it is high time that we recognized the futility of our intervention and undertook to renew the efforts made for negotiation before our escalation aborted them. We must intensify our work for peace and give added strength to the organizations who work for peace.

The vast majority of American rabbis opposed the war from its very earliest stages. Hindsight tells us that they were right in doing so.

Now the year is 2002. And what you think about a potential coming war with Iraq depends on how you were raised, your political orientation and what part of the country you live in. A member of a congregation in Dallas may have attended a rally supporting troops who have been sent overseas, while his cousin in San Francisco may have attended a massive peace demonstration in San Francisco urging our country to stay out of it.

It should be abundantly clear, by this point, that Judaism has no definitive view of war, as rabbis from different eras evoked reluctant images of battle, olive branches of peace and everything in between. Jewish law does indeed provide for the possibility of war. If your life is threatened and

the other side will not negotiate you are not only permitted, but required, obligated, to defend yourself and your people. Therefore, Judaism developed two categories, milchemet reshut, permissible war and milchemet chova, obligatory war. Clearly, when the Nazis were trying to make Europe Judenrein, free of Jews, that was milchemet chova, obligatory war. Most would argue that the War of Independence in 1776 was milchemet reshut, permissible war. Most of us would probably also argue, I imagine, that the Vietnam conflict was neither.

So what is Iraq? And what does Judaism have to say about this one? The answer is "I don't know." I can't take a political position because it is a question of politics, not Judaism or even Jewish history. I know that many of you would prefer I take a strong stand one way or another, but my opinion on this would and will be as an individual person, not so much as a rabbi. As a rabbi, I can only say that if there is no evidence that Saddam Hussein has nuclear power or the intent or capability of using it, then war is not permissible at all. However, that is a gamble. If a dictator like him does have the power and may use it, we go to the other extreme, and Jewish law would declare it chovah, obligatory. Gambling with millions of lives is one of the riskiest proposition in human history. But killing hundreds of thousands of innocent people based on politically motivated fear is one of

the gravest examples of immorality in human history. Unfortunately, only God has the answers.

So you're not going to find me frequenting the "No War on Iraq" rallies. Nor will you find me saying we need to be "over there," as the famous World War I song chants. The truth is that we never know and, in this particular case, I'm not sure we even have a good, educated guess. After all, this is 2002, not 1776, 1865, 1945 or 1967 and, if this is the age of anything, it is surely the age of uncertainty. All we can really do is (1) exercise our right to vote this Tuesday, though in this case our votes here in Northern California don't have that kind of national impact and (2) pray for peace and guidance from our God above.

Rabbi Shawna Brynjegard-Bialik

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You can't turn on the television or the radio these days without hearing about the threat of war with Iraq.

There is no shortage of opinions on whether or not we should attack Iraq, whether or not they really have weapons of mass destruction, whether or not they will comply with the UN resolution, and with each violation of the no-fly zones we wonder if this will be what triggers the war.

Political analysts are quick to tell us the current political motivations and justifications for going to war. President Bush has been in the news all week, trying to drum up domestic and international support for war with Iraq. As Americans, we should be keeping up with these developments; if our country goes to war, we go to war?informed or not, supportive or not. We should consider what it will mean to our national interests and our security, and we should engage in the kind of healthy debate that defines America.

As Jews, we have another responsibility?we should be looking to Jewish values for guidance at this time, to see what our tradition can teach us about war. What does Judaism tell us about taking up arms, and how can that inform our opinions and understanding of what is going on in our world today??

Jewish texts on war tend to focus on kings and the Davidic monarchy, and though much in the Middle East has changed since Davidic times, we can?and do?fairly easily read these texts in ways that relate to modern-day Israel. While it is a bit of a stretch to apply biblical notions of kingship and governance to the modern state of Israel we make that stretch because Israel has a mostly Jewish government and is the same land that the Bible is talking about. But what about a war outside of Israel? Can Torah teach us about how the United States should conduct itself? As Reform Jews we believe that the lessons of Torah are relevant and applicable to?modern life, especially in times of doubt and indecision; Torah can teach us about the standards for our leaders and government.

Jews participate in a type of dialogue called *responsa*, wherein questions are submitted to a rabbi or, in the Reform case, a panel of rabbis, and their answers serve as a kind of Reform *halacha*. Reform *responsa* take into consideration Jewish tradition and traditional teachings and they utilize the traditional Jewish texts, including the Talmud, but they do so in light of Reform Judaism?what we have, therefore, is not the most traditional answer, but an interpretation of the text that speaks to us, today. There are sometimes *responsa* where no clear-cut answers are provided; such is the case with questions about war.

Recently the Reform movement?s *responsa* committee was asked about the permissibility of a preemptive strike?that is, a military action against a perceived clear and present danger. The person asking the question specifically dealt with the Israeli bombing of the Osarik nuclear plant in Iraq in 1981, but there were many parallels with our current situation. The committee?s answer deals directly with the current situation with Iraq and provides us a framework for looking at the issues.?

The first question the responsa answers is whether it is permissible to make war at all. Judaism recognizes that sometimes, it is. In fact, there are certain wars that are commanded by Jewish law: war against the seven Canaanite nations, war against Amalek, and war to defend the nation against attackers. Commanded wars are called *milchemet mitzvah*, and they are commanded of us, in short, because we Jews have the obligation to defend and preserve our own lives. On the other hand, discretionary wars, called *milchemet rishut*, are defined as those conflicts which serve to expand the territories of the nation and to increase the glory and reputations of its king. Jewish law permits kings to wage both discretionary and commanded wars, but they are to be waged in different ways. In a commanded war everyone has to serve, even a groom would have to leave right from his wedding to serve in the armed forces. In addition, in fighting a commanded war a soldier was exempt from obeying other *mitzvot* if they were contrary to his war-time duties. In a discretionary war there are those exempted from serving in the army, including one who is recently married, one who has recently built a house or planted a vineyard, or even one who would be fearful of fighting.?

Judaism places great value on peace, and our awareness of the destructive nature of war leads very easily to the idea that the damage done is not worth the gains in reputation and glory; for that reason, the responsa explains that discretionary wars are quite soundly condemned by contemporary Reform Judaism. The exemptions granted during a discretionary war could serve as a powerful deterrent to a king, who would have to think twice about fighting a war with a reduced army. This *de facto* discouragement of discretionary wars lends support to the contemporary disdain for them; the deterrents to discretionary war can be interpreted as God's way of discouraging these sorts of engagements. Even King David was stained by his discretionary wars: he is credited with greatly expanding the borders of Israel, but he was not permitted to build the Temple, as his hands were too bloody; God saved this task for Solomon. David, who we consider our greatest king, was not entrusted with the greatest deed, the building of the Temple. Our tradition views God's preference as avoiding discretionary wars; with that understanding there is no way to justify a discretionary war in modern times. From the Torah's exaltation of peace as a predominant social value and from the strict limitations it places upon the conduct of *milchemet hareshut*, a discretionary war, we learn a somber lesson: war is at best a necessary evil??necessary? perhaps but ?evil? all the same. This lesson in turn leads us to conclude that the Torah's permit for the king to engage in war ?to increase his greatness and reputation? is a political justification of such a policy but not a *moral* justification of it. This concession to the *political reality* of the ancient Near East cannot blind us to the reality of war as it is fought today, to the horrific price it exacts of soldiers and non-combatants alike, and to the prospect of massive and unfathomable destruction that its armaments have placed in our hands. If the Torah's teaching of peace means anything to us, in the context of our time, it means that such is too high a price to pay for the enhancement of a state's material interests. On the contrary: we are morally justified in waging war only when war is absolutely necessary and unavoidable. A war fought *today* for anything other than defensive purposes must therefore be viewed as an *unnecessary evil*, as a transgression of the message of the Torah, and as a repudiation of our most cherished values and commitments. The Reform movement says that

discretionary wars, fought for the glory and reputation of a nation or its leaders, are immoral and should not be fought.

Let us return to the concept of commanded wars. The first two types of commanded wars, against the seven Canaanite nations and against Amalek, are not relevant to any current situation; the seven Canaanite nations no longer exist and Amalek is now only a symbol of evil,<sup>7</sup> not a specific nation or group. Yet the third kind of "commanded war"—the war "to assist the Jews against enemies who have attacked them"—sadly retains its relevance. The fact that our tradition sees a defensive war as a commanded war, a *milchemet mitzvah*, teaches us that our tradition rejects pacifism as a policy of national defense. The responsa explains that the Torah does not expect us to submit to armed aggression, to stand by silently and passively when others seek to conquer and dominate us. The people of Israel have the right to defend themselves from attack. Indeed, we are commanded to do so: the obligation to defend and preserve our lives overrides virtually every other religious duty. In this way, the Jews are like the other nations of the earth; there is no reason to believe that the Jews are the only people entitled to self-defense. Every nation must possess the right to take up arms if necessary to protect itself and its citizens against military attack. After September 11 it became clear that we need to defend ourselves against terrorist attacks, and Jewish law supports this: when you are attacked, you may defend yourself. But what if we know we are about to be attacked? What if we believe, but can not prove, an attack is coming? Must we sit idly by while others plan our destruction? Again, our tradition distinguishes between two types of action; in this case, the responsa points out that a distinction is drawn between a preemptive strike and a preventative strike.

A preemptive strike is one launched against an enemy that has mobilized or is engaged in obvious and active preparation for war. In 1967 the Arab nations of the Middle East had massed their forces on the borders of Israel, and the Knesset decided to strike first, in hopes of shortening the war and limiting casualties. National security was definitely threatened, and it served no moral purpose for Israel to wait for the enemy to strike; the preemptive strike was a defensive maneuver.

In contrast, a preventative strike is one in which it is believed that an enemy is planning an attack, but there is no direct proof, or the threat is not in the immediate future. A preventative strike operates on the assumption that by striking first you can prevent a potential war. The Sages do not view preventive war as an instance of "commanded" war; it is by no means assured that war is imminent, and therefore the strike is not justified. The Torah tries to prevent wars that are not absolutely necessary. While a war fought in self-defense is deemed necessary and therefore "commanded," a war initiated against a nation that *might* attack some day does not fall into this category. The rabbis consider this to be a "discretionary" war. The Torah grudgingly allows the king to order a preventative strike, but it is a war that, in the context of the history of our time, cannot be justified on moral grounds.<sup>8</sup>

How does all this illuminate the choices that the United States faces as it considers an offensive against Iraq? If we perceive a military strike against that nation as a case of "preventive" war, then the weight of our tradition would counsel against it. Yet it is not at all clear that this is the category we should apply in considering an attack against the Iraqi regime. Let us suppose that the arguments being made in favor of such an attack are in

fact correct. Let us suppose that intelligence experts are fairly certain that Saddam Hussein's regime is building and stockpiling weapons of mass destruction. No hard evidence may exist to prove this assertion, but let us posit that the experts have good reason to believe that it is true. If this is the case, then there is also good reason to believe that this regime, which has compiled a record of aggression against other countries and against its own citizens, continues to harbor aggressive intentions. We would therefore judge Iraq to be a threat to peace and security, if not today or tomorrow then surely at some point in the realistically near future. Under these circumstances, we would be justified in viewing an attack upon Iraq as a *preemptive* war, as a strike against a real enemy engaged in the early stages of a planned military offensive, rather than as a *preventive* war against a nation that *might* one day pose a threat but which does not do so now. As noted, a preemptive strike in the legitimate cause of self-defense more closely resembles a commanded war than a discretionary one. The responsa committee says that it deems such a strike to be morally justifiable and then continues:

We repeat: morally ?justifiable,? not necessarily morally *justified*. As rabbis, we are in no better position than anyone else to evaluate the military and diplomatic arguments for and against this contemplated war. Based upon what we know as we write these words, it lies beyond our competence to determine whether a strike against Iraq would fall into the category of preemptive rather than preventive war. We do not say that the war is justified but simply that it *can* be justified, that a case *can* be made that such an offensive is necessary for the defense of this nation and of others. The government has the right, and indeed the duty to make this case.? We concede that it may be impossible for the government to prove its case beyond a reasonable doubt. We recognize that its decision may be based largely upon intelligence reports that cannot be revealed to the public. We know that there can be honest differences of opinion over the evaluation of evidence. We also know that governments are liable to make cynical use of the rhetoric of self-defense in order to justify wars that are in truth fought for other purposes. We cannot escape the shadows of uncertainty when considering questions of this nature. For example, to cite the case presented by our *sho?el*, we may never know with precision just how close Iraq had come to building a nuclear bomb before Israel?s air force destroyed the reactor at Osirak. All we can say is that *if* the Iraqis were building a bomb there, then Israel was morally justified in attacking the facility in the name of national defense.?

Which brings us to another obvious application of this responsa, to the current situation in Israel. Thursday morning there was another bombing in Jerusalem and more innocent people were killed. It is another example of Palestinian terrorist groups such as Hamas and Islamic Jihad perpetrating deadly attacks on Israeli citizens, and Israel has both retaliated against those attacks and assassinated leaders of those groups in preemptive strikes against terrorist attacks. Nonetheless, the attacks continue and Israel is getting closer to an all-out war with the Palestinians and, most likely, some of its Arab neighbors. We should not be so naive as to imagine that the issues surrounding Iraq and Israel are unrelated. We know from the Gulf War in 1991 that Iraq will not hesitate to attack Israel. Our government must consider that in a war with Iraq we are not just risking the lives of American soldiers and possibly American civilians, but Israelis as well.



I wish I could tell you what the right answer is; I wish I had a crystal ball and could tell you definitively if Saddam Hussein and Iraq pose a real and present threat in the near future. I can't. I can tell you what our tradition says, and what the responsa say, and I can reveal my personal leanings. Torah teaches us that a peaceful resolution should be the ultimate goal of any conflict, that war for political or economic reasons is immoral and that we should be challenging our leaders to prove that this is not the case. But Torah is also tells us that when all offers of peace are rejected and we are attacked or clearly threatened, we have every right to defend ourselves. May the One Who makes peace in the highest heavens grant peace to us, to all Israel, and to all the world.

## Appendix G: Rabbi Dena Feingold, "Profound Ambivalence: Jews and the War with Iraq"

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Shabbat Sermon  
March 21, 2003

### "PROFOUND AMBIVALENCE": JEWS AND THE WAR WITH IRAQ Rabbi Dena Feingold

Now that the long-anticipated or long-dreaded war with Iraq has begun, I want to comment on it by taking us back a week or two when it was all still just theoretical.

I am sure I am not the only person in this room who was shocked and angered last week when Virginia Congressman James P. Moran stated: "If it were not for the strong support of the Jewish community for this war with Iraq, we would not be doing this." After an outcry from the Jewish community, Democrat Moran apologized for his comment. Leaving aside the impression that his comment seem rooted in anti-Semitic attitudes and exaggerated notions about the influence Jews have over the U.S. government, I was bothered by his comments primarily because most of the Jews I have talked with about this war, are *against* it, as am I.

But, the truth of the matter is that Moran's assessment of Jewish attitudes toward the war was wrong--and so was mine. In reality, the Jewish community is not in agreement about this war at all. While many Christian denominations have come out with strong statements opposing the war, no such statement has come out of any of the Jewish streams. In fact, the leader of the Reform Movement, Rabbi Eric Yoffie has characterized the stance of the Jewish community toward war with Iraq as one of "profound ambivalence." The executive director of the Jewish Council for Public Affairs reported, similarly, that after trying to come up with a resolution on Iraq at its national convention, the only thing upon which the delegates of that group were able to come to consensus "was that there is no consensus."

Although, as individuals, some Jews have no ambivalence about where they stand with respect to this war, it is curious that the Jewish community as a whole is so divided. It may be that we are divided about the wisdom of this war because we have different understandings about the purpose of the war. It may boil down to definitions. Do we see this war as a pre-emptive war or as a preventive war?

The terms may sound synonymous, but Jewish scholars have differentiated between pre-emptive strikes and preventive war. Let us look to our Jewish texts to teach us about the different types of war. Then perhaps, we will have a clearer view of why our community has such "profound ambivalence" about the invasion of Iraq. Perhaps this information will enable those who have been ambivalent about the war up to now, to take a stand.

Jewish texts have a great deal to say about war and when it is and is not justifiable. Tonight, I want to share a very simplified version of Jewish teaching on this subject. If you wish to understand the topic more thoroughly, speak to me at the Oneg and I can lead you to an excellent article on the topic.

The rabbis of the Mishnah identified two types of war. *Milchemet mitzvah* (commanded war) and *milchemet reshut* (permitted or discretionary war). (Sotah 8:7, Sanhedrin 1:5) Generally speaking, a commanded war was about conquering and defending the Biblical land of Israel. A permitted war was a war of territorial expansion, undertaken by King David and others. Most scholars agree that both of these types of war applied only to the period of ancient Israel and only to the situation of a Jewish country led by a Jewish king who was advised by a Jewish court or Sanhedrin.

Still, these definitions of war lay out some important distinctions that can be used to evaluate the moral validity of other types of war, including the war in which our nation is now engaged. Since Jewish law recognizes the principle of self-defense, any war that is waged to protect the Jewish people, or any people for that matter, from being attacked is accepted as obligatory in Jewish law today. On the other hand, a war that is waged for the purpose of territorial expansion is considered illegitimate by Jewish law. But what about the current war—a war that falls into neither of these categories?

The Talmud touches on this grey area at one point. In a discussion about types of war, the text tells us:

*Both opinions agree that Joshua's wars of conquest were obligatory and that David's wars of expansion were discretionary. They disagree, however, over the case of a war fought to weaken the Gentiles so that they will not attack. One view calls this mitzvah (commanded) and the other calls it reshut (discretionary). (Sotah 44b)*

This passage refers to a type of war that is a great deal like the war with Iraq: A war fought to weaken another nation so that it will not attack. Notice, that, like the Jewish community and America today, the rabbis not in agreement about whether this type of war was obligatory or merely discretionary. Jewish and American attitudes about the Iraq war seem to fall into these two categories as well: Those who think we have no choice but to fight this war (the obligatory, in favor, camp) and those who think we are choosing to fight a war that it is not really necessary (the discretionary, opposed, camp).

But, to many people this war seems to fall between the extremes. Interestingly, this past summer, the scholars of the Reform Movement identified within this same Talmudic passage a third type of war and related it to the then impending war with Iraq. They wrote:

*In between the wars that we must fight and the wars that we may fight is the type of conflict that we call preventive war, an offensive launched at another nation or nations to forestall the possibility of future attack. (CCAR Responsum 5762.8)*

A preventive war, then, is a “war against nation that might one day pose a threat but does not do so now.” (CCAR Responsum 5762.8) The responsum writers pointed out that in assessing this preventive type of war, the Sages (or the majority of the rabbis) of the Talmud ultimately came down against its being commanded. In Biblical times, they concluded, the King of Israel might have been allowed to fight a preventive war, but in later times, it did not seem justifiable.

As the Reform responsum writers considered the situation with Iraq, they concluded; “IF we perceive a military strike against a nation as a case of preventive war, then the weight of our tradition would counsel against it.” (Ibid)

But that is a big IF. It is not objectively clear that this war can be categorized as merely preventive. Clearly, President Bush and his advisors think otherwise. Like the Bush administration, some of us view the war more as a **pre-emptive strike against an enemy who is poised to attack.**

The Reform responsum writers differentiated a pre-emptive war from a preventive war. Our national leaders have been trying to make the case for a pre-emptive war against Iraq for months. They argue that Iraq has been stockpiling weapons of mass destruction and intends to use them in the near future. Saddam Hussein’s past history of aggression enhances this assertion. Security concerns may prevent our leaders from sharing details of the intelligence they have on this situation, but some of us believe that we should trust the experts--that they would not lead us into a war without good reason. A pre-emptive war of this type can be categorized, in Jewish law, as a war of self-defense, which according to the responsum, “more closely resembles a commanded war than a discretionary one.” The responsum writers classify this type of war as morally justifiable.

These definitions of preventive war versus pre-emptive war give us some insight into why the nation and the Jewish people are so ambivalent about this war. We really do not have clear answers to the questions: Is Saddam Hussein a real, concrete threat to America or other nations? Is he poised to strike? Those who support the current war believe Iraq is poised to attack now. If they are right, then according to Jewish teaching, this is a pre-emptive war, and it is a just and necessary war. But if Saddam Hussein is merely a distant threat, then this is a preventive war and it is not morally justifiable.

This week, I had the opportunity to declare where I stand on this question by signing onto to a statement against the war that was published in the New York Times yesterday. During this entire build up toward the war, I have never heard compelling enough evidence to convince me that Iraq is poised to attack the United States or any other nation at this time. In spite of Saddam’s past record, I see this war as merely preventive and not pre-emptive, and therefore I cannot support it. As much as I would like to see Saddam out of power for many reasons, I cannot justify this war. Therefore, I signed my name, along with hundreds of other Jews to the following statement: ...

I am aware that there are those in the congregation who do not share my view. I am aware that most Israelis do not share my view. And those who are on the other side may be right, and I may be wrong. Only time will tell. Nonetheless, I believe that if we feel strongly about something, we should speak out and act upon our beliefs. That is why next week, I intend to continue my comments on the war by talking about “Patriotism and Protest” as responses to the war.

Let me conclude by offering this rendition of the Oseh Shalom prayer written by Rabbi Arthur Waskow:

*May the One Who makes harmony in the ultimate reaches of the universe teach us to make peace within ourselves, within our communities, among all...the children of Israel, among all the children of Ishmael, and among all who live upon this planet. Oseh Shalom Bimromav, hu ya'aseh shalom aleynu v'al kol Yisrael v'al kol Yishmael v'al kol yoshvey tevel. V'imru, and let us say: Amen.*

## Appendix H: Rabbi Barbara Goldman-Wartell, "Iraq, Sudan and the Ethics of War"

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**Iraq, Sudan and the Ethics of War**  
Rabbi Barbara Goldman-Wartell  
Congregation B'nai Harim, Pocono Pines, PA

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As we assess our own personal ethics during the High Holy Days, it is a fitting time to reflect on the larger ethical issues confronting our nation and our community. This year, we are a nation at war. In our homes, congregations and communities we have discussed the myriad issues and views related to the war in Iraq. Current events have also raised serious questions of ethical behavior in war that are raised by, but go beyond, the situation in Iraq. The situation in Sudan provokes serious consideration of when and how to wage war in defense of one's self and in defense of others.

The first issue for me is the very important conversation about *milchemet hareshut*, discretionary war, and *milchemet mitzvah*, obligatory war, which so impressed me that the rabbis really were looking at the same issues that were being aired on NPR before we entered Iraq and really crystallized the concerns that we had as a country over the potential of waging war. It definitely made clear that our texts are timeless and they teach us every day.

(There is a basic distinction drawn in Biblical and rabbinic literature between two kinds of war: *milchemet mitzvah*, which we can call an "obligatory war," and *milchemet hareshut*, which we might define as an optional, or discretionary war – a war that a state may decide to fight for a variety of interests. )

*Milchemet mitzvah* is understood as a defensive war. Classically, there are three reasons why *milchemet mitzvah* may be fought: The one that remains relevant to us is that you are commanded to fight a war in order to save Israel from enemies who seek to attack her. So a *milchemet mitzvah* is a war of self-defense.

We consider self-defense to be a human need; it's not something that relates only to the Jews. Nor does it relate only to one's own nation. The need to defend an ally, or a nation, or a group of people who lie defenseless in the grip of powerful enemies who seek to destroy them – that too can be a *milchemet mitzvah*, a case of obligatory war, a war of defense.

The immorality of discretionary warfare is another strong element in Judaism. Although, classically the Torah permits the state or a king to fight wars that are not for the purpose of the defense of the nation, the Torah seeks to discourage the king from fighting such

wars, placing very strict limits on their acceptability. The Torah also condemns war while exalting peace.

Given the terribly destructive nature of warfare in the modern world, there is no longer any moral justification – indeed, if there ever was a good moral justification – for discretionary war. That is, although the Torah seems to accept as a fact of life that states will fight wars for reasons other than defensive purposes, the proper moral stance is to condemn such warfare and say it's not an acceptable reason for placing lives and property and peace in jeopardy.

Our next step is to attempt to apply all of this to the current situation – or, at least the situation that was presented to us two years ago. Is the case for war in Iraq morally persuasive enough to declare that this is a justifiable situation, a situation which justifies warfare?

The Reform responsum notes that there is no calculus that can make that decision for us. There's no precise method for determining whether a particular military action is right or wrong; you have to make judgments, you have to measure the factual situation, if we know it, against the principles we have developed for determining the moral acceptability or lack of acceptability of war.

In so doing: First, there is a difference between preventive war and pre-emptive war. A pre-emptive strike is an example of self defense. That is, if you know another nation is threatening you or threatening somebody else, is making preparations to do so – is, let's say, amassing stockpiles of weapons of mass destruction, which have no good purpose except to threaten somebody else – then, going after those weapons would be a justifiable case of self-defense.

That's not preventive war, because preventive war, remember, is fought against somebody who isn't planning to attack you now, but might someday down the line do that. That, we said, was an example of *milchemet hareshut*. *Milchemet mitzvah*, a war of self-defense, can cover pre-emptive strikes. You don't have to wait to be attacked first; in fact, sometimes it is morally the better course of action to hit first, and thereby lessen the damage that the war that would otherwise inevitably come would wind up causing. But I think where we are today, that conversation, whether discretionary war, obligatory war, what this war is all about is somewhat of a futile conversation. We're in a different place. The war is what it is. People are being killed on all sides, and we need to look at it from a homiletical perspective, in saying what does it mean our responsibility is, sitting in our sanctuary on the High Holy Days.

And so I turn first to Eric Yoffie's words, that have very clearly stayed with me about the war, when he said, here in Minneapolis, at the Biennial, "Our government is the first in the history of our country to ask the sons and daughters of working men and women to risk their lives in war while asking the wealthy to pay less in taxes. To our nation's leaders, we say: this is a time to pursue a policy of national unity and social solidarity. This is a time to affirm that we are all in this together."

And for me, I think it really is about taking on the responsibility and the sacrifice of what it means to send our young people to Iraq.

And again, I turn to Golda Meir, who said, "There is no difference between killing and making decisions that will send others to kill. It is exactly the same or worse." We have a responsibility. We're sending these young people out. Now what is our role?

At this point, I believe our role is to be the watchdogs for what happens while we remain there.

Biblical text understands war as chaos. And so does rabbinic text. And so the idea that it is part of the *yetzer hara* – to go into war, there is the sense, both biblically and rabbinically, of putting boundaries on that *yetzer hara* when you're there. And that is very much what we have seen as a major concern for our country. We have seen prisoner abuse. We have seen abuse all over. And now there's a concern for sacred sites. Again, if we can be the watchdogs of what happens.

And for me, it's enlightened self-interest, as well, because when we bring those young men and women home, what is it going to mean for our society when these people come home? And what is going to happen if we allow ourselves to run amok, really, then why do we assume, when they come home, that that will also be boundary-less?

And so we look at our text, and we see that it tells us that **no one, other than ourselves, can be an agent for us, for a sinful act.** So the fact that these people who abuse prisoners are saying that it's someone above them – **Jewish text** doesn't agree with that. **It is your responsibility.** If someone says 'go and kill so-and-so,' you have to say, 'I will not slay them.' That's from *Sanhedrin*.

And it is also from Deuteronomy. If you look at how we are to treat the trees – do not destroy trees, in Deut. 19-20, you see that it's about keeping control of that *yetzer hara*, and what we do in being in Iraq, how we take care of what is there at this point.

You look at *eshet yefat toar*, the captive woman in Deut. 21. There is the sense that when you take somebody, and when you are there on their land, you also give them dignity. And for me, that's very much what we need to encourage our country to do, is to have dignity.

The Deut. 21 text tells that if a person sees a woman and finds her beautiful, then you bring her into the house, and if it's during wartime, you let her take a month to mourn her mother and her father and you can take her as a wife, or you release her again. It is that human dignity that we have to keep control of. That is a very Jewish concept of this war in Iraq.

And now I'm just going to take a few moments to look at Sudan, because I think, again, that obligation, responsibility, and sacrifice is at the foundation, and is our cornerstone, of what the High Holidays are teaching us about all these situations.



The Jew does not stand idly by. There is no other society in the world that prosecutes someone for standing by other than Judaism, for not helping another person in need. It is not something that is prosecuted in our country, or in other countries, but **in Judaism we say, if you don't act, then you are guilty**. That is very much very, very, fundamental.

And so, if you look as we know in the Talmud and *Sanhedrin*, we see that it tells us that if someone is about to kill someone that if you don't stop that person from killing another, even if you kill the potential killer, then you are at fault. So there's the sense that we have to act, we have to move in.

The *Shulchan Aruch*, which is amazing, even goes a little beyond that, and says, even if a person withholds information that could help someone else, he violates Jewish law. It's not only the action itself, but if you have relevant information that you decide to keep to yourself, then you, again, are responsible.

It is even in the sense of protesting – we have to protest. And there is, in the Talmud, the story of Abner and King Saul. Abner, some say, never protested, and so he was punished by shortening his life at King Saul's evil actions. But others say he did protest, but not loud enough, not hard enough. So it's not only that we have to protest, but we have to be persistent, and we have to fight. We need to make sure that we go forward.

Now, the people in Sudan we can perhaps see as captives. And then we move into a whole other category, of what our responsibility to redeem the captive is. I think that when we move there, we see that there is even stronger action to be taken. Again, if you look at Abraham, he needed to redeem Lot, and actually waged war in Sodom, so we see that there's even the potential of acting in war to save – redeem – captives.

In the *Shulchan Aruch*, it says that you can take money that was brought to build the great temple in Jerusalem, and you can use that instead to redeem the captive. So it is, in the strongest sense, that we have a responsibility – not a sense of what is nice. It is our obligation to act.

The captive issue, if we think of the *eshet yefat toar*, that is a good paradigm for the case of prisoners of war. Take a look not just at the Biblical passage in Deut. 21:10-14, but also the midrash – look at Rashi on that text; he summarizes the midrash. What the Torah is saying is that war is hell (the Torah doesn't say that, but I think it believes that), and bad things are going to happen. In fact, the midrash says: "The only reason you're allowed to take this woman as a captive is that you're going to do it anyway." So that the Torah has to allow this, but has to try to regulate it.

The Midrash reads the passage as what the Torah's trying to do is talk you out of it. You don't want to keep this person; you don't want to abuse her for your own needs. Abuse of prisoners happen because prisoners are taken; that's an inevitable result of war. We try to control that; we try to make sure it doesn't happen. On the one hand, we know it's going

to happen, we're not so Pollyanna-ish as to think we can stop it from happening. On the other hand, we have to do everything we can to keep it from happening.

**"Ultimately, history will judge the morality of that action.** In the meantime, we can demand that our leaders do not lie to us; if they cannot tell us everything they know, let them make their case as completely and as honestly as they can. Human beings assume a high moral responsibility when they propose to lead nations into war; let them accept that responsibility with the utmost seriousness."

If we want to think about the question of whether the war in Iraq met the criteria that we tried to develop based upon Jewish source materials for a just and morally acceptable war, I think we would have to measure it against the question of whether the justification for the war was, in fact, true. **We would have to ask ourselves whether those who offered that justification actually believed in it; whether they thought there were weapons; or whether they were using this justification simply as a cover in order to turn a discretionary war into a war of defense.** Because, as we note earlier in that paragraph, that is what nations often do, justifying their military actions with the rhetoric of self-defense.

**Ultimately, we're left with the responsibility of making judgments which are not absolutely obvious.** But I think based upon the source materials, we can talk about whether a particular military action really is carried out in the defense of our own country, the defense of an allied nation, or perhaps in the defense of a group of people living in some other country who, while not of military significance for us, would be the victims of horrendous death and destruction if nobody comes to their aid. Such are examples of obligatory war, in which case, war could be morally justifiable; in other cases, war is much more difficult, if indeed possible, to justify.

First, let's take some of the ideas of the "just war" theory, and apply it to Iraq and Sudan.

First: Almost everyone agrees that there has to be some form of just authority who authorizes the war. In the Jewish context, that meant the approval of the Sanhedrin, Jewish Court, for a non-obligatory war, for a discretionary war. For an obligatory war, the commander-in-chief, the king, was able to make the decision alone. The question is – the way we structured our Congressional decision, I don't think it met that criteria. I don't think the *halachah* or the Sanhedrin would simply give blanket authorization for the king to make the war on the king's own choice somewhere down the road.

Conversely, there are some differences between Christian and Jewish just war theory on a couple of crucial points, one of which is: Christian theory talks about exhausting all alternatives. And one of the reasons Christians have come down so hard on this war is the feeling that we didn't exhaust all alternatives. Jewish law argues for a good-faith effort to reach peace, give the other side a chance to surrender. The *halachic* authorities argue that there have to be three attempts. Others say, one attempt, but you have to wait three days

to see the answers. Others argue for a longer period of time. But the basic idea is that there are limits to that, that you don't have to exhaust all possibilities, and I think one can make an argument

I think an argument can be made that the President met the *halachic* criteria, made a good-faith effort – didn't do a very good job, necessarily – but made a good-faith effort in terms of Colin Powell's presentation at the UN, going back to the UN twice, et cetera.

Third, the idea of proportionality. It is a central idea in Christian just war theory. I don't think it exists in Jewish just war theory. I think in Jewish just war theory, in terms of the rules of war, there are certain targets you can't hit, but ones you can hit, you can hit them as hard as you want, so long as it doesn't spread beyond there to other protected targets.

Fourth, I think our armed forces have been moving in that direction. It is encouraging that debates on the floor of Congress and in the military on just war theory are a growing phenomenon.

I would say also that the notion of imminence is required – whether we're talking about the preventive war as opposed to the pre-emptive strike, or we're talking about the *rodef* (pursuer). In each case, just like in the concept of *pikuach nefesh* (saving a life), the *halachah* demands imminence. It can't be some abstract threat down the road. As in the case of war, the same is true to intervene and stop a *rodef* – there also has to be a threat of imminent danger, in order to invoke the *pikuach nefesh*, there has to be a body before us – it can't be a theoretical aspect.

I would suggest to you, while that cuts one way in terms of saying you really have to have a situation where you're in danger, what we know now, and what, I would argue, we knew back then, makes it very hard to justify in terms of Iraq.

The new changes in technology, I believe, have altered that calculus in the sense that when Israel went after [Iraq's nuclear] reactor [in the early 1980s], it went after it not because they thought the next day there would be a threat, but Israel knew that once it went online, it could not attack it without gravely endangering large segments of the civilian population, which is prohibited under *halachah*, and damaging the environment (another central rule about *tashchit* (not destroying) in the Jewish just war theory that actually doesn't exist at all in Christian just war theory – concern about the ability of the environment and civilian life to renew itself after the war). And with non-conventional weapons, the notion of imminence, I think, has to be thoughtfully redefined. But I don't think that it justifies that redefinition being applied to conventional weapons and conventional thoughts.

The final *halachic* point I would make is a little murky for me. In Christian war rules, there is a rule that requires there has to be a viable chance for success. In my understanding of modern *halachic* writers writing on this, I see that some argue that that's built into the *halachic* system – that you don't do things that have no chance of succeeding, and clearly, that is a determining factor. If you see that as one of the factors,

then the lack of planning for after the war, to really succeed in our goals, really would have undercut a moral decision that this was the time to go to war without having made those preparations.

The *rodef* brings us also to Sudan. In Sudan, as you know, some 50,000 people have died. Now, this is after a civil war in the south that saw the destruction of two million people, and the displacement of nearly 5 million people. That is more than the total number of people destroyed or displaced in Bosnia, Kosovo, and Rwanda put together. It is the worst humanitarian disaster of the last generation. And the world did stand idly by, did turn a blind eye to the blood of their neighbor.

Now, the real focus is on Darfur; 50,000 dead already. The situation is so bleak that the US relief agencies say that if the doors open today, and we can move relief people in unimpeded today, probably at least a quarter of a million, or as many as 350,000, will die in spite of our best efforts – and those doors aren't open.

The systematic, genocidal activity to 'ethnically cleanse' this area of the Black tribes – now, this is Muslim against Muslim; in the south for 20 years, it had been Muslim against Christian and animist, but also lighter-skinned versus darker-skinned tribal groups. Here, the janjaweed militia are the most vicious in terms of wiping out people, filling up wells with bodies and covering them over, systematic rape as a weapon of war, and starvation and hunger and thirst as a weapon of war – cutting off water, letting people simply die of starvation. It is as clear a case I can think for the *rodef* modality of thinking as any in the world today.

But wisdom says if we do calculate chances of success, our unilateral action, while theoretically moral, may be dysfunctional and counterproductive to the very things we want to achieve. And that is why we have been busy. When I say we, I mean a dedicated coalition of Jewish, humanitarian and other faith groups. We met recently with the ambassadors of all the African Union countries, pushing them hard to intervene here, to get relief workers on the ground and send in the troops necessary to protect them. It looks like that might happen.

I will just finally say on Sudan, that it is not as hopeless as it might seem. In the bleakness, the worst moment of the civil war in the south, we persuaded the President to send a high-level personal envoy. He chose John Danforth. And for a year and a half, John Danforth worked, and actually got a peace deal signed in the south. It can be done if the world community wants to do it, but it can't be the United States alone, even if it takes us a year and a half, because we're going to lose a million of our brothers and sisters there, and we simply have to speak out.

I use the term brothers and sisters. Elie Wiesel, in talking about this, talking about the term, do not stand idly by the blood of our neighbor, *re'echa* – not our brothers, *achecha* but our neighbors – tells us the mandate to intervene applies not just when Jews are being hurt, but non-Jews as well, and that seems to me to be an appropriate message to discuss on the High Holidays.

With all due respect to Rush Limbaugh, this is not a case of fraternity pranks. This is something that should not be done. So everything that can be done to make sure that prisoners of whatever gender are not abused by their captors has to be done, even though we know their efforts may not be entirely successful, we have to do what we can.

In the case of the Sudan, Either you think of that as a defensive war, fought on behalf of someone else, or a case of lifesaving, *hatzalah*, in which case you have a resource of Jewish thought that allows you to create an argument for taking action, and now rather than later.

On the issue of the chances of success – that’s a pivotal thing. There are, in the situation of the *rodef*, you don’t intervene if you’re going to lose your life doing it. In other words, you don’t have to lay down your life needlessly, and there actually is a *gamara*, talking about when you enter a war, if you think it’s going to be more than one-sixth casualties, you don’t do that. **There have to be reasonable chances of success.**

I think that most of you know that the Reform movement opened up a box here at the URJ to accept donations, 100% of which will go through two relief operations in Sudan as soon as things begin to gear up a little bit more and we do a cross-section of effective groups so there will be a Jewish presence dealing with a range of different organizations. We’re encouraging people to continue to write letters to senators and congresspeople, to the White House, and to the UN, urging them to keep the pressure on, and to keep doing more, thanking them for the vote on declaring this to be a genocidal situation in Congress, thanking the President for his leadership, but pushing them to do more as well.

” justification of using any funds for redeeming captives in the context of Sudan. Would–argue that our allies should give in to terrorists in Iraq who kidnap citizens with demands that they leave Iraq in return for their lives? What does it mean, ultimately, to redeem captives?

There are two questions here – one is about giving in to the terrorists. I think most people are familiar with the rules about ransoming captives. It is a primary obligation, but you don’t do it if the amount of money would be so high as to stimulate more captive-taking in order to do that. I think that’s directly applicable here. People could certainly make the argument that giving in to terrorists as Israel has made, and America has made, and most of the countries in Iraq have made is that giving into terrorists just encourages more terrorism, and I think that that would be clear.

We choose to read our Torah portion, Leviticus 19, as part of the High Holidays cycle, so you have the text that says “Do not stand idly by the blood of your neighbor.” That’s number one.

Number two, it is a time of *t'shuvah*. And looking back on one of the greatest failures of human history, after we had said "Never Again," the central lesson of our history. Our tradition's not just the *halachah*, it's also the lessons of our history, and "Never Again" was a central one. To have seen Cambodia and Rwanda take place, and southern Sudan, with the world standing idly by, part of the *t'shuvah* of this High Holiday period is for us to re-evaluate that. And then there's the *unetane tokef* prayer. I can't think of anything more appropriate to the Sudan; it could also be applied it to the Iraq situation, but again, the concept of this is "a time where it will be decided who shall live and who shall die. Who at the measure of their days, who before, who by fire, who by water, who by hunger, who by thirst, who by the sword, and by the wild beast." To me, the wild beast can refer to the militias there as well. There is a powerful message of life and death that's really in the core of what we're about.

Again, I want to thank, Mark Washofsky, and David Saperstein, and Marcy Zimmerman, for their presentations.

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Again, thank you, and *Shanah Tovah* to all of you.

**Shabbat Vayigash 5763—Sermon**

*The Jewish View of War and Peace*

December 13, 2002

Rabbi Steven Moskowitz

Jewish Congregation of Brookville

RE-TELL JOSEPH STORY

GEN 37—"THEY CONSPIRED TO KILL HIM"

ONLY REUBEN TRIED TO DEFEND HIM

GEN 44—JUDAH DEFENDS BENJAMIN

וַיֵּגֶשׁ אֵלָיו יְהוֹדָה

AND JUDAH APPROACHED (OR WENT UP; CAME FORWARD; DRAW NEAR)

VAYIGASH IMPLIES TO MAKE WAR—APPROACH TO MAKE WAR

IE II SAMUEL 10:13

וַיֵּגֶשׁ יוֹאָב וְהָעָם אֲשֶׁר עִמּוֹ לְמִלְחָמָה

JOAB AND THE TROOPS WITH HIM MARCHED INTO BATTLE

WHAT IS THE JEWISH VIEW OF WAR?

JUDAISM IS NOT A PACIFIST TRADITION

AS SOME EARLY REFORM RABBIS SUGGEST

THE CCAR RESOLVED AFTER WWI

"WE BELIEVE THAT WAR IS MORALLY INDEFENSIBLE"

JUDAISM ALLOWS FOR WAR

AS WITH ASPECTS OF HUMAN NATURE IT TAKES A REALISTIC ATTITUDE

CF TO FOOD AND SEX

IT DOES NOT SEEK TO LEGISLATE AGAINST WAR

BUT SEEKS TO MAKE IT HOLY

TO MAKE HOLY—TO RAISE SOMETHING UP TO A HIGHER PLANE

BUBER—NOT HOLY AND PROFANE, BUT HOLY AND NOT YET HOLY

IN SHORT—I KNOW PEOPLE AND NATIONS ARE GOING TO MAKE WAR, HOW

CAN I MAKE ITS CONDUCT BETTER AND PERHAPS EVEN HOLY

CF TO MODERN GENEVA CONVENTION

JUDAISM SEEKS TO LEGISLATE THE CONDUCT OF WAR

THERE ARE TWO TYPES OF WAR

MILCHEMET MITZVAH (OR CHOVAH)—OBLIGATORY WAR

MILCHEMET RESHUT—PERMISSABLE WAR

MILCHEMET MITZVAH IN ONLY 2-3 INSTANCES

ACCORDING TO TALMUD SOTAH 44B AND MAIMONIDES MISHNEH TORAH

1. JOSHUA'S WAR OF CONQUEST AGAINST CANAANITE NATIONS

2. CAMPAIGN AGAINST AMALEK

3. WAR OF CLEAR AND IMMEDIATE DEFENSE AGAINST AN ATTACK ALREADY  
LAUNCHED—ACCORDING TO MAIMONIDES

MILCHEMET RESHUT

1. EXPANDING THE BOUNDARIES

2. INCREASING ONE'S POWER OR PRESTIGE

JEWISH LITERATURE ALLOWS FOR WARS FOUGHT ONLY AT THE BEHEST  
OF THE KING (OR QUEEN)

IT SEEKS ONLY TO REGULATE THE CONDUCT OF SUCH A WAR

IT LIMITS WHO MAY FIGHT

IE A BRIDEGROOM IS EXCUSED FROM FIGHTING IN A PERMITTED WAR BUT  
OBLIGATED IF IT IS OBLIGATORY

THE INEVITABLE KILLING AND DESTRUCTION IS MORE SEVERELY  
CURTAILED IN MILCHEMET RESHUT

CENTRAL QUESTION—PREVENTIVE OR PRE-EMPTIVE ATTACK OBLIGATORY  
WAR OR PERMITTED WAR?

JEWISH LITERATURE UNCLEAR

WHY UNCLEAR—RABBIS WRITING WHEN NO JEWISH POWER

DID NOT IMAGINE JEWISH STATE—EXCEPT ONE ESTABLISHED BY GOD IN  
MESSIANIC TIMES

AND CERTAINLY DID NOT MENTION OUR SITUATION—WHERE WE LIVE IN A  
COUNTRY THAT IS NOT JEWISH YET WHERE WE STILL HAVE A VOICE

THE CURRENT SITUATION IS AT BEST MURKY

IS THE IMPENDING WAR WITH IRAQ RESHUT OR MITZVAH?

IT SEEMS CLEAR THAT THE WAR AGAINST AL-QAEDA IS A MILCHEMET  
MITZVAH BUT WHAT OF A WAR AGAINST IRAQ—OR IRAN OR N. KOREA?  
YOU MUST DECIDE—IT IS **NO DOUBT RESHUT** BUT UNCLEAR IF MITZVAH



ONE THING IS CLEAR  
THE DECISION TO GO TO THE UNITED NATIONS WAS CRITICAL  
WHY?—NOT BECAUSE I TRUST OR HAVE FAITH IN THE UN  
BUT BECAUSE JEWISH LAW INSISTS THAT ONE MUST FIRST OFFER TERMS  
OF PEACE BEFORE MAKING WAR  
MAIMONIDES INSISTS THAT EVEN IN THE CASE OF MILCHEMET MITZVAH  
ONE MUST FIRST OFFER TERMS OF PEACE  
DEUTERONOMY 20:10  
WHEN YOU APPROACH A TOWN TO ATTACK IT, YOU SHALL OFFER IT TERMS  
OF PEACE..."

PEACE HAS ALWAYS BEEN THE JEWISH IDEAL  
IN FACT PEACE IS SO IMPORTANT THAT TRUTH CAN BE SACRIFICED FOR  
THE SAKE OF PEACE

ALTHOUGH WAR IS THE REALITY OF BOTH BIBLICAL TIMES AND THE  
PRESENT, IT IS NOT THE IDEAL  
THE IDEAL IS PEACE—SHALOM  
SHALOM IS NOT SIMPLY THE ABSENCE OF WAR—THAT IS MORE APTLY  
TERMED A CEASE-FIRE  
WAR IS NOT A MEANS TO APPROACH GOD—IN THE JEWISH TRADITION IT IS  
NOT HOLY WAR, BUT WARS MADE HOLY  
THE DISTINCTION IS ABSOLUTELY CRUCIAL—WE DON'T HAVE HOLY WARS  
WE FIGHT TO DEFEND OURSELVES OR PROTECT OUR INTERESTS  
WE DO NOT FIGHT IN GOD'S NAME

THIS IS WHY THE GREATEST KING OF ISRAEL IS FORBIDDEN FROM  
BUILDING THE HOLY TEMPLE  
GOD TELLS DAVID: "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." (I CHRONICLES 22:8)  
BLOODSHED—AND EVEN DEFENSIBLE KILLING—IS ANTITHETICAL TO  
BRINGING GOD'S PRESENCE CLOSER TO HUMANITY

WHAT IS GODLY IS SPEAKING FOR PEACE  
THE PROPHET MICAH DECLARED:  
THUS HE WILL JUDGE AMONG THE MANY PEOPLES,  
AND ARBITRATE FOR THE MULTITUDE OF NATIONS,  
HOWEVER DISTANT;  
AND THEY SHALL BEAT THEIR SWORDS INTO PLOWSHARES

AND THEIR SPEARS INTO PRUNING HOOKS.  
NATION SHALL TAKE UP  
SWORD AGAINST NATION;  
THEY SHALL NEVER AGAIN KNOW WAR... (MICAH 4:3)

UNTIL THAT TIME HOWEVER WE MAY NOW AND AGAIN BE REQUIRED TO  
MAKE WAR  
LET US NOT GLORIFY IT OR RELISH THE CONQUEST  
LET US SIMPLY CALL IT WHAT IT IS  
A HORRIBLE REALITY FORCED UPON US  
THAT WE WILL DO OUR BEST TO MAKE AS HOLY AS POSSIBLE  
AND PERHAPS EVEN AS UNNECESSARY AS POSSIBLE  
WHILE ALWAYS PRAYING FOR PEACE

AMEN  
KEIN Y'HI RATZON

PRAYER FOR OUR COUNTRY

SOURCES:  
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PUBLISHED BY CONSERVATIVE MOVEMENT  
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PUBLISHED BY REFORM MOVEMENT

**War**

Rosh Hashanah 5767, 2006

**Rabbi Peter J. Rubinstein**  
**Reform, Central Synagogue, New York**  
**09/23/2006**

Need I say that we Jews abhor war? We Jews especially abhor war because from the beginning we have been sacrificed on the battlefield of national interests. Our weak and elderly were massacred by Amalek when we fled Egypt. Jews were murdered by both the Muslim and Christian armies during the crusades. We suffered in the Czar's army. We were expelled from our homes during this country's Civil War because we weren't trusted to be loyal. And, as we know all too well in our time, we Jews were annihilated in the name of German national purity.

We know war and it never ceases to unsettle us. We enter the Sanctuary this year battered by daily reports of escalating body counts and fallen soldiers in Iraq, increasingly described now as on the brink of civil war. What can be the future of this heartbreaking conflict? And we are worried about Israel, apprehensive that the battles of this past summer may be a harbinger of larger wars to come.

Yes, we are especially unsettled. Though we hold a singular commitment to "seek peace and pursue it" (Psalms 34:14), we are not a pacifist tradition. Even knowing the tragedy and heartbreak of war, we will not turn aside from the battle for justice. We take our place on the front lines of the righteous cause. We are loyal in the battles for human dignity and protection of the weak. We take our stand, as we must, for the protection of life.

But how do we decide when the cause is just, that the battle is merited, that the war is worth our life or anyone's life, our death or anyone's death?

That is the question which occupies us today. So on this Rosh Hashanah, in the midst of our joyful celebration of beginning again, let us briefly reflect on war so that, whatever our opinions about Iraq or Israel may be, our principles and our actions bespeak Jewish values.

First, from the Torah:

- Whenever Israel goes to war, the Torah decrees, every Israelite is commanded to be in battle. No one stays home.
- The Torah teaches that wanton destruction of life and property must be prevented. In fact even the life of an enemy is sacred.
- Moreover, the Torah also teaches that, before Israel goes to war, it must first offer peace.

In the 12th century, Maimonides, commenting on the Torah section on war, expounded three fundamental moral principles about war.

1. First, there is a difference between a *milchemet rashut*, the "voluntary" or "discretionary war," and the *milchemet mitzvah*, the "commanded" or "defensive" war.

A *milchemet mitzvah*, the commanded or the defensive war, is fought in direct response to an attack. It is a military retaliation when the security of our people or nation is threatened. The Bible refers to a war against Amalek as a *milchemet mitzvah*, an "obligatory" war. Amalek was an especially despicable enemy who singled out the weak and stragglers for annihilation (Deut. 25:17-19). Any war fought in immediate defense of Israel the people or the nation is an obligatory war. And by extension, I suggest that any war fought in immediate defense against an attack on this nation would be considered an obligatory war.

A *milchemet rashut*, a voluntary war, was not for self-defense or immediate protection. Voluntary wars were not fought to destroy an attacking army but were launched by a king or a leader for territorial expansion or the extension of national hegemony. Voluntary wars, according to our tradition, better served the reputation or self-interest of the king than the welfare of the people.

The great King David was forbidden to build the holy Temple because the wars he led were voluntary wars and he had irresponsibly spilled the blood of his countrymen. God considered David's behavior reprehensible.

Maimonides affirms that voluntary wars were permissible but morally repugnant while defensive wars were obligatory and principled.

2. Secondly, Maimonides endorses the Biblical understanding that every Israelite must fight when the people go to war. While there were some exemptions, allowing people in specific situations to walk away from fighting in a voluntary conflict, all eligible Israelites were commanded to stand in the front lines in a defensive war. The Mishnah says that everyone, man and woman, go to the battle "even the bridegroom out of his chamber and the bride from under the Chuppah." (Sotah 8.7)

When the cause was just, said Maimonides, the entire citizenry should support it with their own flesh and blood. No one sent others. They went themselves. Loyal citizens mobilize in partisan defense of their people or their nation when they are committed to the cause for which their nation is fighting.

By inference, the question we should ask ourselves about any war is whether we would go. Would we fight the battle with our own lives in the balance, or the lives of our children or our grandchildren? No one chooses to die on the battlefield, but people will go to battle when they feel threatened or are passionate about a war's

justification. Citizens will fight to protect themselves and their families and their homeland. Maimonides insinuates that people vote on the righteousness of a war with their personal military service. When endangered, people step forward. When ambivalent, they don't.

3. Thirdly, Maimonides asserts that the thrust towards peace must be the goal prior to, during, and after any war. Peace must be pursued with all available means, energy and purpose.

"Prior to attacking a town," the Torah requires, "you must offer terms for peace." Maimonides reminds us, "When Joshua conquered the land of Israel, which had been promised, he sent the Canaanite nations who dwelt there three letters urging them not to fight, but to accept peace and avoid the loss of life." (*Hilchot Melachim* 6.5) And he further adds that "sensitivity to human life....must be present even in war. A Jewish army is not permitted to surround an enemy on all four sides. Those who want to run away must be permitted to do so," thereby preventing the unnecessary loss of life. (*Hilchot Melachim* 6.7)

On these holy days, we apply this long -defended Jewish tradition to the wars in Iraq and Israel. We ask these questions:

1. Are these a *milchemet mitzvah*, defensive wars? Are these wars fought against an attacking enemy? Are we, here in America, or there in Israel, in imminent danger of armies massed on our borders or pointing their rockets at us? Is this a war against an immediate threat?
2. Is it a war about which we care so much that we would put ourselves or our children or grandchildren on the front line?
3. Is it a war that offers a hint of amelioration, negotiation, hope or peace? Is it leading to a better world or a better time?

Good people, very good people may answer these questions differently.

From the very beginning, a national debate about Iraq has raged as to whether the war should ever have been fought. For some of us in this sanctuary, the almost 2700 United States service men and women who have died on the streets of Baghdad and in the alley ways of Fallujah are the price we must pay, and the over 6000 violent Iraqi civilian deaths, recorded in July and August alone, are the price the Iraqis must pay, for the birthing of democracy. For others of us in this sanctuary, the thousands of young American service men and women who will carry their wounds of battle for the rest of their lives are sad, but necessary martyrs in a preemptive strike against terrorists who would otherwise be massacring us. And, for others in this nation, the Iraqi conflict is a shameful national catastrophe.

We knew that terrorists had launched a war against us. September 11th, the still gaping wound where the World Trade Center stood, the constant reminders at airport security, regular police presence in front of our own synagogue remind us that there are terrorists

who hunger to hurt us. We need to respond with vigilance, intelligence and firm national will and even force when and where it is proper.

Applying Maimonides first principle to this war, it didn't make sense to many Americans that Iraq was the proper battlefield against terrorism, that it was from Iraq that terror attacks were being launched or formulated. For them the Iraqi war is not a *milchemet mitzvah*. On the other hand, for those who do believe that our presence in Iraq is effectively disabling terrorists, then of course, this is a proper war, most definitely a *milchemet mitzvah*. Each of us needs to decide.

As to Maimonides second principle regarding compulsory conscription, most of us in this sanctuary will, thankfully, not know death in the Iraqi war. For the most part, it is not our sons and daughters who will be torn from the fabric of our family life. We are not the ones who are volunteering as soldiers or marines to search for roadside bombs or, failing to find them, be shredded to pieces. In fact, because there is no military draft and no feeling of shared sacrifice on the battlefield, protests against the war in Iraq are muted and most Americans will need not bury a child killed in action.

We ask ourselves, does the measure of personal service as a gauge support this war? According to our tradition, you know best about war by your instinct as to whether you would personally go to battle.

And, even if our answer is "No, this is not a war I support, not a cause for which I would fight," nevertheless we deeply honor those who have gone to battle. We mourn those service men and women who have died in action. By reading their names every week, we take them as our own in saying *Kaddish*.

What about the war in Israel this summer? About this one there was never any debate in Israel whether it should be fought. Israel responded to an armed incursion across its northern border, the killing of its soldiers and the capture of others, a constant rocket barrage on its northern cities and settlements, and the threat of more rocket attacks deeper into its heartland. It was, in every way, a *milchemet mitzvah*, a defensive war against immediate aggression. It was and remains a war for survival. Israelis were of one mind.

Additionally, since every young man and woman does military service in Israel, since reserve duty is required of every citizen through middle age, every Israeli family knows what death is. No Israeli faltered. Troops were called up and they went. Men left their wives and children. Women left their families and parents. The battle was pitched. Armaments were mustered. Israelis died - in battle and at home. No one in Israel is exempt from trauma and pain and loss. But Israel had enough. It went to war with one mind and one heart.

The survival of the Jewish state is at stake; this is a battle worth fighting for. None of us can shrink from that battle. In this war, we are all on the front line. I will talk about this next week.

In the meantime, today we focus on the Torah and on Maimonides' third instruction: that war, brutal and murderous as it is, must thrust towards hope and peace.

Recently I read a book by Vali Nasr, *The Shia Revival*, a substantial perspective on the struggling Middle East. I commend it to you. Nasr theorizes that many of the military and terrorist eruptions around the world stem from an internecine struggle within Islam itself, a struggle between Shia and Sunni that has spanned nigh on 14 centuries. Nasr conjectures that "The lesson of Iraq is that trying to force a future of its liking will hasten the advent of those outcomes that the United States most wishes to avoid." (250)

Nasr concludes that we must contend "with the reality of sectarian rivalries and understand what motivates them..." And then go "beyond them in the pursuit of common goals." (p.253)

"In the pursuit of common goals"...that is a great hope, a hope that nations will speak to enemies as Israel has set out to do by tiptoeing toward conversation across battle lines. I believe that, in this wild time of confusion, when spasms of evil shatter the bedrock of decency and the rhythm of life, I believe that now when our children's future is belittled by the misery of those who would eradicate us, that especially now we best find room for vision. Now we must rise from the mire of hopelessness.

So, yes, despite the mood of crisis and the fear in our hearts, I choose to be hopeful; no matter the morass that Iraq and Iran and other Arab Islamic states have presented, I choose to be hopeful.

I personally will act out of hope and ask you to join me in this congregation's search for partners in frank dialogue, not only with the moderate Muslim leaders with whom we have talked, including the wonderful imam of the mosque down the street and others. No, we need to pursue meetings with those Muslim leaders in the city who so far turn away from meeting with us and who uphold political positions we oppose. It will be formidable but we do not withdraw from the challenge.

Let us deal with those who aim to hurt us. And at the same time let us learn about those who don't know us. Let us speak to those who acknowledge us. Let us uncover intelligent alternatives to ineffective force. Let us understand for what the downtrodden in other countries yearn and why they are convulsing. Let us imagine speaking to those who say they despise us but who cannot live without us. Let us use our power for good. It is the character of this nation, and the noble hunger of every man and woman.

I believe passionately in the state of Israel. I believe passionately in the United States and the values upon which this nation is founded. We will stand firm with Israel. We will stand firm as United States citizens. And it is time for us to measure our wars, time to find ways to search first for peace. Now is time for us to commit to this vision. It most certainly is time for hope.

So we have work to do - acting on vision and hope takes work.

Yet, there is no other way for each of us to survive. The year awaits us. The world awaits us. So let us get on with it. May God help us be strong!



## Going to War

January 24, 2003 - 22 Shevat 5763  
Congregation Beth El - Missouri City, Texas  
Rabbi Avi M. Schulman

I was a young man when I first experienced war. Twenty-nine years ago I was in my third year in college, spending my junior year abroad at the Hebrew University of Jerusalem. In the summer of 1974 I lived in a dorm on the Mt. Scopus campus of Hebrew U. Mt. Scopus has a commanding view overlooking Jerusalem, and many a late afternoon I would watch the sun set over the city, turning the entire landscape into a shimmering vision of gold.

The dorms on Mt. Scopus were relatively small and comfortable, divided into floors of ten rooms each. In the summer of 1974 I shared a dorm room with another student from the University of California. Next door to us were Israelis and, in fact, each floor was evenly divided between students from abroad and Israel. We shared the same bathrooms and cooked our meals on the stoves, but clearly there was a vast difference between the Americans and Israelis. We Americans were young; 19 and 20 year olds; book smart yet relatively inexperienced in life. In contrast the Israeli students were older; most Israelis our own age were doing their compulsory service in Tzahal -- the Armed Forces of Israel.

In July of 1974 we American Jews lived side-by-side with our Israeli cousins. We were united by faith, but the divide in our experience was vast. For all of my Israeli dorm mates had recently fought in a war. The Yom Kippur War had erupted just nine months before. In October of 1973 the combined forces of Egypt and Syria had staged a surprise attack on Israel on the holiest day of the Jewish year. Israeli intelligence had failed the government of Golda Meir. With the element of surprise on their side, Egyptian forces in the south overwhelmed Israeli troops in the Sinai. In the north Syrian tanks rolled down the Golan Heights headed toward Jewish settlements in the Galilee. Israeli soldiers fought with incredible bravery. Stories are told of outposts of Israeli soldiers fighting to the last man defending their posts; of a single Israeli tank holding off a battalion of Syrian opponents. The late Prime Minister of Israel, Chaim Herzog, recorded these

stirring accounts in his book The War of Atonement.

I heard such stories firsthand that summer of 1974. My Israeli dorm mates all had fought in the Yom Kippur War. Night after night we sat in the main area of our floor. Sprawled on couches, sipping coffee or tea, these Israeli student soldiers told their tales - not of their own bravery, but of their friends and comrades, many of whom had died fighting the enemy. There was a hollow look in their eyes as they spoke. The faces of their dead friends loomed before them. Survivor guilt gnawed at their souls. They spoke haltingly about what they faced in combat -- of rockets fired past their tanks, of bullets whistling by their ears. These images haunted them, especially at night. There was no vanity in the voices of my Israeli dorm mates in the summer of 1974. Only the need to talk, to get it out, to talk, and try to move past the horror of combat.

And I, an American Jew of 19-years-old, listened and listened, trying to draw out of my Israeli friends their tales of terror until they and I both reached the point of exhaustion. I learned then what I know now. That war is hell. I heard secondhand what every soldier who has seen combat knows first hand, that war is horror and chaos and bloodshed and violence.

Our faith does not glorify war. Neither Abraham's wars against the four kings (Gn. 14); or Jacob's struggle against the Amorites (Gn. 48.22) or Joshua's conquest of the Land of Israel are celebrated in Judaism. Only wars for our very survival -- against the genocidal decree of Haman as recorded in the Book of Esther; or against the Syrian forces of Antiochus as accounted in the book of Maccabees are enshrined in Jewish holidays. In our own day and age we rejoice that Israel triumphed in its War of Independence, fought in 1948 against seven Arab nations so that the nascent state of Israel might live.

Wars of Survival are deemed Milchamot Mitzvot in Judaism. Wars of Self Defense are obligatory; mandated by God that we might exist. The Yom Kippur War of 1973 was also a Milchemet Mitzvah; a war of survival, fought against implacable enemies who wished to kill Jews and destroy the Jewish state.

The concept of a war for self-defense is comprehensible by most civilized people. Defending the physical welfare of your family, your friends, your city, your nation justifies going to war. A willingness to die so that the ideals of freedom and democracy may flourish justifies making a supreme sacrifice.

At this moment there is every indication that the United States of America is going to war against Iraq. The signs all point in that direction --

the deployment of soldiers from the US and the massive build-up of troops in the Middle East indicate to many that in the next four weeks US forces will be unleashed against Saddam Hussein's army.

I have no doubt in the overwhelming superiority of our Armed Services, or in their bravery and courage. I trust that comprehensive plans have been developed by Secretary of Defense, Donald Rumsfeld, and head of US Central Command, General Tommy Franks, to conduct a quick, decisive war against Iraq.

But I ask myself, why? Is it a war of self-defense? Only in the most abstract sense can we say that Iraq threatens Americans or our way of life. Is it because Saddam possesses weapons of mass destruction? Months of examination by United Nations weapons inspectors have not told us anything new -- Saddam possesses biological and chemical weapons though almost certainly not nuclear weapons. We already knew this -- and there is little reason to believe that there is any so called "smoking gun," testifying to a new threat that Saddam has developed.

Are we going to war because Iraq refuses to comply with United Nations sanctions? Clearly Iraq is not in compliance with the UN, and most of our European allies with the exception of Great Britain deserve criticism for their unwillingness to force Saddam to comply. But when did the United States become the Cop of the World? When did the US seek to unilaterally impose its will on other nations? What justifies the radical shift in United States foreign policy from fighting wars of self-defense, or to defend democracy, to launching a war to compel another country to comply with an international treaty? When did we forsake fighting wars when our own way of life is at stake and instead be willing to stage preemptive attacks on another country because of a presumed threat?

There are too many questions and suspicions that have remained unanswered about this potential war. To my mind, the President of the United States has not made a compelling case to the American people for war against Iraq. It is resoundingly clear that our government has not convinced our allies of the necessity for this war. The administration's foreign policy expertise is not aided by its own inconsistency. Our aggressive stance with Iraq stands in stark contrast to the administration's waffling passivity to the real nuclear threat posed by North Korea.

In his State of the Union address a year ago, the President linked North Korea and Iraq along with Iran as representing an Axis of Evil. The President's moral clarity is commendable, yet he has not clearly laid out the case of why now, at this time, the USA is justified in going to war against one

of the three countries on this Axis. There is suspicion about the President's personal agenda. Is his real motivation that as the son of the 41st president he is determined to finish what his father did not do in the Persian Gulf War in 1991-- depose Saddam? Or is it even more personal -- since Saddam tried to kill his daddy, he wants to kill Saddam.

Or it is quite possible to go in a completely different direction. There is the suspicion that this war really has nothing to do with Saddam per se and everything to do with global economic and political interests. Many suspect that a war against Iraq is about establishing American hegemony in the Middle East, insuring the steady supply of Iraqi oil, and providing in a post war occupied Iraq, a base for American imperialist interests.

Looking back ten years ago, was the Persian Gulf War really about liberating Kuwait or about protecting our supply of oil from the Middle East? A combination of both, to some extent. So too today, a mixture of high falutin' ideas are floated for public consumption, yet in this year of 2003 the reasons for America going to war are more suspect.

Is Saddam evil? Yes. Is he crazy? Most likely. Is he a murderer? Undoubtedly. Will he deploy chemical or biological weapons if directly under attack. Most likely. Is he a threat to our way of life? I don't think so. Is he a threat to our allies, including Israel? Most certainly, though some Israeli analysts I have read are not convinced that at this time the US should go to war.

Should the United States of America go to war against Iraq?

I am, honestly, divided on this question. Three months ago I was 50 - 50 on this issue. But at this moment, I am more like 80 - 20, with the greater side of me opposed to the war than for it.

Undoubtedly the issue is debatable and there are those here who will agree or disagree with me. But know this, all of us who are adults in this congregation tonight bear a communal responsibility for what is about to occur. As American citizens we are ultimately responsible for the actions of our government which should be for the people and by the people.

No one knows what lies ahead if the United States goes to war. But I know this, when the war has ended, there will be young men and women who survive the combat. And many of them will resemble the Israeli soldiers I encountered nearly thirty years ago. Late at night they will be unable to rest. They will lie awake, staring out into space, recounting the horrors they witnessed. They will remember their comrades bravery, they will recall the faces of those who perished beside them, and they will struggle to give meaning to the bloodshed and violence in which they have taken part.

The prophet Isaiah envisioned a world in which nation would not lift up sword against nation, *Lo Yissa Goy el Goy Cherev*. Nor would nations practice war anymore, *Lo Yilmadu Od Milchama*. May God enable us to see that day, when the world will be just and all people will live in peace.

Amen.

**The Ethics of War**

*Erev Shabbat-Erev Rosh HaShanah/1 Tishrei 5767*

Friday, September 22, 2006

Rabbi Jonathan Stein

Five years ago, on *Erev Rosh HaShanah* 5762, I stood before you for the 1st time. We gathered in the shadow of September 11th. Five years. So much has changed in the world around us and in our own congregation. And yet the still-unfolding aftermath of 9/11 draws our attention again and again and again to the Middle East—Afghanistan, Iraq, Iran, Israel, Lebanon---a shifting yet constant and seemingly never-ending cycle of fighting, some of it waged on the battlefield, some on civilian territory, some by way of words and arguments, too much by way of bloodshed, suffering and death.

The recent outburst of fighting between Israel and two of her sworn enemies—Hezbollah and Hamas—has resurfaced public discussion about issues related to questions on the so-called 'ethics of war,' an exquisitely oxymoronic phrase. Both Israel and Hezbollah have been accused of 'war crimes'. Hezbollah has been charged with hiding behind innocent Lebanese and purposely if randomly targeting Israeli civilians with their indiscriminate rocket attacks. Israel has been condemned for violating a tenet called 'proportionality' and with causing unnecessary damage due to the necessity to strike Hezbollah through Lebanon's civilian population and infrastructure. And both the Iraqi insurgents and our American armed forces have also been charged with unethical behavior. The insurgent's use of suicide bombers and the random killing of innocents are under attack and we Americans stand indicted for Abu Graib, Guantanamo, and our not-quite-so-secret prison camps; some of our soldiers will stand trial for rape and murders that evoke memories of My Lai.

We Jews are no strangers to war and its difficulties, and despite the long centuries of pacifism that characterized our people in Central and Eastern Europe, we have fought many wars throughout the centuries. Abraham saved his nephew Lot and conquered an occupying army. Our Israelite ancestors defeated the Amalekites immediately after the Exodus from Egypt and other enemies as well during our 40 years of wandering in the desert. Joshua led the conquest of the Promised Land against the Canaanites. The Judges protected our people in battle against the Philistines. The kings of Israel and Judah fought various enemies in order to defend and sometimes to expand their territory. The Maccabean revolt in the middle of the 2nd century BCE, the rebellion in the year 70 CE, and the Bar Kochba revolution in 132 were struggles against Greek and Roman oppression. Untold numbers of Jews fought and died trying to ward off the all-too-frequent attacks on Jewish villages and ghettos throughout the Middle Ages. And in our

own time we have witnessed the uprisings in the Nazi camps and resistance in the ghettos, most notably Warsaw. And of course the armies of Israel fought in '48, '56, '67, '73, and '82 and in the on-going struggle against terrorism over the past two decades and especially the past few years. War is neither a new nor a theoretical issue for our people.

In traditional Jewish thought, there are two types of legitimate wars. One is called *Milchemet Mitzvah*, 'a commanded war' or a *Milchemet Chovah*, 'an obligatory war.' According to Maimonides (*Hilchot Melachim* 5:1), there are 3 situations that fall under this category. The first is the *Torah's mitzvah*, God's direct commandment, to conquer and destroy the seven nations of Canaan as part of Jewish rights to the Promised Land. Because these seven Biblical nations no longer exist, this *mitzvah*, Maimonides says, is no longer operative. The second category of an obligatory war is based on God's command in Deuteronomy (25:19) to fight and destroy the nation of Amalek. Since Maimonides does not state in his treatise that the Amalekites are extinct, at least in his day, it is presumed that this *mitzvah* is still operative. Because the Amalekites attacked our ancestors from the rear where the women and children and aged and sick were straggling, they earned the eternal enmity of our people. Ever since then we have considered all the enemies of our people to have descended from Amalek. The book of Esther even specifies that Haman (boo!) was an Amalekite.

The third category of an obligatory war is fighting a defensive war when the Jewish nation is threatened. This category is based on the general moral notion of not only the permissibility, but also the responsibility of self-defense. Self-defense is a moral obligation in Jewish thinking because the infinite worth of each human being includes, of course, oneself, one's family and community. Not to defend oneself is to act as if our own life is not as valuable or worthy as the life of our attacker.

And what is the definition of a Jewish war of self-defense? For Maimonides, it is the imperative to assist any Jew anywhere who is threatened or in trouble. Nachmanides (*Sefer Mitzvot*), in his list of *mitzvot*, holds that the capture of any part of the land of Israel is automatically considered *Milchemet Mitzvah*, a commanded war. According to tradition, a Jewish king or leader may fight such a war immediately without consultation and without prior community approval. The *Shulchan Aruch* (*Orach Chaim* 329:6 and *Ramah* commentary), the greatest medieval code of Jewish law, teaches that even a preemptive strike that anticipates an imminent attack by an enemy can be considered an act of self-defense. *Mishnah Berurah* (comment #15 on above) argues that even information that comes via word-of-mouth than an attack against you is impending is considered sufficient evidence for a preemptive strike provided that the information is from a trustworthy source.

The 2<sup>nd</sup> type of legitimate war in traditional Jewish thought is called *Milchemet Reshut*, literally 'a war of permission'. This is a war fought for the specific purpose of enlarging the borders of Israel beyond those designated in the Bible. To fight a *Milchemet Reshut*, a king or Jewish leader must first get the approval of the *Sanhedrin*, the High Court of 71 judges, who must debate and formally approve the war. Thus no Jewish leader can fight an expansionary war on his own without the explicit support of the

community. In addition, the soldiers who fight in a *Milchemet Reshut* must be volunteers; they cannot be conscripted against their will.

In order to fully understand the Jewish approach to war, we must also take note of the *halachic* or Jewish legal notion of a *rodef*, a person who is pursuing you with the intent to cause you harm. According to Jewish law if a *rodef* is pursuing you, you must engage in self-defense to prevent the *rodef* from hurting you. However the *halachah* likewise forbids the use of excessive force against a *rodef*, and cautions that a person who causes more injury to such a pursuer than is necessary may be liable for legal penalties. It is important to emphasize the notion put forth here by Jewish law: even under the stress of having to defend oneself, the sanctity of every human life is affirmed, most especially the life of the one under attack, but even the life of one's enemy.

In general, then, war is permitted in Judaism, but only under certain specific conditions. And even when necessary, there are other laws and values that one must adhere to. For example there are draft exemptions for men in various life situations. On the assumption that one will be killed in battle and therefore not able to atone for the killing of the enemy, the *Torah* commands that every person eligible to fight must offer an anticipatory sacrifice to atone for the sin of killing even before going off to war. In addition, the environment is to be protected during battle; most notably, trees must be spared. And terms for peace must be sincerely offered and seriously considered before any attack may commence.

Finally, the tradition also reminds us never to rejoice at the downfall of an enemy. Of course a soldier can be happy that the fighting is over and his life has been spared, but one may not celebrate the death of the foe. This is reflected in the custom of diminishing our wine by 10 drops at Passover and in the famous *Midrash* where God chastises our people for celebrating after the Egyptian armies perished in the Red Sea. God says, "My children are dying and you sing songs of rejoicing?" Judaism affirms that even though war is sometimes necessary or even a *mitzvah*, it may be waged only for the right purpose, with proper preparation and intention, and with sensitive implementation.

For me, the application of these principles is fairly straightforward in the case of Israel. Israel is clearly in a war of self-defense even if not one against one of the 7 Canaanite nations or the Amalekites (depending on whom you talk to). Her obligation to try to minimize damage is also clear, and we, her fellow Jews, are likewise obliged to hold her to that standard.

For 6 years, since her withdrawal from Southern Lebanon, Israel has suffered and endured continuing attacks from Hezbollah while the legitimate government of Lebanon, indeed the international community, did nothing. To kill Israelis, Hezbollah contemptuously hides behind women and children, just as it deliberately dug bunkers in the crowded suburbs of Beirut. In 2002, a Hezbollah team infiltrated a kibbutz, fired on a school bus and killed six children--and who called for a cease-fire then?



Many in the Muslim world cynically see a no-lose situation: either the rockets would be successfully fired into Northern Israel or, if Israel attacked the rocket installations, the world would condemn them. The human shield strategy is the most despicable possible exploitation of civilians and of international law. The calculus is simple: launch a rocket from within a civilian population; if you kill Jews that's a victory. If the Jews hit back and in so doing kill Lebanese civilians, that's a victory. If they don't hit back because they're afraid to hit civilians, that's a victory.

Who truly doubts the responsibility of a government to defend its citizens? No country would tolerate missiles being fired at its cities. Who would doubt the US response if rockets came across our Mexican border or if Canadian forces killed and kidnapped Americans on US soil?

Professor Alan Dershowitz recently pointed out that "an analogy to domestic criminal law is instructive: a bank robber who takes a teller hostage and fires at police from behind his human shield is guilty of murder if they, in an effort to stop the robber from shooting, accidentally kills the hostage. The same should be true of terrorists who use civilians as shields from behind whom they fire their rockets. The terrorists must be held legally and morally responsible for the deaths of the civilians even if the direct physical cause was an Israel rocket aimed at those targeting Israeli citizens."

It is categorically true that any and all civilian casualties are tragic but in Lebanon they are the direct consequence of the way the terrorists hide their rockets in private residences and pay rent to conceal their launchers. Hezbollah fired indiscriminately at civilians in Northern Israel; Israel fired at their headquarters and outposts. There is a substantial moral difference between those two objectives.

As concerns our own country, I gave a sermon in early February 2003, just before our invasion of Iraq, and argued that, based on the evidence of weapons of mass destruction and the threat of a pre-emptive strike, the attack on Iraq could be justified using traditional Jewish principles. As the truth of the situation has emerged, however, it has become clear that these two rationales are no longer justifiable. In Jewish terms, the war in Iraq has changed from being a *Milchemet Chovah*, a war that could be thought of as mandatory, to a *Milchemet Reshut*, a war that needs permission.

Still, it is impossible for us to abandon our American troops, including, now, a young man with whom I celebrated *Bar Mitzvah* and Confirmation in San Diego. And so I have hesitated to publicly withdraw my support for the war even as I have been as frustrated and disgusted as have many of you. But several weeks ago a small news item in the New York Times caught my eye and led me to change my mind. Some of you who attended our *Erev Shabbat* worship this summer in the Raisler Room will remember.

The dateline is August 22 and the headline reads "Marines May Call Up 2,500 Reservists for Involuntary Service." The first sentence of the article said that the Marines "can no longer find enough volunteers to fill (its needs)." Until now the Marines have relied on volunteers, but now some call-ups will be mandatory.

With this act, I am convinced that President Bush has in effect lost the consent of the country. If our volunteer armed forces cannot attract enough recruits to fulfill our country's commitments, then something is wrong with those commitments. Remember that a *Milchemet Reshut*, a war that needs permission, needs the permission of both the people's representatives (in our case, Congress) as well as volunteer soldiers, not involuntary conscripts. With the institution of this compulsory service, I add my voice to those who hope that we will withdraw our troops from Iraq soon and that we turn over the governance and security of that country to its own citizens even if we have not completed the job to the satisfaction of all. The advantage of a timetable and a deadline is that it would give the Iraqi government a goal that will prove its staying power...or not.

Yes, even war has its ethical challenges and moral dilemmas, and I believe that our Jewish tradition offers us significant and insightful ways of looking at the world we live in. Unfortunately I'm afraid that we will continue to discuss the Iraq war in the coming weeks, months and, sadly, even years. And we all know that the fight for our Jewish state is a long-term battle.

And that's why I ask you to help me end this sermon with our prayer for peace:

עושה שלום במרומיו הוא יעשה שלום עלינו ועל כל ישראל ואמרו אמן.

"May the One who makes peace in the heavens above help us make peace on our earth below, peace for Israel and for all humanity." And let us say together: *Amen*.

## Appendix M: Rabbi Jonathan Stein, "Jewish Perspectives on War (with the Palestinians and with Iraq)"

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### Jewish Perspectives on War (with the Palestinians and with Iraq)

Rabbi Jonathan A. Stein

August 23, 2002/16 Elul 5762

War has been very much on the minds and hearts of our world in recent days. The war against terrorism, the war between Israel and the Palestinians and, of course, the possibility of war between America and Iraq. Given how much our world has changed in less than a year, tonight I'd like to explore with you the notion of war in the Jewish tradition and to see how we might apply some of the principles that Judaism has developed over the millennia as our people have faced a variety of enemies.

For Judaism, life is our highest value and each human life has the infinite value of an entire world. Logically one would think that Judaism should oppose any type of war. However this would make Jews, and all peoples, vulnerable to those who choose to settle disputes through violence with no chance of self-defense. For this reason Judaism has, with various reservations and limitations, affirmed the tragic reality that sometimes war is not only inevitable but also necessary.

We Jews have fought many wars throughout the centuries. Abraham saved his nephew Lot and defeated an occupying army. Our ancestors defeated the Amalekites immediately after the Exodus from Egypt and other enemies during our 40 years of wandering. Joshua led the conquest of the Promised Land. The Judges protected the people in battle. Many of the kings of Israel and Judah fought to protect and sometimes expand their territory. The Maccabean revolt in the middle of the 2<sup>nd</sup> century BCE, the rebellion against the Romans in the year 70 CE, and Bar Kochba revolution in 132 are other examples. In our own time we have witnessed the uprisings in the Nazi camps and in several ghettos, most notably Warsaw. And of course the armies of Israel fought in 1948, 1956, 1967, 1973, and 1982 and in the on-going struggles of the past two decades.

There are two types of legitimate wars in Jewish thought. One is called a *Milchemet Reshut* (literally 'a war of permission'). This is a war fought to enlarge the borders of Israel beyond those designated in the Bible. In a non-obligatory war, the king or Jewish leader must first get the approval of the *Sanhedrin*, the High Court of 71 judges, who must debate and approve the war. Thus no Jewish leader can fight this type of expansionary war on his own.

The other type of legitimate war is called *Milchemet Mitzvah*, 'a commanded war' or a *Milchemet Chovah*, 'an obligatory war.' According to Maimonides (*Hilchot Melachim* 5:1), there are 3 categories of obligatory war. The first is the *mitzvah*, the commandment to destroy or conquer the 7 nations of Canaan as part of Jewish rights to the Promised Land. Because these 7 Biblical nations no longer exist, this *mitzvah*, he says, is no longer operative. The second category of an obligatory war is based on God's command in Deuteronomy (25:19) to fight and destroy the nation of Amalek. Since Maimonides does not state in his treatise that the Amalekites are extinct, at least in his day, it is presumed that this *mitzvah* is still operative.

The third category is fighting a defensive war when the Jewish nation is threatened. This category is based on the general notion of not only the permissibility but also the responsibility of self-defense. What is the definition of a Jewish war of self-defense? Helping any Jew anywhere that is threatened or in trouble is considered a defensive war. The *Shulchan Aruch* (*Orach Chaim* 329:6 and *Ramah* commentary), the greatest medieval code of Jewish law, says that even a pre-emptive attack, merely anticipating an upcoming attack by an enemy, can be considered an act of self-defense. *Mishnah Berurah* (comment #15 on above) argues that information that comes via word-of-mouth that an attack is impending is considered sufficient evidence for a preemptive strike provided that the information is from a trustworthy source. Nachmanides (*Sefer Mitzvot*), in his list of *mitzvot* not covered by Maimonides, holds that any capture of any part of the land of Israel is automatically considered *Milchemet Mitzvah*, an obligatory war. According to tradition, a Jewish king or leader can fight such a war immediately without consulting anyone.

We must also take note of the Jewish legal notion of a *rodef*, a person who is pursuing you with the intent to cause you harm. According to Jewish law one must engage in self-defense to prevent the pursuer from hurting you. However the *halachah* also forbids the use of excessive force and cautions that a person who causes more injury to the *rodef* than is necessary may be liable for legal penalties. While it may be virtually impossible to know how to judge such situations, many of which require split-second decision-making subject to criticism after-the-fact, it is important to recognize the important principle upheld here by Jewish law: even in the stressful times of defending oneself, the sanctity of every human life is affirmed.

Thus war is permitted in Judaism, but under limited conditions. And even when permitted, there are many laws and values that must be adhered to while fighting. For example there are several draft exemptions for men in various life situations; a person eligible to fight must offer a sacrifice in anticipation of killing before going off to war; one must offer terms of peace before attacking; the environment is to be protected; and terms for peace must be sincerely offered before an attack may begin.

The tradition also reminds Jews not to rejoice at the downfall of an enemy. Of course a soldier can be happy that the fighting is over and his life has been spared but one may not celebrate the death of the foe. This is reflected in the custom of diminishing our wine by 10 drops at Passover and in the famous *Midrash* where God chastises the people for celebrating after the Egyptian armies perished in the parting of the Red Sea. God says, "My children are dying and you sing songs of rejoicing?" Like most actions, Judaism affirms that sometimes war is necessary or even good, but only in the correct time and place, and only for the right purpose.

How can we apply these principles to the various situations that we are currently facing in our world today?

It strikes me as very difficult to argue that either Israel or the United States has the moral right to engage in a *Milchemet Reshut*, an optional war intended to expand our territory, or even our influence. We live in a different age than did our ancestors and international standards of proper relations between nations with recognized borders precludes the purposeful taking of another country's territory for its own sake. And, of course, you also need to get permission to fight this type of war. This is proving to be

most difficult for both President Bush and Prime Minister Sharon in both the court of public opinion and the legislatures of our respective countries.

I do believe, however, that one can make a legitimate Jewish argument that the concept of *Milchemet Mitzvah*, an obligatory war, and specifically the responsibility to engage in self-defense could be applied the situation between Israel and the Palestinians, and in the U.S. war on terrorism. One might even argue that the tradition would affirm a preemptive strike as self-defense by the U.S. against Iraq if it can be proven that there is sufficient trustworthy evidence that an Iraqi attack against the U.S. or Israel is planned or impending. Like Israel's 1982 decision to preemptively destroy that Iraqi nuclear facility, now embraced as a visionary and necessary strike, Judaism's understanding of an obligatory war could arguable affirm such an approach.

I also believe that a good case can be made drawing on the principle of the *rodef*. The 9/11 terrorist attacks on American soil, the on-going public threats to America and Israel by terrorists, the continuing homicide-suicide bombers in Israel---all of these can be interpreted as enemies pursuing us with the expressed desire to cause us harm. In that case, self-defense is clearly a *mitzvah*.

Unfortunately, there are those in both Israel and the United States who would like to use the Amalek argument to justify their position. In Israel one actually hears talk and sermons that portray Arafat as a contemporary Amalek and too many in the Bush administration try to use the same scare tactic concerning Sadaam Hussein. Despite the fact that Maimonides left this question open, personal grudges or vendettas or the politically expedient desire to demonize another person or society should never be considered, in and of themselves, sufficient grounds for initiating a war.

In the book of Psalms (29:11), the warrior King David writes "God gives his people strength and also blesses them with peace." At first glance this text doesn't seem to make sense. Normally strength or power is given in order to fight. However here the meaning of the verse is that power can also be used as a deterrent. This is, in the mind of Judaism, an ideal: to have the power and potential to fight but to never have to use it. Military power can be, ironically, the very means by which we can achieve peace. Unfortunately, we live in a world where we are too often forced, against our will and best judgment, to recognize this fact.

David's son King Solomon, in the book of Ecclesiastes, follows his famous phrase "a time for war" with "and a time for peace." Sadly we live in a time of war. May the time of peace come soon.

Amen.

*"War, What Is It Good For?"*

Delivered by Rabbi Leonard B. Troupp, D.D.

Temple Beth David, Commack, NY (Rabbi Emeritus)

Rosh Hashannah, 5765

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Late morning, Wednesday, May 6, I was sitting with a group of my rabbinic classmates on the great lawn of the Hebrew Union College campus in Cincinnati. We were discussing the events of the last four days. Alison Krause, Jeffrey Miller, Sandra Scheuer, William Schroeder: A Kaddish list of American students killed at Kent State by the Ohio State National Guard. Killed because students were protesting the widening of the Vietnamese War.

Dr. Nelson Glueck, our Rabbi and President, came walking towards us. A tall, powerful man, he was an archeologist, an intelligence officer in the Middle East during the second World War and possibly after. He was later rumored to be the model from which Indiana Jones was created. He commanded nothing but respect. Dr. Glueck sat down on the lawn with us. Though he could sit comfortably in makeshift camps in the Nabatean wilderness, in his suit on the lawn he seemed awkward — as if the "generation gap" was unbridgeable. But, I felt he honestly wanted to hear what we had to say. We were students in our mid-twenties. We knew nothing about *realpolitik* and didn't care. We were animated by the words of the prophets, Isaiah and Micah, to "turn our swords into ploughshares and our spears into pruning-hooks." With prophetic zeal, known in those days as "radicalization," we were intent. Like other schools already, we were going to shut down our school in protest. Dr. Glueck wanted to keep our school open. We listened to his arguments. His faculty was divided on the question. But we were not. There was no other way. Hebrew Union College-Jewish Institute of Religion, training ground for the future rabbis of the Reform Movement, would be shut down to protest the war and the killing of students on American soil. And we were not alone. Campus after college campus across the nation shut down in protest.

There were many anti-war songs. But there was one over the next three months which became our anthem. By the end of August it was number one on the charts and sold more than three million copies. (Play music) "War, what is it good for? Absolutely nothing." We sang it. We marched to it. We, student-rabbis, draft-counseled to it. We believed it. "War, what is it good for? Absolutely nothing." The lyrics spoke to the radicalized population of America including many who are sitting here this morning: "WAR! I despise, 'cos it means destruction of innocent lives, War means tears to thousands of mother's eyes, When their sons gone to fight and lose their lives . . . Life is much too short and precious to spend fighting wars these days. War can't give life, it can only take it away! Peace love 'n' understanding then tell me, Is there no place for them today?"

They say we must fight to keep our freedom, But Lord knows there's got to be a better way."

Over thirty years later, in the run-up to the war in Iraq, there were some protestors. Some were left over radicals from the Sixties and Seventies; some just hated George W. Bush and anything he might do and thought he was a liar besides. But those protests were meager by the standard of the Seventies. The President, the Congress were taking America into war against Saddam Hussein and, in large measure, we were with them. I was with them. And so I said. On the Sabbath after the war in Iraq began, I stood on this bimah, not in protest; not singing the lyrics despising war. To the contrary, I stood on this bimah, firmly in support of the war, firmly in support of our President: a Republican President, a President for whom I did not vote, a President with whom, in most other respects, I did not politically agree, a President I did not like.

Preparing for that sermon, I wondered what had become of the young radical rooted in the prophetic hope of "turning swords into ploughshares"? Wasn't there a better way to keep our freedom than fighting? Wasn't there a place for peace, love, and understanding?

I suppose over the years I have come to the realistic conclusion that peace is not just the absence of war. I have come to the unhappy conclusion that sometimes peace can only be secured by fighting a war, sometimes only through the sacrifice of lost lives. It doesn't mean that I have abandoned the messianic hope of such a peace in which the lion would lie down with the lamb. But it does mean that until that great day comes, we will sometimes have to fight and kill and destroy to rid evil from our midst. As we entered this war, I believed this was one of those times it was necessary to rid evil from our midst.

And what was that evil? Saddam and his two sons were vicious, immoral, reprehensible human beings. They had repressed and murdered their own people, often in grotesque and inhumane ways. Saddam used poison gas as easily as bullets and gunships — on his own people and on other people and nations in misguided wars of adventure. He ground his people down into poverty and a meager existence, while he and his family lived in multiple grand palaces on purloined funds and the graft of his own government and the connivance of U.N. ministers. But was this enough to wage a war? Unfortunately, there are too many countries in the world filled with evil leaders. Too many leaders who will sacrifice their own people for power and greed and hatred. Look at Kosovo, Rwanda, Sudan.

Yet there was one further evil with Saddam Hussein: his ability to pursue the development and acquisition of weapons of mass destruction, and his proven, evil ability to use them! This was an evil danger not only to his own people and the people and nations of his region, including Israel, but in the aftermath of September eleventh, Saddam's access to these horrific weapons were too horrendous to consider.

But did I believe President Bush and his claims about Saddam Hussein? I had a tendency not to. Because of the broken promises of his campaign, his failure of compromise further

preventing Republicans and Democrats from working together, his domestic views, his truculence particularly as a minority President. I just don't like him. But I also wanted to give him the benefit of the doubt. After September eleventh we were a nation under attack. I certainly supported him pursuing the Taliban in Afghanistan. I endorsed his pursuit of terrorists, even as I was dismayed over the threats to our liberty by John Ashcroft. And even if I was uncertain about Bush, I believed Colin Powell, I believed in our intelligence estimates. I believed also because I trusted in Congressional oversight. Given all this, I felt I had to give President Bush the benefit of the doubt and support the invasion. Europe, as always, was weak-kneed, too willing to accommodate, always willing to endure the slaughter of innocents, corrupt capitalists who would sell nuclear secrets and nuclear fuel and put themselves and the world at risk. I supported President Bush in taking unilateral action.

And now, with the discovery that there were no weapons of mass destruction, with the evident, all-but-total failure of our intelligence services, with the complete lack of pre-war planning for post-war administration, with the incontrovertible and certain knowledge that the planning for this war against Saddam was already in the minds of the President and his advisors from the first day after September eleventh, if not before, what shall I say to you now?

There are many liberal, Democratic voices today who say, "If I knew then, what I know now, I would not have supported the invasion of Iraq." Even included among those voices is the famed Conservative, William F. Buckley, Jr. There are some liberal, Democratic voices today who say, "Even if Hussein was developing weapons of mass destruction, I would not have supported the invasion of Iraq." And included among those voices are Neocons Paul Schroeder, Francis Fukuyama, and Pat Buchanan who said, "The Conservative movement has been hijacked and turned into a globalist, interventionist, open borders ideology, which is not the Conservative movement I grew up with."

Democrats and Republicans, especially during this election period, will argue over whether President Bush dragged us into a war which was nothing more than the opportunity to right his father's wrongs. They will argue about whether President Bush and his administration was incompetent in anticipating the events of September eleventh. They will argue about whether President Bush diverted the resources necessary to capture Bin Ladin and destroy Al-Qaeda by beginning the war against Hussein. They will argue to what extent President Bush contributed to the "intelligence failures." They will argue over how President Bush has treated our allies. They will argue whether President Bush adequately prepared for the period after the military victory, a period during which already more than one thousand U.S. forces have been killed. And upon these evaluations, perhaps the election in November will be decided as you and I answer these questions.

But I believe there are deeper, and more importantly profound, moral issues which will face our President, whether that President will be Kerry or Bush. One issue is whether



and under what conditions we may go to war with another nation or entity? Another issue is, what is America's world role as the remaining superpower?

I am a member of the Central Conference of American Rabbis' Responsa Committee. Periodically we receive questions about Jewish law and observance. In November 2002 we received the following question from a fellow rabbi: "Does our tradition countenance preemptive military action when there is suspicion, but no *prima facie* evidence exists, that a perceived enemy will attack?"

Our answer, called a *responsa*, properly did not address whether it was advisable for the United States to attack Iraq. But it did look to understand what our tradition might have to say about the waging of war.

Our tradition notes two kinds of war: "commanded war" and "discretionary war." A "commanded war" is a war of self-defense. It acknowledges the right that any people have to defend itself against armed attack. A "discretionary war" could be fought to enlarge territory or enhance the power or status of a king. Though our tradition permitted a "discretionary war," the tradition also made it extremely difficult to accomplish. While our tradition permitted a "discretionary war," it did not advocate such a war.

But what about the "preemptive war" and the "preventive war" of which our questioner asked? A "preemptive war" was considered a "commanded war" because there was a clear and present danger that the enemy was about to attack, imminently threatening national security and that there was no purpose in waiting for the inevitable and immediate attack to occur. Such were the circumstances of the Israeli preemptive attack against Egypt in 1967.

On the other hand, our tradition did not support a "preventive war." A "preventive war" is one which is initiated against a nation that poses no immediate clear and present danger, but might pose a real future threat. Such a war is not considered defensive. It is considered by our tradition a "discretionary war" and discouraged.

In the various discussions of our committee which led to our *Responsa*, I argued a different point of view. I argued that the dangers of nuclear proliferation, the relative ease of building and delivering weapons of mass destruction, and the imminent and real dangers posed by rogue nations, evil leaders, and world-wide terrorist organizations who might possess weapons of mass destruction required that we should expand Jewish law by making necessary their preemptive destruction simply by the fact of their existence alone, not the immediacy of their use.

Not surprisingly, my view was not accepted by the members of the *Responsa* Committee, nor by the weight of International Law, Christian views of the just war, liberals, neocons, nor *The New York Times*. In fact the only people who seem to agree with my position are Bush and Chaney.

The confines of time for this sermon do not permit me to address every objection, but let me note a few. One objection begins with a form of Kant's Categorical Imperative: "What if every nation did that?" Why can't any nation claim that an enemy and its leader are evil, have hostile intentions and are attempting to arm themselves with weapons of mass destruction which they might use at some future time and attack them?" Another objection begins with the charge of the imperialism: "Who gave America the right to be the policeman of the world; do we want the United States to be the country that strikes first whenever there is a problem in the world; who gave America the right to deny other sovereign nations the right to possess weapons of mass destruction? The third objection is based on charges of cynicism and hubris: "Do you really think the United States is that noble; do you think the United States is really that competent; do you think the leadership of the United States is that wise and incapable of error and miscalculation in planning and operations?" And if these serious, well-taken objections were not enough, we could also ask about the easy dismissal of our allies and the United Nations. It is not difficult to come up with objections to tinkering with a system of international relations which has been in place for more than two thousand years and with some semblance of success. I am sure you can add your own objections to the list I have assembled.

But my response to the objection of the categorical imperative is "Osirak." In 1981 Israel destroyed Iraq's Osirak nuclear weapons facility. Some estimates thought Iraq would have a usable nuclear weapon in a year or two. But most other estimates believed it would more likely be five to ten years. Menachem Begin was fearful that the Labor Party might win an upcoming election and engage in endless diplomacy with Iraq through the French. In the meanwhile Hussein would have completed constructing a nuclear weapon which would have placed Israel in an untenable situation. Begin decided to act and the Osirak nuclear weapons facility was destroyed. There was world-wide condemnation of Israel at the time. But I would ask this question: are you not happier that Israel took preventive — not preemptive — action, which, at the time, was a clear violation of international law and the Jewish tradition? Could you imagine the result of a nuclear-armed Iraq invading Kuwait? What would we have done? What would that region look like today? And if Iraq developed nuclear weapons, there is little doubt that Egypt and Saudi Arabia would be forced, in reaction, to develop them as well. And imagine a nuclear armed Saudi Arabia. Who might control that country in the probable palace intrigues that will take place after eighty-year-old Crown Prince Abdullah's death? The faction who supports Osama bin Ladin? Nuclear proliferation and the growing availability of other poor man's weapons of mass destruction are not a distant threat. I believe they are a clear and present danger. Menachem Begin believed that and though the world complained, the world slept better.

In discussing America's role as the only remaining superpower with you Rosh Hashannah morning, 1991, I suggested that in the post Cold War world, we faced three major crises: "the increased possibilities of regional wars, the threat inherent in nuclear proliferation, and the continued strengthening of democracy." I suggested that "[e]ven if we are forced into a policeman role in the world, that is a responsibility I believe we must accept. It is the price of winning the Cold War. To the extent that we can involve other

countries and the United Nations in resolving regional wars, all the better. But if we cannot, we must still be responsible. . . . “

I believe now, as I did then, America, as the remaining superpower, must take responsibility for preventing the further proliferation of nuclear weapons and other weapons of mass destruction — not always militarily, but militarily if necessary. A proliferating world is many times more dangerous than was the danger inherent with two great nuclear superpowers. At least we had the counterintuitive, but successful, doctrine of Mutually Assured Destruction to keep fingers off the nuclear button. But in a proliferating world, there will be too many fingers on too many buttons. The argument goes that this is certainly an imperialist notion. I can have the bomb, but you can't. And I suppose, at bottom, it is an imperialist position.

There is no doubt, it makes me uncomfortable. My liberal underpinnings resent the implicit unfairness of my position. Why should America or Israel have the bomb, but no one else? Well, in a perfect world of sovereign nations they should not. But this is not a perfect world. And when I deal with issues of imperfection, I ask myself this question. “If I am going to make an error, which human beings are prone to do, which error should I make?

Should I acknowledge that every nation has an equal and inalienable sovereign right to make nuclear weapons and other weapons of mass destruction and make the error of permitting the world to become infinitely more dangerous and, certainly, American cities far more exposed to horrific destruction thereby? Or should I acknowledge that the proliferation of nuclear and other weapons of mass destruction are too horrific to countenance in this world and make the error that not all nations will be equally sovereign and that the United States will bear a greater and, necessarily imperialistic, responsibility? Which error do you prefer to make? Which error do you prefer a future President Bush or a future President Kerry to make? Either one as President will be forced to make one of these errors.

I may be biased, but even in an asymmetrical world, in general I don't view the United States as a threat to anybody else's security. Well, whoa there Rabbi! What about Iraq? Talk about making errors: Hussein was certainly an evil despot, but there were no weapons of mass destruction. Didn't we get an awful lot of things wrong? Yes, we did, which brings us to the third objection: cynicism and hubris. Are we about to let the United States go out into the world as a bull in a china shop? Just look at what we got wrong here. We picked the wrong country. If we had to go on this adventure, shouldn't it have been Iran? Our intelligence was a colossal failure. What evidence is there that we can rely on our intelligence services or Congressional oversight? Both are turf conscious, seeming to care more about perks than protecting our homeland.

And our hubris. We act as if we know what's right for the world and we will force it down their throats whether they like it or not. How can we say that nations should not acquire nuclear weapons and other weapons of mass destruction when President Bush

pushes for a new generation of nuclear bunker-buster bombs which lowers the bar for nuclear use?

I do not deny the real problems of America in trying to wield its great power wisely, intelligently, or morally. Iraq will stand as a glaring symbol for the next few years as a testament to our hubris and our errors and miscalculations and failures of judgment and glaring imperfections of leadership. But these are not systemic issues. They are issues of responsibility for our leadership. It is not inevitable that our leaders must act with hubris. It is not inevitable that our leaders will wield America's powers immorally, without wisdom or intelligence. We have had brilliant leadership in the past. We need only look to the Cuban Missile Crisis or before that to the post-war reconstruction of Europe and Japan. We can have such leadership in the future. But these are not only issues for the leadership of our country, but also for us, its citizenry. The questions of leadership must be addressed as we go into the privacy of the voting booth: which presidential candidate, which congressional candidates, can we trust to lead our country wisely, intelligently, and morally so that we are not a threat to the security of peace-loving nations? You and I cannot abdicate that responsibility. That is why, as part of my Yom Kippur sermon, I intend to address the question of how we should vote in the Presidential election.

I believe the world has become categorically different than it was before September Eleventh. I believe we are now forced to think differently about how we, especially the United States, must act in the world. I have preached today a view which aches my heart. In my heart I hear the beat of the song: War, what is it good for? I still hear in my heart the radical, prophetic hope and promise of Isaiah:

"And they shall beat their swords into plowshares, and their spears into pruning hooks; nation shall not lift up sword against nation, nor shall they learn war any more."

But I know that time is not yet. And so with aching heart, I offer as my prayer for this new year the prayer we recited with the Torah in our arms:

"We pray for all who hold positions of leadership and responsibility in our national life. Let Your blessing rest upon them, and make them responsive to Your will, so that our nation may be to the world an example of justice and compassion. . . . Cause us to see clearly that the well-being of our nation is in the hands of all its citizens; imbue us with zeal for the cause of liberty in our own land and in all lands; and help us always to keep our homes safe from affliction, strife, and war. Amen."

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They say that "the more things change, the more they stay the same." Lately I've been having those nagging feelings of *deja vu*. So I went back to my file of sermons. I looked things I wrote in the autumn of 1990 and the winter of 1991 - the weeks leading up to and during the Gulf War. And I learned, to my distress and to my sadness, that "the more things change, the more they stay the same." In 1990 and 1991 I shared with you a possible Jewish response to the ethical questions raised by our country's increased military presence (and subsequent military engagement) in the Persian Gulf region. I looked a little further, and I found how true it is that "history repeats itself." In February of 1998 I shared similar thoughts with you - as President Clinton was contemplating military action against Iraq. Now, once again, our country's leadership is looking toward war. And now, once again, I feel compelled to suggest to you that Jewish teachings about war can guide our analysis of the news and perhaps inspire our thinking and actions.

But before I begin let me be clear about one thing: There is no question in my mind that Saddam Hussein is legally wrong and morally bankrupt. That, in and of itself, however, is neither a necessary nor a sufficient motivation for a military response on our part.

As our President talks about launching an attack against Iraq, I think that it is instructive to look at Jewish teaching about war. In Jewish law wars are classified into two categories. This first is *milchemet hova* also called *milchemet mitzvah* - obligatory war. The second is *milchemet r'shut* - optional war.

Tradition teaches that there are three types of conflict that are considered *milchemet hova or milchemet mitzvah* - obligatory/commanded war: 1) a war to conquer the seven Canaanite nations thereby securing the land of Israel for the Jewish people; 2) a war against Amalek - the tribe that brutally and repeatedly attacked the Israelites during their forty year sojourn in the wilderness; 3) a war of national self-defense and survival, when the nation is under attack. A *milchemet hova* could be declared unilaterally by the King and every Israelite was obligated to fight in such a war.

Tradition teaches that there are two types of conflict that are considered *milchemet r'shut* - optional/discretionary war: 1) a war waged by the King

to extend the borders of Israel and to enhance his greatness and reputation;  
2) a preventative war against those who might someday attack Israel. A *milchemet r'shut* may not be declared unilaterally by the King. Rather he must obtain the *r'shut*, the permission/consent of the Sanhedrin. What's more, not every Israelite was obliged to fight in a *milchemet r'shut*.

It is helpful and instructive to apply these categorical distinctions from our Jewish tradition to our country's current involvement and potential war with Iraq by asking: Into which category would this year's war fall? Shall we say that it would be a *milchemet hova* an obligatory war? If so, we would then ask of what type? Clearly it would not be a war that would directly threaten the physical borders of the United States. It would not be a war of national self-defense wherein our borders are under attack. It also could not be a war to conquer the seven nations in order to secure the Land of Israel. Those nations were conquered long ago and have not existed for centuries. But shall we say that Mr. Bush's war against Saddam Hussein could be considered analogous to a war against Amalek? In Deuteronomy Chapter 25 we read:

*Zachor et asher asah lecha Amalek* Remember what Amalek did to you on your journey, after you left Egypt - how, undeterred by fear of God, he surprised you on the march, when you were famished and weary, and cut down all the stragglers in your rear. Therefore, when the Lord your God grants you safety from all your enemies around

you, in the land that the Lord your God is giving you as a hereditary portion, you shall blot out the memory of Amalek from under the heaven. Do not forget!

Jewish tradition over the years has transformed Amalek from a person or a single tribe into the personification of evil. Haman was an Amalekite. Hitler is called an Amalekite. Amalek is so evil that he doesn't play by the rules. Amalek is so evil that he is "undeterred by the fear of God." Amalek is so evil, so demonized, that he is considered inhuman. And so, wiping out an Amalekite is not the same as murdering a fellow human being; not as bad as murdering a fellow human being.

Now it seems that our President and his advisors seek to cast Saddam Hussein as a modern day Amalek. They have characterized him as a "madman," as a "Hitler." They say that, "The American way of life is at stake!" which is another way of saying that Hussein, like Amalek, plays "dirty," and doesn't "play by the rules."

As I said before, I am not trying to advocate Saddam Hussein's position or to favor his side even a little bit. But he is a human being. And he does play by rules - his rules. And while his rules are not the same as our rules, maybe if we took the time to understand him and the rules in his part of the world - we might be able to formulate a more reasonable and more



promising course of action to pursue - one that might point us toward peace, instead of toward war. Saddam Hussein is wrong; he is out of line; he is in violation of international law; he regularly offends our sense of common decency . . . but he is not Amalek. And we should expect our leaders not to stoop to the level of name calling, demonizing, and drawing macho lines in the sand. We should expect them, instead, to turn their energy to real leadership, to real diplomacy, to the waging of peace.

If and when the President begins this war it will not be a *milchemet hova* an obligatory war. It will not be a *milchemet mitzvah* a war fulfilling God's commandment. It will be a *milchemet r'shut* a voluntary war, an optional war. We might say: a war of discretion (or better yet, a war of indiscretion). It would be a war not of self-defense, but a war to extend our boundaries, not literally but in terms of spheres of influence.

Jewish tradition requires the King to seek the permission and consent of the Sanhedrin before engaging in a *milchemet r'shut* an optional/discretionary war. President Bush has been given the approval and support of the Congress but has indicated that he seeks the approval and support of the entire American people as well. In my judgment, he has yet to make a convincing case. First, there is no question that many Americans harbor the nagging perception that the Administration is preparing for war against Iraq as a way of distracting attention from the administration's domestic

problems. I cannot say whether that notion is true or false. But I can say that the fact that many people believe it suggests that the President has yet to make a persuasive case that war is necessary. Second, it is clear that over the past 10 years or so, since the end of the Gulf war, Saddam Hussein has regularly been in violation of international law, as well as the specific agreements the he, himself, signed. It is clear that Saddam has repeatedly flouted UN resolutions and repeatedly deceived or barred UN weapons inspectors. So why now? What has made Hussein's compliance more urgent now than six months ago or two years ago or five years ago, or three years hence? The administration has yet to demonstrate why the situation is so urgent that the United States must go to war, now.

On November 28, 1984, then Secretary of Defense Casper Weinberger outlined a number of criteria which should be fulfilled before the United States commits to offensive military attacks overseas. While these are not law, our President and his cabinet would do well to consider them and to hold off firing the first missile until they are fulfilled. Among Weinberger's criteria are:

1. The United States should not commit forces to combat overseas unless the particular engagement is deemed vital to our national interest;
2. Before the U.S. commits combat forces abroad, there must be some reasonable assurance we will have the support of the American

people and their elected representatives in Congress;

3. The commitment of U.S. forces to combat should be a last resort.

My friends, it is not yet time for that last resort. I am gravely concerned that the case for war is, at best, weak; that the motives of the administration are suspect; and that the prospect of war is exceedingly dangerous. It is not at all clear that a military intervention at this time will in fact make the world a safer place. It seems just as likely to lead to a more unstable, less safe world.

We must demand of our President and his cabinet and his advisors that they try harder. We must let them know that they do not have a broad consensus in favor of war. We must remind them of the ultimate failure of President Bush's Gulf war 1991. We must tell them that we know: that even if the war that they are threatening were to be "successful" (whatever that could mean) the cost of such military success is too high in dollars; the cost is too high in terms of the damage it could do to our standing among the nations of the world; and the cost is especially too high in lives of soldiers and lives of civilians.

Rather we should encourage each and every one of our leaders to be like Aaron, *ohev shalom v'rodef shalom* to be lovers and pursuers of peace. Because everything depends on it.

And we should pray that the One who makes peace in the heights will also soon send peace to the entire Middle East and to the entire world. *Oseh shalom bimromav hu ya'aseh shalom aleinu v'al kol Yisrael, v'imru AMEN.*

**Resolution on the War in Iraq 2007**  
**Union for Reform Judaism**  
**Executive Committee**  
**March 12, 21007**

**I. Introduction**

Fourteen months ago, the Union for Reform Judaism adopted its 2005 Resolution on the War in Iraq. In the Resolution, which was brought to the 2005 Biennial Convention by member congregations, we spoke out on the war because the prophetic tradition, so central to Judaism, calls on us to address the great moral issues of our day. And no issue raises more urgent and challenging moral considerations for our nations (even while affecting particular Jewish concerns from the war on terrorism, to stability in the broader Middle East region to Israel's security and well being) than does the war in Iraq.

Since that Resolution was adopted, over a year of escalating violence, death, and civil strife has ensued. The Iraq Study Group (Baker/Hamilton) Report and more recent testimony by military and policy experts in front of the U.S. Senate Committee on Foreign Relations has revealed additional concerns about the strategic implications and effectiveness of the war in its declared objective to combat terrorism.<sup>1</sup> And the American public has made its dissatisfaction over the war felt through the ballot box.

**II. The 2005 Resolution on the War in Iraq**

The Union for Reform Judaism's 2005 Resolution on Iraq called on the United States Government to take several actions including "some withdrawal of troops [that] should begin after the completion of the parliamentary elections [December 2005] with the continuation as soon as possible, in a way that maintains stability in the nation and empowers Iraqi forces to provide for their national security." The 2005 resolution urged President Bush to provide a "clear exit strategy to the American public." None of these recommendations have been fulfilled. We did not, at that time, call for immediate withdrawal of U.S. troops to be completed by a given time, intending to give the Administration and the military maximum flexibility in devising expeditiously an exit strategy. Since then, there has been no reduction in U.S. troop numbers in Iraq, with the current level at approximately 135,000. To the contrary, on January 10, 2007, President Bush announced the deployment of over 20,000 additional troops to Iraq. Neither has the President provided a

<sup>1</sup> The Iraq Study Group Report, [http://www.usip.org/isg/iraq\\_study\\_group\\_report/report/1206/index.html](http://www.usip.org/isg/iraq_study_group_report/report/1206/index.html).  
Dr. Zbigniew Brzezinski, Former National Security Advisor. Testimony to the U.S. Senate Committee on Foreign Relations, February 1, 2007. <http://foreign.senate.gov/testimony/2007/BrzezinskiTestimony070201.pdf>  
Statement of Richard N. Haas, President, Council on Foreign Relations, to the U.S. Senate on Foreign Relations. January 17, 2007. <http://foreign.senate.gov/testimony/2007/HaassTestimony070117.pdf>

plan for withdrawal or an exit strategy that our nation and our troops deserve. This escalation seems difficult to reconcile with our resolution, particularly when that escalation is not set within the context of a clearly specified exit strategy. Further, as the months drag on and the death toll rises, it seems increasingly clear that a specific exit strategy will not be set forth without a specific timetable.

### III. Jewish Values Regarding Rules for War

The Jewish tradition offers guidance for us in our deliberations. It offers ethical analysis as to the causes justifying the use of force ("just cause"), the authority to wage war ("right authority"), and the "just means" for fighting war. A number of considerations animate our decisions:

1. The tradition distinguishes between two basic types of war: *milchemet mitzrah*/*milchemet chova* (obligatory wars including wars of self-defense) and *milchemet reshut* (wars of permission such as offensive wars – and, most Jewish authorities would hold, preemptive wars). Wars of permission, which the Iraq war would be categorized as, have stricter requirements in terms of right authority and just means.

2. "Just cause" includes the protection of innocent people, a criterion drawn from the individual obligation to intervene to protect those who are being pursued by evildoers. (Lev. 19:16: "Do not stand idly by the blood of your neighbor;" BT Sanhedrin 74a, Baba Kama 28a, Shulchan Aruch Hoshen Mishpat 425:1) Our URJ executive committee meeting in 2002 (the first Union body to consider the proposed war against Iraq) believed the effort to remove Saddam Hussein met "just cause" criteria. This was one of the most brutal dictators of the 20<sup>th</sup> century. He held power through the massive oppression of his people, engaging in widespread systematic human rights abuses. He had sought the development of non-conventional weapons and actually used them against his own people. The chilling tapes, released in court in early January 2007, of Saddam's conversations with top advisors in which he callously and explicitly calls on his commanders to use chemical weapons against his own civilians in the most devastating manner possible, affirms this. He attacked neighboring countries without cause. He lobbed missiles at Israeli population centers in the first Gulf War, when Israel was not a combatant and paid money to the families of Palestinian terrorists.

Nonetheless, just because a government has a right to do something does not make what it does right – or wise. Further, meeting one just war norm does not justify the violation of others.

3. The halachah suggests that a preemptive war against those intending to do you harm, if there is evidence of imminent threats, is justifiable. (BT, Sotah 44b, Eruvin 45a) The clear evidence of the 9/11 Commission

that Saddam was not close to developing or obtaining nuclear or biological weapons, that his chemical weapon capacity was almost entirely eliminated, and that he did not cooperate with Al Qaeda in attacks on the U.S., mitigates any arguments of imminence.

4. While an obligatory war can be declared by the King alone, a *milchemet reshut* (permissible war) must be approved by the Sanhedrin --- the legislative cum judicial branch of the Jewish government. This model of cooperative decision-making, balanced between the various branches of government, led the URJ in 2002 to support congressional efforts to require the President to come back to the Congress for approval before actually deploying troops. It argues as well for vigorous and effective Congressional oversight of the way the war has been prosecuted (called for in our 2005 resolution), something that has been woefully lacking. Further, in our contemporary world, there is a strong argument that "right authority" for international intervention requires legitimate international authority -- something the U.S. recognized in bringing its case to the U.N. But the lack of support from the U.N. Security Council and NATO denied that right authority.

5. The halachah is clear about the need to pursue vigorously peaceful options before the use of force could be justified (Maimonides, Mishneh Torah, Melachim 6:1). This was a requirement that the 2002 URJ Executive committee decision called for and one that the 9/11 Commission found we had failed to achieve.

6. One of the distinctive aspects of Jewish rules of warfare is found in the "just means" category: the concept of *bal tashchit*, derived from the biblical mandate not to destroy fruit-bearing trees. In the Talmudic and Maimonidian expansion of *bal tashchit* to involve most things necessary for normal life, we are taught that war should be fought in a manner so as to allow normal civilian life to resume after the war. (This, in contrast to Rome's salting of Carthage or U.S. massive defoliation programs in Vietnam.) Jewish tradition argues that war, while justifiable, should always be regarded as an aberration. Fighting wars in a way that allows for the return to peace and normal life must always be the goal. The failure of the U.S. government to secure the civilian infrastructure in the aftermath of the successful invasion and the failure in the following three years to rebuild effectively ignores these values and is cited as a major factor in our limited success by the Baker-Hamilton Report.

7. Central to Jewish just means doctrine is the need to protect innocent civilians (MT Melachim 6:11). The alarming devastation wrought has been damaging for the civilian population.

8. Captives in warfare are entitled to protections of their safety and dignity. (See, e.g. Deut. 21:10-14 regarding female captives). It is difficult to reconcile this mandate with the widespread abuses, particularly the use of torture, that have taken place in Iraq and other U.S. facilities. Jewish tradition calls for humane treatment, even of one's adversaries. The Bible teaches, "When you encounter an enemy's ox or donkey, you must take it back to him" (Exodus 23:4). I.e. the religious test here is, strikingly, not how one would treat a friend, but how one relates to one's enemy. "Classical Rabbinic texts also are rigorous in prohibiting acts of humiliation. In Jewish tort law, an additional penalty is assessed against one who has physically injured another person when it is found that the victim also suffered humiliation (*boshet*) while being wounded. Even verbal humiliation is said to be the equivalent of shedding blood. These factors were cited by the Israeli Supreme Court in 1999 in barring torture by Israeli armed forces, even against terrorists."<sup>2</sup>

9. Embodied in halachic norms is the presumption that if the rabbinic implementation of a halachic rule leads to consequences different from those intended, the implementation of the rule can be changed or suspended. Further, the Jewish tradition on war (as well as Christian and Muslim just war theory) contains the idea that before force is used, there needs to be a reasonable chance that the force will achieve the moral goals it is being used for.

In conclusion, our failure to pursue all reasonable alternatives to war, to mobilize the kind of broad-based international cooperation we had in the first Gulf War, the array of faulty justifications for war offered, the woeful lack of planning for the aftermath of the invasion, the disgraceful failure to protect the civilian infrastructure (*bal tashchit*), the abuses of prisoners, the alarming devastation wrought on civilians – all these and more raise significant abuses and failures of Jewish just war standards.

#### IV. Update on the Situation in Iraq

Since we last considered in 2005 our position on this vital issue, the situation in Iraq has become far grimmer and more challenging. The ongoing and escalating loss of life among U.S. and coalition forces and the Iraqi people, and growing instability within Iraqi society, compels us to revisit and apply our policy to these changing circumstances.

Although overall the situation on the ground in Iraq has deteriorated, there have also been important accomplishments. Since the passage of the Resolution, Iraqi National Elections were conducted under the

<sup>2</sup> "Rabbinic Letter on Torture," Rabbis for Human Rights. January 27, 2005. <http://www.rhr-na.org/torture/letter012705B.html>.



New Constitution in December 2005, a Prime Minister and cabinet were appointed, and control of three Iraqi provinces was transferred to Provincial Iraqi Control in 2006. Saddam Hussein was captured, tried and found guilty of crimes against humanity.

Notwithstanding limited progress, the level of sectarian violence and casualties, both Iraqi and American, has risen sharply.<sup>3</sup> American military fatalities have surpassed 3,000.<sup>4</sup> In 2006, 34,452 Iraqi civilians died violently, averaging 94 per day.<sup>5</sup> Iraq has clearly descended into civil war-like strife, as the sheer level of violence and increasing level of sectarian attacks indicate.<sup>6</sup>

In addition to the human cost of the war, the economic price of the war continues to divert much-needed funds away from domestic U.S. concerns. In our 2005 resolution, we took notice of the rising price tag for the war, which will require future generations to pay the cost as a result of concurrent tax cuts coupled with spending of substantial levels of borrowed funds. The monetary cost of the war has been made difficult for the public and members of Congress to assess because funding requests for the war have come largely through supplemental requests and not the normal budget process. A wide array of military and policy experts have pointed out that the financial burden also diminishes the ability of the U.S. military to respond to other threats and acts as a barrier to U.S. cooperation with the international community on other issues. Although difficult to pinpoint the exact cost of the Iraq war, it is estimated that the war is costing the United States approximately \$8 billion per month, with economists estimating the projected total cost of the war between \$1-2 trillion.<sup>7</sup>

## **V. United States Withdrawal and Exit Strategy**

The United States has been at war in Iraq for almost four years – longer than our engagement in World War II. There is no indication that our current policies are likely to lead to success; to the contrary, the American presence in Iraq may be fueling the current conflict, contributing to the rising death rate. A declassified intelligence report released in September 2006 stated that “The Iraq conflict has become the ‘cause celebre’

<sup>3</sup> Pentagon “Measuring Stability and Security in Iraq: November 2006 Report to Congress. In the period of Aug. 12 through Nov. 10, 2006, weekly attacks increased by 22% and Coalition casualties increased by 32% from the previous reporting period. The Iraq Coalition Casualty Count (<http://icasualties.org/oif/>) reported December 2006 was the deadliest month for United States troops in over two years.

<sup>4</sup> Bill Brubaker, “Soldier Killed by Roadside Bomb in Iraq.” The Washington Post, January 3, 2007.

<sup>5</sup> “UN Assistance Mission for Iraq Human Rights Report: 1 November – 31 December 2006.”

<sup>6</sup> Michael O’Hanlon, “Where We Are: The Current Situation in Iraq.” Testimony in front of the Senate Foreign Relations Committee, January 10, 2006.

<sup>7</sup> David Leonhardt, “What \$1.2 Trillion Can Buy.” The New York Times, January 17, 2007.

for jihadists, breeding a deep resentment of U.S. involvement in the Muslim world and cultivating supporters for the global jihadist movement.”<sup>8</sup> Other experts have argued that the continued American presence in Iraq may be deterring the Iraqi government from taking responsibility for the political situation through reconciliation talks and through aggressively prosecuting militias and insurgents. Instead, the United States’ announcement of a clear exit strategy, including the release of a timetable for phased redeployment and the immediate beginning of withdrawal of troops, may be more likely to encourage Iraqis to play a stronger role in the stabilization of their country.<sup>9</sup>

## VI. Iraqi Reconciliation Talks

Not seeing an exclusively military solution to the conflict, policy experts and commissions have called for the United States to seek a more vigorous diplomatic process, internally and externally, that increases stability and security.<sup>10</sup> This would include Iraqi Prime Minister Nuri Kamal Al-Maliki convening reconciliation talks with the broadest possible range of Iraq’s top military, political, and religious leaders. The Baker/Hamilton Report recommended that the Iraqi government oversees these talks themselves and that they end only when agreements have been made on the critical issues. The issues that would need to be addressed for there to be any hope for a diplomatic resolution include the ultimate configuration of Iraq and its governing structure; whether amnesty should be granted for Sunni insurgents who are willing to surrender their weapons; the disarming and demobilizing of Shia militias; review of the Iraqi Constitution to include the views of the Sunni minority who were not active participants in the drafting process; the admittance of and restrictions on former members of Saddam Hussein’s Baathist party in the new government; fair allocation of oil revenue across all of Iraq, including those provinces without oil fields; the role of religion in the new government; and finally, the protection of civil and human rights for all Iraqi citizens.<sup>11</sup>

## VII. Continued Assistance

<sup>8</sup> Declassified Key Judgments of the National Intelligence Estimate, “Trends in Global Terrorism: Implications for the United States,” dated April 2006

<sup>9</sup> Thom Shanker, “General Opposes Adding to U.S. Forces in Iraq, Emphasizing International Solutions for Region.” *The New York Times*, December 20, 2006.

<sup>10</sup> “Trying to Contain the Iraq Disaster,” *The New York Times*. October 24, 2006.

The Iraq Study Group Report, [http://www.usip.org/isg/iraq\\_study\\_group\\_report/report/1206/index.html](http://www.usip.org/isg/iraq_study_group_report/report/1206/index.html).

Statement of Richard N. Haas, President, Council on Foreign Relations, to the U.S. Senate on Foreign Relations. January 17, 2007. <http://foreign.senate.gov/testimony/2007/HaasTestimony070117.pdf>.

<sup>11</sup> “Trying to Contain the Iraq Disaster,” *The New York Times*. October 24, 2006.

The Iraq Study Group Report, [http://www.usip.org/isg/iraq\\_study\\_group\\_report/report/1206/index.html](http://www.usip.org/isg/iraq_study_group_report/report/1206/index.html).

A widespread bipartisan consensus has developed that the international community, in the region and beyond, has a stake in the success of the Iraqi state, especially in preventing the spread of global terrorism. The United Nations and its member states must be engaged to encourage and aid the strengthening of the Iraqi government and provide economic aid for reconstruction efforts. Regionally, the collapse of Iraq threatens the stability of Iraq's neighbors. They have an essential role to play in preventing that collapse through financial support; reconstruction; securing Iraq's borders by preventing incursions of terrorists and destabilizing actors; reinstating diplomatic relations; and encouraging national political reconciliation.<sup>12</sup>

Iran and Syria particularly play central roles in the region and can help or hinder the security of and situation within Iraq. Due to the ethnic makeup of both Iran and Syria, these countries should be pressured to engage in dialogue with their counterparts in Iraq to encourage an end to the insurgency and the beginning of stability.

Despite the urgency of withdrawing combat troops, we recognize our obligation to continue aiding the new Iraqi government to ensure the best chances for stability. Proverbs tells us, "If your enemy is hungry, give him bread to eat. And if she is thirsty, give her water to drink" (25:21). Economic aid can, and should, be provided to assist with the rebuilding of Iraq's infrastructure, create jobs, and support the development of the democratic government in Iraq. Experts cite the importance of a continuing limited presence of logistical staff, engineers, training and support forces, special operations forces, search-and-rescue-units, air support from outside Iraq, and counter-terrorism intelligence as a means to provide needed support to the new Iraqi leadership, this can help insure an American presence aimed at protecting other US interests in the region including Israel's security.<sup>13</sup>

## VIII. Conclusion

As the situation continues to deteriorate, and the Administration continues to follow an unsuccessful strategy, growing majorities of the American people are demanding a change in United States policy in Iraq. Our resolution seeks to address these concerns. As is true with all of our resolutions, the Union for Reform Judaism speaks only to the policy of the Movement as a whole, and does not speak for each congregation or

<sup>12</sup> Ibid

<sup>13</sup> The Iraq Study Group Report, [http://www.usip.org/isg/iraq\\_study\\_group\\_report/report/1206/index.html](http://www.usip.org/isg/iraq_study_group_report/report/1206/index.html).

for every individual affiliated with a Reform congregation. Recognizing that there are good people in our congregations who embrace strongly held differences of opinion on the critical issues addressed in this resolution, the Union leadership invited and considered feedback from members of its congregations in advance of its adoption.

There are some who hold strong and thoughtful views contrary to our position on Iraq. Yet, at our 2005 biennial convention, the vote of our leadership from across the nation against the war was overwhelming. Recent polls confirm this perspective at a grassroots level with Gallup recently reporting that 77% of American Jews (including 65% who do not identify themselves as Democrats) believe sending troops into Iraq was a mistake.<sup>14</sup>

**THEREFORE**, the Union for Reform Judaism resolves to:

1. Reaffirm the principles stated in the 2005 Resolution on the War in Iraq and the 2005 Resolution on Support for Jewish Military Chaplains and Jewish Military Personnel and their Families, particularly:

- A. Commending and supporting all of our service women and men (and their families) who have answered duty's call and served our nations honorably and support generous benefits including quality healthcare for them, particularly those who have been wounded and their families;
- B. Encouraging the involvement and support of the international community towards a working democratic Iraqi government and rebuilding Iraq's infrastructure;
- C. Ensuring the United States government provides sufficient armor, supplies, and security for our troops through the completion of phased withdrawal;
- D. Providing diligent congressional oversight of the war and related expenditures;
- E. Ensuring that the financial burden of the war falls not just on the poor and on future generations, but be shared equitably;
- F. Beginning immediately the process of phased withdrawal of our troops from Iraq in the manner that best enhances stability in Iraq – and, we would add to the 2005 resolution, stability for the region, including Israel.

2. Call on President Bush and Congress to:

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<sup>14</sup> "Among Religious Groups, Jewish Americans Most Strongly Opposed to War." Gallup News Services, February 23, 2007. <http://www.galluppoll.com/content/?ci=26677&pg=1>.

- 220 A. Set and announce a clear timetable for the phased and expeditious withdrawal of United States  
221 troops from Iraq;
- 222 B. Include the estimated cost of the war in the annual budget and not through emergency  
223 supplemental bills; and
- 224 3. Call on congress to effect the goals of this resolution.
- 225 4. Oppose an escalation in troop strength; and
- 226 5. Call upon the United States and Canadian governments and the international community to:
- 227 A. Encourage Iraqi Prime Minister Nuri Kamal al-Malaki to resume reconciliation talks with the full  
228 range of Iraq's political leaders;
- 229 B. Actively support a dialogue between Iraq and all its neighbors, especially in regards to helping to  
230 stop civil strife and terrorism and helping finance Iraqi job programs and reconstruction.

**Resolution Adopted by the CCAR**

**THE WAR IN IRAQ**

**Adopted by the 117th Annual Convention  
of the Central Conference of American Rabbis  
San Diego, CA  
June, 2006**

**Background**

The war in Iraq is clearly one of the most challenging moral issues facing America.

A brutal dictator has been removed and is now being tried by a national tribunal for mass murder. Consequently, Iraq has seen movement toward democracy and toward freedom of press and speech that was unimaginable just a few years ago. A long-time destabilizing regional force has been eliminated.

However, more than 2,500 U.S. service members have lost their lives, over 17,000 others have been wounded, and scores of thousands of Iraqis have been killed and wounded. Violence in Iraq continues, with new casualties virtually every day. Resentment against the United States is breeding a new generation of insurgents and terrorists -- resentment further fueled by the recent suggestion by the U.S. military that two dozen Iraqis were unjustifiably killed in Haditha on November 19, 2005 by U.S. marines. While the death of Al Qaeda in Iraq leader Abu Musab al-Azraqawi on June 7 might slow the insurgency, the lasting impact of his death remains uncertain. Iraq is in danger of splitting into regional cantons that would provide an additional source of destabilization.

Meanwhile, Pentagon officials have warned that the combined resources devoted to fighting in Iraq and Afghanistan weaken our ability to deal with other conflicts. [1] Recruitment to the U.S. Armed Forces is down; and, to maintain troop levels, the military has instituted a controversial "stop-loss" program (sometimes referred to as the "backdoor draft") that extends service members' tours of duty beyond the limits of their contracts. U.S. Department of Veterans Affairs spending has decreased per patient over the last decade, yet the VA continues to face budget cuts.

Moreover, the Administration has placed the burden of the Iraq War squarely and exclusively on the shoulders of our Armed Services personnel and their families. The balance of the American people have not been asked to share the burden of the conflict, either through taxation, service or sacrifices that would decrease our nation's dependence on imported oil. As a result, most Americans are shielded from the reality that we live in a nation at war. Moreover, our Armed Services personnel may well feel abandoned and alone in their mission. Symbolic support for our troops is insufficient, and may even be interpreted as an un-American insistence that citizens not voice criticism of the war itself. History teaches, most notably in World War II and in Israel's military successes, that a nation will be victorious at war only if all its citizens participate sacrificially.

Over the last several years, the Reform Movement has spoken out and taken action on several related issues. Prior to the invasion, the URJ advocated on behalf of a congressional resolution, introduced by Senator Edward Kennedy (D-MA), that would have required the Administration to return to Congress to obtain authorization prior to deploying troops to Iraq. In 2003, a CCAR Resolution emphasized prayer for the welfare of Armed Services personnel and prayer for peace. In May 2004, the Union denounced the abuse of prisoners at Abu Ghraib and other prisons. The Union and other groups successfully advocated for a Senate amendment to the Defense appropriations bill prohibiting cruel and inhumane treatment of

detainees. In June 2004, the Central Conference of American Rabbis passed a resolution that raised concerns about the false claims on which the war was based, the abuse of prisoners, the need to be visibly and strongly supportive of our military personnel, and the need to set a clearly-defined and measurable exit strategy for the withdrawal of Coalition military personnel from Iraq. In 2005, the CCAR amplified its position, opposing torture as a means of extracting intelligence from prisoners. Twice since the war began, these concerns about the war were raised directly with the Secretary of Defense by senior Religious Action Center staff. Most recently, in November 2005, in response to a proposal from URJ congregations that the Movement address the ongoing challenges of the war, the Union adopted a resolution expressing the majority of the concerns contained in this document.

Today, we know, based on the reports of two bi-partisan commissions appointed by President Bush – the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, chaired by former Senator Charles Robb and Judge Laurence Silberman, and the 9/11 Commission, chaired by former Republican Governor Tom Kean and former Democratic Representative Lee Hamilton – that many of the premises on which the Congress, the American public and the Reform Movement based their prescriptions were false: that no weapons of mass destruction were stored in Iraq; that there was no attempt on the part of the government of Saddam Hussein to purchase uranium from the nation of Niger during the years leading up to the invasion; [2] that there were no ties between Saddam Hussein and the events of September 11, 2001; and that there was no cooperation between Iraq and Al Qaeda that had led to terrorist attacks. [3] These mistakes -- be they misrepresentations or misunderstandings -- have significantly undermined American credibility.

Furthermore, lack of adequate planning for the aftermath of the invasion greatly aggravated the chaos and instability. Experts have widely criticized the failure to protect American forces by guarding Saddam Hussein's ammunition dumps, weapons from which now maim and kill American soldiers; the failure to keep an Iraqi army selectively intact (as we did in Kosovo); the failure to ensure the delivery of basic services to Iraqi citizens; the refusal to accept the offers of the United Nations and individual countries that had not fought in the invasion to provide on-the-ground peacekeepers and reconstruction assistance; and, over the first three years of the war, the lack of an adequate supply of flak jackets and Armored Personnel Carriers. (Improvements have been made in this area, and Congress is currently considering steps to do better). The result has been to provide fertile ground for the insurgency.

American public opinion, and Jewish opinion in particular, has turned against the war: nearly two-thirds of Americans disapprove of the Administration's handling of the situation in Iraq. [4] Moreover, Americans are uneasy about the rising price tag for the war, now approaching \$300 billion, diverting money and resources that are urgently needed at home. [5] Some have argued that future generations will continue to have to pay this cost, as a result of concurrent tax cuts coupled with spending of borrowed funds. Seventy percent of American Jews now describe the war as a mistake and a majority seeks to bring American troops safely and speedily home. [6]

Nonetheless, with much of Iraq's infrastructure now undermined, the old leadership removed, and new leadership still in flux, a contentious debate on how and when the U.S. can withdraw divides the nation. Ironically, some who supported the war now think we should withdraw immediately, while some who opposed the war believe we cannot begin to leave until the situation stabilizes. Opponents of immediate withdrawal argue that the U.S. should not establish a timetable for withdrawal because if we withdraw too soon, Iraq will devolve into civil war and become a haven for terrorists. Opponents also note that if we set deadlines and then fail to meet them, we will be perceived as weak by our enemies. Supporters of a more imminent withdrawal argue that Americans and Iraqis continue to die as a result of the insurgency, and that rather than maintaining order in Iraq, the presence of the United States as an occupying power engenders resentment and resistance from the populace and creates sympathy for the insurgents to continue fighting.

Growing voices in this country are calling for fundamental changes in U.S. policy in Iraq, changes that will bring our troops home safely and soon, and promote the creation of a sovereign and peaceful Iraq. Sadly, within the organized opposition to the war there are a number of groups espousing radical, anti-Israel

rhetoric (including a number of members of ANSWER – Act Now to Stop War and End Racism). In a second major coalition, United for Peace and Justice, there are fewer such voices. The absence of mainstream American Jewish organizations from this debate has created a vacuum in which other voices are manipulating messages about Jews and Israel in the context of and in opposition to the Iraq war.

The Iraqi people ratified the permanent Constitution by a referendum conducted on October 15, 2005, and parliamentary elections under that Constitution occurred on December 15, 2005. Both are critical steps in establishing a functional, stable government in Iraq. These recent events present an opportunity for the United States to establish a plan to withdraw United States Armed Forces from Iraq that would support the legitimacy of the Iraqi Government and the assumption of responsibility by Iraqi forces for security and public safety. On March 21, 2006, President Bush stated that future troop levels "will be decided by future presidents and future governments of Iraq." Critics argue that a clear plan for a phased, tactical withdrawal is the best way to ensure the safe return of our Armed Forces personnel, who will continue to be put in harm's way if they remain in Iraq indefinitely or are withdrawn prematurely and with inadequate organization.

As the United States enters its fourth year of war, with no end in sight, it is incumbent upon the leadership of the Reform Movement to confront these issues and take a position.

THEREFORE, the CCAR resolves to:

1. Acknowledge our earnest gratitude to U.S. and international forces and commend those Iraqis and others who have contributed courageously to building a democracy in Iraq;
2. Condemn, in the strongest possible terms, the insurgents, who have resorted to horrific violence against soldiers and civilians in an effort to undermine Iraq's transition to democracy;
3. Commend our service women and men (and their families) who have answered duty's call and served our nation honorably, often with valor and distinction, and who have earned our respect and gratitude and that of the American people, and support generous benefits for them, both in Iraq and at home, thus honoring those who serve our nation and fulfilling our commitments to them; and specifically to:
  - A. Encourage Congress to provide the resources and the Administration to guarantee that our service men and women receive appropriate flak jackets, armor and other equipment to afford them maximum protection as they carry out their mission; and
  - B. Demand that adequate funds be made available to the Department of Defense and Veterans Administration to ensure that United States military personnel wounded in connection with the Iraq war receive the highest quality medical care available and that they and their families are afforded the necessary support (including counseling) to cope with their injuries;
4. Call upon the Administration to ask the American people to share with our Armed Services personnel the burdens of and sacrifices required by the current war effort, through:
  - A. Progressive taxation that represents the actual cost of the endeavor;
  - B. A policy to achieve the President's stated goal of independence from imported oil, which would require the implementation of dramatically higher standards for gasoline efficiency in motor vehicles and would also require immediate sacrifice by the American people, including a gasoline tax; and
  - C. Consideration of some form of national service.
5. Call upon the Bush Administration immediately to provide more transparency regarding all aspects of the war and a clear exit strategy to the American public with specific goals for troop withdrawal as soon as possible, in a way that maintains stability in the nation and empowers Iraqi forces to provide for their national security;
6. Call upon Congress to:
  - A. Provide more diligent oversight of the war and the expenditures related to it;
  - B. Promote efforts to bring about, as soon as feasible, a withdrawal that supports peace and stability; and



- C. Ensure that the financial burden of the war fall not just on the poor and on future generations, but be shared equitably;
- 7. Call for a bipartisan, independent commission to determine the lessons learned from our strategic, intelligence, planning, and implementation failures before and during the war;
- 8. Call on all nations, especially those in the region, to:
  - A. Terminate support for the insurgents and terrorists,
  - B. Actively support the democratically elected Iraqi government,
  - C. Provide tangible support, in the form of training and equipment, to facilitate the development of a professional Iraqi security force, and
  - D. Assist in rebuilding the infrastructure of the country;
- 9. Condemn, in the strongest possible terms, violations of the Geneva Conventions and other applicable laws, including torture and abuse of prisoners and detainees in U.S. custody;
- 10. Condemn, similarly, any unjustifiable violence on the part of the U.S. military personnel against civilian populations, and call for a thorough and open investigation of such conduct -- which, if proven -- diminishes the noble service of the overwhelming majority of our troops.
- 11. Condemn those who would use opposition to the war in Iraq as justification for anti-Israel efforts;
- 12. Call on its members to guide the communities they serve to:
  - A. Provide a venue to address these issues;
  - B. Advocate consistent with the principles set forth in this resolution; and
  - C. Adopt respectful and meaningful methods of acknowledging the contribution of our military such as the use of prayers for the welfare of service members, listing names of military personnel lost in the line of duty in Kaddish prayers or in temple bulletins, or other appropriate ways.

[1] October 23, 2005, New York Times,  
[http://select.nytimes.com/search/restricted/article?res="F10910F9385B0C708EDDA90994DD404482"](http://select.nytimes.com/search/restricted/article?res=)

[2] <http://www.wmd.gov/report/index.html>

[3] <http://www.9-11commission.gov/report/911Report.pdf>

[4] CBS News Poll, Feb 22-26, 2006, N="1018," 65% of all adults responded .Disapprove. when asked: .Do you approve or disapprove of the way George W. Bush is handing the situation with Iraq?.

[5] Associated Press/IPSOS poll, Sept. 16-18, 2005, N="1,000," 65% of adults responded that we are spending too much to fight the war and rebuild Iraq. CBS News/New York Times Poll, Sept. 9-13, 2005, N="1,167," 90% of adults disapprove of the U.S. cutting spending on domestic programs, like education and health care, to pay for the war with Iraq.

[6] American Jewish Committee 2005 Annual Survey of American Jewish Opinion,.



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## THE WAR IN IRAQ

**Submitted by the Commission on Social Action of Reform Judaism, Congregation Shir Hadash of Los Gatos, California, Congregation Tikkun V'or of Ithaca, New York, Temple Beth Or of Everett, Washington, Temple Emanuel of Worcester, Massachusetts, Temple Sinai of Brookline, Massachusetts, and Temple Sinai of Pittsburgh, Pennsylvania to the 68th Union for Reform Judaism General Assembly**

## BACKGROUND

The war in Iraq is clearly one of the most challenging moral issues facing America.

It is true that a brutal dictator has been removed and is now being tried by a national tribunal for mass murder. In removing Saddam Hussein, there has been movement toward democracy and toward freedom of press and speech that was unimaginable just a few years ago. A long-time destabilizing regional force has been eliminated.

However, more than 2,000 U.S. service members have lost their lives, over 14,000 others have been wounded, and scores of thousands of Iraqis have been killed and wounded. Violence in Iraq continues, with new casualties virtually every day. Resentment against the United States is breeding a new generation of insurgents and terrorists. Iraq is in danger of splitting into regional cantons that would provide an additional source of destabilization.

Meanwhile, Pentagon officials have warned that the combined resources devoted to fighting in Iraq and Afghanistan weaken our ability to deal with other conflicts. <sup>1</sup>Recruitment to the U.S. Armed Forces is down, and, to maintain troop levels, the military has instituted a controversial "stop-loss" program (sometimes referred to as the "backdoor draft") that extends service members' tours of duty beyond the limits of their contracts. U.S. Department of Veterans Affairs spending has decreased per patient over the last decade, yet the VA continues to face budget cuts.

Three years ago, the leaders of the Union for Reform Judaism addressed the prospects of war in Iraq. In September 2002, the Executive Committee of the Union's Board of Trustees discussed, at length, the morality and efficacy of the use of force. It examined the insights from Jewish moral rules regarding war and related issues, insights that remain relevant today, including: the obligation to defend innocents derived from the duty to rescue (Lev. 19:16: "Do not stand idly by the blood of your neighbor;" BT Sanhedrin 74a, Baba Kama 28a, Shulchan Aruch Hoshen Mishpat 425:1); the justifications for preemptive wars (BT, Sotah 44b, Eruvin 45a) and how it applies to a situation where non-conventional weapons were widely suspected; the need to pursue vigorously peaceful options before the use of force could be justified (Maimonides, Mishneh Torah, Melachim 6:1); the need to protect civilians (MT Melachim 6:7); and the need, derived from the rules of *bal taschit* (do not waste), to provide for the protection of environmental and economic infrastructures that would allow civilian life to resume as soon as possible after warfare (Deut. 20:19-20; Ibn Ezra commentary on Deut. 20:19; MT Melachim 6:10). A variety of other insights from the Jewish tradition are also relevant, from the protections

of captives (See, e.g. Deut. 21:10-14), to the obligation of the judges and leaders of the community to be forthright people who would neither lie nor mislead (Deuteronomy 16:18-20).

These discussions of Jewish tradition and U.S. policy options led to the adoption of the position on “Unilateral Action by the U.S. Against Iraq” that supported military action by the U.S. – even unilateral action if necessary – only in the context of four propositions:

- a. International cooperation is far, far better than unilateral action, and the U.S. must explore all reasonable means of attaining such support;
- b. Non-military action is always preferable to military action, and the U.S. must fully explore all options to resolve the situation through such means;
- c. If the effort to obtain international cooperation and support through the United Nations fails, the U.S. must work with other nations to obtain cooperation in any military action; and
- d. The President should not act without Congressional approval of the use of force, including any unilateral military action taken by the U.S.

In the intervening time period, the Reform Movement has spoken out and taken action on several related issues. Prior to the invasion, the URJ advocated on behalf of a congressional resolution, introduced by Senator Edward Kennedy (D-MA), that would have required the Administration to return to Congress to obtain authorization prior to deploying troops to Iraq. In May 2004, the Union denounced the abuse of prisoners at Abu Ghraib and other prisons. The Union and other groups successfully advocated for a Senate amendment to the Defense appropriations bill prohibiting cruel and inhumane treatment of detainees. In June 2004, the Central Conference of American Rabbis passed a resolution that raised concerns about the false claims on which the war was based, the abuse of prisoners, the need to be visibly and strongly supportive of our military personnel, and the need to set a clearly-defined and measurable exit strategy for the withdrawal of Coalition military personnel from Iraq. Twice since the war began, these concerns about the war were raised directly with the Secretary of Defense by senior Religious Action Center staff.

Today, as we apply the standards outlined by the Union leadership in 2002, we find that many of our expectations have not been met. Now we know, based on the reports of two bi-partisan commissions appointed by President Bush, the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, chaired by former Senator Charles Robb and Judge Laurence Silberman, and the 9/11 Commission, chaired by former Republican Governor Tom Kean and former Democratic Representative Lee Hamilton, that many of the premises on which the Congress, the American public and the Union’s Executive Committee based their prescriptions were false: that no weapons of mass destruction were stored in Iraq; that there was no attempt on the part of the government of Saddam Hussein to purchase uranium from the nation of Niger during the years leading up to the invasion;<sup>2</sup> that there were no ties between Saddam Hussein and the events of September 11, 2001; and that there was no cooperation between Iraq and Al Qaeda that has led to terrorist attacks.<sup>3</sup> These mistakes – be they misrepresentations or misunderstandings – have significantly undermined American credibility.

Furthermore, lack of adequate planning for the aftermath of the invasion greatly aggravated the chaos and instability. Experts have widely criticized the lack of an adequate supply of flak jackets and Armored Personnel Carriers; the failure to protect American forces by guarding Saddam Hussein's ammunition dumps whose weapons now maim and kill American soldiers; the failure to keep an Iraqi army selectively intact (as we did in Kosovo); the failure to ensure the delivery of basic services to Iraqi citizens; and the refusal to accept the offers of the United Nations and individual countries that had not fought in the invasion to provide on-the-ground peacekeepers and reconstruction assistance. The result has been to provide fertile ground for the insurgency.

American public opinion, and Jewish opinion in particular, has turned against the war: nearly two-thirds of Americans disapprove of the Administration's handling of the situation in Iraq and would favor removing some or all troops from Iraq.<sup>4</sup> Moreover, Americans are uneasy about the rising price tag for the war, which has already cost over \$200 billion, diverting money and resources that are urgently needed at home.<sup>5</sup> Some have argued that future generations will continue to have to pay this cost, as a result of concurrent tax cuts coupled with spending of borrowed funds. Two-thirds of American Jews now describe the war as a mistake and a majority seeks to bring American troops safely and speedily home.<sup>6</sup>

Nonetheless, with much of Iraq's infrastructure now undermined, the old leadership removed, and new leadership still in flux, a contentious debate on how and when the U.S. can withdraw divides the nation. Ironically, some who supported the war now think we should withdraw immediately, while some who opposed the war believe we cannot begin to leave until the situation stabilizes. Opponents of immediate withdrawal argue that the U.S. should not establish a timetable for withdrawal because if we withdraw too soon, Iraq will devolve into civil war and become a haven for terrorists. Opponents also note that if we set deadlines and then fail to meet them, we will be perceived as weak by our enemies. Supporters of a more imminent withdrawal argue that Americans and Iraqis continue to die as a result of the insurgency, and that rather than maintaining order in Iraq, the presence of the United States as an occupying power engenders resentment and resistance from the populace and creates sympathy for the insurgents to continue fighting. Both sides are hopeful that Iraq's newly adopted Constitution and impending elections are steps that will lead to increased stability, making U.S. disengagement more realistic.

There are growing voices in this country that are calling for fundamental changes in U.S. policy in Iraq, changes that will bring our troops home safely and soon, and promote the creation of a sovereign and peaceful Iraq. Sadly, within the organized opposition to the war there are a number of groups espousing radical, anti-Israel rhetoric (including a number of members of ANSWER – Act Now to Stop War and End Racism). In a second major coalition, United for Peace and Justice, there are fewer such voices. But, the absence of mainstream American Jewish organizations from this debate has created a vacuum in which other voices are manipulating messages about Jews and Israel in the context of and in opposition to the Iraq war.

However, another coalition has demonstrated goals and values more consistent with our own. "Win Without War" has attracted the support of many mainstream American organizations, including NAACP, National Council of Churches, Sierra Club, Physicians for Social Responsibility, United Church of Christ and United Methodist Church General Board of Church

and Society. Among other things, Win Without War calls on the Bush Administration to announce a plan to end the occupation that includes target dates for troop withdrawal; transform the military occupation into an Iraqi-led, regionally-backed, and internationally supported effort to achieve stability and a representative government; and redirect funds to support Iraq-directed reconstruction and humanitarian needs.

There is a belief among some Iraqis that the United States intends to occupy Iraq on a long term basis, and this perception has fueled the insurgency with escalating violence. The Iraqi people ratified the permanent constitution by a referendum conducted on October 15, 2005, and parliamentary elections under that constitution are now scheduled for December 15, 2005. The ratification of the Iraqi constitution and the scheduled parliamentary elections are critical steps in establishing a functional, stable government in Iraq. These recent events present an opportunity for the United States to establish a plan to withdraw United States Armed Forces from Iraq that would support the legitimacy of the Iraqi Government and the assumption of responsibility by Iraqi forces for security and public safety. Furthermore, we believe that a plan for a phased, tactical withdrawal is the best way to ensure the safe return of our Armed Forces personnel, who will continue to be put in harm's way if they remain in Iraq indefinitely or are withdrawn prematurely and with inadequate organization.

As the United States enters its third year of an untenable war, with no end in sight, it is incumbent upon the leadership of the Reform Movement to confront these issues and take a position.

**THEREFORE**, the Union for Reform Judaism resolves to:

1. Reaffirm the principles espoused in its 2002 pre-invasion policy statement to guide us when and if future conflicts arise, and as a touchstone for assessing our current policy in Iraq, and note with grave concern that those principles were not followed when we went to war;
2. Commend our service women and men (and their families) who have answered duty's call and served our nation honorably, often with valor and distinction, and who have earned our respect and gratitude and that of the American people, and support generous benefits for them, both in Iraq and at home, thus honoring those who serve our nation and fulfilling our commitments to them; and specifically to:
  - A. Demand that our service men and women receive appropriate flak jackets, armor and other equipment to afford them maximum protection as they carry out their mission; and
  - B. Demand that adequate funds be made available to the Department of Defense and Veterans Administration to ensure that United States military personnel wounded in connection with the Iraq war receive the highest quality medical care available and that they and their families are afforded the necessary support (including counseling) to cope with their injuries;
3. Call upon the Bush Administration immediately to provide more transparency regarding all aspects of the war and a clear exit strategy to the American public with specific goals for troop withdrawal; some withdrawal of troops should begin after the completion of the parliamentary elections (currently scheduled for December 15, 2005) with the

continuation of withdrawal implemented as soon as possible in a way that maintains stability in the nation and empowers Iraqi forces to provide for their national security;

4. Call upon Congress to:
  - A. Provide more diligent oversight of the war and the expenditures related to it;
  - B. Promote efforts to bring about, as soon as feasible, a withdrawal that supports peace and stability; and
  - C. Ensure that the financial burden of the war fall not just on the poor and on future generations, but be shared equitably;
5. Call for a bipartisan, independent commission to determine the lessons learned from our strategic, intelligence, planning, and implementation failures before and during the war;
6. Call on all nations, especially those in the region, to:
  - A. Terminate support for the insurgents and terrorists,
  - B. Actively support the democratically elected Iraqi government,
  - C. Provide tangible support, in the form of training and equipment, to facilitate the development of a professional Iraqi security force, and
  - D. Assist in rebuilding the infrastructure of the country;
7. Condemn, in the strongest possible terms, violations of the Geneva Conventions and other applicable laws, including torture and abuse of prisoners and detainees in U.S. custody;
8. Condemn those who would use opposition to the war in Iraq as justification for anti-Israel efforts;
9. Call on congregations to:
  - A. Provide a venue to address these issues;
  - B. Advocate consistent with the principles set forth in this resolution; and
  - C. Adopt respectful and meaningful methods of acknowledging the contribution of our military such as the use of prayers for the welfare of service members, listing names of military personnel lost in the line of duty in Kaddish prayers or in temple bulletins, or other appropriate ways.

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1 October 23, 2005, New York Times, <http://select.nytimes.com/search/restricted/article?res=F10910F9385B0C708EDDA90994DD404482>

2 <http://www.wmd.gov/report/index.html>

3 <http://www.9-11commission.gov/report/911Report.pdf>

4 CBS News Poll, Oct. 3-5, 2005, N=808, 64% of all adults responded "Disapprove" when asked "Do you approve or disapprove of the way George W. Bush is handling the situation with Iraq?" Newsweek Poll, Sept. 29-30, 2005, N=1,004, 62% of all adults responded "Disapprove" when asked the same question. CNN/USA Today/Gallup Poll, Sept. 16-18, 2005, N=818, asked "Which comes closest to your view about what the U.S. should now do about the number of US troops in Iraq? 33% of all adults responded that the U.S. should withdraw some troops, and 30% responded that the U.S. should withdraw all of its troops.

5 Associated Press/IPSOS poll, Sept. 16-18, 2005, N=1,000, 65% of adults responded that we are spending too much to fight the war and rebuild Iraq. CBS News/New York Times Poll, Sept. 9-13, 2005, N=1,167, 90% of adults disapprove of the U.S. cutting spending on domestic programs, like education and health care, to pay for the war with Iraq.

6 American Jewish Committee 2004 Annual Survey of American Jewish Opinion, Aug. 18-Sept. 1, 2004, N=1,000.

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**EXECUTIVE COMMITTEE DECISION ON  
UNILATERAL ACTION BY THE U.S. AGAINST IRAQ**  
Russell Silverman, Chairman, UAHC Board of Trustees  
Rabbi Eric Yoffie, President, UAHC

September 23, 2002  
18 Tishri 5763

TO: The Leadership of UAHC Congregations

We write to inform you of the position adopted by a wide margin (45-10, representing over 900 congregations) at the meeting of the Executive Committee of the UAHC Board of Trustees with regard to the possibility of a war with Iraq.

As you are undoubtedly aware, President Bush has sought both UN and Congressional resolutions authorizing military action against Iraq. On September 19th the President asked Congress for sweeping authority to use "all means he deems appropriate, including force," to disarm Iraq and dislodge Saddam Hussein, including unilateral action by the United States if necessary. Many Jewish organizations, as well as religious groups of all denominations, have been struggling with the question of what guidance their religious traditions offer on this issue.

The question before the UAHC Executive Committee was: "Under what conditions, if any, would the UAHC support unilateral action by the U.S. against Iraq?"

At the outset of the discussion, Rabbi David Saperstein, director of the Religious Action Center of Reform Judaism, discussed the position of Jewish law permitting pre-emptive or preventive action where there is a significant, immediate threat to innocent people; the arguments for and against U.S. military action in Iraq; and the geopolitical context in which this decision is being made.

The UAHC Executive Committee discussion was thorough, thoughtful, and informed. The many arguments for and against U.S. involvement, the uneasiness that many share about the policies being articulated by various government officials, and our concerns about the State of Israel were articulated, as the Committee understood the gravity of the moment and the importance of the vote that was being taken.

After an hour of discussion, the Executive Committee endorsed a proposal in which the UAHC would support unilateral military action by the U.S. in the context of four propositions:

1. International cooperation is far, far better than unilateral action, and the U.S. must explore all reasonable means of attaining such support.
2. Non-military action is always preferable to military action, and the U.S. must fully explore all options to resolve the situation through such means.
3. If the effort to obtain international cooperation and support through the United Nations fails, the U.S. must work with other nations to obtain cooperation in any military action.
4. The President should not act without Congressional approval of the use of force including any unilateral military action taken by the U.S.

The Executive Committee stated that it would support unilateral action if the Government of the United States made every reasonable effort to meet the conditions noted above and yet the threat posed by the Government of Iraq, particularly its possession of non-conventional weapons, remained unresolved. The



Executive Committee authorized the chairman of the Board and the president to speak on this issue on behalf of the Union. In addition, the Committee urged the Religious Action Center of Reform Judaism to redouble its efforts on behalf of all these alternatives to unilateral military action, even while advocating, as the U.S. formulates its military policies, that such policies include provisions to protect the lives of innocent civilians as well as plans for the rebuilding of a democratic society in Iraq.

This Executive Committee decision will be used to direct the advocacy efforts of the UAHC staff members at the Religious Action Center in Washington and to determine UAHC policy in communal forums. In other respects, it is advisory only; Reform congregations and individual members of our synagogues are, of course, free to adopt their own positions on these issues.



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