AMBIVALENT NORMATIVITY: REASONS FOR CONTEMPORARY JEWISH DEBATE OVER THE LAWS OF WAR

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A blossoming body of academic literature argues for a range of normative Jewish approaches to the laws of war, based on ancient or medieval texts and on the argument that there is a practical contemporary need for a distinctive Jewish approach to making war and peace. Much of this literature is motivated by the conviction that there is a normative Jewish approach, against which competing opinions can be shown to be less credible and authentic. This essay explores the ambivalence which arises as a result of the twofold awareness that the textual basis which supports competing approaches to justice and peace is not unambiguous, and that geographical, denominational and political differences distinguish the various projects for a revived Jewish norm to govern the making of war and peace.

Introduction

That Jews are perceived to lack a coherent normative approach to war has occasioned an entirely new body of literature in the last fifty years. This work, typically in essay, sermon or edited paper form, responds to a common compulsion to apply Jewish textual resources to new dilemmas posed by contemporary warfare. Many of the writers engaged in this enterprise are clearly troubled by the discordant approaches which other writers take to the normative dimension of the subject. The present essay examines the reasons for the resulting debate, and the consequent ambivalence towards normative judgements that is thereby associated with the attempt to apply Jewish law and ethics to war.

Numerically the greatest portion of these essays investigate the bases for a distinctive Jewish religious response to contemporary Israeli and American military affairs based on Jewish texts alone,[1] though a growing number also examine parallels between Jewish teachings on war and the Christian 'just war tradition'.[2] What this Jewish approach to war

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[1] For three of the most useful introductions to this work, see J. David Bleich, *Contemporary Halakhic Problems* (New York: Ktav/Yeshiva University Press, 1977–1989), Vols I–IV; Michael Walzer, ed., *Law, Politics and Morality in Judaism* (Princeton: Princeton University Press, 2006); and Murray Polner and Stefan Merken, *Peace, Justice and Jews: Reclaiming Our Tradition* (New York: Bunim & Bannigan, 2007).

[2] For example M. Broyde, 'Fighting the War and the Peace: Battlefield Ethics, Peace Talks, Treaties, and Pacifism in the Jewish Tradition' in J. Patout Burns, ed., *War and Its Discontents: Pacifism and Quietism in the Abrahamic Religions* (Washington D.C.: Georgetown University Press, 1996), 1–30; George R. Wilkes, 'Judaism and Justice in War', in Paul A. Robinson, ed., *Just War in Comparative Perspective* (Aldershot: Ashgate Press, 2003), 9–23; Norman Solomon, 'The Ethics of War in Judaism' in David Rodin and Richard Sorabji, eds., *The Ethics of War: Shared Problems in Different Traditions* (Aldershot: Ashgate Press, 2006), 108–137; Norman Solomon, 'The ethics of war in Judaism' in Torkel Brekke, ed., *The Ethics of War in Asian Civilizations: A Comparative Perspective* (Abingdon/New York: Routledge, 2006), 39–82; George R. Wilkes, 'Legitimation and Limits of War in Jewish Tradition', Mark Levene, 'Imagining Co-Existence in the Face of War: Jewish "Pacifism" and the State 1917-1948', and Melissa Raphael, 'The

consists of is as contested as are Christian just war teachings. Some versions tend to a deliberately liberal, humanistic, and even quasi-pacifist position, insisting on the utility of a tradition of Jewish norms in guarding against the whim and self-interest of those who in power seek a bloody sacrifice from their enemies and from their own citizens.[3] The idea that there is a pacific or humanistic ethic in Judaism that seeks to limit every facet of the conduct of war also has fierce opponents.[4] They argue that it is irresponsible to expose soldiers and citizens to any unnecessary risk: war is governed by the ability of one side to overwhelm its opponents, and what they see as normative Judaism recognizes that excessively 'limited' warfare creates drawn-out conflicts which may be in the long run even bloodier.[5] In this view, Judaism is not pacifist, and nor does it promote the expectation that a people will, through nobility or humility, commit collective suicide, in Michael Broyde's elegant phrase.[6]

A relatively minor irritant generating some of the clash of perspectives can be found in denominational difference. The Reform movement in the USA has since the 1960s embraced more self-declared pacifists than the Modern Orthodox have,[7] and the influence of a theological or prophetic pacifism on influential Progressive thinkers from the nineteenth century onward has irked both Orthodox and Conservative critics alike.[8] This inter-denominational debate has informed both Orthodox and non-Orthodox polemic. One of the most insightful documents showing the development of this debate is presented in the proceedings of a multi-denominational rabbinic conference on war held in New York in 1963. And yet, as the conference proceedings recurrently underlined, clashes over the use of authoritative Jewish texts also mark discussion within each denomination – indeed, much of this debate is constructed as an internal Orthodox debate, and particularly a concern of the established authorities of the National Religious community in Israel. In the polemical texts covered here, normative claims are frequently strengthened as much by generalizations about consensus as they are by assertions about the binding nature of particular commands or texts.[9] The literature written since that time gives almost as much attention to the rhetorical strategies which contribute to this renewed debate as it does to the nature of an authoritative Jewish wartime law or ethic as a subject in itself.

Gendering of Jewish Post-Holocaust Responses to War and Collective Violence' in Linda Hogan and Dylan Lehrke, eds., *Religion And The Politics Of Peace And Conflict* (Eugene OR: Wipf & Stock, 2009), 3–24, 57–82, 159–174.

[3] Polner and Merken, *Peace, Justice and Jews*; Murray Polner and Naomi Goodman, eds., *The Challenge of Shalom: The Jewish Tradition of Peace and Justice* (Philadelphia: New Society Publishers, 1994).

[4] Maurice Lamm, 'After the War –Another look at Pacifism and Selective Conscientious Objection' in Menachem Kellner, ed., *Contemporary Jewish Ethics* (New York: Sanhedrin Press, 1978), 221–238.

[5] M. Broyde, 'Fighting the War and the Peace', 1–30.

[6] Michael Broyde, 'Just Wars, Just Battles and Just Conduct in Jewish Law: Jewish Law Is Not a Suicide Pact' in Lawrence Schiffman and Joel B. Wolowelsky, eds., *War and Peace in the Jewish Tradition* (New York: Yeshiva University Press, 2007), 1–44.

[7] For a critical treatment of long-term shifts in Reform attitudes, see Judith Bleich, 'Military Service: Ambivalence and Contradiction' in Lawrence Schiffman and Joel B. Wolowelsky, eds., *War and Peace in the Jewish Tradition* (New York: Yeshiva University Press, 2007), 415–76.

[8] For example, Maurice Lamm, 'After the War' in Kellner, ed., *Contemporary Jewish Ethics*, 221–238, and Jacob Agus, 'A Jewish View of the Problem of War: Prevention Today' in *Dimensions of Peace: A Jewish Confrontation. Report of a Conference on the Relevance of Jewish Tradition to the Problems of a Nuclear Age* (New York: Dimensions of Peace, 1963), 2–4.

[9] *Dimensions of Peace: A Jewish Confrontation. Report of a Conference on the Relevance of Jewish Tradition to the Problems of a Nuclear Age* (New York: Dimensions of Peace, 1963), *passim*.

What follows is a critical commentary on selected exempla, sometimes reporting Israeli positions in order to cast light on the debate in English-language texts, often quite self-consciously engaged in a developing transnational and – for many commentators – transdenominational debate on the subject. The commentary is divided into three parts, focused on three factors which trouble assertions about Jewish laws or ethics in making war. First, the textual basis for a normative Jewish teaching about war is slim, and the impact of historical contexts makes for such a diversity of texts and opinions that many judge it difficult to arrive at any generalizations at all.[10] The same could easily be said about the Christian just war tradition, and indeed about *jihad* in Islam: passages on the subject written in the formative periods of both religions are both brief and contradictory, and subsequent innovations make the traditions ever more diverse. However, the textual evidence for a normative Jewish approach to war is fraught with obscurities for a further reason, which weakens the scope for an easy consensus between legal scholars.

This second factor is the distinctive historical relationship between Diaspora Jews and the governments under which they lived, which meant that legal scholars faced far less demand for a body of legal or ethical writings about military practice. It is commonly suggested that Jewish debate about war has been even more stunted than the Christian and Muslim traditions by the lack of power held by Jews across the last two millenia, at least until the creation of the State of Israel, and that, primarily with this in mind, the last sixty years has seen the return of a genre of writing about *halakhah* in war.[11] The claim itself demands examination: if it is accepted, then a *halakhic* or normative Jewish approach to war stands on whether or not it is of practical use for political leaders and for soldiers; not primarily on whether it creates an effective limit on power, nor on the potential offense presented by power unregulated by ethics. The second part of this essay examines the role of practical demand in the recent flowering of Jewish legal and ethical tracts on the making of war. The bulk of those who have engaged in this debate are academics, and – though the Israeli writers perform national service and reserve duty – they are not writing as serving soldiers, nor professionally involved in the military.

The third and final section addresses a set of questions about the nature of ethics, law and human purpose which underpin the quite different notions of practicality deployed by the commentators under review. While some view war as an appropriate subject for the application of a normative Jewish law or ethics, and some even treat it as the archetypal instance in which a normative Judaism is needed, others argue that war is essentially lawless, or otherwise outside the realm in which a Jewish ethic or norm can be meaningfully applied. A diverse range of essayists examine war in the light of these more foundational normative questions. In common, they suggest that Jewish texts, in all their diversity, provide a basis for reflection on this deeper level of ethical and legal obligation as rich, and therefore as useful, as can be found in any other religious tradition.

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[10] Abraham Cronbach, 'Judaism and World Peace' in *Dimensions of Peace*, 1; Aviezer Ravitsky, 'Prohibited Wars' in Walzer, *Law, Politics and Morality in Judaism*, 169.

[11] Walzer, *Law, Politics and Morality in Judaism*, 150; Stuart A. Cohen, 'The Re-Discovery of Orthodox Jewish Laws Relating to the Military and War (*Hilkhot Tzavah U-Milchamah*) in Contemporary Israel: Trends and Implications' in *Israel Studies* 12:2 (2007), 1–28; Arye Edrei, 'Law, Interpretation, and Ideology: The Renewal of the Jewish Laws of War in the State of Israel' in *Cardozo Law Review* 28:1 (2006), 188– s227.

1. Legal text and context

The textual basis for a consistent normative approach to war is clear to some and quite obscure to other, equally insightful, commentators. To many essayists, key Biblical and post-Biblical texts constitute obvious foundations for a normative Jewish approach to war. By contrast, a second range of thinkers, Orthodox and non-Orthodox, argue that each text must be viewed in its historical context, not assimilated to some overarching external norm. That the former would naturally include some of the more committed pacifist and anti-pacifist contributors to the debate is only to be expected. Be that as it may, many of the more determinedly radical writers insist on a sophisticated separation between textual analysis and normative judgement.

Deuteronomy 20 has long been treated as a *locus classicus* for Jewish discussions of what is legitimate in war, and what illegitimate. This is its status in chapter 8 of tractate *Sotah* of the Mishnah, and subsequently in much medieval commentary on the nature of Biblical war. A summary of Deuteronomy 20 reveals a chapter which at face value provides an interesting basis for legal and ethical limit to warfare, though it is neither explicit nor definitive in identifying reasons for these limits. The Children of Israel are instructed that on going out to battle, they are not to fear; a war priest is also to counsel the people to have no fear; officers are to urge newly-weds to return home, as well as those who have just built a home or planted a vineyard; captains are to be appointed over the soldiers; the enemy should be approached with an offer of peace in return for tribute; if they refuse, it is the enemy that is making war, and a siege ensues at the end of which every male is to be killed, taking their wives, children and goods as booty; unless they be of the seven Canaanite tribes, which are to be utterly destroyed so that Israel not learn idolatry from them; and finally, fruit trees may not be felled, while other trees may be used for the siege, until – the passage ends – the city falls.

The limitations of the text alone could explain much of the unresolved debate over the nature of 'war' in Jewish circles. War is not defined, leaving the commentators quoted in the Mishnah and Talmud divided over which provisions in the chapter apply to defensive wars, which are treated as, to all intents and purposes, wars commanded by God (the *milhemet mitzvah*).[12] Some of the provisions are held to apply solely to discretionary or opportunistic wars fought against the enemies of the people at the instigation of the leaders of the Jewish people (the *milhemet reshut*, once translated as 'political wars', now commonly rendered as permitted wars, or wars launched by the authorities).[13] Jewish commentators continue to debate whether the final verses about trees describe a strictly limited and humanitarian code of military conduct, or rather a 'no-holds barred' warfare waged with one eye on military necessity and another on the moral cause for which victory must be achieved – and both approaches find support within the Mishnah, Talmud and Tosefta.[14]

Where the Mishnah and Talmud advance discussion about the definition of war in the biblical text, there is much which remains unclear. The Talmud (Sotah 44b) distinguishes

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[12] Bleich, *Contemporary Halakhic Problems*, Vol. III, 252.

[13] One of the most insightful discussions can be found in Geoffrey B. Levey, 'Judaism and the Obligation to Die for the State' in *AJS Review* 12:2 (Autumn 1987), 175–203.

[14] See Solomon, 'The Ethics of War in Judaism' in Rodin and Sorabji, eds., *The Ethics of War*, 113, and Wilkes, 'Legitimations and Limits of War in Jewish Traditions' in Hogan and Lehrke, eds., *Religion And The Politics Of Peace And Conflict*, 21.

between the 'commanded' wars of conquest fought by Joshua and the 'discretionary' wars of conquest fought by King David. About the basic distinction between these categories J. David Bleich notes that there was no recorded Talmudic dispute, yet the exact boundaries between the precedents set for a defensive war, a pre-emptive war and a preventive war have been the subject of an 'exceedingly complex' rabbinic discussion.[15] By no stretch of the imagination is Deuteronomy 20 a summary statement of a Jewish law of war. Indeed, the most extended Mishnaic treatment of the text (in *Sotah* 8) appears as part of a debate about the use of the holy language, not about war or politics, and this chapter of the Mishnah does not cover all of the issues raised by the biblical text. One popular, if contested, reading of the Mishnaic and Talmudic texts on war construes these texts as deliberately and progressively narrowing the scope for war-making over time: the Deuteronomic mandate for 'commanded' conquest soon disappears, and by Tannaitic times the oracle required for 'political' wars had long been unavailable.[16] At the same time, the Mishnah does not present the argument, as it could have done, that the entirety of Deuteronomy 20 applied only to the original conquest of the Land. The terse statements of the Mishnah and Talmud exacerbate the difficulties of drawing a normative reading from either, as the Central Conference of American Rabbis, the principal Reform rabbinic body in North America, noted in its responsa on preventive war in 2007.[17] The most serious attempts to find a definitive and faithful interpretation on the part of Orthodox *halakhic* scholars such as J. David Bleich and Michael Broyde do not rest on a plain reading of these texts alone, but seek to find compelling interpretations through reflection on a wide range of texts and commentaries. In examining the basis for a Talmudic law governing preventive wars, Bleich finds consistency through a careful casuistic approach, reading only the most limited claims into the competing opinions recorded in the Talmudic text.[18] Broyde admits more room for divergence between *poskim*, the scholars who derive normative claims through engaging with authoritative texts and *halakhic* precedent, though compelling rationale and the consensus of succeeding generations of sages bolster his own sense of those views which are more justly called 'normative'.[19]

The elaboration of a coherent *halakhah* to apply to the making of war first received deliberate essay-length attention in the twelfth century CE, in Maimonides' *Laws of Kings and Their Wars*, the final section of his law code, the *Mishneh Torah*. Maimonides' brief survey of the biblical laws relating to kings and to 'their' wars is far from an exhaustive treatment of the biblical or Talmudic laws relating to war. Indeed, there is much in the interpretation of war given by Maimonides which diverges from the preceding textual tradition, the by-product in particular of his Islamic milieu, focussing on the prerogatives of the king, on the mandate for war to command right and forbid wrong, on the martyrdom of the soldier, and

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[15] Bleich, *Contemporary Halakhic Problems*, Vol. III, 252.

[16] See, for example, Solomon, 'The Ethics of War in Judaism' in Rodin and Sorabji, eds., *The Ethics of War*, 110. For further discussion of Tannaitic attempts to provide restrictive interpretations of the scope for making war, see Michael S. Berger, 'Taming the Beast: Rabbinic Pacification of Second-Century Jewish Nationalism' in James K. Wellman, ed., *Belief and Bloodshed: Religion and Violence across Time and Tradition* (Lanham MD: Rowman & Littlefield, 2007), 47–62.

[17] CCAR, 'Preventive War' in CCAR Responsa (5762.8, 2007) http://data.ccarnet.org/cgi-bin/respdisp.pl?file=8&year=5762

[18] Bleich, *Contemporary Halakhic Problems*, Vol. III, 252.

[19] Broyde, 'Just Wars, Just Battles and Just Conduct in Jewish Law' in Schiffman and Wolowelsky, eds., *War and Peace in the Jewish Tradition*, 1–43, especially nn. 49, 67, 96, and 'Only the Good Die Young?' in *Me'orot* 6:1 (Shevat 5767/2006), 62-67, especially 63–64.

on the elimination of idolatry.[20] Nevertheless, the book's definitive style and relative completeness has given it a central place in rabbinic debate over the *halakhah* of war. Few commentators examining the Scriptural commandments about warfare rely on Maimonides' judgements alone,[21] though these judgements remain an unavoidable feature of scholarly and popular presentations of Jewish law and ethics in war and peace-making. Maimonides sought a clear basis for an eternally-applicable divine law, though within his own text a series of difficulties with this project become clear. Maimonides' stated argument, that there is a timeless, divinely ordained law of war, elides Deuteronomy with subsequent texts on the actions of the Prophets, Kings and Sages of Israel, and with the Mishnah, Gemara, Tosefta and Midrash. This is achieved in part by not making explicit reference to his sources, in part by selecting evidence from the latter writings, and particularly from I Samuel, where it appears to conform with Deuteronomy 20 and the surrounding Deuteronomic text devoted to the King's duties and prerogatives, beginning with Deuteronomy 17. With this in mind, his construction of the laws of war is clearly not a closely-reasoned attempt to define the historically-contingent Biblical law of war but rather a counterblast to Karaite and other heterodox arguments which separated Deuteronomic law from the laws of the Prophets and Kings of Israel, and which separated both of these again from the laws elaborated in the Mishnah and Talmud. Maimonides' bold elucidation of a normative '*halakhah* in principle' is so remote from both the Biblical text and the changing realities of war that Gerald Blidstein suggests it is wholly *aggadic* and is not an accurate representation of a normative *halakhah*.[22]

By contrast, for a scholar seeking a medieval authority on which to found a Jewish just war tradition, the *Laws of Kings and Their Wars*, and the subsequent tradition of commentaries on the work, is as coherent and encompassing in its scope as the works of his Christian and Muslim contemporaries. If the distinctiveness of Maimonides' text and context raises questions about its utility for Jewish thought about war today, there is no shortage of scholars for whom it is viewed as a usable, even a preferred, basis for a principled discussion of ethical and legal constraints on modern warfare.[23]

Against these texts, the more quietist or thoroughly pacifist voices have many other textual resources which make war appear both wrong and thoroughly un-Jewish – classically texts read from the prophetic or wisdom literature as a basis for character perfection,[24] construing war as a divine punishment, as it has been in Jewish literature since at least the composition of the text of Jeremiah.[25] The selection and interpretation of texts troubles protagonists

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[20] Gerald Blidstein, 'Holy War in Maimonidean Judaism' in Joel Kraemer, ed., *Perspectives on Maimonides* (Oxford: Oxford University Press, 1991), 212, 215, and, for a suggestion that Maimonides may have deployed Islamic precedent for 'safe passage', too, 216. See further in George Wilkes, 'Religious War in the Works of Maimonides and the "Maimonideans": An idea and its transit across the medieval Mediterranean' in Sohail Hashmi, ed., *Just Wars, Holy Wars, and Jihads: Christian, Jewish, Muslim Encounters and Exchanges*, forthcoming.

[21] See, for example, Broyde's comments in Broyde, 'Just Wars, Just Battles and Just Conduct in Jewish Law' in Schiffman and Wolowelsky, eds., *War and Peace in the Jewish Tradition*, 13–15 and 19–20.

[22] Blidstein, 'Holy War in Maimonidean Judaism' in Kraemer, ed., *Perspectives on Maimonides*, 215.

[23] For example, David Schatz, 'Introduction', and Broyde, 'Just Wars, Just Battles and Just Conduct in Jewish Law' in Schiffman and Wolowelsky, eds., *War and Peace in the Jewish Tradition*, xiv–xv and 13–15, 19–20; Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), 168.

[24] For example, Polner and Merken, *Peace, Justice and Jews.*

[25] For Josephus' debt to the precedent established in Jeremiah, for instance, see *Jewish War*, 5.402–3 and 412, 6.110, 7.453. Nicole Kelley, 'The Cosmopolitan Expression of Josephus's Prophetic Perspective in the *Jewish War*' in *Harvard Theological Review* 97:3 (2004), 257–74, especially 260.

in the debate from all perspectives, a point underlined, for instance, throughout the multidenominational rabbinic conference held in New York in 1963.[26] 'Scriptural quotations are not arguments', Abraham Cronbach, one of the leading Reform pacifists of the time, noted, 'they are embellishments'.[27] The recurrent debate over the following decades has similarly pitted two polar argumentative extremes against each other, a 'Left' and a 'Right', differentiated not by texts or interpretations used, nor by their views of legitimate chains of authority, denominational cohesion or the nature of consensus. A more important dimension of the divergence between protagonists lies in their assessment of the nature of a Jewish approach to war that has a practical impact and is coherent.

2. Power, powerlessness and the problem of identifying practical norms

It is a cliché that Jewish discussion of practical military ethics is limited because for two millennia Jews have not had power. For this reason, too, it is commonly concluded that there has not been the practical necessity to develop laws of war. In this period, Christian and Muslim scholars turned their attention to practical issues associated with the justification for wars, with the limits of justifiable conduct in war, and with related religious issues such as the propriety of carrying copies of the Bible or Quran into enemy territory. Jews, it is said, did not have to face these issues until the establishment of the State of Israel in 1948.[28]

The resulting picture is a caricature which glosses over a wealth of theoretical and practical reflection relating to war throughout the past two millenia. Jews have been involved in warfare throughout their history, and this has been reflected in communal organization as well as *halakhic*, homiletic and exegetical literature. It is true that there were very few dedicated publications or practical manuals of the type that informed Christian and Muslim military instruction – Israel Meir Kagan's book for Jewish soldiers in the Russian army being the most notable exception before the twentieth century.[29] The key features of the Jewish textual tradition have instead been taught through Bible and Talmud study, through sermons, through historical scholarship, and as part of broader *halakhic* and textual studies. Israeli approaches to the idea that there are Jewish norms of war were thus not created *ex nihilo*. They are adduced in the context of competing intellectual trends: democratic and nationalist, liberal and more recently post-modern, and religious.[30]

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[26] *Dimensions of Peace: A Jewish Confrontation. Report of a Conference on the Relevance of Jewish Tradition to the Problems of a Nuclear Age* (New York: Dimensions of Peace, 1963).

[27] Cronbach, 'Judaism and World Peace', *Dimensions of Peace*, 1

[28] For example Arye Edrei, 'Divine Spirit and Physical Power: Rabbi Shlomo Goren and the Military Ethic of the Israel Defense Forces' in *Theoretical Inquiries in Law* 7/1 (January 2006), especially 255–256. David Biale's compelling work *Power and Powerlessness in Jewish History* gives a critical account of the assumption that Jews have been powerless in the Diaspora, and yet gives the subject relatively little attention, and ceases to treat questions relating to the uses of military power after the Middle Ages. David Biale, *Power and Powerlessness in Jewish History* (New York: Schocken Books, 1986).

[29] Israel Meir Kagan (commonly referred to as the Chafetz Chaim), *Mahane Yisrael*, Vilna, c. 1880 (reprinted New York: Shulsinger Brothers, 1943). For further discussion of Kagan's contribution and on subsequent halakhic literature for soldiers, see Chaniel Nahari, 'The Development of Halakhic Literature for Soldiers from 1880–1975,' Bar-Ilan University, MA thesis, 2003, especially 8–19.

[30] See, for example, Schiffman and Wolowelsky, eds., *War and Peace in the Jewish Tradition*, passim.

As careful as Bleich, Broyde and their Orthodox colleagues are to examine the *halakhic* corpus in its own terms, the material on war developed within the National Religious camp is no less marked by these modern ideologies. Eugene Korn judges that a *halakhic* approach to contemporary warfare must be supplemented by both normative and empirical calculations which are external to *halakhah* – determined by frameworks beyond *halakhic* sources and distinctively *halakhic* methodology.[31] As a result of this modern political environment, religious Zionist texts abound which debate the relative prerogatives of the government and parliament in relation to the earlier *halakhic* material on the roles of the king and Sanhedrin, material which is found both within more liberal, academic circles, and amongst the more anti-liberal streams of *yeshiva* scholars inspired by elder and younger Kooks.[32]

At the same time, the growth of a variety of types of *halakhic* publication on war in the State of Israel clearly reflects a different experience and expectation about the relationship between power and religion in the State. There is a new body of literature on general *halakhic* practice in military life, which often only implicitly or tangentially overlaps with the *halakhic* material on broader questions of military ethics.[33] After millenia without a sovereign Jewish state, Jews either have to relate what remained a hypothetical, idealistic, messianic tradition to the messy complexity of military and political reality, or to reject the notion that the tradition can be applied altogether. Ideological choices already enter with the attempt to derive a medieval textual basis for a practical *halakhah* of war. A weighty strand of medieval commentators preferred an idealized Messiah figure who would not even hypothetically be a military man.[34] For Maimonides, by contrast, the military role of a messianic pretender was more than hypothetical. In a letter to the Jews of Provence, he invoked the lack of military training as a cause of the fall of the Temple, implying that it reflected a broader moral malaise which contributed to the Temple's destruction.[35] Nevertheless, his treatment of the subject in 'Kings and Their Wars' is determinedly idealistic about the King, who has personally to follow the most rigorous demands of Torah observance.[36] Whether this image of the King only describes an ideal Messiah – as Michael Walzer has argued[37] – is not wholly clarified in the text, though Maimonides gives an implicit hint that these guidelines could guide Jewish leaders before Messianic times, concluding that in Messianic times the normal rules of war and politics will apply.[38] The question poses itself differently for writers who

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[31] Eugene Korn, 'Editor's Introduction to the Shevat 5767 Edition' and 'Conversation: Ethics and Warfare' in *Me'orot* 6:1 (Shevat 5767 / 2006), 4.

[32] Bleich, *Contemporary Halakhic Problems* (New York: Ktav, 1977), Vol. I, 15–16; Noam Zohar, 'Morality and War: A Critique of Bleich's Oracular Halakha' in Daniel H. Frank, ed., *Commandment and Community: New Essays in Jewish Legal and Political Philosophy* (Albany: SUNY Press, 1995), 252.

[33] Stuart A. Cohen, 'The Re-Discovery of Orthodox Jewish Laws Relating to the Military and War (*Hilkhot Tzavah U-Milchamah*) in Contemporary Israel: Trends and Implications' in *Israel Studies* 12:2 (2007), 1–28; Edrei, 'Law, Interpretation, and Ideology', 188–227.

[34] Richard G. Marks, *The Image of Bar Kokhba in Traditional Jewish Literature: False Messiah and National Hero* (University Park PA: Pennslyvania State University Press, 1993), 57–80; George Wilkes, 'Religious War in the Works of Maimonides and the "Maimonideans": An idea and its transit across the medieval Mediterranean' in Sohail Hashmi, ed., *Just Wars, Holy Wars, and Jihads: Christian, Jewish, Muslim Encounters and Exchanges*, forthcoming.

[35] Maimonides, 'Letter on Astrology', trans. Ralph Lerner, in Isadore Twersky, ed., *A Maimonides Reader* (New York: Behrman House, 1972), 465.

[36] *Mishneh Torah*, 'Kings and Their Wars', chapters 1–3.

[37] Michael Walzer, *Law, Politics and Morality in Judaism* (Princeton: Princeton University Press, 2006), 160.

[38] *Mishneh Torah*, 'Kings and Their Wars', 12:1.

juxtapose the modern development of a Jewish polity with centuries of exile. The argument that Jews had no practical experience of military affairs is commonly joined to a critique of historic elements of Jewish tradition deemed to be too influenced by the experience of powerlessness to provide an ethic for the responsible use of force. Progressive writers have identified the influence of a wild Greek militarism on the development of the thought of Maimonides and his modern Zionist successors alike,[39] while National Religious moderates such as Gerald Blidstein have begun to unpick the medieval Islamic ideology which shaped *Kings and Their Wars*,[40] and a range of advocates of a Right-wing hawkish Israeli defence policy have pilloried classic Jewish responses to power as weak-minded assimilationist responses to wider society, whether Roman or Enlightened and European.[41] The reconstruction of the Jewish laws of war is tied to a difficult retrospective historical assessment, and it is easy for anachronism to creep into the generalisations that are so often invoked. No doubt, for instance, Maimonides' approach can be depicted as ideological,[42] though his texts relating to war also reflect a heavy dose of realism, or pessimism.

Tempting as it is to focus on the remarkable shift from the absence of state, army or security to full armed statehood, none of these by themselves need provide a functioning norm for the use of force. It scarcely need be said that each sector of the Israeli Jewish public, secular, *haredi* and *dati*, is divided over what they perceive to be the basic norms by which the security of a Jewish state should be maintained. With power certainly come new conceptions of what constitutes practical, pragmatic, necessary and realistic. In order to become entrenched in army doctrine, or to be widely accepted in public and political discourse, these notions need not be coherent, nor authentically Jewish, nor far-sighted, grounds on which Israelis have criticized both the broadly-accepted innovations of a 'purity of arms' doctrine and the notion that Israel fights wars because the Jewish people are given 'no choice'.[43] Nor need these new conceptions engage with the frameworks which motivate the more philosophical accounts of what makes justifiable military conduct, and what is cause for shame. In the Roman, Christian and Islamic equivalents of the just war traditions, this philosophical core of the laws of war was perennially honoured by rulers in the breach, and taught by lawyers and philosophers who exercised no military power, nor sought to. To take the most obvious example: Aquinas, who is said to have advised Louis VIII on affairs of state, did not write his account of the just war as a manual for a prince. It is aimed at a far wider audience, encompassing not only those for whom war was a tool of politics but also those who saw war as repugnant.[44]

A great proportion of those who write on Jewish military ethics today are experts not in military affairs, but in philosophical ethics, in political thought and in Jewish thought or *halakhah*. Amongst these scholars, the impact of war on the Jewish people is as evident a

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[39] See, for example, Dow Marmur, *Beyond Survival: Reflections on the Future of Judaism* (London: Darton, Longman & Todd, 1982).

[40] Gerald Blidstein, 'Holy War in Maimonidean Judaism' in Joel Kraemer, ed., *Perspectives on Maimonides* (Oxford: Oxford University Press, 1991), 211–212, 215.

[41] For example Ruth Wisse, *Jews and Power* (New York: Schocken, 2007).

[42] Blidstein, 'Holy War in Maimonidean Judaism' in Kraemer, ed., *Perspectives on Maimonides*, especially 211.

[43] On the 'purity of arms', see Benjamin Ish-Shalom, '"Purity of Arms" and Purity of Ethical Judgement' in *Me'orot* 6:1 (Shevat 5767 / 2006), 53–61, and Michael Broyde's response, 62–67. On the 'no choice' doctrine, see Ahron Bregman, *Israel's Wars, 1948–1993* (London: Routledge, 2000).

[44] Thomas Aquinas, *Summa Theologiae*, ii–ii, Q. 40, 'On War'.

motive for the development of a Jewish ethical framework for the use of force as are calculations about the effective use of armed force. This balance can be matched from Biblical and Rabbinic texts. Alongside the commentaries on *Kings and Their Wars*, *halakhic* commentators have drawn on a countervalent textual tradition in which war is presented as a state of affairs governed by cruelty and excess, an anarchy which takes over regardless of the aims, strength and methods of the parties to a conflict. War is a state of uncontrolled instability, of crisis, as Joseph B. Soloveitchik put it.[45] Emmanuel Levinas sees this perspective in a rabbinic observation about the attempt to introduce control in city policing, and applies it to war as the extreme situation in which the urge to translate norm into practice confronts reality.[46] This definition of war as an experience, with domestic parallels, opens the debate to a far wider group without military expertise. The powerless know this experience, perhaps more than those in power. For a figure seeking to revive interest in the Jewish text as a locus for contemporary legal and ethical reflection – a key motivation for Levinas, or for Michael Walzer, for instance – centuries of Diasporic experience provide a distinctive resource for reflection on war. Jews have not had an unbroken tradition of sovereignty, but they have been at the receiving end of wars, judging some well-conceived and others misconceived. In treating warfare as an experience, Jewish political thinkers might hope for at least as wide a range of normative sensitivities from Diasporic Judaism as is to be found in the commentaries of the recognized Christian or Muslim authorities on the subject, generally also working at one remove from the political establishment.

3. Is war a proper subject for a distinctive Jewish law or ethic?

Faced with the difficulties inherent in imposing any kind of law on a chaotic medium such as war, Jewish commentators have offered very different responses to the question: Is war a proper subject for Jewish law and ethical exhortation?

A negative response to this question has long typified a quietist Jewish literature for which war is a 'gentile' pursuit, a perspective drawing on isolationist passages in the major Prophets but commonly identified with the period of exile during the two thousand years following the destruction of the Second Temple in 70 CE. This gentile warfare was neither sanctioned, nor was it classically expected, without a Messianic moment.[47] In the post-1945 literature we are covering here, such expectations have been met with three forms of rebuttal, one typically non-Orthodox, another more prevalent within various Orthodox communities, and a third and fourth typifying both traditionalist and progressive figures with a commitment respectively to ethics or spirituality in public life. Firstly, Jacob Agus, an American Conservative rabbi, condemned the notion of allowing war to occupy a lawless zone as a form of idolatry.[48] Agus agreed that Jews have been distinctively isolated from 'the wars of the nations', and that neither pacifism nor militarism can be said to be a clear imperative of

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[45] Joseph Soloveitchik, 'Insights', lecture delivered 6 January 1979, http://www.613.org/rav/ravnotes2.html#jan0679

[46] Emmanuel Levinas, 'Essai d'analyse philosophique de la guerre', in Jean Halpérin and Georges Levitte, eds., *La conscience juive face à la guerre*: *données et débats* (Paris: Presses Universitaires de France, 1976), 11–26.

[47] Walzer, *Law, Politics and Morality in Judaism*, 153, 160–61.

[48] Agus, 'A Jewish View of the Problem of War' in *Dimensions of Peace*, 2–4.

religious faith. On the other hand, the ideals inspired by that religious faith, he claimed, are critical tools for public discussion of the fundamental grounds for working towards international peace.[49]

The second rebuttal is embodied in a classic Orthodox response promoted in the work of Michael Broyde.[50] According to Broyde, the *halakhah* allows for a difference between Jewish responsibilities in making war and peace and those of 'the nations of the world', with the law restricting Jewish more than it does other nations.[51] Sharon Last Stone contrasts this dualistic approach to law with a more universalistic approach, open to the influence of contemporary international law on *halakhah*, for Jews as well as the nations at large.[52] In this third perspective, the notional division between Jewish and non-Jewish war undermines efforts to address the gaps which war and other international challenges open up for the law-maker.[53]

A fourth rebuttal acknowledges that war spins out of control, but finds grounds for an ethical response in the role of the passions and of self-interest in creating conflict. War is, particularly within literature focused on a more spiritually-defined ethics, a spiritual challenge. Where it is viewed as the archetypal challenge to the quest for a disciplined obedience to law and to external ethical limitations, it can also be presented as the archetypal situation in which law and ethical restraint are necessary. Thus, Deuteronomy 20 is followed by the 'beautiful captive' passage (Deuteronomy 21: 10–14), laying down rules to control the bestial urges of the soldier when confronted with a vulnerable female in the heat of battle. Michael Walzer has argued that this text is definitive of a historic 'just war' tradition of recognising the rights of the individual in wartime.[54] The Progressive rabbi Edward Feinstein used the text to argue that the chaos of war is exactly where ethical restraint must be asserted – that the 'beautiful captive' text presents an archetypal situation of spiritual contest for the Jewish ethicist.[55]

These competing positions suggest a distinctive ethical motivation for imposing limitations on war, and the corollary to these positions is the assumption that a distinctive ethical contribution to international politics can be effective. Others, at the other end of the spectrum, and often in the context of *halakhic* debate rather than as part of a broader ethical exhortation, argue that the nature of war makes it uncontrollable, wild, and uncivilised. In Saadia Gaon's *Emunot ve-Deot*, war is touched upon only as a catastrophe or a divine visitation, not as an ethical challenge,[56] and this is true of many medieval commentaries. But in those *halakhic* texts where a doctrine of self-defence is established, the lawlessness of war has ethical

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[49] Agus, 'A Jewish View of the Problem of War' in *Dimensions of Peace*, 2–4.

[50] For example Broyde, 'Just Wars, Just Battles and Just Conduct in Jewish Law' in Schiffman and Wolowelsky, eds., *War and Peace in the Jewish Tradition*, 1–44; and 'Only the Good Die Young?' in *Me'orot* 6:1 (Shevat 5767 / 2006), 62–67.

[51] Broyde, 'Just Wars, Just Battles and Just Conduct in Jewish Law' in Schiffman and Wolowelsky, eds., *War and Peace in the Jewish Tradition*, 9–17.

[52] Sharon Last Stone, 'The Jewish Law of War: The Turn to International Law and Ethics' in Sohail Hashmi, ed., *Just Wars, Holy Wars, and Jihads: Christian, Jewish, Muslim Encounters and Exchanges*, forthcoming.

[53] Stone, 'The Jewish Law of War' in Hashmi, ed., *Just Wars, Holy Wars, and Jihads*.

[54] Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), 134–135.

[55] Edward Feinstein, cited in Wilkes, 'Judaism and Justice in War' in Robinson, ed., *Just War in Comparative Perspective*, 14.

[56] Saadia Gaon, *The Book of Beliefs and Opinions*, trans. Samuel Rosenblatt (New Haven: Yale University Press, 1948).

implications. One Modern Orthodox and *haredi* response is to assert that the uncivilizable chaos of war removes all moral limits on the use of force once a war is launched. Restraint, according to this view, belongs to the period before battle is commenced, and then it becomes immoral. Thus, Menachem Mendel Schneerson, the last Lubavitcher Rebbe, consistently rejected any projected ceasefire in Lebanon in 1982, basing his rejection in terms of the continuing threat that the enemy posed, and by reference to a series of biblical verses which he believed assure 'complete victory' for those who trust in the Lord.[57]

The doctrinal opposition to an apparently excessive restraint is not necessarily tantamount to a call for totally unrestrained violence. It may be, however. If war is essentially wild and chaotic, then focused, purposive, necessary violence becomes very difficult to measure. Broyde adopts a position acknowledging both the virtually lawless nature of war, and the duty to impose law on that chaos. In Broyde's view, war demands a readiness to suspend normal *halakhic* limitations, if necessary by virtue of a *hora'at sha'ah*, temporarily declaring a law to be inapplicable.[58] While this responds to the ungovernable nature of war, Broyde insists that a normative response is appropriate to and demanded by the state of war. War does not make law irrelevant, because without legal sanction killing for a religious Jew is murder. The law in wartime, however, has to be different in order to preserve the possibility of a normative order.

The significance of the range of normative options canvassed in the literature can be further clarified through the decisions these normative options imply. To make judgements in response to the chaotic nature of war, a range of commentators rely upon experts, and which experts they favour speaks volumes about the normative framework into which war is placed. In 1967, Joseph Soloveitchik urged rabbis to defer to military experts when faced with requests for guidance on questions of war and peace, though earlier in his career he took a more ebullient *halakhic* line in insisting both that military achievements were in the hands of God and that rabbis ought not to be excluded from the public realm.[59] According to Menachem Mendel Schneerson, the judgements of the military were of definitive importance because of their expertise, though in his view these judgements became 'the *halakhah*', rather than restricting the scope for *halakhic* guidance.[60] Amongst more determinedly *haredi* commentators, this respect for military experts is commonly balanced by an affirmative view that the great sages of the day, the *gedolei hador*, have a special purchase on both the true *halakhic* answer and the prospect of victory or defeat, which lie in God's hands.[61] The rabbis may, alternatively, be credited with a superior ethical perspective. Thus, according to one of the most respected right wing Modern Orthodox rabbis, the late Chaim Zimmerman, military men cannot be trusted with decisions about lives at stake in wartime because of the crude statistical approach they have in calculating the effect of military actions on lives (here

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[57] 'Fulfillment of Mission', translation from addresses given in 1982, published in Menachem Mendel Schneerson, *Peace For The Galilee: Sichos In English, Excerpts of Sichos delivered by The Lubavitcher Rebbe, Rabbi Menachem M. Schneerson*, Vol. 14 Sivan-Elul 5742/1982 (Brooklyn NY: Committee for Sichos in English, 5744/1984).

[58] Broyde, 'Only the Good Die Young?' in *Me'orot* 6:1 (Shevat 5767 / 2006), 46.

[59] On Soloveitchik's much-noted Teshuvah shiur at the 92nd Street YMCA, September 1967, see for example Haskel Lookstein, 'A Mission Fulfilled' in *Jewish Action* (Spring 2003/5763), 3. On Soloveitchik's earlier views, see Shalom Carmy, '"The Heart Pained by the Pain of the People": Rabbinic Leadership in Two Discussions by R. Joseph B. Soloveitchik' in *Torah u-Madda* (13/2005), 1–14, here 3.

[60] 'Fulfillment of Mission' in Schneerson, *Peace For The Galilee*.

[61] For a critical reflection, see Lawrence Kaplan, '*Daas Torah*: A Modern Conception of Rabbinic Authority' in Moshe Sokol, ed., *Rabbinic Authority and Personal Autonomy* (Northvale NJ: Jason Aronson, 1992), 1–60.

he is referring to Jewish lives, specifically). The rabbis, by contrast, are devoted to a much stricter level of commitment to individual life.[62]

Against these positions, a growing body of more liberal, communitarian commentators – among whom Michael Walzer is both representative and influential – promote a distinctive Jewish political engagement with international political problems faced not by Jews alone but by the nations of the world as a whole, in which the expertise deemed most crucial to the making of war and peace is political and more broadly philosophical. The role of the political expert is not only to provide a check on military and executive, though in this vein of literature, increasing stress has been laid on the role of a democratic assembly in war-making powers.[63] Recognising the moral and political nature of war, political experts are envisaged here to guide public debate towards effective long-term commitments, as much from outside Parliament as from within it. What is effective or 'practical' in this communitarian perspective is not primarily defined by short-term calculation, nor does it propose long-term certainties where the unpredictability of war prevents this. If they are vulnerable to charges of political or military impracticality, Jewish communitarians nevertheless insist that a distinctive religious Jewish contribution to political and military affairs must comprise a long-term commitment to a collective ethical or human dimension or it will either cease to be Jewish or it will cease to be politically relevant. Moral commitment, to the 'purity of arms' or to the sanctity of the lives of individual soldiers, makes a core feature of this communitarian politics, and is in this view worth the risk it entails to national security and the lives of individual soldiers.[64]

Conclusion

Above, we have seen the practical limitations to normative Jewish teaching on the making of war and peace. The burgeoning body of literature on Jewish approaches to war asserts that, because of this, there is a need for renewed debate over Jewish approaches to war, and in spite of this, Jewish norms must apply to war.

The lack of practical experience of sovereignty and war-making in previous centuries does not discourage some commentators from judging Jewish tradition to be more 'realistic' about war than its Christian counterparts – a generalisation promoted by Michael Broyde,[65] as it had been in the 1920s by Franz Rosenzweig.[66] Similarly, Michael Walzer and fellow communitarians see Jewish tradition as a distinctive and particularly valuable source of

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[62] Chaim Zimmerman, 'The Prohibition of Abandoning Land in Eretz-Yisrael', *Ariel Center for Policy Research Policy Paper* 158 (March 2005).

[63] See, notably, Noam Zohar, 'Morality and War: A Critique of Bleich's Oracular Halakha' in Daniel H. Frank, ed., *Commandment and Community: New Essays in Jewish Legal and Political Philosophy* (Albany: SUNY Press, 1995), 245–258; Walzer, ed., *Law, Politics and Morality in Judaism*. For a broader background to the project, see, for example, Daniel Elazar, ed., *Morality and Power: Contemporary Jewish Views* (Lanham MD: University Press of America / Jerusalem, Jerusalem Center for Public Affairs, 1989), and Michael Walzer, Menahem Lorberbaum and Noam Zohar, eds., *The Jewish Political Tradition*, Vol. 1 (Authority, New Haven CT: Yale University Press, 2000).

[64] Benjamin Ish-Shalom insists on a close parallel to this in his defence of 'the purity of arms', in '"Purity of Arms" and Purity of Ethical Judgement' in *Me'orot* 6:1 (Shevat 5767 / 2006), 53–61.

[65] Broyde, 'Fighting the War and the Peace' in Burns, ed., *War and Its Discontents*, 1–30, here 24n.29.

[66] Franz Rosenzweig, *The Star of Redemption*, translated from the 2nd ed. of 1930 by William W. Hallo (New York: Holt, Rinehart and Winston, 1971), 331.

reflection on war because Jewish tradition highlights the human context in which war is fought.[67]

A vibrant sense of the need for normative teaching on war therefore coexists in both Orthodox and non-Orthodox Jewish literature with an equally vigorous dispute over the ambivalent nature of that normative body of law. The military situation of both the State of Israel and the United States of America has persuaded many that the recovery or development of a distinctively Jewish approach to the laws of war is a matter of urgency, whether this distinctive approach promotes or counters an effective resort to warfare. In much of this literature, the extent of the divergence of opinion within the Jewish community is the subject of extended deliberation. The limits or ambiguities of the textual resources available are examined alongside the argumentative and intellectual strategies by which these limits are overcome by partisans of the competing positions in the debate. Clearly, many protagonists in the debate find the diversity of opinion problematic. For that reason, it would be unwise to imagine this new genre of Jewish 'war and peace' ethics as evidence of an embracing pluralism. Neither are many of the essays covered here evidence of raw, unnuanced polemic. In their combination of commitment and ambivalence, they provide an excellent resource for the student of contemporary Jewish normative strategies when faced with little consensus in respect to the authorities most appropriate for the task, and less with regard to the nature of the practicalities involved. The resultant diversity feeds on the sense that for Judaism to be Judaism it must present normative responses to the dilemmas faced in such an important aspect of Jewish life.

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[67] Walzer, *Just and Unjust Wars*, notably 168. A comparable teaching explored by one of the leading communitarians within the Jewish renewal movement, Arthur Waskow, may be found in 'Gentle Hearts and Coronets', *Jerusalem Report* (4 September 2006), originally written as 'Soldiers, Kings, and the "Gentle Heart": Torah & Today' (2002), available at http://www.shalomctr.org/node/1171

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