

JUDAISM, THE LIMITS OF WAR, AND  
CONFLICT RESOLUTION

*Paper delivered at Princeton University*

*April 27, 2001*

©Marc Gopin

The complex nature of the interaction between world religions, peacemaking and conflict generation in recent decades, in addition to the role of religion throughout history, warrants a special area of investigation. The need for this is urgent. As religion becomes more important in the lives of hundreds of millions of people, the political power generated by this commitment will either lead to a more peaceful world or a more violent world, depending on how that power is utilized. Only through understanding the nature of this growing enthusiasm for religion can we hope to steer the religious world in the direction of peacemaking and coexistence. Furthermore, only if peace is, and is perceived to be, a part of a principled and meaningful fulfillment of religious experience, rather than a shady compromise with an unredeemed world, will this commitment take hold in the broadest spectrum of those who are now zealously religious. Methods of peacemaking that continue to focus only on political and intellectual elites, or that fail to address the broadest possible range of religious believers, are leading to systematic and potentially catastrophic diplomatic failures in key areas of the world, such as the Middle East.

There are several areas of inquiry regarding peace and war, all of which, for independent reasons, have failed to account for this complex issue. Much of the

thinking about peace and conflict in terms of religion has been divided into questions about the legitimacy of war or its conduct. This has a long history the contours of which have come to be dominated by Christian discussions of “just war” theory or, alternatively, pacifism. There have also been corresponding bodies of literature, going back thousands of years, in other religions on the legitimacy of war and its conduct. [\[1\]](#)

Most of this discussion has a tendency to limit the full range of possible approaches to human problems, religious or otherwise. There is an important and old discussion, for example, about just war in Christianity, especially in Catholicism. There is, however, a far broader Christian discussion over the centuries about interpersonal ethics, human psychology, and the things inside human beings that lead alternatively to love or hate, compassion or rage, peace or conflict. The same is true in numerous other traditions that have a curious split between discussions of war or peace, on the one side, and, on the other, discussions of ethics and psychology, the latter being critical to the capacity, or lack thereof, to create peace. This selective approach to religious literature and experience is the first problem with just war literature. [\[2\]](#)

The second problem is that just war literature always focuses on a single, rather limited choice: war or not war. But this is hardly the range of choices that are available to human beings in conflictual situations. One can believe that war is sometimes necessary, but also believe that the choice for war, even if it rests on sound moral principles, effectively expresses a complete failure of all the other ethical or spiritual directives that are ideally supposed to guide one’s actions. It is their absence that leads to conflict, and war may now be the only moral course of action possible, assuming one is not a pacifist. For example, these spiritual directives can include a

prohibition in both Buddhism and Judaism against selling destructive weapons. [3] The failure to follow this precept leads to violence, and is therefore a critical component in analyzing its genesis according to these spiritual systems of belief and practice. Nevertheless a resulting war may be obligatory due to the obligation of self-defense, at least in Judaism. For example, a complete theological analysis of the Gulf War against Iraq would include a severe condemnation of the Western countries for having armed Saddam Hussein in the first place, with appropriate demands for admission of responsibility and the prevention of such sinful abetting of crime in the future.

Another example might be the directive of boundless love in Christianity, or *metta* in Buddhism, that were it followed on a day to day basis with adversaries, might prevent minor disagreements from turning into violent warfare. In other words, there is a range of ethical practices, spiritual experiences, laws and codes, which inhere in religious life that are virtually left out of just war discussions. [4] The broader ethical literature is the key to serious and constructive approaches to conflict prevention, resolution and reconciliation, in religious societies.

The third problem with just war literature is the lack of consciousness of the variety in cultural context that forms the basis of how people think about conflict, war and peacemaking. There is a tendency to define war and peace in terms of specific religious criteria in only some faith traditions, and almost exclusively in terms of Biblically based religions. But many people the world over are not thinking in terms of Biblically based religions. Even most of those who are rooted in Biblical religion do not in practice make decisions about conflict based on just war criteria. Few of them know these criteria at all. Therefore, the entire discussion smacks of elitism and theological speculation--often after the fact--that has little to do with how, when, and

why violence is generated by religious people, or why and how peace is sought and cultivated.

This has important ramifications in terms of global relations, as well as domestic relations between disparate cultural groups. Just war discussions have been valuable in the attempt to search for global standards of behavior regarding the conduct of war, harking back to their original function in the Middle Ages. It has also been a helpful banner around which to frame opposition to an ugly war. Furthermore, I do not deny the importance of evoking standards, either secular or religious, for shared behavior and values on a universal scale. Conflict prevention will require this ultimately, and certainly the building of civil societies between religious, non-religious, and multi-religious contexts requires this.

The real problem is that we cannot, while pursuing just war standards, bury cultural specificity or the unique character of all religious expressions when it comes to peace and conflict, without subverting our original intention. These unique qualities must become key to the discussion if we are not simply to repeat the same mistakes of miscommunication across civilizations, or impose standards coercively on others in the name of peace. In particular, it is the broad range of spiritual beliefs and practices that could be useful in creating constructive approaches to preventing conflicts or managing constructive conflicts nonviolently. [\[5\]](#) From the perspective conflict resolution practice, if we consult religious traditions only when war is imminent or on the horizon then we ask their advice only when the real damage has already been done. By the time the sabers are rattling—or the nerve gas is cooking—the great potential of religious interpersonal values to prevent violence has already been emasculated by the violent and terrifying circumstances.

## Jewish Legal Religious War In The Contemporary Context

Let us now examine the Jewish legal attitude to war making. The matter is subject to extensive debate in the earliest sources. What emerges from that debate is a conception of three types of war: *milhemet hova* (obligatory war), *milhemet mitsvah* and *milhemet reshut*. The first two, for all practical purposes, appear to be the same (at least the way that they have been received in traditional Judaism), namely, a war that is obligatory or considered *amitsvah*. These wars include the war against the ancient Amalekite nation and the war against the Canaanites and other tribes occupying the land that became Israel. Only these latter wars involve the killing of every man, woman and child. Virtually all Talmudic authorities concluded that the war against the Canaanites is finished because they no longer exist. The Amalekite case is different. Some authorities compared them to the Canaanites in the sense that they no longer exist. Others delay the battle with Amalek to the pre-Messianic era. [\[6\]](#)

The latter poses a problem in the sense that, at least according to some authorities, and pervasive in the popular religious Jewish consciousness, is the fact that implacable enemies of the Jewish people truly are in some sense the Amalekites. The fact that once a year it is obligatory in Orthodox Judaism to recite, hear, or read the Biblical verses declaring an eternal war on Amalek has strengthened a continuing sense among some Jews that there will always be people who, when they demonstrate an implacable need to kill Jews, can be considered like Amalek. Furthermore, part of the struggle in Israel today over its future relationship to Arabs and Palestinians, and the territories, involves a minority of religious Jews who actually do consider this period of history to be the pre-messianic period of struggle, which means that war against Amalekites could be operative potentially. Furthermore, every time there is a bombing in which the purpose of the bomb is to kill as many Jews as possible, with no

other objective, it confirms in many religious minds that, on a theological plane, Amalek exists and it is the Palestinians, just as it used to be the Nazis.

Nevertheless, it is important to point out that the vast majority of *halakhic* authorities do not consider this kind of war to be operational. This leaves the final kind of obligatory war, which is the war of self-defense. If it is clear that an enemy has attacked a Jewish self-governing entity then it is obligatory to defend oneself. The texts certainly seem to indicate that this obligation is limited to defense in response to attack, not preemptive strikes.[\[7\]](#)

Preemptive strikes are a major issue today in the missile age, in the sense that waiting to be attacked could mean waiting to suffer massive losses and even defeat. Thus, there has been considerable discussion in the literature on preemptive strikes, particularly in light of Israel's decisions in 1967 and the questions surrounding the Lebanon war of 1982. [\[8\]](#) The fact is that it remains extremely difficult to justify preemptive strikes as obligatory according to Jewish law, despite the existence of some authorities such as R. Menachem ha-Meiri (d. 1315) who did, due to several important authorities that specifically defined obligatory war as a response to attack.

This then leaves the category of *milhemet reshut*, discretionary war. Here we have an interesting set of disagreements. Jacob David Bleich summarizes the traditional attitude to discretionary war by stating quite clearly that it is precluded in modern times, and in fact has been precluded since at least the end of the second Jewish Commonwealth (70 CE), if not earlier. Discretionary war requires a Jewish king, presumably of Davidic descent, a Sanhedrin (ancient Jewish high court), and the *urim ve-tumim* (a breastplate worn by the High Priest, consulted to give its miraculous indication of whether or not to wage war). All three of these institutions have been assumed to be impossible to recreate before the coming of the Messiah,

according to traditional Judaism. This point of view is typical of ultra-orthodox Judaism in modern times that has been quite reluctant to follow the lead of Religious Zionism in terms of reconstituting Jewish institutions of power before the Messiah arrives. This represents a subtle but deep fissure regarding Jewish use of state force.

Reuven Kimelman has done extensive work on the parameters of Jewish warfare. He cites the idea, based on precedents in Maimonides, among others, that the Sanhedrin requirement is meant to act as an expression of the needs of the people, and to be a counter-balance to the needs of the sovereign. Furthermore, the former would be in a position to evaluate the rights and wrongs of going to war and conducting it in an *halakhic* fashion. He also points out, following Chief Rabbi Goren, that the key element of Sanhedrin is its representative authority. [\[9\]](#) Furthermore, the *urim ve-tumim* is no longer necessary for consultation now that it is defunct, according to some authorities. [\[10\]](#)

The Sanhedrin would provide a counter-balance to the ruler(s) in making the decision to go to war, thus balancing state interest and the people's interests (though not those of the adversaries) in deciding to go to war. [\[11\]](#) In the immediate background of this formulation, especially regarding Kimelman's citation of Chief Rabbi Goren, seems to be a suggested justification of war making in contemporary Israel when the elected government and recognized *halakhic* leaders agree on going to war, though I am uncertain of this. There appears, however, to be some confidence that the agreement of the state and the representative *halakhic* body would be enough to ensure that the war is conducted for "moral" reasons.

It must be noted, however, that Kimelman, like many previous scholars, weds this argument to an extensive effort to circumscribe both the legitimization of war and the conduct of war by a broad series of ethical/*halakhic* guidelines. This includes not

engaging in wars that will involve more than one-sixth of one's forces as casualties, allowing escape routes for retreating forces, and conducting negotiations before besieging a city, "calling out to it in peace first". Destruction that is unnecessary for the achievement of military aims is disallowed. Destruction of the surrounding environment is not allowed. The killing of noncombatants is not allowed. [\[12\]](#)

This raises an issue, not really addressed by Kimelman, namely, the problematic nature of targeting anything near civilian populations with explosive weapons. In general, I would argue, explosive weapons, from rocket launched grenades to F-16's, and certainly weapons of mass destruction, make it extremely difficult to comply, in any contemporary warfare, with the *halakhic* rule that requires giving even combatants, let alone unarmed civilians, a way out of conflict, a path of retreat.

It would seem that Kimelman hopes to limit war due to the nature of the *halakhic* institutions that would need to support a war, and who in some fashion represent the interests of the people. In principle I would agree that getting the consent to go to war from those who represent the average person's interests is no longer easy in an age where the brutality of war is available in the living room of every parent who would send a child to the battlefield. But a present day *halakhic* body would not necessarily be the equivalent of a democratic or even representative institution by any means, especially in a largely non-religious and at times anti-religious society in Israel. On the other hand, the Israeli Parliament, which is a representative elected body hardly operates in terms of *halakhic* guidelines on issues of national security and morality surrounding the taking of life, nor can its members in any way be seen as having *halakhic* authority. Thus, we are still left without a clear way to conduct a modern Jewish war, or even a mechanism to determine which wars are justified.



David Novak, reflecting on a Jewish attitude to wars conducted by gentiles, which Jews must decide whether to support (specifically regarding the Vietnam war), employs the now infamous *rodef* law, made famous by the assassin of the late Prime Minister Rabin. The *rodef* law requires a person A to intervene and stop B from killing C. But A may not use any means whatever, unless it is clear that killing B is the only way to stop him. And, in fact, A can be guilty of murder if he does not need to use deadly force. This law is used rabbinically to justify abortion where the fetus is threatening the life of the mother. The assassin of Rabin and his rabbis [\[13\]](#) extended this law to politics, and made the case that, in their mind, Rabin was a direct and immediate threat to Jewish life, a position that the vast majority of rabbinic authorities have repudiated.

Novak extends this law to justify exactly the opposite of killing regarding Vietnam. If persons B and C, argues Novak, are not clearly defined, and we do not know who exactly is trying to kill whom, then the law of *rodef* does not apply, and another *halakhic* principle, namely, not destroying one life for another, or not considering one life more valuable than another, becomes morally paramount. Who was really the pursuer in this Vietnamese war is dubious from an ethical point of view, argues Novak. Whether it was a war of aggression by the North, a civil war, or the Cold War fought by proxy, or all three, is unclear. Furthermore, the United States was hardly in a position to make a moral judgment on this, considering the fact that its strategic interests were paramount, and its decisions about the war were certainly not based on the Jewish law of *rodef*. [\[14\]](#) Thus it would be very complicated to justify the war as a religious Jew, argues Novak.

I would point out the rather circumscribed nature of the *rodef* law in that it only justifies use of force in very limited circumstances of “hot pursuit”, as far as I

have been able to tell. [15] The danger of the political extension of this law to war and wholesale killing, or the use of this law to justify premeditated killing when there is no hot pursuit seems clear. Thus while Novak's use of the *rodef* law to limit the justification of war is understandable, I think that its extension at all by theorists to situations beyond "hot pursuit" of one person by another that you see before you is ill-advised. [16] It confuses political calculus and the *halakhic* challenges of individual decision making in very particular situations.

There seems to be very little to justify Jewish war today, except when being attacked, and even then a set of circumscribing *jus in bello* laws apply. It is also not clear to me whether even this category is legitimate, because the state of Israel is not a *halakhically* constituted state. Neither were the many Jewish communities in the pre-modern era. The very category of *halakhic* war is only discussed by the Mishnaic and Talmudic rabbis in the context of a highly theoretical construct of the *halakhic* state. Many rabbinic discussions in general-- most of the discussions in certain areas of law, in fact--are completely theoretical in nature because the current circumstances make the law's applicability impossible. I am not satisfied that it has been proven that these Talmudic war discussions apply to any circumstances beyond the Second Temple period, or could in principle. Furthermore, it is questionable whether the rabbis, even in the period of the second Temple, ever had a sovereign construct in which their guidelines to war were ever operationalized.

This leaves us with two curiously overlooked Jewish principles. One is that saving of life, *pikuah nefesh* [17], justifies the abrogation of most other laws, and the other is the principle that if someone comes to kill you, you are obligated to kill him first in self-defense. [18] As far as the former, one is permitted to do almost anything to save one's life and the lives of others, with the exception of incest, idolatry, and

premeditated murder. However, I cannot kill someone else who is not attacking me. Thus, even if person A, ordering me to kill person B, will kill me instead if I do not comply, I cannot follow the order. Now it is clear that war is a very different situation from this, where an attacking army is directly threatening one's life, and the lives of many others. The people that I kill are the people who are attacking. Once again, however, it would be very problematic to kill civilians or those not directly threatening one's life, based on this law, say with indiscriminate bombardment of enemy cities. The same would apply to the second rule. These two principles seem to me to justify the use of violence in very limited circumstances of attack, and makes organized war that operates in an environment of many civilians very problematic.

### Individual Religious Ethics Versus Religious Warfare

This limited notion of self-defense in specific circumstances highlights the way in which Jewish law and religion is supremely wedded to individual circumstance. This has ramifications in terms of the following. One of the fundamental challenges to the moral evaluation of war in general, not just Jewish war, is the way in which the word "war" includes such a vast array of unpredictable circumstances, especially modern war. How is the individual who is committed to a personal code of morality expected to suspend all of those values in the context of war? When is the personal code, or one's *shalakhic* code in the Jewish situation, to be suspended and when is it not to be suspended? When does the obligation to kill, steal or destroy things as a part of warfare, override all of the everyday laws that absolutely prohibit these activities? When exactly is there a suspension of the numerous *halakhic* moral safeguards governing one's internal life and external behavior that often prohibit even the hint of violence, such as talebearing or losing one's temper?

Michael Walzer attempts to get at some of these issues by looking at the details of war situations, but it is a very difficult enterprise. [\[19\]](#) The same is true of the dichotomy between extremely high standards of conduct demanded by Halakha and Jewish pietistic literature as applied to individuals versus the behavior that is apparently acceptable and expected in war. We see from Kimelman's sources that indeed the rabbis expected some complex interaction between these two spheres. But the interaction remains extremely nebulous, as far as I can tell, as if there is vacuum of experience in this regard. Indeed, there is little experience that rabbinic Judaism has of organized warfare in the last two thousand years, where Jews are the combatants, not the victims. The vast chasm between the life of warfare and the Talmudic and medieval pietistic insistence on an utterly sanctified day to day, even moment to moment, interpersonal lifestyle seems to be insufficiently confronted.

Let us take an example. Person A is part of a group that has expressed hostility to some Jews at some point in time, such as Christians in medieval Europe, or Arabs today, but has not attacked a Jew himself. Does one treat person A as an enemy, as if war has been declared, or does one, on the contrary, owe him all of the moral obligations of the Jewish tradition: honoring him as a creature of God, or as an elder (if he is older), greeting him with peace, honoring his property, even loving him as a creature of God, as Hillel did to all gentiles [\[20\]](#), and so on? Is this stranger perhaps in an in-between state? How can one immediately classify all Christians, Arabs, or Muslims in one category, simply because some of them at some point in time have engaged in hostilities? How does one determine the contours of enemy, friend, righteous gentile, and, most importantly from a realistic as well as psychological point of view, those who are in-between, neither friend nor foe. These questions are particularly relevant today to Jewish-Arab relations, for example, but have never

really been analyzed in Jewish legal tradition, due to reasons that wait to be uncovered.

A far deeper problem with the secondary literature on war in Judaism is that it suffers from a compartmentalized and fragmented approach to life. It is only one part of a religious system of belief and practice that actually governs all human interactions. But the literature reads as if the question of war and violence can be discussed and then acted upon utterly divorced from the rest of Jewish morality. In this way, it models itself on discussions of *jus ad bellum* and *jus in bello* in Christian tradition that have a long history. The latter, however, may be accused of the same thing. Both discussions divorce the subject of war from the rest of the range of religious values applied to the individual, as if these other religious values, such as humility, compassion, and justice, which are incumbent on the individual, were abolished during war or irrelevant to the decision of whether to participate in a war, or whether there are other avenues of dealing with adversaries short of war, and as if the Jewish moral agent somehow disappears on the battlefield. Most importantly for our subject, regarding the transition from war to peace or peace to war, it is as if the decision to engage in war with an enemy is somehow divorced from the entire set of human interactions that brings groups of people to the brink of conflict, violence and bloodshed.

Here is the most important point. War does not happen in a vacuum without any causal chain leading to it. Furthermore, war is not neatly separated from other human interactions. War is first a distant possibility, then it becomes one, and then it disappears again. Or it grows, is waged, but suddenly stops due to any number of complex socio-economic, psychodynamic, and political factors. In other words, whether war happens, how it proceeds, and how and why it ends is a sufficiently

complex human phenomenon that it cannot be separated from the range of human choices and behaviors that lead up to it, or interact with it in complex ways. There are innumerable contributing factors that bring people to a state of war, and these factors themselves, be they political, economic, psychological or ethical, can be further broken down to many individual choices that helped create the atmosphere of war. These innumerable individual choices are precisely the kind of choices that most interest rabbinic *halakhic* Judaism, especially the sources that ask continually, ‘what brings people to bloodshed’. But this aspect of *halakhic* thinking does not become part of the *halakhic* analysis of war in the scholarly literature.

It is also clear from our experience in conflict analysis and intervention that war often exists along a continuum from deeply embedded friendship, to miscommunication, to peaceful but cool coexistence, to serious disagreement, small-scale isolated conflict, large-scale isolated conflict turning into chronic conflict, isolated bloodshed, organized massive bloodshed, and sometimes genocide. This continuum is in itself complex, and it does not always follow a predictable order. But this more nuanced understanding of war making as well as peacemaking means that many of the circumstances leading up to war are, in fact, governed morally by other parts of Jewish moral and *halakhic* tradition that apply directly to the individual and to the spiritual community (the *kehillah* in the medieval and modern period), not just a sovereign or a Sanhedrin. The latter emerge as more important when being attacked. But even afterward they do not supplant the individual’s moral decision making in key choices that he makes on the battlefield, as we have seen.

Far too little attention is given, by contrast, to all of the circumstances leading up to attacking or being attacked, how to avoid a conflict that turns into war, what religious values prevent conflict and bloodshed, or what to do when the war or acts of

violence are over in terms of mourning, recovery and reconciliation, and the moral laws and values that come into play for this crucial stage of human relations. Yet rabbinic sources are filled with advice on these matters, but this is somehow cut off in the secondary literature from the war discussion. This is a distortion--though probably not conscious--of the complex panorama of rabbinic Judaism.

It cannot be denied that just war efforts from the pre-modern era to limit war are laudable. We now know from recent experience with the twentieth century penchant for terror through the targeting of civilians that agreed upon *jus in bello* limits would be a major advance on many war situations around the world. If enemies agreed, for example, to limit war to men in uniform, to eliminate rape as a weapon, to eliminate children from being subjects or objects of warfare, to agree to eliminate sacred sites and city centers from bombing targets, we would eliminate the vast majority of the barbarism into which the world descended in the twentieth century. The more experience I have in conflict intervention the more I have come to welcome the value of these pre-modern standards as the basis for step by step bilateral confidence building measures between bitter enemies.

I often ask myself why there were pre-modern wars in which these limits were adhered to, but which all fell apart in the twentieth century. Sometimes I suspect that it is the very pacifist illusions of the post World War I era that led to a kind of psychological and ethical unpreparedness for the barbaric potential of war that increased exponentially due to technology. Air war, light weapons, unconventional weapons, remote control, they all made barbarism and terrorism very easy, practically the flick of a switch. The human species was unprepared for this power. Just at the same time we developed delusions of a world without war and were thus unprepared to limit our own brutality.

That having been said, and now that we are in this place of very complex, very deadly conflict, we must maximize our creative use of the individual, and his or her moral capacity to anticipate, prevent and heal conflicts. If there is a silver lining to the last several hundred years of technological advance that have made it so easy to be barbaric, it is the fact that a slow and steady march of democratization has infected this planet.

Due to technology of communication, millions of people are empowered more than ever before to engage in cross-cultural, cross-religious, and international relationship building. Elitist diplomacy, shackled by a desperate fear of the dissolution of the state as such, has viewed the individual's foray into the area of conflict prevention and resolution with trepidation and suspicion. This has resulted in a fantastic waste of cultural and spiritual resources for the construction of global civilization.

It is quite clear that the subtleties of individual religious ethical values and relationship building processes can and should play a much larger role in future processes of conflict resolution. This may very well provide nations or groups with the ability to prevent conflicts from becoming wars, and, alternatively, help wars to become constructive conflicts. These values are paramount: respect for all human beings as God's creatures, the ethics of inter-personal encounter and respect, training in the capacity to admit mistakes, regret the past, apologize, repent, and promise a different future, compassion wedded to and in struggle with strict justice, a commitment to pursuit of peace as a religious experience, humility, the skills of respectful listening and silence. [\[21\]](#)

We need to look forward to a future in which we recognize the potential of religious individuals and communities to play a pivotal role in conflict prevention and



resolution. We dare not create our own nightmare by assuming and insisting that ultra-violent constructs of religious traditions are its authentic core, while peacemaking constructs are apologetic appendages. The lived religion of millions of human beings, past and present, suggest that religious human beings can play a pivotal role in not only the advocacy of peace, but also the subtle insertion of peace into the inner recesses of damaged human relationships. This is a level of peacemaking and healing before which just war theory and international relations theory should deferentially bow. It may be the only antidote we can evolve as a species that will counteract the indescribable power that technology has placed in the service of human anger. Whether it be small bombs on the backs of nineteen year old suicides, light weapons in the hands of teenagers from Liberia to American high schools, we need much deeper skills of conflict resolution and healing than ever before in human history. The time is not near that we as civilization seem capable of banning these weapons, as obvious a solution as this is. As an alternative, religious cultures and their ethical traditions need to be given a chance to respond to violence and war in creative conjunction with other forms of diplomacy and social science intervention.

---

[1] For a representative sample of essays with accompanying bibliographies, see Terry Nardin, ed., *The Ethics of War and Peace* (Princeton, NJ: Princeton University Press, 1996).

[2] The same could be said for the secular just war tradition. There is a curious tendency to bifurcate the political and theological calculus of war, and divorce it from the entire range of human ethical arrangements, principles, and intuitions. The latter are critical in preventing wars and ending them, yet are absent from just war discussions. Furthermore, the second subject of just war theory is the proper conduct of war. Here too there is a curious way in which different rules and values apply, as if values that address stealing, dishonor, brutality, have to be seen in some

new way during wartime, or even discarded during war. Clearly, advances such as the Geneva Conventions have attempted to place back into war some of the normal, universal considerations of ethics. But just war discussions have a curious way of speaking about major cataclysms in such broad terms that the fate of individual moral decision making is completely obscured. This may be a bow to military hierarchy and the loss of a soldier's personal choice. But this too has been challenged by recent conventions. Essentially the just war tradition deprives us too much of the range of moral thinking and reflection that are most essential in situations of radical moral complexity, such as a battlefield. An exception to this is Michael Walzer's attempt to investigate the complexity of military choices. See his *Just and Unjust Wars* (n.d.: Basic Books, 1977).

[3] See Kenneth Kraft, ed., *Inner Peace, World Peace* (Albany: SUNY, 1992), 129. In Judaism the prohibition is on selling weapons to someone who could not be trusted to commit murder with those weapons, and involves the obligation to not aid someone else to commit a crime. See Talmud Bavli (henceforth T.B.) Avodah Zarah 15b; Maimonides *Mishneh Torah*, Laws of Murder 12:12. Of course, the sad truth is that Maimonides' same Laws of Murder also make it obligatory to kill Jewish apostates and heretics wherever this is possible, if they have refused to repent, in addition to a particularly callous attitude to the value of a polytheistic human life. See idem, 4:10, 11. Hence, the mixed legacy of the classical sources, although it must be said in fairness to traditional Judaism that Maimonides was particularly harsh as a social legislator on matters of dogma.

[4] See, for example, John Yoder's argument, in *Religious Perspectives on War: Christian, Muslim, and Jewish Attitudes to Force after the Gulf War*, ed. David Smock (Washington, DC: U.S. Institute of Peace, 1992), p. 41ff., that a key part of the ethical evaluation of the Gulf War and its conduct should be the question of how Saddam was armed in the first place.

[5] By "constructive conflict" conflict resolution theoreticians are generally alluding to the fact that many conflicts need to occur, and can play a constructive role in creating more just societies or more honest relationships where everyone's needs are openly confronted. Conflict management, in such circumstances, would have as its goal, not the suppression of the conflict but, ensuring that conflict does not turn into a destructive (usually meaning violent) enterprise that is self-perpetuating or intractable. With some practice, observers and activists can become fairly

adept at distinguishing constructive and destructive conflicts, whether they may be interpersonal, familial or societal. See Louis Kriesberg, *Constructive Conflicts* (Lanham: Rowman & Littlefield, 1998).

[6] Reuven Kimelman, “War,” in *Frontiers of Jewish Thought*, ed. Steven Katz (Washington, DC: B’nai B’rith Books, 1992), 309. We have no way to know exactly what motivated each of these rabbis to curtail or eliminate altogether the legal operationalizing of these wars. We do know, however, that this hermeneutic is made in the context of pervasive criticism in Jerusalem by many Jews of both the Hasmoneans and the priestly leadership, especially regarding violence. See M. Eduyot 8:7; E. Urbach, *The Sages*, trans. I. Abrahams (Cambridge, MA: Harvard University Press, 1987), 575-576; 661-665; 995, n. 45. But more work needs to be done on the exact connection, if any, between pietistic anti-violence statements, Talmudic legal efforts to circumscribe Jewish war, and the historical context.

[7] Samuel David Luzzatto indicated that the Biblical text generally cited to justify war can only refer to response to an attack from a group that has made it clear by that attack that they are, in fact, an enemy. See *Ha-Mishtadel* (Vienna, 1847) on Leviticus 20:11, 18.

[8] See J. David Bleich, “Preemptive War in Jewish Tradition,” *Tradition*, 21:1 (Spring 1983): 3-41, and Kimelman, “War” *op. cit.* Recent revelations reported about Moshe Dayan’s confessions that, pressured by farming interests in the north, he provoked Syria into the 1967 war, in order to make a land grab on the Golan Heights, highlight the trap of theological reflection that is dependent upon limited information from governments, especially when that information is from one side of a conflict. A provocation to acquire farming land would have entirely rewritten the moral and *halakhic* debate about preemptive strikes in 1967. See “Israeli Hero Reveals Hebron Regrets” by Dafna Linzer, *Associated Press* (May 11, 1997). There will undoubtedly be debate in the future about Dayan’s motivations. Even if it turns out that his land motivations were mixed with security calculations, this would still significantly affect a moral discussion on many war-related *halakhic* issues, such as *pikuah nefesh*, and the decision to risk lives for a military (or agricultural) purpose.

[9] Kimelman, “War”, 312.

[10] Kimelman, "War", 327, n. 16.

[11] Kimelman, "War", 312-313.

[12] These guidelines raise several issues. First, one sixth of one's mobilized forces in modern warfare involves a huge amount of deaths. For example, there were 8,744,000 American forces mobilized in Vietnam. One sixth dead would have meant approximately 1 1/2 million American deaths. 58,000 actual American casualties caused a significant crisis in the social history of the United States. Great Britain, in one of its most devastating social traumas in its history, lost approximately 1/8 of its armed forces, one million men out of eight million mobilized in W.W.I. See *The 1994 Information Please Almanac* (Boston and New York: Houghton Mifflin, 1994), 385,389. Furthermore, there is no mention in the Jewish sources of a limit on enemy soldier deaths. Thus there would be no moral calculation regarding 2 million Vietnamese dead versus 58,000 American dead, or 180,000 Iraqi deaths due to the war and the embargo (this is a rough approximation that includes mostly noncombatants who died due to the destruction of the electric infrastructure, hospital supplies etc. These numbers are still debated.) versus about 100 American deaths. However, there would be a serious *shalakhic* problem with the number of those dead who were non-combatants, the massive use of napalm, an indiscriminate weapon, and the lack of escape routes from carpet bombing campaigns.

[13] Who these rabbis were or whether anyone specifically authorized Amir is a matter of debate, because everyone denies *ex post facto* that they supported assassination, despite their rhetoric beforehand.

[14] David Novak, *Law and Theology in Judaism* (New York: Ktav Publishing House, 1974), 130.

[15] The context in the following sources seems clearly limited to "hot pursuit" circumstances: T.B. Bava Kama 117b; T.B. Sanhedrin 72b; Maimonides, *Mishneh Torah*, Hilkhoh Nizke Mammon 9:6; idem, Hilkhoh Rotseah 1:6-7.

[16] The abortion analogy would still be valid based on my analysis of *rodef*. The rabbis suggested that a caretaker, seeing that the fetus before them is threatening the mother, must then see the fetus as a *rodef*, and protect the mother

at the expense of the fetus. This does not extend the killing justification beyond the immediate circumstances, however.

[17] See, for example, *Shulhan Arukh*, Orah Hayyim 160:22; 248:41; 329:1.

[18] See, for example, T.B. Berakhot 58a; T.B. Sanhedrin 72a.

[19] Michael Walzer, *Just and Unjust Wars* (U.S.A.: BasicBooks, 1977). See esp. Parts 4 and 5.

[20] See Mishnah Avot 1:12; *The Fathers According to Rabbi Nathan*, ch. 12.

[21] For a full paradigm of the ethics of conflict resolution out of the sources of religion, see Marc Gopin, *Between Eden and Armageddon: The Future of World Religions, Violence and Peacemaking* (New York and London: Oxford University Press, 2000), chapters 2 and 7. For a paradigm out of the sources of Jewish communal and individual ethics, see idem, chapters 5 and 8. On constructs of conflict resolution in the Abrahamic traditions as they pertain to the Palestinian/Israeli conflict, see *Holy War, Holy Peace: Moving the Abrahamic Religions from Violence to Peacemaking in the Palestinian/Israeli Conflict* (New York and London: Oxford University Press, forthcoming).