



Pekudei

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Amidst the war unfolding in Israel, we have decided to go forward and continue publishing a variety of articles to provide meaningful opportunities for our readership to engage in Torah during these difficult times.

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INSANITY AND HOPE

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This article originally appeared in Hebrew in Or Ehad: An Anthology of Thoughts on the War and on the Day after It, ed. Arik Solomon (Mitzpeh-Ilan: January 2024), 6-7,¹ and it is published here with permission. English translation by the author.

One of the well-known sources of old-time religious Zionism is the treatise by R. Joseph Kaspi

(1280-1345) on the future Third Temple in his book *Tam ha-Kesef* (discourse 8).² Kaspi argues there that the return of the Jews to the Land of Israel is a “natural” thing and a “likely possibility.” It is very possible because history consists of unexpected events. “Who does not know, or who does not see, the continual and ever-changing rise and fall of nations?” History displays no apparent direction. The Christians conquered the entire Kingdom of Aragon and the island of Mallorca from the Muslims in 1231, while the Muslims conquered the Galilee, Syria, and Acre from the Christians in 1291. “Who can give a reason for this?” Not us mortals; God alone knows. “Can

¹ Available at www.mizpeilan.org.il/objDoc.asp?PID=515730&OID=1244532&DivID=1&oAcl=0.

² Text and translation in Adrian Sackson, [Joseph ibn Kaspi: Portrait of a Hebrew Philosopher in Medieval Provence](#)

(Leiden, Netherlands: Brill, 2017), 295-317. Compare, e.g., Menachem M. Kasher, ed., [Israel Passover Haqqadah](#) (New York: Torah Shelema Committee, 1950), 133. See also Alexander Green, [Power and Progress: Joseph Ibn Kaspi and the Meaning of History](#) (Albany: SUNY Press, 2019).

there be such insanity, I mean, that it should occur to us to try to determine a reason or cause for the actions of God in these events?... Discussion of all of this is extreme insanity [*shigga'on muflag*]." History knows no scientific rules ("covering laws"). The future is unpredictable. "If so, why should it be a miracle in anyone's eyes for the Land of Israel to return to us from the hands of the Muslims?" Since history makes no sense but is "extreme insanity," *everything* is possible, including the restoration of Jewish sovereignty in the Land of Israel.

Kaspi's conception of history as "extreme insanity" is the exact opposite of the deterministic or "stychic" doctrine of Hegel, Borochoy, and R. Abraham Isaac Kook, which has dominated religious Zionism in recent years. However, the hope of Zionism is based, according to Kaspi, not on the faith in historical determinism but precisely on the negation of this faith. The future is not predetermined but is wide open and surprising. If everything is possible, there is hope.

The horrific events which took place on this year's Simhat Torah holiday exemplify in a chilling way Kaspi's anti-deterministic view of world affairs.

On the eve of Simhat Torah this year, the situation in Israel was rather good. Despite many months of extremely turbulent social conflicts that raged among us following the government's controversial "legal reform," there was reason for optimism. As part of the successful Abraham Accords, United States President Joe Biden led a new political move that promised to secure peace between Saudi Arabia and Israel and to improve significantly the situation of the Palestinians. The

Prime Minister of Israel delivered a very optimistic speech at the United Nations on September 22, declaring that "we are at the cusp of an historic peace with Saudi Arabia" which will "create a new Middle East." A few days after this speech, two Israeli ministers visited Saudi Arabia as part of two different official delegations and were received with all due honors. Israeli tourism to Muslim countries, such as Turkey, Egypt, Jordan, Morocco, the United Arab Emirates, and Bahrain, had grown greatly in the past three years, reaching approximately two million visitors per year. Similarly, the business ties between Israel and these Muslim countries developed impressively. Indeed, on the eve of Simhat Torah this year, the situation in Israel was rather good.

The hideous success of the attack on Israel by Hamas terrorists on Simhat Torah was neither expected nor inevitable. The IDF is a strong, intelligent, and rich army, which has all the means necessary to protect its borders. The army had very detailed information about Hamas's attack plans, and one would think that it could have known how to thwart any plot. It is true that the Israeli government harbored an irresponsible illusion that Hamas was not interested in carrying out its attack plans in the near future, but this illusion in itself could not be a sufficient condition for the defensive failure. After all, even someone who believes that the chances of war are low should fortify one's line of defense adequately. On Simhat Torah, Israel's line of defense on the Gaza border was not in a satisfactory state of readiness. Various partial explanations have been given for this dereliction (e.g., soldiers were home for the holiday, vital tactical reserve forces were transferred from positions on the Gaza border to

policing activity in Judea and Samaria, or tanks and other armored vehicles were being repaired). Whatever the reasons, the failure was not inevitable. Senior military commentators all over the world were amazed and wondered how such a catastrophe could have befallen a formidable army like the IDF. In places along the border where there was a sufficient order of forces, the terrorists were repelled or killed. If there had been a sufficient order of forces along the entire separation fence, the attack would have been foiled; the atrocities would have been avoided; the captives would not have been captured; the abductees would not have been abducted; the long, bloody war with Hamas would not have happened; and antisemitism throughout the world would not have skyrocketed. And maybe we would now be celebrating the peace agreement with Saudi Arabia and speaking about a “new Middle East.”

In short, the abysmal difference between our situation on the eve of Simhat Torah and our situation after the morning of the holiday corroborates Kaspi’s anti-deterministic view of world affairs. History is extreme insanity.

I thought of Kaspi’s words when I saw the editors’ guiding question for this anthology. They wrote: “We... seek to produce a booklet... named *Or Ehad* [‘One Light’] with articles... outlining... the direction in which we are going. If, as of today, it is difficult to understand where everything that is happening around us is taking us, then we seek to propose the goal, the ideal, to which one should strive.”

Now, I admit that I do not understand the direction in which we are going, and I do not know how we can get out of the difficult situation in which we find ourselves. I certainly do not think that anything good can come out of the grave failure on the morning of Simhat Torah this year. I do not identify with those who say, “We will come out of this stronger than ever.” True, Nietzsche did say: “What doesn’t kill me, strengthens me” (*Was mich nicht umbringt, macht mich stärker*).³ But death does not strengthen me. No good can ever come from mass murders.

Well, what should we do? I can think of only one thing. After the return of all the hostages and the end of the war, we must work very hard to try to restore all that was destroyed, as much as possible. Beyond that, I find some hope in Kaspi’s view. Just as we came into this darkness unexpectedly, so can we unexpectedly come into the light. Everything is possible.

A PHILOSOPHICAL REFLECTION ON THE HALAKHIFICATION OF WARFARE

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Many believe, and take to be common sense, that war represents a sphere of moral exception in which attempts at constraint are at best fantastical and at worst precisely

³ Friedrich Nietzsche, *Twilight of the Idols*, I, Aphorism 8.

counterproductive, producing more, rather than less, suffering.¹ “War is cruelty,” General Sherman [wrote](#) to Mayor Calhoun in 1864, “and you cannot refine it.” In the realm of *halakhah*, the sphere-of-exception view of war is represented by numerous authorities in explanation of the basic license to kill and be killed in wars. Clearly, these authorities reason, the law against murder is simply inapplicable here, for “on such a basis was the world founded” ([Netziv to Bereishit 9:5](#)).² Taking this line of thinking to the limit, R. Michael Broyde concludes in a classic article “that all conduct in war that is needed to win is permitted in view of halakha,” and conceptualizes this comprehensive license as representing a “presumptive *hora’at sha’ah*,” or a “temporary ruling,” suspending the law under circumscribed conditions.³

R. Aryeh Klapper took issue with this formulation, arguing that it is both morally dangerous and simply incorrect to think of war as ungoverned by the very same *halakhah* governing all other areas

of life.⁴ He cites R. Aharon Lichtenstein’s formulation that “It is most important that a person going out to war not understand that he is not passing from a world possessed of one hierarchy of values to a world with a different hierarchy of values,”⁵ and concludes that “wartime must be a fully integrated category of *halakhah* and Jewish ethics.”⁶ We must do our best with the paucity of sources at our disposal to articulate a *halakhah* of war, and we must conceptualize our conduct of war as, in principle, comprehensively bound by it.⁷ This point of view resonates with what has become the dominant view in much of contemporary political and journalistic discourse, where it is taken for granted that law and standardized codes of conduct are the basic reference-points for the evaluation of warfare.

This divergence can go along with disputes about the law itself – R. Broyde and R. Klapper disagree on the question of torture, for instance – but my focus here is on the respective rhetorical

¹ My thanks to the “Yeshivat Yale” crew for their help in working this material through and their intellectual and spiritual community generally; to R. Aryeh Klapper for a helpful exchange on his and my views; and to the Lehrhaus editorial team for helping me achieve whatever degree of clarity and cogency I’ve managed.

² For helpful digests of this line of thought, see *Tzitz Eliezer* 12:30; *Be-Ikvei Ha-Tzon*.

³ Michael Broyde, *The Bounds of Wartime Military Conduct in Jewish Law: An Expansive Conception*, (Center for Jewish Studies: Queens College, 2006).

⁴ Aryeh Klapper, “Warfare, Ethics, and Jewish Law,” in *Meorot* 6:1 (2006), 1. Some related themes are discussed by R. Klapper in his recent article, “[Civilian Casualties in the Light of Halakhah and Ethics: Revisiting Rav Shaul Yisraeli’s Analysis](#),” [thelerhaus.com](#), (Dec. 20, 2023). An editor notes

that in that article R. Klapper acknowledges (in the name of R. Shaul Yisraeli) that the legal canons of wartime will perforce not be identical to the legal canons of peacetime, a point that may not have been obvious from his 2006 article. But my question is what it means for war to be governed by law at all. Acknowledging that we require war-specific canons of law only highlights the need to address this question.

⁵ Translation R. Klapper; reference is to an interview with R. Lichtenstein in *Tehumin* 4:185.

⁶ Klapper, “Warfare, Ethics, and Jewish Law,” 2.

⁷ R. Klapper does acknowledge that there will inevitably be hard cases where soldiers will need to exercise individual discretion, but these decisions, too, should be made in light of fixed ethical principles, and will ideally reflect the conditioning of the halakhic system overall. See *ibid.*, 3.

formulations and the underlying philosophical positions they express. For R. Broyde, as for many others, it is important to say that the domain of law ends at the battlefield's border; for R. Klapper, as for many others, it is important to say that it does not. I believe that each position captures something vital, and I want to attempt a third articulation between and perhaps reconciling them, grounded on a reading of Rambam's *Mishneh Torah*.

The Gemara records a ruling that all spoils from the initial conquest of Canaan, even "cuts of pig" [some texts say "necks of pig"], were permitted for consumption (*Hulin* 17a). Rambam codifies this ruling as follows:

When soldiers enter enemy territory, conquering them and taking them captive, they are permitted to eat improperly slaughtered, unfit animals, the flesh of pigs, and the like, if they become hungry and find only these forbidden foods. Similarly, they may drink wine used in the worship of idols. This is learned from tradition, as the verse "God... will give you... houses filled with all the good things" (Devarim 6:10-11) is interpreted as referring to pigs' necks and the like. ([Laws of Kings and Wars 8:1](#), translation my own)

Rambam's formulation appears to deviate from the Gemara's in two ways, both expanding and constraining the ruling. On the one hand, whereas

the Gemara seems to limit this license to the initial conquest of Canaan, Rambam extrapolates its application to all battlefields through space and time. On the other hand, whereas the Gemara's license seems to be categorical, Rambam constrains it to circumstances in which the soldiers are "hungry and find only these foods." Why the deviations?

With regard to the expansion, we might say first that Rambam is resistant to the idea of a *sui generis* carve-out to the law exclusive to the initial conquest of Canaan. The nature of law is to be of general application, and so, despite citing the proof-text clearly pegged to the initial conquest, Rambam reasons that the initial conquest must be taken as a paradigm for all wars. Furthermore, it is possible Rambam is simply convinced by the cogency of applying this license to war generally. War is hell, and hungry soldiers should be allowed to eat whatever they can get their hands on. On this reading, Rambam clearly recognizes, over and against the apparent formulation of the Gemara, the imperative to render all war a sphere of exception.

At the same time, perhaps Rambam reasons that the law in fact cannot quite suffer fixed spheres of exception, and so, over and against the apparent formulation of the Gemara, the exception must be limited to cases where the soldiers are hungry and have no other provisions available. It is important, as Kesef Mishneh ([ad loc](#)) points out, that Rambam presumably does not mean to limit the license to cases where the soldiers are literally starving, as in such cases no special wartime license would be necessary. Rambam is offering, and seems compelled to offer, a significant

compromise of the law under conditions of war. But he is also compelled to constrain that compromise within reasonable limits. Do what you feel is necessary, he says, but no more. And, clearly, it would be best to proactively reduce instances of such necessity to the extent possible at a given moment, and to further endeavor to extend that possibility in the course of time. War is a sphere of exception governed by an imperative to render that sphere effectively null.

In confronting the legal and moral challenges of contemporary warfare, Rambam's dialectic offers several critical advantages. First, insisting on a comprehensive legalism obscures the reality that law is not yet, and will likely never be, fully adequate to the task of regulating warfare. It is not simply that the *halakhah* of war was dormant due to the millennia of Jewish powerlessness and so remains underdeveloped, as many have noted. Even if it had been in constant use, there is no reason to think Jewish jurists in the middle ages would have produced, say, the present international regime of restrictions on aerial bombardment in civilian areas, much of which was not crystallized until well after Vietnam. The victors of WWII certainly did not believe directly targeting civilian population centers to be categorically out of bounds. And as urban warfare has grown increasingly complex, the challenge of specifying adequate parameters has increased in kind. The United States published a substantial [revision](#) of its policies on civilian casualties on December 21, 2023, and this will surely not be the

last word on the subject. This is also not merely a matter of inevitable hard cases and dilemmas requiring discretion on the part of individual soldiers; it is a question of the conduct of war overall. The point is that the laws of war are always at best a work in progress, and recognizing the imperative to continue that work requires recognizing that war will never be adequately governed by law.

Second, as my doctoral adviser Sam Moyn has [argued](#), with reference to the recent American context, the effort to render warfare increasingly "humane" through legal constraint has had the perverse effect of sustaining warfare, and the hegemony it entails, indefinitely.⁸ When war was manifestly brutal and indiscriminate, it was a natural target for opposition, and politicians felt compelled to limit its scope even when it otherwise seemed justified. But with concurrent advances of technology allowing increasingly precise, remote targeting, and of the law underwriting strikes anytime and anywhere, the public has come to largely accept this all as part of the regular world order. Similarly, the development of clear principles of proportionality, applied by elaborate systems of in-house military lawyering, produces a complacency toward civilian casualties. So long as we trust that proper procedures are followed, we can rest assured that all is morally well. But we should surely *not* rest morally assured, and so we must be clear that our conduct of war remains as yet significantly outside the domain of law. Even

⁸ I am informed by multiple parties that this proposition is the theme of the Star Trek episode "A Taste of Armageddon" (Season 1, episode 23, 1967). Moyn, for his part, traces the genealogy of this line of thought to Tolstoy. The animating

pulse of his book is in his critical evaluation along these lines of the American war on terror, especially in the Obama years.

where we judge war necessary, we therefore have a responsibility to proactively render that necessity effectively null.

Third, people tend to think of law as received from on high, as it were, and so tend to think that if there is a point of law we have yet to ascertain, our work is to discover what the law *already is*. But there is no reason to think there is even in principle a single right answer to the question of, for instance, precisely how many civilian casualties are tolerable when a state is seeking to debilitate a fervently genocidal and recently successful terrorist group deliberately embedded in an elaborate tunnel system in a dense population center directly over its border. And to the extent that this question is meaningfully answerable, it will be answered not through textual research but through good-faith, open-ended, communal deliberation on the part of humanity, asking not what is right or wrong in the abstract, but what we as the human community are prepared to actually expect of each other.

This will entail, first of all, that no state can be reasonably held to standards that no other state does, or would, observe.⁹ It will also entail that it is in principle reasonable for a part of humanity, witnessing a horrible and in certain respects unprecedented, war, to call for raising our collective standards. Such agitation is vital, because we should never assume our present

standards are adequate. But the human community can make this demand of a state in the above predicament if, and only if, it is prepared to assume its share of the responsibilities and burdens of that state's safety. Otherwise the demand on that state would be unreasonable, and hence good-faith conversation would break down. Conversely, however utopian this may sound, that state should in fact feel empowered, and compelled, to demand from the human community that it share its security burdens, and so lessen its need for full-scale war. We realize the need for this kind of open-ended deliberation, and the mutual commitments such deliberation requires, when we see that the laws of war are not, and never will be, simply there for us to read and follow.

But if comprehensive legalism has dangerous ramifications, a pure sphere-of-exception view is directly dangerous. And so I want to stress that I passionately endorse the effort to articulate, as R. Klapper puts it, a *halakhah* and Jewish ethic of war, and I also endorse the ongoing efforts of the international community to humanize war through regulation. What is needed, however, is the Rambam's dialectic. We must be honest about the reality that war requires that we eat cuts of pig, as it were, stepping outside the law to do what must be done. War is never simply lawful or moral. And we must hold ourselves to the imperative to continue the painfully unfinished,

⁹ This precisely does not mean, in my view, that we are not bound by norms our enemies violate. Where our enemies violate a given norm, rather, we are bound by the norms accepted by the human community overall with respect to parties in violation of these norms. The use of human shields

by one side in a conflict, for example, is generally taken to allow an adjustment to the standard proportionality calculation, allowing higher numbers of civilian casualties, but is not taken as grounding a comprehensive license for inhumane warfare.

collective work of making it as lawful, moral, and infrequent, as possible.

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