

Rabbi Eliezer Yehudah Waldenberg on the Justification of War

In the recent and growing body of literature on war in Halakhah, R. Eliezer Yehudah Waldenberg (1915-2006) is perhaps best characterized as a figure of moderate importance. On the one hand, he produced a pioneering work on this subject as part of a three-volume set on Halakhah and politics, *Hilkhot Medinah*.¹ Written in the 1950s, this work was one of the first attempts by a major halakhic authority living in the newly-established state of Israel to deal with the reality and consequences of the Jewish return to political power. Moreover, R. Waldenberg authored several responsa on war that appear in his massive 22-volume collection of responsa, *Ziz Eli'ezer*.² On the other hand, R. Waldenberg's treatment of war in *Hilkhot Medinah* is of little practical importance because of its utopian character. Much of the discussion in this work is on such issues as the structure of the army in biblical times and the laws for maintaining holiness within the army camp, topics that would be of little relevance to a modern and secular Israeli army. By contrast, not much attention is paid to such timely issues as combat ethics. As for R. Waldenberg's responsa on war, while some of them deal with practical issues, the number of responsa focused on war occupy only a tiny fraction of his *Ziz Eli'ezer*.

1. *Sefer Hilkhot Medinah* (Jerusalem, 1951).

2. *Ziz Eli'ezer* (Jerusalem, 1945-1994).

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Against this background, it is not surprising that although R. Waldenberg's views on war are cited in modern halakhic and academic discussions of this topic, it is not with as much frequency as those of other halakhic authorities.³ Yet, there is an element of R. Waldenberg's halakhic views on war that deserves special attention, and that is his treatment of the justification of war. This issue is worth examining, first, because of its importance within the context of recent discussions of war in Halakhah in general. The justification of war is not the focus of much concern in medieval halakhic sources, but it becomes a central topic of discussion among halakhic authorities after the founding of the State of Israel and the establishment of a Jewish army for the first time since the first century.⁴ Second, R. Waldenberg's views on the justification of war point to issues that are of broad significance to current debates about war among social scientists—even though R. Waldenberg was not necessarily aware of such debates.

Before we examine R. Waldenberg's views, let us first define more precisely what we mean by "the justification of war." We are not concerned here with whether in principle war can be waged. No halakhic authority medieval or modern would ever doubt that war is permissible under the right circumstances. After all, the Bible itself is filled with wars, some of which are directly commanded by God. The problem for modern halakhic authorities in justifying war is how to get around two major halakhic obstacles that present themselves whenever a Jewish government sends an army into combat. The first is that according to Halakhah, one cannot force an individual to endanger his life in order

3. The legacy of R. Waldenberg's treatment of war in Halakhah is discussed by Yosef Aḥituv, "*Min ha-Sefer el ha-Sayyif: Al Demuto ha-Hazuyah shel ha-Zava ha-Yisra'eli al pi ha-Torah ba-Shanim ha-Rishonot le-Kum ha-Medinah*," in *Shenei Evrei ha-Gesher: Dat u-Medinah be-Reshit Darkah shel Yisrael*, ed. Mordechai Bar-On, Zevi Zameret (Jerusalem, 2002), 425-31. The following are examples of recent studies on war in Halakhah in which R. Waldenberg's views are cited and analyzed: Michael J. Broyde, "Just Wars, Just Battles, and Just Conduct in Jewish Law: Jewish Law is Not a Suicide Pact!" in *War and Peace in the Jewish Tradition*, ed. Lawrence Schiffman and Joel B. Wolowelsky (New York, 2007), 2-3; Yiḥzak Avi Roness, "*Al Musariyyutah shel ha-Milḥamah be-Sifrut ha-Halakhah ba-Me'ah ha-Esrin*," in *Sefer Amadot: ha-Kippah ve-ha-Kumta*, ed. Moshe Raḥimi (Elkanah/Rehovot, 2010), 202-4. Both Broyde and Roness are academics and rabbis, and they therefore approach the subject of war in Halakhah from a perspective that combines an academic orientation with constructive ethics.

4. As we shall see below, even in the nineteenth century, this issue begins to crop up among halakhic authorities, due in part to the fact that in Europe, young Jewish men, who were now citizens of European countries, were being drafted into the armies of those countries.

save the life of another. It is therefore not clear why a government should be allowed to conscript soldiers against their will and send them into battle, even for the sake of defending their country. The second obstacle is that while Halakhah certainly allows an individual to kill an attacker in self-defense, it does not allow one to do so if it means that innocent people are killed as well. Yet, in war the latter occurs all the time; innocent civilians inevitably die when wars are fought. In short, war needs to be justified in Halakhah because it is not immediately apparent what allows a Jewish government to endanger its own soldiers or enemy civilians, even for a just cause.⁵

The first problem regarding the risk that war presents to Jewish soldiers receives a good deal more attention from recent halakhic authorities than the second, and R. Waldenberg is typical in this regard. When dealing with the justification of war, he too focuses primarily on the question of how war can be waged if soldiers are required to risk their lives in battle. Our analysis will therefore focus on R. Waldenberg's treatment of this specific issue.

The question of justifying war is first raised by R. Waldenberg in the second volume of *Hilkhot Medinah* in a chapter devoted to discretionary war (*milhemet reshut*). R. Waldenberg asks specifically why we are allowed to endanger Jewish lives in this type of war.⁶ He does not elaborate on the motivation for this question, but it appears that he is bothered by the moral challenge that discretionary war raises. Unlike mandatory wars

5. A number of halakhic authorities deal with these problems. Among the most prominent are R. Abraham Isaac Kook, *Mishpat Kohan* (Jerusalem, 1966), #143, pp. 308, 315; R. Shaul Yisraeli, *Ammud ha-Yemini* (Tel Aviv, 1966), ch. 16, pp. 189-205; R. Shlomo Goren, *Meshiv Milhamah* (Jerusalem, 1986), 3: 268-72; J. David Bleich, "Preemptive War in Jewish Law," *Contemporary Halakhic Problems* (New York, 1989), 3: 274-77. A wonderful overview and analysis of the problems involving the waging of war is found in Nahum Rakover, *Mesirut Nefesh: Hakravat ha-Yahid le-Hazalat ha-Rabbim* (Jerusalem, 2000), ch. 9.

6. *Hilkhot Medinah* (henceforth *HM*) 2:119. This chapter is reproduced in a responsum in *Ziz Eli'ezer* 20:#43, pp. 103-13. While this responsum was composed later than any of the texts we will examine, I still regard the discussion on the justification of war contained in it as R. Waldenberg's earliest treatment of this issue. The responsum was composed to answer a question posed to him about the role of Sanhedrin in waging war. R. Waldenberg answers his questioner by noting that he has already dealt with this issue in a chapter in *Hilkhot Medinah*, but since the book was no longer in print, he writes that he will answer the questioner by simply reproducing that entire chapter verbatim. Thus, while the discussion of the justification of war is indeed included in this responsum, it is clear that R. Waldenberg's purpose here is not to revisit this particular matter, but rather to answer the questioner who has asked about the role of the Sanhedrin in war.

(*milhemet mizvah*), discretionary wars are not commanded directly by God, nor are they fought necessarily for defensive purposes.⁷ Why, then, may a king risk the lives of his soldiers in order to fight this kind of war?

R. Waldenberg responds by arguing that discretionary wars are permitted because war in general functions by its own set of halakhic norms that are different from those that govern everyday life.⁸ The reason war has this special status is that it is a universal and natural phenomenon, and all nations are therefore allowed to engage in this activity. The presumption here seems to be that if war is universal and natural, it must have the approval of the divine will despite the loss of life it incurs.

As his discussion proceeds, it becomes clear that R. Waldenberg's inspiration for this position ultimately comes from R. Naftali Zevi Yehudah Berlin (1817-1893), better known as Neẓiv. Neẓiv makes the argument that R. Waldenberg is presenting here in a remarkable and often-cited passage in his commentary on the Torah, *Ha'amek Davar*. The passage is a gloss on Genesis 9:5, in which God addresses Noah immediately after his exit from ark and reiterates the prohibition against murder: "But for your own life-blood, I will require a reckoning . . . for every man for that of his fellow man." On this verse, Neẓiv comments as follows:

When is a person punished [for murder]? At a time when one is supposed to act with fellowship [toward others], which is not the case in a time of war and a time of hatred. In that instance, it is a time to kill, and there is no punishment for it at all, for that is the way the world was founded (*kakh nosad ha-olam*). An Israelite king is even permitted to wage discretionary war, although a number of Israelites will be killed because of this.

Neẓiv focuses on God's statement that He will require a reckoning of a man who kills his "fellow" man. According to Neẓiv, only in times when men treat each others as "fellows" is there a prohibition against murder. Since that is not the case in war, which is characterized as a time of hate, killing in war is permitted. Neẓiv also adds the important comment that killing in war is permissible because "that is the way the world was founded." He appears to imply here that war is a natural activity built into the

7. The most authoritative discussion of categories of war in classical Halakhah is contained in Maimonides' *Mishneh Torah, Hilkhhot Melakhim*, ch. 5. Here and elsewhere in my discussion, I will therefore presume that this is R. Waldenberg's scheme unless I specify otherwise.

8. My analysis does not follow the precise sequence of the arguments presented by R. Waldenberg in order to provide a clearer exposition of his views than he himself does.

fabric of the human world.⁹ Neẓiv supports his views on the permissibility of war with Tosafot's reading of a talmudic passage in *Shevu'ot* 35b, according to which a king may sacrifice up to one-sixth of his army in a discretionary war.¹⁰ While this source only provides dispensation for the king to endanger his own soldiers in war, Neẓiv seems to assume that it provides license for killing the enemy as well.¹¹

R. Waldenberg also argues that R. Abraham Isaac Kook (1865-1935) is in agreement with Neẓiv. Before we take a look at the passage that R. Waldenberg cites from R. Kook to make his case for this connection, some background is needed. R. Waldenberg's citation of R. Kook is taken from a lengthy and complex exchange that R. Kook had with his contemporary, R. Shlomo Zalman Pines, about whether one is allowed to give up one's life in order avert danger to the Jewish people as a whole, both in war and non-war situations. In the course of the exchange, R. Pines claims that one is allowed to violate even the most serious of prohibitions in order to ensure victory in a mandatory war, and he cites as proof the biblical example of Yael.¹² According to rabbinic tradition, Yael agreed to engage in sexual relations with Sisera as part of her scheme to kill him and save the Israelites from the Canaanites, whose army Sisera had just led into battle against them.¹³ Engaging in illicit sexual relations is forbidden even on pain of death,¹⁴ and yet Yael is lauded by the rabbis for her actions on behalf of the Jewish people, a clear indication

9. Some commentators reject this reading and claim that Neẓiv's intent is only that war is a universal convention among human beings for the purpose of settling conflicts. That is, "the world" that "was founded" such that war has become ubiquitous is the world of human convention, not the world of nature. This appears to be the manner in which R. Shaul Yisraeli understood Neẓiv's position in his famous essay on the Kibiyeh operation, and R. Yisraeli adopted this position as his own as well. R. Yisraeli's essay originally appeared as "*Takrit Kibiyeh le-Or ha-Halakhah*," in *Ha-Torah ve-ha-Medinah* 5-6 (1953-4): 71-113, and later in a slightly expanded version in the collection *Ammud ha-Yemini*, ch. 16, pp. 168-205, under the title, "*Pe'ulot Zeva'iyyot le-Or ha-Halakhah*." Yitshak Kofman also rejects the notion that Neẓiv saw war as natural. See his article, "*Et Milhamah ve-Et Shalom al pi ha-Neẓiv*," *Merhavim* 6 (1997): 285-97. This matter is also discussed by Ahituv, 344-45, and Roness, 201-2. However, I believe that the reading of Neẓiv according to which war is an expression of human nature is the better one because it reads less into the text than the alternative interpretation. Attempts to deny that Neẓiv viewed war as natural betray an apologetic intent. It also appears that R. Waldenberg adopted the first reading, not the second.

10. Tosafot, *Shevu'ot* 35b, s.v. *de-katla aḥad mi-shita be-alma*.

11. *HM* 2: 120-21.

12. Judges 4:17-24.

13. *Yevamot* 103a; *Nazir* 23b; *Horayot* 10b.

14. *Sanhedrin* 74a.

that the drive for victory in mandatory war takes precedence over the commandments.¹⁵

R. Kook firmly rejects R. Pines's opinion, and the passage in which he responds to R. Pines is cited by R. Waldenberg in full as proof that R. Kook supported Neziv's views on war:

Where have we found a dispensation for [committing sins involving] illicit sexual relationships with respect to mandatory war (*milhemet mizvah*)? Even [with] other prohibitions, we find no dispensation—except for those matters that they [i.e., the rabbis] allowed in the [army] camp, as recorded in *Eruvin* 17, and all the [dispensations] for [eating] forbidden foods and the like, when they [i.e., the soldiers] cannot find permitted [food], [all this] in accordance with Maimonides' [ruling] in [*Laws of Kings* 8:1. And in this [matter], there is no difference between mandatory war and discretionary [war]. And aside from [the dispensations for] these prohibitions, there are no [other] dispensations, even in mandatory war. Moreover, one cannot by any means infer anything from the fact that in it [i.e., war] *we expose ourselves to the dangers of killing and being killed in accordance with the nature of the world*. For that is the very commandment [of war]. [We do not make this inference] just as we do not infer from [the case of] those worthy of the death penalty whom we kill in order to fulfill the commandment pertaining to them, each one in accordance with his judgment, [and fulfill] as well as the general positive commandment of “rooting out the evil in your midst” [Deut. 13:6, 21:21, 22:22]—to say that there is a commandment that is not pushed aside because of [the imperative] of saving lives. For this is the essence of the commandment [of imposing the death penalty]. Whatever the case, from the explanation for the matter of the dispensation of sending [soldiers to be exposed] to the dangers of wars, whether it [i.e., this dispensation] is something unique in being part of the laws of kings, or [unique] in some other fashion—one does not by any means make a ruling from it regarding other prohibitions [in war].¹⁶

R. Kook rebuts R. Pines's interpretation of Yael's actions by arguing that war does not give us wholesale license to violate the commandments, and certainly not a commandment as serious as the prohibition against adultery.¹⁷ Indeed, R. Kook admits, there are some commandments that

15. R. Pines's entire correspondence is found in Rakover. See p. 224 for the passage we are examining here, and pp. 142-43 for Rakover's explication of it.

16. *HM* 2, 120; R. Kook, *Mishpat Kohan* #144, pp. 326-27. The emphasis in this passage is mine and will be explained below.

17. In subsequent discussion, R. Kook claims that Yael's behavior was nonetheless justified because she was acting according to the principle of *hora'at sha'ah*, a principle that allows the rabbis to use extraordinary measures in situations in which the well-being of the entire Jewish people is being threatened.

R. Kook's remarks here and R. Waldenberg's approval of them cast doubt on Brojde's assertion (p. 4) that Halakhah would allow a Jewish army to send a woman

the rabbis allowed Jewish soldiers to violate while fighting a war, such as certain prohibitions involving prohibited foods. However, these are exceptions, and beyond them there are no dispensations. R. Kook also preempts any argument that in war all commandments can be violated in order to achieve victory because war requires us to override the specific commandment to preserve life at all costs and that the same thinking can therefore be applied to other commandments as well. The very essence of the commandment to wage war requires the taking of life, and thus nothing is being “overridden” here. Consequently, the permission to take lives in war cannot be used as precedent for disregarding other commandments. The same point can be illustrated with the administering of the death penalty, which also should not be viewed as overriding the commandment to preserve life; in that case as well, the very essence of the commandment to implement the death penalty requires the taking of life.

What does all this have to do with R. Waldenberg’s views on war? First of all, R. Kook affirms R. Waldenberg’s contention that war is governed by unique halakhic norms in allowing a king to send soldiers into combat despite the dangers involved—although R. Kook emphasizes that one must not use this dispensation to justify other violations when fighting a war. However, in R. Waldenberg’s subsequent discussion, it becomes clear that just as important for him in this passage is R. Kook’s reference to war as an activity in which “we expose ourselves to the dangers of killing and being killed in accordance with the nature of the world,” the statement highlighted in the citation above. The last phrase is taken by R. Waldenberg to allude to the position of Neziv, for whom war is justified because “that is the way the world was founded.” Consequently, after summarizing R. Kook’s views, R. Waldenberg informs us that R. Kook “alluded with this—[that is,] with the essential notion that war is different [from ordinary activities]—to the words of

to seduce an enemy army general in order to elicit valuable information from him. Brojde’s remarks on this issue are part of a wider argument he makes that Halakhah gives Jewish military planners wide latitude to violate halakhic norms in order to achieve victory, and he prominently features R. Waldenberg and R. Kook as authorities supporting this approach (p. 2). However, as we see here, both R. Waldenberg and R. Kook explicitly rule out the notion that a woman may in principle transgress sexual prohibitions as a matter of military strategy. I have similar doubts about Brojde’s use of R. Waldenberg and R. Kook to justify other actions in war, such as the use of torture to elicit information from the enemy.

Neziv”¹⁸ That is, R. Kook’s comments on the justification of war are taken to be a deliberate attempt to explain the views of Neziv. R. Waldenberg believes that like Neziv, R. Kook holds the view that a king may endanger the lives of his soldiers in war because war is a natural phenomenon and thus has divine approval.

In the course of his discussion, R. Waldenberg also cites verbatim another passage from R. Kook’s exchange with R. Pines that elaborates on the special halakhic norms that govern war:

The concerns of the issue of wars are separate from this matter of “you shall live by them” (Lev. 18:5). For discretionary war (*milhemet reshut*) is also permitted, and how is it that we find a dispensation to place many lives in danger for the sake of expansion [of territory] (*harhavah*)?¹⁹ But war and the laws of the collective are different [from those of the individual]. Perhaps it [i.e., the body of laws regarding war] was part of the laws of kingship that were undoubtedly many [in number] and given to the nation. . . . Among them [i.e., the laws of kingship] are also laws of war, both mandatory war and discretionary war.²⁰ But it is impossible to learn from this [i.e., the laws of war] about another area [i.e., the laws governing individual behavior].²¹

R. Kook informs us that a soldier is required to endanger his life in war, even though in normal situations, the passage in Leviticus commanding “and you shall live by them” ordinarily absolves one of the obligation to risk one’s life in order to fulfill a commandment. The reason that war is exceptional is that it is governed by a sector of Halakhah that is communal in focus, and these laws are completely separate from the norms that govern individuals in everyday life. Proof for the exceptional nature of war is that a king is permitted to wage a discretionary war for the expansion of territory, a cause that does normally justify the loss of life.

The connection that R. Waldenberg makes between the views of Neziv and R. Kook regarding war as a natural phenomenon is also elaborated upon in a passage that appears later on in R. Waldenberg’s responsum:

Moreover, from the words of the explanations of *Ha’amek Davar* and *Mishpat Kohen* emerges and sprouts the seed of a distinction that the

18. *HM* 2, 120.

19. See Maimonides, *Mishneh Torah, Hilkhhot Melakhim* 5:1, where we are told that discretionary wars can be waged for this purpose.

20. The last two sentences appear only in the original text of R. Kook. I have included them here because they make the passage more understandable, and R. Waldenberg appears to have assumed that his reader would be familiar with the full text.

21. *HM* 2, 120; *Mishpat Kohen* #143, pp. 315-16. R. Waldenberg’s text of R. Kook has minor differences from the published version. I have translated from the latter.

matter of exposing oneself [in war] to “the dangers of killing and being killed in accordance with the nature of the world” is different [from other matters], and that one [may] say [about war] that “that is the way the world as founded.” We have found something like this [notion] also in the book *Shem Aryeh* (14:27), who writes by way of explanation that [with regard to] even those things that are a source of danger, when it concerns a matter that is [in accordance with] the custom of the world and is by way of necessity, one should not be wary etc. And similarly, it is permissible to [engage] in every matter that is necessary for the world, such as going to war, which is [a situation of] certain danger—even a discretionary war.²²

In this passage, R. Waldenberg assumes that R. Kook and Neziv both view war as a natural activity. A clear equation is made between R. Kook’s statement that war is “in accordance with the nature of the world” and Neziv’s view that war is permitted because “that is the way the world was founded.”

Moreover, R. Waldenberg informs us here that the viewpoint of Neziv and R. Kook is in turn explained by Shem Aryeh.²³ Shem Aryeh briefly alludes to the issue of war in a responsum dealing with the general question of how one should assess whether an action is dangerous enough to one’s life to render it forbidden from a halakhic standpoint. Halakhah does not permit an individual to risk his life unnecessarily, but given that there are dangers in many of the ordinary activities we engage in on a day-to-day basis, what criteria does one use to determine when an activity carries with it sufficient risk to be deemed impermissible? For instance, does a merchant embarking on a voyage by sea to conduct business place himself in a position of sufficient danger that he should be forbidden from travelling in this manner? Shem Aryeh concludes that actions that bring with them some degree of danger are not forbidden if they are performed in accordance with the “customs of the world” (*minhago shel olam*) or are done “by way of necessity” (*derekh hekhreah*) in that they are required for everyday life. Therefore, the merchant is by no means forbidden from travelling by sea, seeing as this action is the normal way merchants do business and it is necessary for his livelihood. Most interesting—and relevant for R. Waldenberg’s purposes—is that Shem Aryeh includes war among “normal” activities that carry an

22. *HM* 2, 121. This passage is in fact one long and complex sentence that is difficult to translate. I have broken the sentence up in order to make it readable in English.

23. *Shem Aryeh* is a collection of response written by R. Aryeh Leib ben Elijah Lifshitz (1808–1888), a Ukrainian rabbi and halakhist.

acceptable level of risk. Here, too, according to Shem Aryeh, war is in accordance with the ways of the world and is required by necessity, and it is for this reason that Halakhah allows the waging of war despite the danger it presents to its participants.²⁴

At no point does Shem Aryeh mention Neẓiv's views on war. However, R. Waldenberg views the remarks of Shem Aryeh as an explication of the latter's position. Neẓiv tells us that war is justified despite the dangers to human life because "that is the way the world was founded" (*kakh nosad ha-olam*), and, according to R. Waldenberg, Shem Aryeh's statement that war is in accordance with "customs of the world" (*minhago shel olam*) is meant as a reference to Neẓiv's viewpoint. Therefore, Shem Aryeh's reflections on war are an attempt to make sense of Neẓiv's elliptical remarks on that subject.

The key points that emerge from R. Waldenberg's discussion of the justification of war in *Hilkhot Medinah* is that despite the loss of life it causes, war is permitted on the basis of the notion that it is a universal and natural phenomenon, and therefore the halakhic directives that regulate it are different from those that govern day-to-day life. Both Neẓiv and R. Kook are seen by R. Waldenberg as authoritative sources for this approach, with Shem Aryeh cited as added support.

The issue of justifying war is again taken up by R. Waldenberg in a later discussion contained in a responsum in volume 12 of *Ziz Eli'ezer*, published in 1976.²⁵ In the very next volume of the same work, published two years later, R. Waldenberg presents a revised version of the responsum that was inspired by deeper reflection on its contents.²⁶ The positions in the second responsum do not differ in substance from those of the first, but are significantly expanded and supplemented by more supporting material. We will therefore focus our analysis on this second responsum.

The question that prompted the initial responsum is not about the justification of war. It asks whether a soldier is required, or even allowed, to save the life of a fellow soldier who is lying wounded in the field of combat. However, in dealing with this query, R. Waldenberg addresses the broader question of war and its justification.²⁷

24. *She'elot u-Teshuvot Shem Aryeh* 2:27 (Vilnius, 1874), 37b-39b. See also *Ziz Eli'ezer* (henceforth *ZE*) 15:#37, pp. 95-96, where Shem Aryeh's views are applied by R. Waldenberg to a case of experimental medical treatment.

25. 12:#57, pp. 157-59.

26. 13:#100, pp. 203-7.

27. *ZE* 12:#57, p. 157; 13:#100, p. 203. Brodye (p. 2) describes these two responsa as

In his attempt to unpack the question, R. Waldenberg informs us that a soldier lying wounded in the field of battle would have, at the very least, the halakhic status of someone who is in a situation of *safek sakkannah*, “possible danger,” in that he may die of his wounds or be killed by the enemy; depending on the circumstances, he may even be in a situation of *vaddai sakkannah*, “certain danger,” for the very same reasons. Moreover, according to R. Waldenberg, the presumption is that a person who attempts to rescue such an individual would have to place *himself* in a situation of *safek sakkannah* in order to do so. Therefore, the essential question in halakhic terms is whether a soldier in the heat of a battle may enter a situation of *safek sakkannah* to rescue his wounded comrade, who is himself either in a situation of *safek sakkannah* or *vaddai sakkannah*.²⁸

R. Waldenberg begins his response with the observation that in non-war situations, one is not required to endanger oneself to save the life of another individual. As support for his position, R. Waldenberg cites Radbaz, who remarks that one who attempts such a rescue is a “pious fool” (*hasid shoteh*), a statement suggesting that such an action is not absolutely prohibited, but is strongly discouraged.²⁹ R. Waldenberg also rules that if the individual requiring rescue is only in a situation of *safek sakkannah*, one is not even *permitted* to endanger oneself to save him, presumably because the wounded soldier may, in fact, survive without any help and risking one’s life to rescue someone in this situation would therefore place one needlessly in the line of fire.³⁰

However, R. Waldenberg goes on to argue that war is different from other situations; therefore, in war these rules do not apply. Proof for this conclusion begins with an analysis of the more general question of why a king is permitted to wage war at all, given that he is endangering the lives of his soldiers by taking them into combat to begin with. That is, R. Waldenberg must deal with issue of the justification of war before answering the specific question at hand.

According to R. Waldenberg, the permissibility of war is implied in Tosafot’s interpretation of a passage in *Shevu’ot* 35b, a source we

dealing with the case of soldiers being held captive by the enemy, and the question is whether other soldiers are obligated to risk their lives in order to rescue them. That is not the scenario being discussed here, although there are certainly some similarities between the case of captive soldiers and that of soldiers wounded in the field of combat, the scenario that R. Waldenberg, in fact, discusses.

28. *ZE* 13:#100, p. 203.

29. *Teshuvot Radbaz* 3:#1052.

30. *ZE* 13:#100, pp. 203-4.

encountered earlier according to which a king may sacrifice the lives of up to a sixth of his army when waging a discretionary war.³¹ R. Waldenberg proceeds to explain why Halakhah allows for such mayhem. One explanation is that of Neziv, which we have already examined. War is a natural phenomenon, and therefore we must accept it and its consequences, including the risk to soldiers whom the king sends into combat. R. Waldenberg also cites R. Kook, as he did in the earlier discussion in *Hilkhoh Medinah*, and he includes the passage in which R. Kook makes the claim that the laws of war are governed by special communal laws that are the prerogative of the king. Yet here, R. Waldenberg presents R. Kook's views as an *alternative* to those of Neziv:

What emerges from the words of these eminent sages is that we have before us two definitions and explanations for the unique laws of war, and they are: 1) because in this way and on this foundation the world has been established; 2) because the laws of the collective and the guidance of the nation are different [from those governing individuals]— that is to say, that this [category of laws] is for the improvement and security of the people and the nation.³²

In this passage, R. Waldenberg sees Neziv and R. Kook as defending two different positions. R. Waldenberg's views of Neziv are unchanged from his earlier presentation. As before, Neziv is depicted as upholding the view that war is permitted because it is a universal and natural phenomenon. However, R. Waldenberg's description of R. Kook's view is now quite different. R. Kook is no longer presented as supporting the position that war is permitted because it is universal and natural, but only because of special halakhic norms that are communal in focus and apply, it would seem, to Jews alone. These special laws allow the Jewish people to wage war in order to safeguard its welfare. Thus, the permission to wage war is not due to the acquiescence to nature, but to a deliberate divine imperative permitting the Jews to protect their interests.

Most tellingly, nowhere in this discussion do we see any mention of the passage in R. Kook cited by R. Waldenberg in the earlier treatment in *Hilkhoh Medinah* in which R. Kook alludes to the notion that war is "in accordance with the nature of the world." R. Kook's position here is thus presented as offering a justification of war that we may call "particularistic-halakhic" in orientation, as opposed to that of Neziv, whose justification for war is "universalistic-naturalistic."

31. See above, n. 10.

32. *ZE* 13:#100, p. 204.

R. Waldenberg also cites two authorities, each of whom, he claims, supports one of these theories. The first is Ḥatam Sofer (1762-1839), who in a responsum speaks of wars waged by a Jewish king as being justified because they are for “the good and welfare of the Jewish nation,” a position that echoes that of R. Kook.³³ The second is Shem Aryeh, whom we encountered earlier, who supports the viewpoint of Neziv. Thus, the dichotomy between Neziv and R. Kook is not confined to these two thinkers. They represent different approaches to war found among other halakhic authorities.

At this point, R. Waldenberg is ready to respond to the original question about whether a soldier is required to risk his life in order to rescue a fellow soldier who is wounded in combat:

Given that we have learned from what has been stated that war is different [from everyday situations], it is reasonable to say that just as one must not learn from an [activity being] permitted in war that it would be permitted in another situation [i.e., in everyday life], so too one must not learn from an [activity being] forbidden in another situation [i.e., in everyday life] that it would be forbidden in war. That is to say, that just as the principle of “and you shall live by them” (Lev. 18:5) does not apply in war, it is also reasonable to say that the principle of “and your kinsman shall live with you,” [Lev. 25:36]—which they [i.e., the rabbis] interpret, to mean “your life takes priority over his”³⁴—does not apply in war. Rather, all men [fighting] in war are together obligated to give their lives, each and every one, for the rescue of their fellow [soldiers]. This point is also one of the principles of laws governing the collective and is in the category of [actions meant for] leading the nation and advancing its welfare.³⁵

R. Waldenberg concludes that a soldier is required to make every effort to rescue a comrade wounded in combat despite the dangers involved. Normally, one has no obligation to risk one’s life to save another person who is in danger. That principle is based on a famous talmudic passage that discusses a situation in which two people are in the desert, and one has with him a jug that contains enough water only for one person to survive the journey. Should they share the water and both die? Or should the person with the jug drink the water himself for his own survival and allow the second one to die? The decisive ruling is that of R. Akiva, who supports the latter option. R. Akiva’s view is based on a biblical verse requiring that one must allow his kinsman to live “with”

33. *Shut Ḥatam Sofer* 5:#44, p. 20a-21a.

34. *Bava Mezi’a* 62a.

35. *ZE* 13:#100, p. 205.

him, implying that that one's life takes priority over that of his kinsman if a choice must be made. However, according to R. Waldenberg, this principle does not apply in war. R. Waldenberg refers to the view of R. Kook that the laws governing the nation differ from those governing individuals in day-to-day life because the former are concerned with the well-being of the entire collective. R. Waldenberg therefore concludes that just as a soldier is required to risk his life for the nation when going to war, he is similarly required to risk his life to save a companion who is wounded in the course of battle.

R. Waldenberg supports his position by looking at other halakhic rulings by rabbinic authorities in situations that involve danger to life. Normally, in such situations we are required to issue rulings that preserve life. Thus, for instance, according to the halakhic principle of *safek nefashot le-hakel*, we must be lenient in judging ambiguous situations involving the death penalty.³⁶ If a defendant has been implicated in a crime that is punished by the death penalty, but it is uncertain whether that person is in fact guilty, we err on the side of leniency and we do not put that person to death. However, R. Waldenberg goes on to argue that in some situations, the imperative to preserve life in halakhic decision-making is not heeded. For example, if a person is in a situation in which the mandate for martyrdom is for some reason unclear, that person is nonetheless required to give up his life for the sanctification of the divine name (*kiddush ha-Shem*). In this instance, therefore, a halakhic ruling that could result in the loss of life errs on the side of stringency rather than leniency. This ruling can be explained by the fact that the Torah does not insist on safeguarding the life of a Jew when martyrdom is required as it does in other situations, and therefore even in a situation in which the mandate for martyrdom is unclear, one must take the stricter approach.

Another case which illustrates the same point involves the prohibition against adultery, which is one of three commandments that one must fulfill even if it means giving up one's life (*yehareg ve-al ya'avor*). If a man is confronted with a situation in which he is forced to have sexual relations with a woman or be killed, and it is unclear whether the woman is married or not, the man must still accept death rather than risk transgressing the prohibition against adultery. Here too a halakhic ruling involving the potential loss of life comes down on the side of stringency, and that is because in cases involving the violation of a

36. *Bava Batra* 50b.

cardinal prohibition, such as adultery, the Torah again does not insist on preserving Jewish life as it does in other instances, and, thus, even in situations of ambiguity, a person must sacrifice his life.³⁷

Most significantly, the same logic, in R. Waldenberg's thinking, applies to a case in which a soldier lies wounded in the field of combat. His fellow soldiers are required to rescue him despite the possible dangers involved, even though in non-war situations that would not be the case, because in war, all soldiers must risk their lives to begin with, and therefore here again we err on the side of the more stringent ruling that may result in loss of life.³⁸

Yet, let us not lose sight of our focus, which is the justification of war. As we have seen, a good portion of R. Waldenberg's responsum is devoted to this issue because he must first explain why a Jewish king is permitted to wage war in the first place, despite the danger to his soldiers, before dealing with the question of whether a soldier must risk his life to save a wounded comrade. R. Waldenberg provides two justifications for a king to wage war: one relies on the particularistic-halakhic approach to war of R. Kook and the second relies on the universalistic-naturalistic approach of the Neziv. Moreover, in seeing a dichotomy here between the views of his two predecessors, he has taken a position different from the one he took in *Hilkhot Medinah*, where he saw harmony between them.

What prompted R. Waldenberg to change his mind on the relationship between Neziv and R. Kook? The simplest explanation is that in his later discussion, R. Waldenberg came to the conclusion that his earlier attempt to harmonize the two had been mistaken. He may have come to the realization that in R. Kook's thinking, war is permitted solely because it is governed by special communal laws to be implemented by the king for the welfare of the Jewish people. The one phrase in R. Kook suggestive of the notion that war is permitted because it is a natural phenomenon was perhaps not sufficient to attribute to R. Kook the naturalistic position of Neziv. Therefore, in this new reading, R. Kook does not support the naturalistic approach of Neziv; what we have here are, in fact, two separate approaches.

However, I suspect there is a deeper issue here. As mentioned in my introductory remarks, one of the limitations of *Hilkhot Medinah* is its

37. The sources of these rulings are the *Terumat ha-Deshen* 30b of R. Israel Isserlein ben Petaḥiah (1390-1460) and the commentary of *Shakh*, R. Shabbetai ben Me'ir ha-Kohen (1621-62), on *Shulḥan Arukh* 157:101.

38. *ZE* 13:100, p. 205.

utopian character. It deals with war in highly idealized form, as depicted in ancient times. However, in his responsum in *Ziz Eli'ezer*, R. Waldenberg had to deal with war as an actual reality. Confronted with practical questions, such as whether a soldier may rescue a wounded comrade, he had no choice but to approach war in this manner. The different contexts may help explain the different approaches to war. As long as R. Waldenberg was dealing with war as an idealized phenomenon, the notion that war was justified because it was a natural phenomenon did not trouble him, and Neziv and R. Kook could therefore be depicted as supporting this approach. But when dealing with the war as a living reality, it may have been more difficult for R. Waldenberg to justify war in this manner. Such a position perhaps suggested too much acquiescence to an ugly aspect of human civilization, too much of a capitulation to the evils that human beings perpetrate against each other. R. Waldenberg therefore presented a more ambiguous position, in which R. Kook's halakhic-particularistic perspective was adduced as an alternative to the universalistic-naturalistic approach of Neziv.

R. Kook's position also had the advantage of presenting war in a more positive light, as an institution designed to serve the needs of the Jewish people and to its bolster its welfare. This view may have been especially appealing to R. Waldenberg in the context of a responsum dealing with Israeli soldiers fighting and being wounded for the sake of the Jewish state. In such a context, depicting war as serving the needs of the Jewish nation was perhaps a far better justification for the sacrifices that Israeli soldiers were making than describing war as a phenomenon that we accept just because that is the way the world is.

This analysis is admittedly speculative. However, I think it is safe to say that at the very least, R. Waldenberg was struggling here with whether war was natural, and his treatment of this issue therefore has significance beyond the confines of Halakhah. In fact, this problem has significance beyond the sphere of Judaism altogether. Social scientists have been grappling with the question of whether war is natural for the past few decades, and the literature on this subject is quite extensive. In recent times, the battle has perhaps tilted in favor of those who argue that war is indeed natural. Most prominent among the recent supporters of this view are Steven Pinker and Edmund O. Wilson, well-known scholars who have produced widely-read volumes on this subject.³⁹

39. Steven Pinker, *The Better Angels of Our Nature: Why Violence Has Declined* (New York, 2011); Edmund O. Wilson, *The Social Conquest of Earth* (New York, 2012).

Their views, however, have not gone unchallenged. David P. Barash, for instance, has argued against Pinker and Wilson in a number of articles that have appeared both in print and online.⁴⁰ A recent study by Douglas Fry and Patrik Söderberg in a prominent academic journal has also taken issue with Pinker and Wilson.⁴¹

R. Waldenberg's reflections on whether war is natural therefore resonate with an important debate that has been taking place for some time in the academic world. Of course, I am not in any way implying that R. Waldenberg was aware of such debates. It is also important to note that there are substantial differences between R. Waldenberg's treatment of the relationship between war and nature and the treatment given to it by social scientists. The debate among social scientists about whether war is natural takes place within the framework of evolutionary biology, a secular framework that is entirely inimical to R. Waldenberg's perspective. For R. Waldenberg, the debate is between positions that both assume a thoroughly theistic worldview. Thus, Neziv's view that war is natural still presumes that a personal God is ultimately the creator of the world and everything in it, including human beings and their tendencies to violence. God's role is even more direct in R. Kook's view, in which war is seen as permissible because of divine directives issued to the Jewish nation allowing it to safeguard its well-being through violence.

Nonetheless, I do not believe that the views of R. Waldenberg on war and those of the social scientists are completely unconnected. The question of whether war is natural is one that would interest any reflective human being living in the past century. In the twentieth century, wars claimed the lives of 100 million people, most of them civilians, making it perhaps the bloodiest century in history. War has therefore had an enormous impact on our world during this time span. For Jews who have lived through the greater portion of the twentieth century, such as R. Waldenberg, war has been an especially significant issue, given the effect that wars have had on the lives of Jews during this period. The Holocaust that took place within the context of the Second World War, along with

40. See, for instance, David P. Barash, "Are We Hard-Wired for War?" which appeared in the *New York Times* on September 28, 2013, accessed online on March 4, 2014, at <http://www.nytimes.com/2013/09/29/opinion/sunday/are-we-hard-wired-for-war.html>.

41. Douglas Fry and Steven Söderberg, "Lethal Aggression in Mobile Forager Bands and Implications for the Origins of War," *Science* 19 (July 2013): 270-73. See also Fry's earlier treatment of this issue in *Beyond War: The Human Potential for Peace* (New York, 2007).

the many wars that the State of Israel has had to fight, have made war a problem that Jews have to think about more than ever before. I therefore think that it is plausible to argue that despite the immense differences between the world view of R. Waldenberg and that of the social scientists, R. Waldenberg may have been drawn to the question of whether war was natural for the same reason that the social scientists have been drawn to it—it relates to one of most pressing issues of our time.

Ultimately, R. Waldenberg's treatment of this question may strike us as unsatisfying. He leaves us hanging between the notion that war is a natural phenomenon that we must simply accept for the scourge that it is and the notion that war is a halakhic institution permitted by God for the purpose of helping the Jewish nation protect its interests and safeguard its welfare. But we may also look at the ambiguity that R. Waldenberg leaves us with as an understandable position to take regarding a feature of human civilization that resists any easy moral explanation and the meaning of which has elicited such heated debate in recent times.