

War and Peace in the Jewish Tradition

EDITED BY

Lawrence Schiffman
and Joel B. Wolowelsky

Robert S. Hirt, Series Editor



THE MICHAEL SCHARF PUBLICATION TRUST
OF THE YESHIVA UNIVERSITY PRESS
NEW YORK

THE ORTHODOX FORUM

The Orthodox Forum, initially convened by Dr. Norman Lamm, Chancellor of Yeshiva University, meets each year to consider major issues of concern to the Jewish community. Forum participants from throughout the world, including academicians in both Jewish and secular fields, rabbis, *rashei yeshivah*, Jewish educators, and Jewish communal professionals, gather in conference as a think tank to discuss and critique each other's original papers, examining different aspects of a central theme. The purpose of the Forum is to create and disseminate a new and vibrant Torah literature addressing the critical issues facing Jewry today.

The Orthodox Forum
gratefully acknowledges the support
of the Joseph J. and Bertha K. Green Memorial Fund
at the Rabbi Isaac Elchanan Theological Seminary
established by Morris L. Green, of blessed memory.

The Orthodox Forum Series
is a project of the Rabbi Isaac Elchanan Theological Seminary,
an affiliate of Yeshiva University

Published by
KTAV Publishing House, Inc.
930 Newark Avenue
Jersey City, NJ 07306
Tel. (201) 963-9524
Fax. (201) 963-0102
www.ktav.com
bernie@ktav.com

Copyright © 2007 Yeshiva University Press

This book was typeset by Jerusalem Typesetting, www.jerusalemtype.com

* * *

Library of Congress Cataloging-in-Publication Data

Orthodox Forum (16th : 2004 : New York, NY)

War and peace in the Jewish tradition / edited by Lawrence Schiffman, Joel B. Wolowelsky.

p. cm. – (Orthodox forum series)

ISBN 0-88125-945-4

1. War – Religious aspects – Judaism. 2. War (Jewish law) 3. Just war doctrine.
4. Peace – Religious aspects – Judaism. 5. Reconciliation – Religious aspects –
Judaism. I. Schiffman, Lawrence H. II. Wolowelsky, Joel B. III. Title.

BM538.P3O78 2004

296.3'6242 – dc22

2006038084

Contents

About the Editors and Contributors	ix
Series Editor's Preface	xiii
Introduction	xv
<i>David Shatz</i>	
Just Wars, Just Battles and Just Conduct in Jewish Law: Jewish Law Is Not a Suicide Pact!*	1
<i>Michael J. Broyde</i>	
Philosophical Perspectives on Just War	45
<i>Herb Leventer</i>	
From a Chessboard to the Matrix: The Challenge of Applying the Laws of Armed Conflict in the Asymmetric Warfare Era	93
<i>Yosefi M. Seltzer</i>	
“What is this Bleeting of Sheep in My Ears”: Spoils of War / Wars that Spoil	133
<i>Moshe Sokolow</i>	
The Origin of Nations and the Shadow of Violence: Theological Perspectives on Canaan and Amalek	163
<i>Shalom Carmy</i>	
Amalek and the Seven Nations: A Case of Law vs. Morality	201
<i>Norman Lamm</i>	

International Law and Halakhah	239
<i>Jeremy Wieder</i>	
International Law, Israel, and the Use of Force: Historic Perspectives/Current Perplexities	265
<i>Michla Pomerance</i>	
“Dilemmas of Military Service in Israel: The Religious Dimension	313
<i>Stuart A. Cohen</i>	
Attitudes Towards the Use of Military Force in Ideological Currents of Religious Zionism	341
<i>Elie Holzer</i>	
Military Service: Ambivalence and Contradiction	415
<i>Judith Bleich</i>	
War in Jewish Apocalyptic Thought	477
<i>Lawrence H. Schiffman</i>	
Models of Reconciliation and Coexistence in Jewish Sources	497
<i>Dov S. Zakheim</i>	
The Orthodox Forum Sixteenth Conference List of Participants	533

OTHER VOLUMES IN THE ORTHODOX FORUM SERIES

Rabbinic Authority and Personal Autonomy

edited by Moshe Z. Sokol

Jewish Tradition and the Non-Traditional Jew

edited by Jacob J. Schacter

Israel as a Religious Reality

edited by Chaim I. Waxman

Modern Scholarship in the Study of Torah:

Contributions and Limitations

edited by Shalom Carmy

Tikkun Olam: Social Responsibility in Jewish Thought and Law

edited by David Shatz, Chaim I. Waxman, and Nathan J. Diament

Engaging Modernity:

Rabbinic Leaders and the Challenge of the *Twentieth Century*

edited by Moshe Z. Sokol

Jewish Perspectives on the Experience of Suffering

edited by Shalom Carmy

Jewish Business Ethics: The Firm and Its Stakeholders

edited by Aaron Levine and Moses Pava

Tolerance, Dissent, and Democracy:

Philosophical, Historical, and Halakhic Perspectives

edited by Moshe Z. Sokol

Jewish Spirituality and Divine Law

edited by Adam Mintz and Lawrence Schiffman

Formulating Responses in an Egalitarian Age

edited by Marc D. Stern

Judaism, Science, and Moral Responsibility

edited by Yitzhak Berger and David Shatz

Lomdus: The Conceptual Approach to Jewish Learning

edited by Yosef Blau

Rabbinic and Lay Communal Authority

edited by Suzanne Last Stone and Robert S. Hirt

Amalek and the Seven Nations: A Case of Law vs. Morality

Norman Lamm

I offer no apologies for this exercise in apologetics. The Torah's injunctions against the people of Amalek and the seven Canaanite nations are enshrined in the Halakhah and, although they have not been put into practice since the Biblical period, they do present today's believers with thorny moral problems that call for understanding and, thus, apologetics. Without any claim to a comprehensive treatment of the issue, this paper will endeavor to analyze the Halakhah on these commandments and attempt to resolve, or at least mitigate, the moral and ethical problems they engender within the confines of Orthodox Judaism.¹

SOME SCENARIOS

Not long ago, the press reported that a devout young Moslem in England belongs to al-Muhajiroun, a group of dedicated Islamists,

and was invited to a conference that will honor the “Magnificent 19” hijackers who perpetrated the September 11, 2001 terrorist attacks on the United States. The group leader told him, “The actions of these 19 are completely justified in the light of Sharia [Islamic law]...I don’t believe any Muslim who believes in Islam, and believes in his Lord, would disagree with that.” He turned to his Imam to resolve his conflict between his faith and his own moral doubts about this course of action. Assuming the Imam was moderate and humane, but a convinced Muslim, what should he say?

Imagine now this unlikely but theoretically possible occurrence: a young Orthodox Jew who is totally committed to Halakhah but is morally sensitive, turns to his Rabbi with a painful dilemma. He has befriended a Gentile and learned by sophisticated DNA testing that the man is unquestionably of Amalekite or Canaanite descent, someone whom the Torah commands be destroyed. What should the Rabbi say?

The parallels are obvious. The first scenario is *halakhah le-ma’aseh* for Moslems. The second, while not of immediate practical significance, is morally troubling for religious Jews. It is now our task to turn to the sources and consult our conscience in order to develop an answer to our theoretical inquirer.

THE BIBLICAL RECORD

In the Torah’s record of the relations of ancient Israel with the surrounding nations, certain of them stand out as implacable enemies deserving of special treatment. They are Amalek, a tribe that attacked the stragglers of Israel with notorious cruelty, and the “seven” indigenous or aboriginal “nations” which occupied what was to become *Eretz Israel*. The Biblical verses are as follows:

Amalek: There are two major passages in the Pentateuch that concern Amalek, the first enemy that Israel encountered after the crossing of the Red Sea.

- a. Exodus 17:8–16 – Amalek came and fought with Israel at Rephidim. Moses said to Joshua, “Pick some men for us, and go out and do battle with Amalek”.... Joshua did as Moses told

him and fought with Amalek...And Joshua overwhelmed the people of Amalek with the sword. Then the Lord said to Moses, "Inscribe this in a document as a reminder, and read it aloud to Joshua: I will utterly blot out the memory of Amalek from under heaven!" And Moses built an altar and named it *Adonai nissi*. He said, "It means, 'Hand upon the throne of the Lord!' The Lord will be at war with Amalek from generation to generation."

- b. Deuteronomy 25:17–19 – Remember what Amalek did to you on your journey, after you left Egypt – how, undeterred by fear of God, he surprised you on the march, when you were famished and weary, and cut down all the stragglers in your rear. Therefore, when the Lord your God grants you safety from all your enemies around you, in the land that the Lord your God is giving you as a hereditary portion, blot out the memory of Amalek from under heaven. Do not forget!

There are several passages in the Early Prophets that speak of the way these charges were or were not carried out. Chief among them is the story of the prophet Samuel and King Saul (1 Samuel 15:1–9):

Samuel said to Saul, "I am the one the Lord sent to anoint you king over His people Israel. Therefore, listen to the Lord's command. Thus said the Lord of Hosts: I am exacting the penalty for what Amalek did to Israel, for the assault he made upon them on the road, on their way up from Egypt. Now go, attack Amalek, and utterly destroy all that belongs to him. Spare no one, but kill alike men and women, infants and sucklings, oxen and sheep, camels and asses!"...Saul destroyed Amalek from Havilah all the way to Shur, which is close to Egypt, and he captured King Agag of Amalek alive. He utterly destroyed all the people, putting them to the sword; but Saul and the troops spared Agag and the best of the sheep, the oxen, the second-born, the lambs, and all else that was of value. They would not destroy them; they destroyed only what was cheap and worthless.²

The prophet was furious at the king for failing to obey the divine instructions, and informed him that he would lose his throne as a result. Samuel summoned the troops to bring Agag to him, whereupon he proclaimed to Agag, “As your sword has bereaved women, so shall your mother be bereaved among women,” and he executed him.

Towards the end of the Biblical period, in the Scroll of Esther, we read of the classical anti-Semite, Haman, that he was the son of Hamdatha the Agagite. Agag himself, as we learned from the Samuel incident, was an Amalekite, and Haman thus reenacted his notorious ancestor’s genocidal intentions concerning Jews.³

*The Seven Nations*⁴: The Torah distinguishes between other (“distant”) nations and the much closer “seven nations” in the following passage from Deuteronomy 20: 9–18:

When you approach a town to attack it, you shall offer it terms of peace. If it responds peaceably and lets you in, all the people present there shall serve you as forced labor. If it does not surrender to you, but would join battle with you, you shall lay siege to it; and when the Lord your God delivers it into your hand, you shall put all its males to the sword. You may, however, take as your booty the women, the children, the livestock, and everything in the town – all its spoil – and enjoy the use of the spoil of your enemy, which the Lord your God gives you. Thus you shall deal with all towns that lie very far from you, towns that do not belong to nations hereabout. In the towns of the latter peoples, however, which the Lord your God is giving you as a heritage, you shall not let a soul remain alive. No, you must utterly destroy them – the Hittites and the Amorites, the Canaanites and the Perizzites, the Hivites and the Jebusites – as the Lord your God has commanded you, lest they lead you into doing all the abhorrent things that they have done for their gods and you stand guilty before the Lord your God.

The stricter attitude towards nations bordering the Land of Israel obviously has to do with the greater danger of assimilation of the

idolatrous cultures. The farther away the offending nations, the less of a danger do they present.

Earlier in Deuteronomy (7:1, 2), the Torah is more explicit in its abhorrence of the Seven Nations: “When the Lord your God delivers them to you and you defeat them, you must utterly destroy them: grant them no terms and give them no quarter.”⁵

THE PROBLEM

The moral issues raised by the by these Biblical commandments center on the total war against these ancient enemies of Israel. Even enlightened modern countries engage in wars in which innocent bystanders are killed and maimed in the course of battle. But that is not the same as specifying that, as a matter of military or diplomatic policy, non-combatant men, women, and children are to be killed, and that these acts of vengeance are to be visited upon their descendants forever.

For contemporary men and women, the moral issue is exacerbated because of our experience with and therefore abhorrence of genocide – although it is uncertain that the term is properly applicable to the commandments concerning Amalek and the Seven Nations. This pejorative characterization of an ancient policy on the basis of a relatively new legal concept is at least open to question. The official legal definition of genocide, according to the Convention on the Prevention and Punishment of Genocide, is the killing or maiming of a *national*, *ethnic*, *racial*, or *religious* group. A *national* group is defined as a set of individuals whose identity is defined by a common country or nationality or national origin. An *ethnic* group is one of common cultural traditions, language, or heritage. A *racial* group is one defined by physical characteristics. A *religious* group is a set of people of common religious creeds, beliefs, doctrines, practices, or rituals.

The question is whether the entities that incurred the Biblical wrath fit it into any of these categories. It is certainly not religious, because most or all other groups of the ancient Near East were equally polytheistic. It is not a racial category, because to our knowledge there is no evidence that Amalek differed physically from any

of the other contemporary groups. Moreover, if it was racial in nature, no exceptions would be countenanced, yet (as we shall see presently), Maimonides and others allowed for exceptions if the enemy groups accepted a peace offer by Israel. The acceptance by Amalek or the Seven “Nations” of the Noahide Laws or the offering of peace by the Israelites thus spares them from the draconian Biblical punishment. The genocides of recent history, most especially the Holocaust, left no escape for Jews or Gypsies. It should not be considered an ethnic matter, for we know nothing, or almost nothing, of distinct cultures or languages that were peculiar to Amalek or the hapless seven. Further, Maimonides (*Guide of the Perplexed* III:50) makes the point that Amalek, alone among the children of Esau, was singled out for horrific punishment. For this reason, the most significant possibility is that of nationhood. Can any group of a thousand or five thousand individuals who unify themselves under one leader reasonably be considered a “nation?” Or are they a “tribe?” Is the third Assembly District of Springfield, MA, a nation? Is Staten Island a nation – and would it be a nation if it declared its independence from the United States? The moral question remains despite categorization of the commanded acts, but the use of a specific pejorative nomenclature – “genocide” – is emotionally laden and understandingly complicates clear thinking about the issue.

There are, basically, two elements of moral concern. One is the Amalek commandment, whereby the descendants of Amalek are forever condemned to death, apparently without regard to their own conduct. The Torah’s explanation implies a genetic defect in the Amalekites. The other is the Seven Nations commandment, whereby the seven indigenous Canaanite tribes are to be wiped out – “you shall not let a soul remain alive” – and the reason is their abominable culture and religion which threaten to corrupt the incoming Israelites.

Neither of these stands up well under mortal scrutiny. Here is a blatant case of Law versus Morality. How should a Jew loyal to Halakhah respond?

A first response is to deny any separate and independent value to morality. What the Law says, that is what is good. Hence, by

definition, the Torah's commandments concerning Amalek and the Seven Nations are good and not open to moral objection. This essentially Platonic idea (as developed in his *Republic* and *The Laws*) is translated into Jewish terms by one of the most outstanding rabbinic authorities of the twentieth century, R. Avraham Yeshayahu Karelitz, known by the title of his major work, the *Hazon Ish*.

For the *Hazon Ish*, it is inconceivable that humans can devise a moral code that, in any way, is more noble or demanding than the laws of the Torah. Nothing that came after the Sinaitic revelation can lay claim to improving on the Torah's legislation. Morality is whatever the Halakhah says. Law trumps conscience; conscience, morality, ethics can never be the source or have the power of *mitzvah*. The sole function of ethics and conscience is to inspire one to observe the Halakhah as the Word of the Almighty.⁶

The *Hazon Ish* subscribes to the conventional view of the Talmudic tradition, that of the declining generations: "If the earlier generations were like angels, we are like humans; if they were like humans, we are like donkeys" (*Shabbat* 112b). It would appear, then, that succeeding generations are utterly powerless to solve their moral dilemmas by positing a more stringent code of practice in the name of a more developed moral intuition.

Yet that is not the rule in all cases, and while it holds for the proximity to or distance from Sinai – any oral tradition suffers diminution in time, thus making the reports by the earlier generations more reliable than those of the later ones – the process of deterioration need not be considered universal.⁷

Proof of this thesis is the fact that in certain important cases, the Rabbis had the right – which they exercised – of suspending Biblical law passively when they regarded it as counter-productive, as in the case of the Scroll of the Suspected Adulteress (the *sotah*), or the abandonment on technical grounds of the death penalty, or the gradual abolition of slavery, or when they wished to protect another halakhic commandment (such as banning the sounding of the *shofar* on Rosh Hashanah which falls on a Saturday). In the first half of the third century CE, the *amora* Rav ordered punishment by flogging for one who officially married a woman by sexual intercourse, even

though a marriage so consummated is technically valid according to Biblical law. Similarly, polygamy was widely practiced in the Biblical period, but was formally banned for Ashkenazi communities by Rabbenu Gershon, “the Light of the Exile,” in the 11th century. The Talmud’s severe treatment of heretics – at times the heretic should be thrown into a pit, at others he at least must not be rescued from the pit – is suspended nowadays, according to the Hazon Ish himself, because it is inoperative in times of “the hiding of God’s face,” i.e., when the society no longer feels itself bound by the strictures of faith, and because it is counter-productive.⁸

If anyone harbors serious doubts about inevitable changes in the moral climate in favor of heightened sensitivity, consider how we would react if in our own times someone would stipulate as the *nadan* for his daughter the equivalent of the one hundred Philistine foreskins which Saul demanded of David (I Samuel 18:25) and which dowry David later offered to him for his daughter Michal’s hand in marriage (II Samuel 3:14)... The difference in perspective is not only a matter of esthetics and taste but also of morals.

The relation of law and morality in secular philosophy is quite complex, and has a long and distinguished history. The question of whether they are rivals or whether law is that part of the moral code which is enforceable, was famously debated in the latter part of the 19th century between the philosophers John Stuart Mill and James F. Stephen.⁹ The overwhelming number of authoritative classical Jewish scholars in general favors the latter over the former. The late Prof. Yeshayahu Leibowitz has over many years denied passionately that Halakhah contains an ethical system. But neither passion nor brilliance can change the facts of the Torah’s and Talmud’s profound commitment to the moral content of Judaism. I do not believe that the denial by Hazon Ish of any independent value to ethics or conscience is necessarily the only authentic voice of Torah Judaism on this subject. In an article I co-authored with Prof. Aaron Kirschenbaum, I argued that Judaism recognizes Natural Law, and this constitutes a system of morality that chronologically (but not axiologically) precedes the Halakhah.¹⁰ Separating Halakhah from

morality does violence to both, turning Halakhah into a codex of rigid and sometimes heartless rules and morality into a kind of unstructured and emotionally driven method, as imprecise as it is subjective, of deciding upon one's conduct.¹¹ Note that the Torah goes out of its way to explain and justify the harsh commandments against both Amalek and the Canaanite aborigines. *That very explanation implies that the Torah itself recognized the moral problem of the harshness of the edict, especially against the innocent children of the reprobates. This offends the modern aversion to vengeance¹² in general and to genocide in particular and, more important, seems to go against the grain of the Torah's own principle not to punish the children for the sins of the fathers (Deut. 4:16). Thus, the Talmud in Yoma 22b has King Saul protesting the divine command to exterminate all of Amalek: if the Torah is so concerned with the life of one individual – as in the rite of the *eglah arufah* – certainly it should be concerned with so large a number as Amalek. And if humans sinned, why punish the animals? And if adults sinned, why harm the children?¹³ To which a divine voice replied: Do not be overly righteous.¹⁴*

We are thus presented with a special case of the larger problem of the conflict between certain Biblical and halakhic imperatives that are *prima facie* morally questionable. The issue of Amalek and the Canaanites is especially dramatic, and we shall attempt to deal with this specific case as an example of other such dilemmas.

Before dealing with this special case, it should be noted that the Jewish tradition recognized that, whereas the Torah's commandments are almost always morally edifying, there are specific instances where the consequences of the *mitzvot* can prove morally undesirable.

Thus, the Sages offer a poignant comment on the verse in Koheleth (Eccl. 4:1): "I returned and considered all the oppressions that are done under the sun; and behold the tears of the oppressed who have no comforter; the oppressors have power, but they [the victims] have no power."

The Midrash (*Lev. Rabbah* 32:8), applies Koheleth's pained cry

of the powerless victims of oppression to the case of *mamzerim*, illegitimate offspring of adulterous or incestuous liaisons, who are forbidden to marry other Jewish people:

Daniel the Tailor applied to *mamzerim* the verse “behold the tears of the oppressed”: their parents sinned, and these wretched ones – what did they do to deserve this? So, the father of this one had illicit relations with a woman; but what sin did the son commit? “Who have no comforter but the oppressors have power” – [this refers to] the Great Sanhedrin of Israel who confront [the *mamzerim*] with the power of Torah and exclude them [as the Torah says,] “a *mamzer* shall not come into the community of Israel” [i.e., not marry into the community]. “They (the victims) have no power” – so the Holy One said, “It is, then, incumbent upon Me to comfort them, for in this world they have [halakhic] defects (of illegitimacy), but in the world-to-come, as [the Prophet] Zechariah said, ‘I have seen [the people of Israel] and they are as the pure as the purest gold’” (i.e., the entire people, including those regarded in this world as *mamzerim*, will be considered as without blemish and thus all will be able to intermarry with each other).

The Halakhah was meant for the welfare of the entire community, and the laws concerning illegitimacy certainly have a powerful deterrent effect on those who would otherwise casually sink into moral turpitude; yet it inevitably disadvantages certain innocent individuals. That is the nature of all law, sacred or profane – a phenomenon already noticed by Plato, and later by Maimonides. And herein lies a problem, or a group of problems. How should the disadvantaged few look upon the law that effectively discriminates against them? Is there not a moral objection to being victimized by the law? Is not the community obligated to ameliorate the situation? Or, more directly, is the law – the Halakhah – identical or even just compatible with moral standards?

We face not dissimilar problems with regard to the Biblical commandments concerning Amalek and the Canaanite Nations.

The tradition grappled with them, directly or indirectly, going back to the Mishnah¹⁵ and the Talmud. They were discussed by the medieval authorities, and have been treated by contemporary halakhic scholars, philosophically oriented thinkers, and historians.

In the following pages I shall make use of the classical sources on Amalek and the Canaanite nations from the Bible through later Talmudic authorities and, as well, contemporary scholars. With regard to the latter, I am indebted to all of them but, of course, I take responsibility for developing the theme in my own way.

THE HALAKHAH

In order better to understand how the Jewish tradition grappled with this dilemma, it is important to note the fact that the Sages were not unaware of moral concerns as well as other problems in the plain reading of Scripture, and were willing – albeit in a highly disciplined manner – to act to bring Jewish law to consider ethical and moral as well as other legal issues. They were prepared to identify the limitations that the Halakhah placed upon the implementation of the Biblical commands.

The Mishnah itself hardly mentions Amalek. In one case (*Megillah* 3:6) it merely includes the public reading of the Amalek passage in Exodus (17:8) on Purim, and in the other (*Kiddushin* 4:14) as one of a series of popular maxims, namely, that the best of ritual slaughterers is “a partner of Amalek.”

The Torah’s “rules of war,” as filtered through the prism of the Jewish tradition, offer a context that makes the Biblical mandate appear far less cruel than it seems from initial confrontation with the text itself. To begin with, the Torah divides the gentile world (the Noahides) into two categories: those who observe the Seven Noahide Commandments and those who do not; the former are considered civilized, the latter as uncivilized because of the unredeemable degeneracy of their cultures, religions, and legal codes – or their cruelty in warfare. Even the Amalekites and Canaanites, singled out in the above verses for especially harsh treatment, could save themselves by accepting the Seven Commandments. The following summarizes much of the halakhic legislation:

- Before undertaking the siege of a hostile city, offers of peace must be undertaken. The terms are subservience and tribute.
- The peace proposals must be made to all, even Canaanites and Amalekites.¹⁶
- If they accept upon themselves the Seven Noahide Commandments, they are considered as citizens and treated as equals before the law.¹⁷
- Ammonites and Moabites, because they mistreated the Israelites in their long trek from Egypt, could not be accepted as proselytes,¹⁸ forever; but it was forbidden to wage war against them.
- All treaties must be solemnly observed by both parties – Israel and the enemy.
- A siege may be laid against a “city” – a term which excludes a village or a metropolis.
- It is forbidden to lay a siege merely for the purpose of destroying a city or taking its inhabitants as slaves.
- The peace terms must be offered by Israel *before* any attack against a city by a blockade of hunger, thirst, or disease.
- The peace terms must be offered to a hostile city for three consecutive days, and even if the terms are rejected, a siege may not be undertaken before the enemy has commenced hostilities.
- No direct cruelties may be inflicted even when the city is under siege.
- No city may be totally blockaded; an opening must be left for people to leave the city.
- Soldiers of Israel were expected to act with exemplary behavior; even slander and gossip were not to be tolerated.
- Those of the enemy condemned to death (i.e., those who rejected the offer of observing the Seven Commandments) were to be killed as painlessly as possible.
- Enemy dead were to be buried honorably.¹⁹
- A city was not to be razed needlessly.
- Women, children, the old, and the sick were not to be harmed.
- Captives of war were to be treated humanely.

Most significant of the above items is the one regarding the offer of peace proposals *even* to the Amalekites and the Canaanites. The source for this law is a bold ruling by Maimonides (*Hilkhot Melakhim* 6:1), for which I can find no clear precedent in earlier Talmudic literature. The Talmud (*Sotah* 35b) accepts the repentance of the condemned tribes. Rashi limits this dispensation to those groups living outside the borders of the Holy Land. Tosafot (*ad loc.*) maintain that the mitigation obtains even for the tribes bordering the Holy Land, provided they sue for peace before the beginning of hostilities. Maimonides extends it even to local tribes who sued for peace even after war breaks out, but insists that they accept upon themselves the Noahide laws as non-negotiable.²⁰ Maimonides further rules that the Biblical commandment to pursue and destroy Amalek “from generation to generation” was limited to those descendants of Amalek who persisted in their barbaric ways. If they do not continue the abominable practices of the Biblical Amalek, the sentence of death is not applicable. But if they do follow the same Amalekite policies, the severe judgment holds sway and is considered a legitimate act of self-defense. Accordingly, the Amalek commandment cannot be considered racial or ethnic but is, rather, behavioral.

DO THE AMALEKITES EXIST ANY LONGER?

So much for the basic outline of the halakhic theory of wars. Even more relevant is the issue of history. We read a record of a court session headed by some of the most significant and authoritative sages during the early Tannaitic period. This deals with tribes other than Amalek, yet is most germane to our thesis. The Mishnah (*Yadayim* 2:17) discusses the case of Judah, an Ammonite proselyte, who appeared before a venerable court in the latter part of the first century C.E. and asked permission to marry a Jewess. The Torah explicitly forbade Ammonites and Moabites from marrying within the Jewish people (Deut. 23:4–5). On this basis, Rabban Gamliel opined that the request not be granted. However, R. Yehoshua ruled that the petitioner be permitted to marry a Jewess. His reasoning: both Moabites and Ammonites no longer populate the same areas as in Biblical days, because the Assyrian King Sennacherib enforced massive population

transfers so that it is impossible to identify individual Ammonites and Moabites. After further dialogue, the Mishnah ruled that the man may marry the Jewess.²¹ This important decision means that today it is impossible to identify the descendants of Amalek, the seven Canaanite nations, Ammonites, etc., and hence the Biblical injunctions, mentioned above, are impossible to implement. Thus, halakhically, these commandments are no longer operative and have not been invoked since the Biblical period.

However, the question is whether this dispensation for members of the inhabitants of Ammon and Moab extends to descendants of the Seven Nations and Amalek. Here is how Maimonides (*Hilkhot Melakhim* 5:4, 5) codifies the Halakhah:

Halakhah 4: It is a positive commandment to destroy the Seven Nations, as it is said, “you must utterly destroy them” (Deut. 20:17). If one has the opportunity and fails to kill one of them, he transgresses a negative commandment, as it is said, “you shall not let a soul remain alive” (Deut. 20:16). But their memory has long since perished.

Halakhah 5: Similarly (*ve-khen*), it is a positive commandment to destroy the remembrance of Amalek, as it is said, “you shall blot out the memory of Amalek” (Deut. 25:19). It is also a positive commandment to remember always his evil deeds and the waylaying [he resorted to], so that we keep fresh the hatred he manifested, as it is said, “Remember what Amalek did to you” (Deut. 25:17). The traditional interpretation of this injunction is: “Remember – by word of mouth; do not forget – out of mind, that it is forbidden to forget his hatred and enmity.”

Note that Maimonides, in *halakhah* 5, when discussing Amalek, fails to add the last clause in *halakhah* 4 concerning the Seven Nations, namely, “But their memory has long since perished.” This would imply an inequality between the halakhic treatment of the Seven Nations and of Amalek. Indeed, our teacher, Rabbi Joseph B. Soloveitchik (“the Rav”) O.B.M., concludes from this omission that,

“It would appear from Maimonides’ statements that Amalek is still in existence, while the Seven Nations have descended into the abyss of oblivion.”²² Only the Seven Nations are obsolete and only they were identified by R. Joshua as having lost their identity because of the enforced co-mingling by the two kings. It follows that Amalekite descendants live on with us, and therefore the law to destroy them is still in force. And since “The Lord will be at war with Amalek from generation to generation,” as the Exodus verse relates, they will not be obliterated until the coming of the Messiah.

The question then arises: If Amalek still survives, where is Amalek today? The Rav’s answer is that “Amalek” undergoes a metamorphosis “from generation to generation.” The Rav quotes his father, Rabbi Moshe Soloveitchik, O.B.M., who expands the injunction against Amalek to include any nation that seeks to destroy the Jewish people. His father then proceeds to discern two separate commandments concerning Amalek: the Deuteronomic obligation to extirpate Amalek’s memory devolves upon every Jew with reference to individual Amalekites, and the Exodus verse, “I will utterly blot out the memory of Amalek from under heaven,” implies the readiness of the entire community to do battle against the whole people of Amalek as a “just war,” a *milhemet mitzvah*. The first of these two commandments applies to all the genealogical descendants of Amalek. The second applies to the peoples of Israel and Amalek as a whole, and concerns not specifically Amalek as such, but *any* entity that seeks to destroy the people of Israel and which thereby becomes the “Amalek” of that generation.

According to this analysis, our moral problem is exacerbated: even today we are commanded to destroy individuals who may lay claim to such unsavory genealogy, innocent individual descendants of evil people who flourished three thousand years ago; and the moral issue of genocide²³ – destroying a whole nation that is anti-Semitic. Emotionally, the latter is a policy that may be gratifying and may certainly be well deserved. But the political and human consequences are stark and overwhelming.

But even aside from the natural reluctance even to imagine ourselves engaging in such morally problematic activities, there are

several reasons to question the whole schema just described. I find it enormously difficult to disagree, especially for the record, with my own revered master. I am acutely aware of the halakhic ethic that *ein meshivin et ha-ari le-ahar mittah*, “one does not refute the lion after he has died” (*Gittin* 33a). But I also feel bound by the maxim of R. Akiva, that “This is Torah, hence I must study it,” i.e., without bowing to authority (*Berakhot* 62a).²⁴ Surely, the Rav himself would have recommended intellectual honesty. In that spirit, I offer the following critique.

First, I believe that the reason for Maimonides failing to mention “But their memory has long since perished,” is the word *ve-khen*, “similarly,” at the beginning of *halakhah* 5. Maimonides thereby implies that the Seven Nations, the subject of *halakhah* 5, is subject to the same terms as Seven Nations, the subject of *halakhah* 4. This would lead one to conclude that just as the law requiring the utter destruction of the Seven Nations is no longer relevant because of the Mesopotamian and Babylonian policy of intermingling all subjugated peoples, so too is it impossible nowadays to identify with any degree of certainty who is and who is not a descendant of Amalek. Hence, it was unnecessary for Maimonides to repeat the clause in question. Moreover, it is important to note that in *halakhah* 1 of the self-same chapter 5, Maimonides exemplifies “obligatory wars” as the wars against the Seven Nations, against Amalek, and in self-defense. The implication is that the wars against the Seven Nations and against Amalek are treated as equal to each other, without any distinction made between them as to the intermingling of peoples.²⁵

Moreover, it is clear from the words of the *Hinnukh*, who usually follows Maimonides, that the Amalekites and Canaanites alike have long since disappeared from the scene of history and whatever stragglers who survived have been assimilated to other peoples.²⁶

Second, as a practical matter, the policy of intermingling was applied to *all* victims of these two ancient tyrants. True, the Jewish people was spared for a variety of historic reasons which are not relevant to other ancient peoples. It is hardly imaginable that the Assyrian and Babylonian chieftains kept Amalek intact solely to be-

fuddle the descendants of their Jewish subjects centuries later. Why, then, should we assume that the Seven Nations were assimilated, but the Amalekites were not?

Third, the conclusion of the Rabbis Soloveitchik, father and son, weighs heavily on one's conscience. It would demand of us to act decisively in the second scenario at the beginning of this paper, telling the innocent young enquirer that it his duty to murder his friend whom DNA testing has positively been identified as an Amalekite, who thus by his very presence proves that the two ancient kings were unsuccessful in wiping out Amalek either by mingling or murder. And we would have to offer our understanding and sympathetic justification to the Imam of the young Moslem who, in the first scenario, is being solicited to join an Islamist terrorist group. Both acts simply violate our deepest moral sentiments as Jews, especially Torah Jews, and would vitiate all reasons proffered by eminent halakhic authorities to soften the impact of the commandments. But even more than conscience is involved here: enlarging the scope of the commandment to destroy nations that are blood-thirsty, etc., places us on a slippery slope. If enlargement is in order, why not include self-hating Jews in the Amalek category? And why not, thereafter, Jews who are not observant? Or Jews who are observant but in a different way or who do not agree with my beliefs or principles? After the Rabin assassination and the current murmurings of a repeat act of regicide, such a bizarre and absurd conclusion is not unthinkable. (I have heard of such terribly dangerous inanity uttered in casual seriousness.)

Fourth is a matter of consistency. If the commandment to destroy the very memory of Amalek applies to any national group that seeks to extirpate every living Jew, then we must treat this as a halakhic matter, and perforce apply this with all the stringency that the Torah makes clear, i.e., the verdict of death must be pronounced on every last member of that nation *and all its descendants* – forever. So, for instance, Nazi Germany would have to be totally destroyed, *including* those Germans who revolted against Hitler, those who attempted at the risk of death to save Jews, those who rebuilt a

democratic state on the ruins of the Third Reich, and those who chose to throw in their lot with the State of Israel. Clearly, that is impractical and unacceptable.

Fifth, the idea that we have the right or even the duty to expand the *mitzvah* of exterminating Amalek beyond the limits of its ethnic-genetic identity, turning a real community into an expanding metaphor, runs into serious difficulties. It is true that in the course of time, this tendency to turn *Amalek* into *Amalekism* became so deeply rooted in Jewish thinking, that many important enemies of Israel were identified halakhically as direct descendants of Amalek. Thus, a tannaitic *aggadah* of the First Century identifies Rome as Amalek.²⁷ But a free-wheeling tendency, if taken literally, faces even greater problems from the perspective of history, including our contemporary times. Following is a list drawn up by Daniel Jonah Goldhagen²⁸:

All over Europe, Gentiles have expelled Jews, sometimes for hundreds of years: Crimea in 1016, Paris in 1182, England in 1290, France in 1306, Switzerland in 1348, Hungary in 1349, Provence in 1394, Austria in 1421, Krakow in 1494, Lithuania in 1495, Portugal in 1497, and most of Germany during the 14–16 centuries. From the 15th century until 1722 Russia forbade Jews to enter its soil. Most infamously, Spain expelled its Jews in 1492...Mass-murdering of Jews began in 414 when the people of newly Christianized Roman Alexandria annihilated the city's Jewish community. The mass slaughter of Jews reached an especially momentous frenzy during the First Crusade in 1096. The crusaders killed the Jews of one community after another in Northern France and Germany...Between 1348 and 1350, during the black plague, ordinary Germans slaughtered the Jews of roughly 350 communities, virtually every city and town, rendering Germany almost *judenrein*. During the Chmielnicki massacres of 1648–1656, ordinary Ukrainians slaughtered more than 100,000 Jews in cities and towns across Poland. The Russian pogroms from 1871 to 1906, though they

claimed a fraction of the victims of earlier atrocities, shocked the Western world.

And we have not even mentioned the Holocaust... Thus, if we legitimize the identification of Amalek with any people who are viciously anti-Semitic, many of whom sought not only to persecute but to wipe us out completely, we would have to apply the biblical command to extirpate every anti-Semitic entity as "Amalek," including Crimea, France, England, Switzerland, Hungary, Provence, Austria, Poland, Lithuania, Portugal, Spain, Ukraine, Russia, certainly Germany, and nowadays many, if not most, of the Islamic countries. And if indeed they be classified as *Amalekim*, how about their descendants whom we are bidden to annihilate "from generation to generation?" How many non-Jews would then remain to populate the planet? Such an ambitious program of wholesale vengeance might solve the problem of anti-Semitism as well as that of the earth's overpopulation, but it offends one's moral sensitivity and is simply beyond moral comprehension and would therefore constitute a massive *hillul Hashem*.

Sixth, the apparent reason for expanding Exodus verse to all anti-Semitic nations is to make sure that the Biblical passages remain relevant even if Amalek as such disappears. But that requires a kind of halakhic legerdemain; the simple (*peshat*) of the verses specifies Amalek. Others among the aboriginal inhabitants of Canaan might have qualified for divine vengeance, but the Torah specifically and explicitly says, "Amalek." Making the second commandment relevant by an expansion to include all enemies of Israel appears more homiletic than halakhic. Is it not preferable to keep the technical *halakhah* close to simple *peshat*, the literal meaning of the verses, and utilize the power of *derush* to caution against Amalek-types that may arise in the future? Furthermore, while the aim is commendable – to keep the law as relevant as possible – these commandments would certainly not be the only ones that are now defunct as a result of the development of history. One need only mention the many laws relating to the sacrifices in the Temple, the incense, the law of the Rebellious Son, the Scroll of the Adulteress, capital punishment, etc., etc.

Seventh, if the Rav and R. Moshe are right, why haven't any halakhic decisors throughout the ages recorded the *mitzvah* to destroy any vicious and genocidal anti-Semitic nation as part of the 613 commandments? Other than this admittedly sophisticated halakhic inference from the Maimonides text, we find no such law or assertion in our literature. Further, if the Halakhah intended that the Biblical enmity towards Amalek is meant to apply to all enemies of Israel, why was it not so codified *explicitly* by Maimonides – not only by inference – or by any other of the Talmudic giants throughout the ages?²⁹

Finally, the Rav and R. Moshe assert that the final destruction of Amalek will not take place until or about the time of the coming of the Messiah. The author of the earlier *Sefer Yere'im*, and contemporary Talmudists as well, clearly reserve that commandment to the reigning Israelite king, representing the entire Jewish nation – a situation that no longer prevails, and will not until the Messianic restoration of the monarchy.³⁰ But that does not necessarily mean that in order for the Biblical commandment to retain its relevance and validity it is imperative to posit the continued existence of Amalek until Messianic times. It must be established, of course, that a time will come when the divine anger, His oath of punishment for the Amalekites, will be appeased. At one point in history, God has to win His war unconditionally. Otherwise the Exodus verse, “I will utterly blot out the memory of Amalek from under heaven,” will always remain unfulfilled – and that is unthinkable. But what happens afterwards, when the Messiah and redemption have come and Amalek is finally banished from the world? Does the verse become obsolete? And if that is acceptable, why is it not acceptable to say that Amalek disappeared for good under the two pagan kings, as did the Seven Nations, and is therefore obsolete in our times, and forever after? Deferring the fulfillment of the commandment to eschatological times does not solve the problem.

Hence, with most respectful apologies to the revered Rabbis Soloveitchik, father and son, I find it difficult to accept their thesis.

Indeed, there are distinguished Talmudists who maintain that the author of *Semag* held that the commandment to read from the

Torah those passages relating to the injunction to remember the vile deeds of Amalek is *not* Biblically mandated, and that *Maimonides apparently agrees* that this is so.³¹ If this is correct, then Maimonides in all probability held that the entire matter of Amalek is no longer applicable. Yet the lesson we derive from the Amalek episode remains one that we must learn and re-learn in every generation even if we do not carry out the Biblical mandate in practice: there *is* such a thing as absolute, radical evil; there are people and groups that have lent themselves to becoming the agents of all that is demonic and have remained unrepentant. It is not possible to coexist with unreconstructed barbarians who have forfeited their right to our sympathy and who make us feel embarrassed to be members of the same human race. No amount of psychologizing can remove from an immoral reprobate the onus of paying for his crimes as a way of protecting society. This is how we “remember” Amalek for all times – remember, not murder; expound, not execute.

At the risk of getting involved in a family dispute, I note the opinion of R. Yitzchak Ze'ev Soloveitchik O.B.M. (=Reb Velvel), brother of R. Moses and uncle of R. Joseph, who maintains that there never was a commandment to individual Jews to destroy individual Amalekites; this action was incumbent only upon the people of Israel as a whole, through the king, and as an act of war. The Prophet Samuel did not slay Agag because Agag was an Amalekite, but because Agag was a murderer; his parting words to Agag – “As your sword has bereaved women, so shall your mother be bereaved among women” – substantiate that assertion. Maimonides himself (*Sefer ha-Mitzvot*, end of Pos. Com. #248) explicitly states that the commandment to destroy Amalek devolves upon the *tzibbur*, the entire people, and not upon individual Jews.³² Furthermore, it is not only the king of the reconstituted People of Israel who decides when and where to fulfill the Torah's commandment concerning Amalek; he must do so only at the urging of the prophet who will arise in the Messianic era.³³

I humbly suggest that we focus on the difference between the verses in Exodus and in Deuteronomy cited at the beginning of this essay. Exodus has God Himself threatening Amalek: “I will utterly

blot out the memory of Amalek from under heaven.” This verse contains no commandment or obligation upon humans. It is God’s oath, and it His duty, as it were, to destroy Amalek. We have no right to impose limitations on God’s freedom, and it is entirely reasonable to say that the Almighty, in His own time and way, will deal with all people of extreme cruelty and consider them as the Amalekites of that generation if He so wishes. We leave it to the Almighty to deal with the new Amalekites of every era. It is He who will revive His people and redeem Israel and the world – and deal appropriately with the wicked of the earth. The Master of the World is free to adopt the interpretation of R. Moshe Soloveitchik and expand the content of “Amalek.”

The passage in Deuteronomy, however, places the responsibility in the hands of humans, of Jews: “*you* shall blot out the memory of Amalek from under heaven. Do not forget.” This verse yields two commandments, namely, the duty laid upon Israel to destroy Amalek, and the injunction to remember and not forget the cruelty of Amalek. If we now follow the teaching of R. Yehoshua, that after Sennacherib we can no longer identify the ancient peoples with any certainty, this leads us to conclude that individual Jews are now exempt from the command to do away with individual Amalekites. We are under no obligation to harm any vicious anti-Semite and we must not utterly destroy any miserable country that adopts anti-Semitism as national policy (except, of course, in self-defense or in war), but we must “remember and not forget” the cruelty of Amalek, thus refining our own sensibilities and re-learning the Psalmist’s teaching that to love God is to hate evil (Ps. 97:10). The decision not to destroy a group or nation does not imply passivity and tolerance of evil. Hence, the fulfillment of the commandment to remember does not require the continued existence of Amalek upon whom we can wreak vengeance. Here we may accept the expansion of “Amalek” proposed by R. Moshe; it is only in the fulfillment of the strict *halakhah* of destroying Amalek that we must remain content with the literal understanding of the term. It is easier and textually more parsimonious to canonize the disgust at Amalek-like cruelty in the

“remember” verse than to “homileticize” what R. Moshe considers the second commandment.

Rabbinic authorities closer to our days also dealt with these issues, which they considered most troublesome. Thus, an unusual explanation of the Amalek verses that reveals sensitivity to the problem is offered by Rabbi Yonatan Eibuschutz (1690–1764) in his *Ya'arot Devash* (Part 2:9). He refers to Proverbs (25:21), “If your enemy is hungry, feed him; if he is thirsty, give him water.” From this, he writes, we learn the attitude of the Torah that one ought to act nobly and not with vengeance towards an enemy. Hence, lest we extend this ethical principle to Amalek as well and forget its brutality towards us, the Torah explicitly excluded Amalek from this general attitude, because “the divine Throne is incomplete” as long as Amalek survives. Paraphrasing a passage in the Talmud (*Megillah* 7b), he declares that the Sages of Israel proclaimed, “You are causing us to arouse the enmity of the (other) nations who will consider us people of bad character who are vindictive and harbor hatred towards them.” By limiting the severe Biblical judgment on Amalek to Amalek alone, he attempts to remove it as a model for relations to other enemies of the Jewish people. He concludes with a novel interpretation of the well known passage (*Megillah* 7a) that one ought drink (wine) on Purim to the point that he cannot distinguish between “blessed is Mordecai” and “cursed be Haman.” His insight: Under the influence of liquor one might forget that by our very nature we ought be kind even to an enemy, and that Haman (a descendant of Amalek) is an exception.

Mention should be made as well of Rabbi Yaakov Tzvi Meklenburg³⁴ (1785–1865), who wrestles with the problem of the divine commandment not to allow any Canaanite soul to live, and quotes the opinions of Maimonides and Nahmanides. He avers that the Torah’s law concerning the Canaanites must not be regarded as cruel, because it was directed only against idol worshippers, but if the Canaanites rejected idolatry they were indeed welcomed as citizens in the Land of Israel. He is mostly concerned about the assumption that this harsh commandment is directed not only against mature

males (who may be presumed to be, for the most part, warriors), but also against women and minors. He refuses to accept the fact that such a cruel law could possibly be the correct interpretation of a divine text, and clearly sees the need for an authentic apologetic. He then proceeds to re-interpret and re-translate the words *lo tehayeh* as “You are not required to provide” food, without which life is unthinkable, and other forms of support to such people, rather than, “you shall not allow them to live.” It is inconceivable to him to imagine that such a law could possibly issue from a merciful Deity.

There are several strategies that we must consider in order to solve or at least mitigate this apparent conflict between Halakhah and morality.

A DEVELOPING (HALAKHIC) MORALITY

First, we must turn to the question of a developing morality, i.e., new moral notions that surpass those of the past. The notion of a moral development in Judaism should not be confused with the “New Morality” of the middle to late 1900’s. The latter did not seek to improve on and elevate accepted individual moral principles, but attempted an entire overhaul of conventional morality in order to make it conform to new practices, such that mores were now blessed as morals. We entertain no such notions. What we are discussing here is the troubling awareness, by those fully located within the halakhic tradition, of moral or legal injunctions that engender consequences that are either themselves immoral or that injure innocent parties.

That later Rabbinical authorities can generate stringencies that go beyond certain Biblical laws is not an altogether unknown idea in Jewish life. Thus, a principle of Halakhah accepted in practice is this: “The Sages established their views in the place of contrary Torah legislation where the action they forbade is passive.”³⁵ While an extensive review of this principle is beyond the scope of this paper, it should be pointed out that the Sages imposed their rulings even in the face of opposition to Biblical law for a number of reasons, including the protection of workers from losing their pay, to spare certain types of *mamzerim* from the taint of bastardy, to enhance

sexual morality, and many other such cases.³⁶ A significant case in point is that of the law of the levirate marriage (*yibbum*), which is Biblical in origin: If a man dies childless, it is the responsibility of his brother to marry his widow; should he refuse, he must undergo the ceremony of *halitzah*, which exposes him to a degree of opprobrium. The Ashkenazic *rishonim* decreed, on the basis of a debate in the Talmud (*Yevamot* 39b), that *yibbum* be proscribed and only *halitzah* be performed. Their reason: if the surviving brother does not have purity of intentions, i.e., if he engages in relations with his erstwhile sister-in-law for reasons of sexual gratification rather than the fulfillment of a *mitzvah*, he is committing incest. Hence, it is best that *yibbum* be banned altogether.³⁷

Similarly, albeit of lesser cause for astonishment, it is an acknowledged principle amongst *posekim* that non-Jews should not appear holier than the people of Israel, and that Jews should therefore accept upon themselves additional stringencies if such strictures are adopted by non-Jews. Hence, Maharsham promulgated a ban on publicly smoking on Tishah be-Av. In the same spirit, one of the greatest of Hasidic masters, known as the Hiddushei ha-Rim, maintained that the only source he could find for applying the *mitzvah* of appointing judges in the Diaspora derives from this same reason: because otherwise it would appear that non-Jews are more respectful of their religion than Jews are of theirs.

Should not the same reasoning apply to the commandments concerning Amalek and the Seven Nations? The fact that the civilized world had begun to abhor genocide ever since the beginning of World War II is unquestionably a major contribution to morality – even if this particular aversion is honored more in the breach than in the practice.

But if we accept the concept of a developing morality in Judaism, annoying and disconcerting problems persist. Thus, on the one hand, does not the assertion of a developing moral sensibility imply that the original position was immoral by our newer standards and nevertheless was sanctified by Torah law, which we profess to be eternal and indisputably sacred? On the other hand, is it possible that the Torah would deny to any generation the right to abide by a

“stricter moral code” even if this latter is not itself explicitly located within the classic texts of Judaism? Is there no room in Judaism for autonomous moral judgment, especially when it is derived, as in our case, from bitter historic experience?

I do not accept the notion that contemporary concepts of morality and the ideal of exclusive moral autonomy are sufficient to override a Biblical commandment or for declaring Halakhah – or an individual *halakhah* – superfluous by dubbing it “optional.”

The contemporary scene offers illustrations aplenty of trendiness triumphant, often wrapped in the mantle of prophetic modernity. We are acquainted with the tendency to invest contemporary political doctrines or sociological theories with the sanctity or at least prestige of a “higher morality.” But not every politically correct policy or theory – or fad – can be allowed to override the commandments first heard at Sinai. Many popular ideas have proved to be ephemeral, or culturally conditioned, and do not deserve to be considered sufficiently weighty as to present a problem for believers in the Halakhah.

However, the concept of “developing morality” can prove acceptable and helpful if it is based upon Torah laws and Torah morality. The moral reasoning for which we attempt to circumvent a Biblical mandate must itself issue from or be compatible with Torah and *mitzvot*, a reasoning based upon a profound belief that the Torah is the source and confirmation of moral excellence, and that – to quote an oft repeated teaching of the Rav – the thirteenth *Ani Ma’amin* (of Maimonides’ twelve Articles of Faith) is the belief that Torah is viable and applicable to each individual generation. Hence, in each of the cases mentioned above, the “new” standard we seek to implement and which apparently conflicts with previously recognized Torah law, has roots in the Torah and is “new” only in the sense that it has only recently emerged into our own moral awareness and gained traction in our consciousness. It is not, therefore, a matter of judging the Torah from the vantage of our newly acquired “superior” morality. It is not a genuinely novel, historic moral conception that we pit against the Biblical moral tradition, but it is the evolving contemporary consciousness that has encouraged us to

rediscover what was always there in the inner folds of the Biblical texts and halakhic traditions. Our moral sensitivity leads us to find warrant in the Torah heritage.

There is no justification for a totally independent and autonomous moral doctrine to cancel out a Biblical commandment. No matter how hard and earnestly we try to force Halakhah into the Promethean bed of our subjective conception of morality, the conclusion has the ring of inauthenticity. But we are not merely spiritual technicians who have no moral compass to guide us. That is, whereas we cannot create a new morality to oppose the Biblical one, we most certainly are free to exercise our judgment and experience in searching out authority in the Biblical and Rabbinic traditions to identify elements in Judaism that support a limitation of or alternative to the original doctrine.

Our goal must be the attainment of moral propriety, in the name of which we seek to revise the formal halakhic ruling, *which is itself derived from halakhic principles or clear Jewish teachings*. We are not free to arrogate to ourselves the right to invent new ethical or moral doctrines in opposition to Torah, but we are free, indeed compelled, to use our creative moral and halakhic reasoning to reveal the latent moral judgments of the Torah that may contradict what we have previously accepted as the only doctrine in Torah.

Rabbi Nahum Eliezer Rabinovitch of Ma'ale Adumim, the author of a thoughtful essay on the Torah as the catalyst for the evolution of moral values in history,³⁸ offers illustrations of the gradual mitigation of the institution of slavery, aiming at its total abolition, the acceptance of warfare as a temporary measure until universal peace is achieved, and other such major issues, all of which are grounded in Torah itself.

For instance, in the case of slavery, the opposing principle is *ki avadai hem*, that all humans are servants of the Creator, and hence we must discourage slavery to a human master. There is sufficient halakhic data to support the abolition of the institution of slavery. In the case of capital punishment, the opposing principle is the sanctity of life (*ve-hai ba-hem*) and the creation of man in the Image of God. The choice before us, in such cases, is the tension between the

Torah's explicit legislation vs. the Torah's implicit value system. (This distinction is not unlike Prof. Gerald Dworkin's famous formulation that apart from rules in a legal system, there are also "principles" and "policies." A "rule" is equivalent to our *halakhah*, and a "principle" is "a requirement of justice or fairness or some other dimension of morality" – a value that is expressed in our *lifnim mi-shurat ha-din* and inheres in the body of law we call the Torah.)

By the same token, the idea of refraining from harming civilian non-combatants, although it has no explicit origin in Torah,³⁹ reflects the Torah value of "Thou shalt not kill" (Ex. 20:13) and "The fathers shall not put to death for the [sins of the] children, neither shall the children be put to death for [sins of the] the fathers; every man shall be put to death for his own sin" (Deut. 24:16.) Likewise, the reluctance to implement, even theoretically, the Torah's stern commandments concerning Amalek and the Seven Nations, bespeaks a later development that always inhered latently in Torah itself. This may be looked upon as a non-technical kind of *lifnim mi-shurat ha-din* which supererogatory nature is part of Torah itself.

Mention should be made of "Situational Ethics" that in recent decades has been much discussed, a movement that rejects code-morality and its generalizations in favor of moral judgments made for particular and usually non-replicable situations. Some aspects of it may be legitimately useful for solving our problem.

Situational or Contextual Morality need not be identified with moral relativism. While in its original formulation it argued for very few general rules – primarily "love" – and manifold specific details of the individual enough to regard him and his situation as unique, we are not obliged to accept this as indivisible doctrine. We may well prefer to judge the qualities of our conduct by a far larger number of rules, namely, those of the Halakhah, and yet allow the individual situation to be examined and judged in its uniqueness.

Rabbi Aharon Lichtenstein has demonstrated that Judaism rejects contextualism (another name for "situational ethics") as a self-sufficient ethic, but nevertheless "has embraced it as the modus operandi of large tracts of human experience. These lie in the realm of *lifnim mi-shurat ha-din*. In this area, the halakhic norm is itself

situational.”⁴⁰ He invokes the Ramban in identifying morality as supererogatory (*lifnim mi-shurat ha-din*), thus keeping morality within the bounds of the halakhic tradition: “If...we recognize that Halakhah is multiplanar and many dimensional; that, properly conceived, it includes much more than is explicitly required or permitted by specific rules, we shall realize that the ethical moment we are seeking *is in itself an aspect of Halakhah*” (my emphasis).

A corollary of this elevated aspiration is the stricter criterion of conduct expected of people of higher station. This allowed the tradition to imply the violation of unstated superior standards where the Biblical text appeared overly harsh. Thus, there are a number of examples where the Sages confronted a Scriptural text describing punishment ordained for a transgression, a punishment puzzled them by its severity, and which they attempted to mitigate by reading more grave infractions into the bare text. For example, Nadav and Avihu, sons of Aaron, were consumed by fire (apparently meaning that they were struck by lightning) during the service in the Tabernacle because, the Torah, tells us, they offered up a “strange fire” in the course of offering the incense (Lev. 10: 1–3). So severe a penalty for so slight a transgression certainly appears unjust, so the Rabbis speculated that the two sons of Aaron were guilty of far more serious conduct that indeed merited Draconian punishment. Thus, they were arrogant in making legal decisions in the presence of their elders, specifically Moses (JT *Shevi’it* 16a); they were overweening in their ambitions, entertaining hopes that the two elders – their father Aaron and uncle Moses – would die so they could take over the reins of leadership (*Tanhuma, Aharei Mot* 6); they were flippant in the course of the Sinaiitic revelation (*Tanhuma, Be-Ha’alotekha* 16). Yet other sources speak of other defects of character warranting harsh punishment (*Yalkut Shimoni*, Lev. 10 no. 524 and Lev. 16, no. 571). What obviously drove the Sages to offer these and similar reasons is the genuinely Jewish teaching of *middah ke-negged middah*, that the punishment must fit the crime. The solution thus came internally, from the Halakhah itself.

Another illustration of apparent injustice and consequent efforts by the Sages to suggest internal reasons whereby the Biblical

narrative satisfies significant moral considerations is the story of the Ark of the Covenant in 1 Samuel Chapter 6. The Philistines had captured the Ark and suffered deadly plague. They therefore returned the Ark to the Israelites in Beit Shemesh, and the latter rejoiced and offered sacrifices to mark the occasion. Then, inexplicably, the Almighty brought a plague upon the Jews – killing seven or fifty thousand (the text is ambiguous) Jews of Beit Shemesh, who then sought to send the Ark elsewhere. Here the Midrashim speak of the lack of respect (*derekh erez*) by the Jews towards the Ark, and especially so in comparison with the heathen Philistines (*Tanna de-Bei Eliyahu Rabbah* 11; Gen. R. 54:4). The *Yalkut* accuses the Beit Shemeshites of irreverent behavior (*Yalkut Shimoni* no. 103); other sources have them addressing the Ark contemptuously. Yet other sources, including some of the major medieval exegetes, add that they gazed brazenly into the Ark, violating major Biblical transgressions, flippancy in failing to retrieve the Ark when it could and should have been done, etc.

What we learn from the above, and other such cases, is that the Sages were troubled by misgivings about what they perceived are questionable moral judgments in the narrative – all this although there is no hint of this in the text – and they could not reconcile themselves to what appeared to be unjust or apparently arbitrary conduct by the Creator Himself. Therefore, they suggested halakhically appropriate rationales for the punishment of the “transgressors.” The moral problem was thus solved without recourse to external, non-halakhic sources.⁴¹

Prof. Haym Soloveitchik maintains that according to the medieval classic *Sefer Hasidim*, there is place in Judaism for ever higher levels of morality. “We find in the Torah that anyone who is capable of understanding [a demand] even though he was not [explicitly] commanded is punished for not realizing [the requirement] on his own.” And, “The will of God, the *retzon ha-Bore*, has not been cabined or confined within the overt dictates of the Torah, written or oral.” These newly discovered norms of the author, Rabbi Judah and his fellow Pietists of medieval Germany, allow for newer and greater forms of morality, and certainly should not be dismissed

simply because they have no *explicit* recognition in either the Written or Oral Torah. Further, again in the words of Soloveitchik, “They [the Pietists] had discovered God’s will in its plenitude and, surely, obedience to this was not optional.” Thus there were two sources of authority for the Hasid. “And these two revelations – the explicit and the implicit – should hardly be conceived of as competing poles of allegiance, but as concentric circles emanating from a unitary (and ever expanding) Divine Will, the outer perimeter of which takes on meaning only because of the wide ambience of the inner.” The creativity of *Sefer Hasidim* lies not in imposing moral considerations that arise independently of Torah, but in tapping the wellsprings of Torah and locating *implicit* in them ideas and values that constitute more sublime moral ideals.⁴²

It is interesting to note that a strikingly similar idea is expressed by one of the later and most creative Zaddikim of Beshtian Hasidism, R. Tzadok ha-Kohen of Lublin, who distinguishes *ratzon* from *mitzvah*.⁴³ The *mitzvah* is the inviolable halakhic command. The *ratzon*, the divine Will, goes beyond the legal and represents a supererogatory, higher form of religious aspiration.

This approach does not derogate the value of society’s evolving moral sense, but seeks to avoid moral fashionableness from establishing itself as the ultimate criterion of right and wrong, undercutting the Biblical-Talmudic tradition which is the cornerstone of Judaism, as well as Western civilization, and which has served us so well for three millennia.

Exactly how to determine what is a serious latent Biblical-halakhic moral stance, and what is an ephemeral illusion issuing from one’s subjective conscience or from the moral *Zeitgeist* of the enviroing culture and then grafted upon Torah, is a legitimate and important question, lest the doors be opened wide to well-meaning but irresponsible amateurs.

We must at all times remember that we are dealing with Hala-khah, in its full legal capacity, not with vague homiletics or simplistic evocation of generalized, “feel good” notions. The ability to discriminate between such vague appeals to fuzzy religious preachments on one hand, and sound and solid halakhic data on the other, is critical

and emphasizes the need for such questions to be adjudicated by mature and responsible halakhic authorities who are, at the same time, sensitive to the currents of contemporary moral philosophy. A responsible religious Jew must step back and consider what is truly the will of God and what is mores masquerading as morals, homiletics parading as Halakhah, and taste disguised as Torah.

These caveats are especially applicable to the area of sexual mores. For instance, no amount of earnest moralizing can convert homosexual relations, which the Torah considers an abomination, into a form of an acceptable alternative morality. “Thou shalt love thy neighbor as thyself” does not trump the ban on illicit love, whether homosexual or heterosexual or incestuous.

Hence we must seek to preserve the integrity of our moral conscience and yet avoid exploitation that results from insufficient sensitivity to or respect for that tradition. The opposing principle that we seek to enshrine as the more morally attuned to our generation is, in some significant way, an extension of a genuine halakhic datum – such as a *lifnim mi-shurat ha-din* growing out of a *din*. The “morality” under consideration must itself issue autochthonously from within the halakhic tradition, although it was latent, concealed until we have turned to it, pressed on by our consciences.

None of the above proposals imply any negative moral judgment on the Torah’s original laws concerning the mentioned enemies of Israel which, prevailing during the earlier period, were quite acceptable morally in their time.⁴⁴ The moral validity of the Biblical law is based upon the principle of reciprocity: it is an appropriate response to a brutal attack by Amalek, which opened the door to later attacks by other enemies. Not to do so would have been to expose the Israelites to further savage actions by their surrounding tribes. Compassion of this sort, in the context of that period of history, would be a “compassion of fools” as it was termed by Ramban (to Deut. 7:15 and 19:13) and “compassion for murderers is comparable to the spilling blood” – reminiscent of contemporary pacifists whose lack of realism makes it possible for the most heinous of people or nations to remain unopposed. It is worth mentioning a tradition that the intended victims of the Amalek attack on Israel consisted

primarily of the non-Hebrews who left Egypt with Israel, and *gerim*, foreigners who were determined to join the faith of Judaism.

The conclusion we may draw from this review of the halakhic record is that the commandments are not as merciless as one would imagine without recourse to the relevant post-Biblical material on the subject. For pious Jews, the Bible is authoritative only as interpreted by the Oral tradition, with its astonishing diversity of opinions and the limitations teased out of the bare verses of the Scriptural text by the Oral Law. The considerable leeway given to civilian bystanders,⁴⁵ the preference for peace over hostilities, and the postponement to eschatological times of the fulfillment of the Biblical commands – all these point to a remarkably humane attitude. One might say that only the most radical pacifist is entitled to complain about the classical Jewish views of warfare. And only those nations that have unblemished records in their history have the moral right to raise moral objections to the Torah.

Most assuredly, our discussion of the Halakhah on Amalek and the Seven Nations has not solved all the moral problems to our satisfaction as believing Jews. And it is believing Jews most of all – those whose commitments have been shaped by Torah in its fullest sense, and whose moral expectations of Torah are higher because of their exposure to its ethical norms – who must be satisfied both as to the way the Torah's rules of engagement have been understood and used, and to what we may anticipate for the future. That is, we can “solve” the problem for contemporary times and the future in the practical sense, based upon the factual disappearance of the last vestiges of the Amalekites and Canaanites – the second “scenario” at the beginning of this paper can come to a satisfactory solution – but we must also be able to justify the implementation of the harsh commandments in Biblical times from a theological and moral point of view.

In sum, one must respect the Rabbis' reluctance to acknowledge a conflict between morality and law because to do so would jeopardize the integrity of the Halakhah and would impute moral insensitivity to their predecessors.⁴⁶ If the countervailing moral theme itself can be derived from authentic halakhic or aggadic sources, as

here proposed, the distance between the purely formal and the moral is lessened, our moral sensitivity is salvaged and acknowledged, and the danger of a moralistic antinomianism is diminished.

That is what we have attempted in this paper, however partial or limited our success has been. It is not an easy task for a generation of a people that survived the most devastating genocidal attack in its history.

NOTES

1. Among the many secondary sources consulted in preparation of this paper, mention should be made of David S. Shapiro's *Studies in Jewish Thought* (New York: Yeshiva University Press, 1975,) vol. 1, especially pp. 345–346, a work important primarily for the context of the Halakhah's treatment of war in general. An analytic paper by Avi Sagi in *The Harvard Theological Review* (1994) is notable for its strength both in comprehensiveness and in organization of the material. Sagi has a philosophical agenda: that morality is not dependent upon religion, and that the Torah's commands must accord with moral considerations. I accept this view, especially because I consider man's moral impulses as God-given and implicit in man's creation in the Divine Image; see below, n. 9. Maimonides (*Guide* III:17) already polemicized against the deterministic Islamic sect, the Ash'ariyya, who denied human initiative and therefore identified the good as the spoken word of God. However, Sagi tends to overstate his argument at times, ignoring important Talmudic and post-Talmudic data which are contrary to his view. For instance, on p. 324 he states categorically that all authorities agree that morality is independent of the Torah's commandments, yet the Talmud (*Berakhot* 33b, based on the Mishnah 5:3) records a respectable amoraic opinion that the halakhic rules are always meant to be disciplinary and a test of man's loyalty and are not intended as moral or ethical commandments. Later, R. Isaac Arama, one of the most important medieval Bible exegetes, clearly places the revealed laws as higher than human moral intuition; see his *Akedat Yitzhak*, 42. More recently, an excellent review and thorough-going analysis of the sources in exploring the moral problems presented by the Amalek commandments and their application is that of Yaakov Medan in "Amalek" in *Al Derekh ha-Avot*, ed. Bazak, Vigoda, and Monitz (Alon Shevut: Machon Herzog, 2001). Between Sagi and Medan, many of our relevant sources are covered.
2. On the basis of textual analysis, Medan (371–373) suggests that Samuel's harsh exhortations were a *hora'at sha'ah*, a temporary suspension of the Halakhah, one permitted to a bona fide prophet, and not the original *mitzvah* of God; it therefore does not obligate future generations. R. Moshe Sternbuch (*Mo'adim u-Zemanim* vol. 6, no. 99) maintains on casuistic halakhic grounds that Samuel's role was not part of the general *mitzvah* of destroying Amalek. He follows *Hagahot Maimuniyot* to *Hilkhot Melakhim* 5 in stating that the true fulfillment of the Amalek command-

- ment will occur only after the arrival of the Messiah. However, the problem with postponing this commandment to eschatological times is that, as will be seen, the descendants of Amalek no longer exist – or, at best, are no longer identifiable.
3. The first mention of Haman's Amalekite lineage is in Targum Jonathan to Esther 3:1.
 4. The exact number is problematical. The maximum number is seven: Canaanites, Hittites, Perizzites, Amorites, Jebusites, Hivites, and Girgashites. Most often, the last group is omitted; see Rashi to Exodus 33:2. Sometimes the Perizzites are not mentioned. See Exodus 3:8, 17; 13:5; Deut. 20:17. *Sifre* to Deut. 26:9 states that the five basic ones are those whose land was "flowing with milk and honey." Ibn Ezra to Gen. 15:20 maintains that all were related and their generic term was Canaanites. To avoid confusion, and because the difference in numbers does not affect this essay, we shall refer to them as the Seven Nations, or simply as Canaanites.
 5. In the following pages, we shall generally treat Amalek and the Seven Nations as a unit. However, see *Responsa Avnei Nezer* no. 508, who maintains that the Seven Nations were more culpable because of their abominable conduct, whereas the Amalekites were condemned not because of their own misdeeds but because of their nefarious ancestors.
 6. *Sefer Emunah u-Bitahon*, chapter 3.
 7. See my *Torah Umadda*, pp. 86–109 on the theme of the degeneration of the generations. See, too, Rav Kook's *Iggerot ha-Reiyah*, 369 and R. Tzadok Hakohen's *Peri Zaddik* to *Bereshit (Va-Yehi)* p.109, in the name of the Tzaddik of Pershischa, all of whom accept the principle reluctantly and declare that inwardly, in the sense of growing saintliness, the later the generation, the greater.
 8. *Hazon Ish* to *Yoreh De'ah*, *Hilkhot Shehitah* 2:16.
 9. For a summary of the sources in greater detail, see Jacob J. Ross, "Morality and the Law," in *Tradition* vol. 10, no. 2 (Winter 1968):5–16.
 10. In "Freedom and Constraint in the Jewish Judicial Process," the *Cardozo Law Review* vol. 1 (Spring 1979). The late Prof. Marvin Fox later wrote against the idea of a Natural Law in Judaism, but it did not convince me to change my mind.
 11. The late Rabbi Walter S. Wurzbarger has written wisely of the "inevitable evolution of the notions of moral propriety in the wake of ever-changing social, economic, and cultural conditions." See his "Law as the Basis of a Moral Society," in *Tradition* (Spring 1981):40–41.
 12. In contemporary society, vengeance is considered morally objectionable. Recently, however, scientists have discovered that revenge can be quite "normal" and often plays a positive role in human relations. See "Payback Time: Why Revenge Tastes So Sweet," by Benedict Carey, in *The New York Times* (July 27, 2004), Science Section, p. 1.
 13. Saul's actions were not motivated by moral considerations; after all, he did kill all the women and children and spared only Agag and the captured booty. Politically, it was an understandable move. He needed Agag as an ally against his traditional enemy, the Philistines. It is possible that he put a moral face on a political move – a

tactic not unknown in history, even in our times. See Yoel Bin-Nun, “*Massa Agag*,” in *Megadim* 17 (1989) and Medan, 376–378. I prefer to interpret the “do not be overly righteous” not as an ordinary reprimand, but as a sarcastic retort by the Almighty to Saul, as if to say, “don’t try to deceive Me with your *tzidkut* when I know very well that you are guilty.”

14. This point is elaborated in Responsa *Avnei Nezer* 508:3. He suggests that the Almighty knew that the demonic nature of Amalek was ingrained in them as a sort of genetic endowment. However, this assertion is refuted by the Talmud (*Gittin* 57b), which avers that descendants of Haman (an Amalekite) taught Torah in Bnei Brak, descendants of Sisera taught children in Jerusalem, and descendants of Sennacherib – Shemaya and Avtalyon – taught Torah publicly.
15. In the early part of the Mishnaic period, there was concern that the divine command to wipe out a whole people would confirm Gentile assertions that Jews were hostile to the rest of humanity. See Louis H. Feldman, “Josephus’ Portrait of Moses, Part Two,” *Jewish Quarterly Review* 83 (1992):35–41.
16. The significance of this law lies in the lack of distinction between Amalek and the Seven on one side and all other nations on the other. See further, below.
17. Medan concludes that Samuel’s insistence that the Amalekites were to be annihilated whether or not they changed their conduct and became civilized was a temporary ruling, an action reserved for a prophet. See above, n. 2.
18. There is an opinion that according to the *Mekhilta*, Ammonites and Moabites were permitted to convert to Judaism but they were forbidden to marry a Jewess. See *Megillat Sefer to Semag*, Neg. Com. 115; and R. Meshulam Roth, Responsa *Kol Mevasser* II, 42. p. 84b.
19. *Mekhilta* 181.
20. Rabbi Shlomo Goren, *Meshiv Milhamah* v, p.244, asserts that according to R. Meir Simhah of Dvinsk in his *Or Sameah*, Nahmanides also agrees with Maimonides that the injunction to destroy all enemy humans of Amalek and the Seven Nations is suspended if they accept the offer of peace terms by Israel. Maimonides appears to have carried the day in this opinion; most *rishonim* agree with him. See, too, Rabbi Y.Y. Weinberg, Responsa *Seridei Esh* II, 73, who holds that according to Maimonides, while Amalek and the Seven Nations as well as other hostile entities are to be offered the option of peace, there is a difference between other (“distant”) nations, who may opt for peace even after hostilities begin, whereas with Amalek and the Seven Nations no peace can be negotiated once they have undertaken military action. Cf. *Hazon Ish* to Rambam, *Hilkhot Melakhim* 5, and see Medan, 363–366.
21. Tosafot (*Yevamot* 76b) maintains that historically there were two such incidents. Sennacherib moved the populations of defeated nations to different areas, so as to weaken their resistance to his rule, but the people returned to their original homes; later, Nebuchadnezzar, the Mesopotamian monarch, “mixed up the world,” i.e., moved whole peoples to other areas, commingling individuals such that in the course of time no one knew for sure his lineage and ancestry. Moreover, he later exterminated many of the tribes. Hence, the acts of population transfer plus

- genocide made it highly unlikely that any individual of these peoples in succeeding generations could be sure of his ancestry. It is on this basis that the *tanna'im* declared that the strictures against marrying Ammonites and Moabites no longer obtained.
22. This article appeared originally in Hebrew as “*Kol Dodi Dofek*” in *Divrei Hagut ve-Ha'arakha* (Jerusalem: World Zionist Organization, 1982), 9–55. It first appeared in English as “Fate and Destiny” in *Theological and Halachic Reflections on the Holocaust* (New York: Ktav, 1992), pp. 51–117.
 23. See above, n. 5.
 24. See too *Shulhan Arukh Yoreh De'ah* 242: 3 and 7, and Rema to 3. Also, R. Hayyim of Volozhin, *Ruah Hayyim to Avot* 1:5 (p. 17).
 25. R. Abraham, the son of Maimonides, lumps Amalek and the Seven Nations together in his response to the queries of R. Daniel ha-Bavli; see his Responsa in the Frankel edition of Maimonides' *Sefer ha-Mitzvot* (Bnei Brak, 1995), 543b.
 26. *Hinnukh, Mitzvah* 425.
 27. See L. Ginzberg, *Legends of the Jews* vol. 2, p. 25, n. 147. It is popularly held that it was Josephus who identified Rome as Amalek: see Bacher Tann, 1 (1930), 146 (but one must first clarify if this was meant in a halakhic or a midrashic sense); Louis H. Feldman, “Josephus' Portrait of Daniel,” *Henoah* 14 (1992), 37–96, 65–71; Christopher Begg, “Israel's Battle with Amalek according to Josephus,” *Jewish Quarterly Review* vol. 4 (1997), 201–216, especially p. 215.
 28. *The New Republic* of January 21, 2002, page 21.
 29. See *Guide for the Perplexed* III:50, where Maimonides himself implies that *only* Amalek was condemned and not other peoples.
 30. Ridvaz (*Hilkhot Melakhim* 5:5) and others hold that the commandment to destroy Amalek applies only to the Messianic age. See too the article *Shituf Nashim be-Milhamah* by R. Shelomo Min-haHar in *Tehumin* vol. IV, p. 75 f.
 31. See R. Ovadiah Yosef, *Responsa Yabi'a Omer*, Part 8, 54, who cites an authority who maintains that the *Shulhan Arukh* (*Orah Hayyim* 685) sides with this opinion, because he, R. Joseph Karo, declares that *some say* that the reading is Biblically mandated (referring to Rosh and Tosafot), implying that others (Maimonides and *Semag*) disagree, and that he sides with the latter.
 32. The author of *Hinnukh* also speaks of the Amalek commandment as one that is incumbent upon the *tzibbur* but, unlike Maimonides, he means by this that every member of the public is under this command, not the nation as a whole.
 33. The material on R. Yitzchak Ze'ev Soloveitchik can be found in *Be-Din Mehiyyat Amalek* by the late R. Shmuel Dickman, in *Kovetz ha-Mo'adim*, ed. R. Joseph Buksbaum (Jerusalem: Moriah, 2002), pp. 311–322. See too above, n. 21.
 34. *Ha-Ketav ve-ha-Kabbalah* to Deurotonomy (13:12, 20:10, 16.)
 35. In an illuminating passage, Ritva to *Rosh ha-Shanah*. 32b cites “a gem from Ramban” that while an individual *shevut* has only Rabbinic force, when it had some foundation in Biblical legislation, the Sages in many places allowed it to override a Biblical prohibition.

36. In the order presented in the text above, the sources are: Tosafot, *Berakhot* 15a s.v. *aflu*; *Sefer ha-Makneh* to *Kiddushin*. 76a; *Tosefot Yom Tov* to *Mishnah Nedarim* 11:12. However, when the Biblical law is explicit, the Rabbis did not impose their views; see *Turei Zahav* to *Yoreh De'ah* 117, and Rabbi Yeshoshua Baumol, *Responsa Emek Halakhah* vol. II, 1.
37. An elaborate discussion of the views of the Ashkenazic authorities as opposed to Sephardic and Yemenite traditions may be found in R. Ovadiah Yosef, *Responsa Yabi'a Omer* 6, *Even ha-Ezer* 14.
38. "The Way of Torah" appeared in Hebrew in the author's *Darkah Shel Torah* in 1999. The somewhat condensed English version was published in *The Edah Journal* 3:1, (Tevet 5763=2003).
39. Indeed, there has been some recent revisionist thinking on this subject, especially in the light of significantly higher casualties among Israeli troops as a result of the "purity of arms doctrine" that has heretofore guided Israeli military policy. To use the Talmudic phraseology, is the blood of Israeli soldiers any less red than that of enemy Arab civilians? See the article by my son, Shalom E. Lamm, "Purity of Arms: A Critical Evaluation," in the *Journal of International Security Affairs* No. 8 (Spring 2005), 37-47.
40. "Does Jewish Tradition Recognize an Ethic Independent of Halakhah?" in *Contemporary Jewish Ethics*, ed. Menachem Marc Kellner (Sanhedrin Press, 1978), pp. 102-123. Rabbi Eugene Korn's "Legal Floors and Moral Ceilings: a Jewish Understanding of Law and Ethics," in *The Edah Journal* 2:2 (Tevet 5762 = 2002) deals with the author's conception of the relationship between Halakhah and morality, and contains a summary of the leading cases of *lifnim mi-shurat ha-din*.
41. See Meiri to *Avot* 4:25, "turn it (Torah) over and turn it over, for all is contained within it." Meiri implies that (unlike the conventional interpretation) one should seek within Torah for the solution to problems that arise in Torah.
42. Haym Soloveitchik, "Three Themes in the *Sefer Hasidim*," in *AJS Review*, volume I (1976): pages 311-356.
43. *Tzidkat ha-Tzaddik* 224.
44. See *Sifre* to *Be-Ha'alotekha* 27, and R. Meir Simhah of Dvinsk, *Meshekh Hokhmah* to *Be-Ha'alotekha* (Numbers 11:1) and R. Naftali Tzvi Yehudah Berlin, (Netziv), *ad loc*.
45. This holds for all wars, whether obligatory or permissible, except for Amalek and the Seven Nations. The rationale for these exceptions is that the practice of these two groups was exceedingly cruel, and the response therefore was correspondingly cruel. Maimonides seems to indicate that even in the event of a war between Israel and other countries (other than Amalek and the Seven Nations) it was forbidden to harm non-combatants, if the other side did not constitute an immediate danger. See Goren, *op. cit.* I, 14, 16.
46. Or even to God Himself; see David Weiss Halivni, "Can a Religious Law be Immoral?" in *Perspective on Jews and Judaism: Essays in Honor of Wolfe Kelman*, (The Rabbinical Assembly, 1978), pp. 165-170.