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LAYING DOWN ONE'S SWORDS—JUDAISM'S JUST WAR

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"[Someday God] will banish the chariot from Ephraim and the war horse from Jerusalem, and the bow of war will be banished, and He will speak of peace to the nations." Zechariah 9:9.

Can war be just? The Catholic Church says "yes," and they have developed a theory defining legitimate and just reasons for war.¹ The "Just War Theory" was asserted as an authoritative Catholic teaching by the United States Catholic Bishops in their pastoral letter, *The Challenge of Peace: God's Promise and Our Response*, issued in 1983.^{2 3} The Just War Theory provides a guide for states that are taking actions in conflict situations.⁴ The Theory is intended to prevent war and encourage alternatives, while also providing guidelines for when war may be justified.⁵

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1. MAX HEINDEL, *THE ROSICRUCIAN PHILOSOPHY IN QUESTIONS AND ANSWERS*, VOLUME II (1990).

2. National Conference of Bishops, *The Challenge of Peace: God's Promise and Our Response: A Pastoral Letter on War and Peace*, May 3, 1983, at 2, available at <http://www.zerounukes.org/challengeofpeace.pdf>.

3. See LIBRERIA EDITRICE VATICANA & CATHOLIC CHURCH, *THE CATECHISM OF THE CATHOLIC CHURCH* (1994), available at http://www.vatican.va/archive/ENG0015/_P81.HTM. More recently, the Catechism of the Catholic Church ("CCC") lists strict conditions for "legitimate defense by military force:" the damage inflicted by the aggressor on the nation or community of nations must be lasting, grave, and certain; all other means of putting an end to it must have been shown to be impractical or ineffective; there must be serious prospects of success; and the use of arms must not produce evils and disorders graver than the evil to be eliminated. *Id.* at ¶ 2309.

4. James F. Childress, *Just-War Theories: The Bases, Interrelations, Priorities, and Functions of Their Criteria*, 39 *THEOLOGICAL STUDIES* 427, 427-45 (1978).

5. Gene Sharp, *Beyond Just War and Pacifism: Nonviolent Struggle Toward Justice*,

There is an established and well-known Catholic Just War Theory, but is there a Jewish Just War Theory? This paper will attempt to answer that question.

Judaism is the source of some of the earliest and most majestic visions of a society of friendship among nations. Given the current crises in the Middle East and Israel, it is important to be familiar with religious doctrines in order to understand and respect views, perspectives and cultural norms. Foundational to other religions, Judaism branches into Christianity and shares prophets with Islam. This paper will examine Jewish texts to determine if Judaism has teachings similar to those of Catholic Just War teachings.

The "Isaiah Wall," located in a park adjacent to the United Nations, has become closely identified with the United Nations. It is inscribed with a quote from the prophet Isaiah: "They shall beat their swords into plowshares and their spears into pruning hooks. Nation shall not lift up sword against nation, neither shall they learn war any more."⁶ Judaism incorporates a perspective that is always cognizant of the future and looks towards the aftermath of our actions. This has been termed "consequentialism."⁷ Judaism values and promotes working toward peace.

Yet Judaism is certainly not a pacifistic religion, and we find in scriptures that the Jewish prophets often inform us that we are obligated to go to war and fight—though not without rules and boundaries. The rules and procedures found in Jewish scripture, the Torah (or Hebrew Bible, Tanakh) and the written rabbinical interpretations of the Mishnah and Talmud (sometimes collectively referred to as the Midrash) reveal the pillars upon which the religion is founded and its guiding principles. These teachings have become more relevant in light of the announcement in 2006 by The Rabbinical Council of America (RCA). The RCA has called on Israel to reevaluate its military rules of war in light of Hizbullah's "unconscionable use of civilians, hospitals, ambulances, mosques and the like as human shields, cannon fodder and weapons of asymmetric warfare."⁸ The RCA includes more than 1,000 rabbis from around the world and, along with separate Rabbinical Courts (Beth Din), provides guidance for interpreting Jewish Law and scripture.⁹

Freedom and Peace, ECUMENICAL REVIEW, April 1996.

6. *Isaiah 2:4*; see *Roots of Peace*, <http://rootsofpeace.org.customers.tigertech.net/RoPIsaiahWallattheUnitedNations.htm> (last visited May 26, 2009).

7. Consequentialism refers to those moral theories which hold that the consequences of a particular action form the basis for any valid, moral judgment about that action. Thus, a morally right action is one that produces a good outcome or consequence. See *CONSEQUENTIALISM AND ITS CRITICS* (Samuel Scheffler ed., Oxford University Press 1988) (1988).

8. Matthew Wagner, *U.S. Rabbis Urge Change in IDF War Code*, THE JERUSALEM POST, Aug. 21, 2006, available at <http://www.jpost.com/servlet/Satellite?pagename=JPost%2FJPArticle%2FShowFull&cid=1154525912677>.

9. See HERBERT DANBY, *TRACTATE SANHEDRIN: MISHNAH AND TOSEFTA: THE JUDICIAL*

The starting point for rabbinic thinking about war is the biblical legislation set out in Deuteronomy 20. This passage is like a military procedure or code of rules that regulates conduct in war. However, it does not specify conditions under which it is appropriate to engage in war. Deuteronomy 20 lays down several “constraints” to be observed in the pursuit of war: (1) the war is to be fought only by those who are courageous, possessing faith in God, and who do not have a commitment such as a new house, vineyard or wife;¹⁰ (2) an offer of peace is to be made to any city which is besieged, conditional on the acceptance of terms of tribute;¹¹ (3) should the city refuse the offer of peace the males are put to the sword, the females and small children are taken captive, and the city plundered;¹² and (4) food trees may not be cut down in the siege.¹³ The same passage distinguishes between war directly mandated by God and other wars.¹⁴ This is something like the distinction made in early modern Europe between wars of the Church and wars of the Prince.¹⁵

Many biblical passages indicate the need for a *casus belli*, or very simplistically, a cause. The Bible, however, does not articulate principles from which we might judge whether a particular cause was justified.¹⁶ Explicit instructions issued by God would constitute adequate justification, however, God has left room for human judgment.¹⁷

War is a last resort for the people of Israel. People mistakenly think that the Torah's directive (for the Israelites to conquer the Promised Land) was to wipe out the Canaanites quickly, cruelly and rashly. In truth, the Jews would have preferred that the nations never deserved punishment. That is why the Canaanites were given many chances to accept peace terms. Even though inhuman practice, such as sacrifice and idolatry, had been indoctrinated into the Canaanite psyche, there was hope that they would accept the “Seven Universal Laws of Humanity.”

PROCEDURE OF THE JEWS AS CODIFIED TOWARDS THE END OF THE SECOND CENTURY A.D., *Mishnah* 1:1-4, 1:6 (1919).

10. *Deuteronomy* 20:5-7.

11. *Deuteronomy* 20:11.

12. *Deuteronomy* 20:13-14.

13. *Deuteronomy* 20:19.

14. JAMES TURNER JOHNSON, *IDEOLOGY, REASON AND THE LIMITATION OF WAR: RELIGIOUS AND SECULAR CONCEPTS, 1200-1749*, at 53 (1977).

15. *Id.*

16. *Casus belli* is an expression meaning “the justification for acts of war.” *Casus* means “incident,” “rupture,” or indeed “case,” while *belli* means “of war.” Merriam-Webster OnLine, *Casus Belli*, <http://aolsvc.merriam-webster.aol.com/dictionary/casus%20belli> (last visited May 26, 2009).

17. *Genesis* 15:16 (God justifies his command of the Israelites to conquer the Promised Land with the claims that He has condemned the Canaanites on account of their immorality and because if they are left alone, they might “contaminate” the Israelites. “For the sin of the Amorites will not be total until then” is a justification of the Israelite conquest on the grounds that God would not have permitted the Canaanites to be destroyed unless and until their evil justified it).

By observing the Seven Universal Laws, mankind is given the means by which it can perfect itself. These seven laws are interpreted by Jewish people as the pillars of human civilization. It is important to realize that this is not exclusive to the Jewish person. Any individual, through these laws, has the power to refine his essential being, and can reach higher and higher without limit. In fact, it is written, "I call heaven and earth to bear witness, that any individual, man or woman, Jew or Gentile, freeman or slave, can have the Holy Spirit bestowed upon him. It all depends on his deeds."¹⁸ These "Noachide Laws" are basic to any functioning society: do not murder; do not steal; do not worship false gods; do not be sexually immoral; do not eat the limb of an animal before it is killed; do not curse God; and set up courts and bring offenders to justice.¹⁹

At the root of these laws lies the vital concept that there is a God who created each and every person in His image, and that each person is dear to the Almighty and must be respected accordingly.²⁰ Maimonides begins his section on the laws of war in the "Laws of Kings" by stating:

[W]ar can never be waged against anyone before a call to peace. This applies equally to a discretionary war [meant to further some policy objective] and to an obligatory one [generally one waged in self-defense]. As it is written, 'When you approach a city to war against it, call them to peace.' If they agree to make peace and accept the seven commandments of Noah, not one soul may be killed.²¹

In other words, war must begin with a vision of the kind of society we are trying to create as a result of the war—in this case, a situation of peace.

In the event that the Canaanite nations chose not to make a treaty, the Jews were still commanded to fight mercifully. For example, when besieging a city to conquer it, the Jews never surrounded it on all four sides. This way, one side was always left open to allow for anyone who wanted to escape.²² This military tactic seems extremely odd by always allowing room for compassion and a way to prevent harm.

There are basically two kinds of war: (1) the *milhemet hova* (obligatory war) and (2) the *milhemet reshut* (optional war).²³ Rava, a fourth century Babylonian rabbi, said, "All agree that Joshua's war of conquest was *hova* (obligatory) and the expansionist wars of David were *reshut* (optional)."²⁴ The Talmudic teachings conflict on the definition of what is obligatory and

18. *Shaare Tzedek* 60a, 60b.

19. *Shaare Tzedek* 60a, 60b.

20. HARAV TZVI YEHUDA HACOEN KOOK, TORAT ERETZ YISRAEL 288 (Rabbi David Samson & Tzi Fishman eds., Torat Eretz Yisrael Publications 1996) (1991).

21. MOSES MAIMONIDES, MOSES HYAMSON & BODLEIAN LIBRARY, MISHNEH TORAH, *Laws of Kings* (1965).

22. *Id.*

23. *Id.* at *Melakhim* 5:1 (1965) (As preventive war, to deter potential aggressors).

24. *Babylonian Talmud Sotah* 44b.

what is optional. However, most rabbinical scholars agree that one *must* defend another Jewish person, the Nation, and the worship of God while the other causes remain optional, leaving room for moral and ethical considerations.

Judaism teaches that sometimes war is necessary, and even essential. Judaism teaches the supreme value of life, yet as Rashi²⁵ explains, dangerous disputes must be resolved because if you choose to leave evil alone it will eventually attack you.²⁶ Jewish perspectives seem clear that one cannot live with concern only with themselves and their own community because disputes will build and sinners can influence your actions.

The duty to defend a threatened third party, even at the expense of the life of the aggressor, is derived from the case of the betrothed rape victim.²⁷ “But if a man find a betrothed damsel in the field, and the man force her, and lie with her: then the man only that lay with her shall die.”²⁸ The text speaks compassionately about the rape victim and condemns the aggressor, but this lesson is also telling in other ways. First, this verse tells us that God realizes that there are victims of aggression that cannot offer a defense. Second, this speaks to the guilt of a soldier and not the guilt of an army for one soldier's actions. For instance, even if the war or larger battle was justified, the rape or conduct of an individual man is not justified. There are some acts of aggression that are never acceptable where a man shall be severely punished. This verse also seems to address the idea of self-defense or killing someone who intends to kill you or harm you in an extreme way.

A sentence of death may seem severe, but Judaism seems to support compassion for enemies in times of conflict. After losing a battle, Hadad, King of Syria, sought refuge with the victor, King Ahab of Israel; Hadad's advisers had counseled him that Israelite kings were *malkhei hesed* (merciful kings).²⁹ Though Ahab was reprimanded by the prophet for affording refuge to Ben-Hadad, the reputation of the Israelite King for showing compassion has subsequently been a source of pride for Israel, and is used by Rabbis as an indication that even in wartime compassion should be shown to one's enemies.³⁰ Jews, like Christians, also see value in protecting others. Jewish people must come to another Jewish person's

25. Rabbi Shlomo Yitzhaki, better known as Rashi, is a rabbi from France, famed as the author of the first comprehensive commentaries on the Talmud, Torah and Tanakh. See MESORAH HERITAGE FOUNDATION, TALMUD BAVLI TRACTATE NEDARIM: THE SCHOTTENSTEIN EDITION, General Introduction (2000).

26. *Deuteronomy* 20:12.

27. *Deuteronomy* 22:25-27.

28. *Deuteronomy* 22:25-27.

29. *1 Kings* 20:31.

30. *Mishnah Sotah* 1.

defense and kill a pursuer trying to kill them, and perhaps even a pursuer trying to kill anyone.³¹

Thus far, this paper has stated several rules or guidelines. However, Devarim 20:1-12 is the central biblical statement regarding war and its limits. Devarim goes so far as to say if one cannot fight courageously, they should not be a soldier: the officials shall go on addressing the troops and say, "Is there anyone afraid and disheartened? Let him go back to his home, lest the courage of his comrades flag like his."³² Verses 1-10 explain that only certain people can fight in war.

Is there anyone who has built a new house but has not dedicated it? Let him go back to his home, lest he die in battle and another dedicate it. Is there anyone who has planted a vineyard but has never harvested it? Let him go back to his home, lest he die in battle and another harvest it. Is there anyone who has become engaged to a bride, but who has not married her? Let him go back to his home, lest he die in battle and another marry her.³³

The minimal standards of wartime are carefully elaborated in Maimonides code in the Laws of Kings.³⁴ Some rules of Just War are universal, for example: presenting terms of peace before attacking and avoiding total war by creating a partially protected status for non-combatants.³⁵ The very idea that there are laws of warfare and limitations on the freedom of military commanders bears an important ethical message. The fact that each religious perspective has limitations on warfare should encourage us to ban universally unethical acts and promote universally ethical actions.

Even as Jews drew close to battle, they were commanded to act with mercy. Before attacking, the Jews offered terms of peace, as the Torah states, "When approaching a town to attack it, first offer them peace."³⁶ Another example of compassion is King Saul. He lost his kingdom when he showed misplaced mercy by allowing the Amalekite King to live.³⁷ Some teachings view this example as disobedience to God and the rules of war, others view it as compassion.³⁸

Despite stated examples of compassion, war makes one callous and cruel. Jewish people believe God recognizes this fact. God Himself commanded the Jews to rid the land of evil, and God likewise promised the soldiers that they will retain their compassionate nature. In the words of

31. RABBI JOSEPH KARO, SHULCHAN ARUCH 425 (1555).

32. *Devarim* 20:8.

33. *Devarim* 20:5-7.

34. MAIMONIDES, *supra* note 21, at *Laws of Kings* 6.

35. THE ETHICS OF WAR: SHARED PROBLEMS IN DIFFERENT TRADITIONS (Richard Sorabji & David Rodin eds.) (2006).

36. *Deuteronomy* 20:10.

37. MESORAH, *supra* note 25.

38. 1 *Samuel* 15.

Parsha, "God will have compassion on you, and reverse any display of anger that might have existed."³⁹ God is preparing the Jewish people to the grotesqueness of war and urging them to protect values such as compassion, empathy and love.

The ideal situation is to avoid war altogether, but this is unrealistic. A more realistic objective is a war conducted with humane norms. This is exemplified in the recounting of the civil war between Judah (the southern kingdom) and Israel (the northern kingdom), where we find that abominations committed by Ahaz, the King of Judah, led to an attack by the kingdom of Israel.⁴⁰ The justification for the attack was to restore Judah to a civilized way of life, yet the victorious northern army treated the captives in a less-than-civilized way. For this they were rebuked by a prophet:

And the designated men rose up and took the captives. They clothed all the naked from the spoil, giving them clothes and shoes, and they fed them and gave them to drink and anointed them, and they led the weak on asses, and brought them to Jericho the city of palms, to their brethren, and they returned to Samaria.⁴¹

The Mishnah tells us war is fundamentally a disgrace. War is sanctioned only as a means to an end, therefore, its conduct must always be guided with those ends in mind.⁴² Scripture reveals that Jewish war must be waged with a vision of the moment before the battle and the day after the war.

The paradoxical images of the virtuous warrior and the pacifist are reconciled in the way Jews view God. God moves between a giving and abundant provider and a jealous and withholding authority. The first image leads to an ethic of peace and fecundity, while the second image creates an ethic of competition and conflict. These contrasting interpretations lead to radically different ethics of war and peace.⁴³

One of the best examples of how Judaism perceives man as a creature prone to engaging in conflict or war is in Genesis where Peace urges God not to create man:

Peace came forth [and said] 'Wherefore, O Lord, shall this creature appear on earth, a creature so full of strife and contention, to disturb

39. *Deuteronomy* 13:18. See Efraim Inbar, *War in the Jewish Tradition*, 9 JERUSALEM JOURNAL OF INTERNATIONAL RELATIONS 86, 98 (1987) (points to the distinction between pre-emptive and preventive war. He cites *Leuim Mishneh* who interprets Maimonides' expression "war to enlarge the borders of Israel").

40. See *2 Chronicles* 28.

41. ETHICS OF WAR, *supra* note 35.

42. Shlomo Goren, *Combat morality and the Halakha*, CROSSROADS: HALAKHA AND THE MODERN WORLD 211-231 (Ezra Rosenfeld ed., Rabbi Ezra Bick trans., Zomet 1999) (1987). The volumes of CROSSROADS contain selected material based on articles in the Hebrew journal, TEUMIN.

43. GERALD J. BLIDSTEIN, EKRONOT MEDINYIM BE-MISHNAT HA-RAMBAM: IYUNIM BE-MISHNATO HA-HILKHATIT 223 (1983).

the peace and harmony of Thy creation? He will carry the flame of quarrel and ill-will in his trail; he will bring about war and destruction in his eagerness for gain and conquest.’

Whilst they were pleading against the creation of man, there was heard, arising from another part of the heavens, the soft voice of Charity: ‘Sovereign of the Universe,’ the voice exclaimed, in all its mildness, ‘vouchsafe Thou to create a being in Thy likeness, for it will be a noble creature striving to imitate Thy attributes by its actions. I see man now in Spirit . . . seeking out those who are distressed and wretched to comfort them, drying the tears of the afflicted and despondent, raising up them that are bowed down . . . speaking peace.’⁴⁴

Genesis seems to address the concerns of Judaism: man is prone to sin and drawn to power and warfare, but he also has great potential.

Regardless, peace is Judaism’s highest aspiration. A Midrash says the entire Torah is based on the value of peace.⁴⁵ Another Midrash explains that the obligation to seek peace is of a much higher order than ritual observances.⁴⁶ It notes that although many of the Torah’s commandments are phrased in conditional terms such as “if you see,” “if you meet,” “if you come across,” which indicate that they are only operative in specific situations, the imperative of peace is much greater, because the Torah demands that one “search for peace and pursue it.”⁴⁷

44. *Genesis Rabba* 8.

45. *Babylonian Talmud: Tractate Gittin* 59b; *Bamidbar Rabbah* 11:7.

46. *Vayikra Rabbah* 9:9.

47. *Psalms* 34:15.