

## CHAPTER 11

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### *With a Mighty Hand: Judaic Ethics of Exercising Power in Extraordinary Warfare*

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The *Haggadah* Jews read at Passover retells the liberation of the Israeli people from Pharaoh's enslavement. The repeated refrain "*with a mighty hand, an outstretched arm and awesome might, signs and wonders*"<sup>1</sup> refers to God's intervening power during this struggle. The *Haggadah* links this phrase to the ten plagues that were intended to spark terror in the hearts of Egyptians in general, and Pharaoh in particular. This was a threat purported to generate a change in national policy: to release the people of Israel from the horrid conditions of slavery.<sup>2</sup>

However successful the liberation movement for the people of Israel may have been, the deliberate and supposedly legitimate use of violence over the Egyptians raises a formidable question. For this chapter's purposes, we conceive "*terrorism*" as "*the intentional use of, or threat to use violence, against civilians or against civilian targets, in order to attain political aims*;"<sup>3</sup> should we infer that Passover celebrates terrorism? But this assumption is not accurate, because it was *God* who enacted the plagues, and not *humans*. Hence, if any terror is to be inflicted, is it to be done *only* by divine hands, and *not* by human hands?

This would contrast sharply with what the broad history of humanity attests and recent years witness, because humans *do* bloody their hands in terror-inducing activity. Moreover, on the one hand, but terrorism may have at one time been relegated to the murky edges of conflicts in today's world, terrorism has become a central strategy and an essential tactical maneuver for some parties. On the other hand, just as the shape, scope, and damage of terrorism has changed through centuries of human warfare, so too have defenses against terrorism been adjusted to better protect certain populations. Therefore, studying terrorism from a Judaic perspective is particularly challenging, not only because assessing the Hebraic tradition is a complicated task, but also because "*terrorism*" potentially encompasses different activities, which is intertwined within the broader question of justifiable warfare. The aim of this chapter is to provide a clearer vision of these controversial issues by examining different angles of terrorism from a Judaic standpoint.

This chapter reviews Judaism's rich and variegated textual traditions in search of methodological approaches to this sensitive issue. It then turns to practices (hypotheticals)

drawing loosely on contemporary events in the Middle East in an attempt to render Jewish principles relevant in addressing modern concerns regarding legal constraints in armed conflict.

## MODERN JEWISH THOUGHT ON VIOLENCE AND WAR

Our method of analysis sidesteps two practices found in the vast majority of modern Jewish thought on violence and war in general. The first is the invocation of certain principles, and the second is the exploration of the categories of war.

In regards to the first practice, we attempt to avoid wrestling with Judaism's nuanced and sometimes contradictory legal and ethical positions on modern armed conflict. Modern authors often invoke general principles in support of one position or another, following an eclectic approach, which enables them to elide textual difficulties.<sup>4</sup> We argue that this practice of using principles to constrain or expand religiously sanctioned forms of exercising military power in defense against terrorism silences vast swaths of the textual tradition. A more sophisticated approach is needed to make sense of problematic texts and to argue how and why these positions do not, or ought not, shape national defense policies. Otherwise, the positions publicly advocated represent only a slim and biased portion of the Judaic tradition.

The second practice often found in modern Jewish scholarship on these topics is a full analysis of the traditional categories of war. Though it is a fascinating discussion and worthy of further exposition, it is not our central concern here. It may be helpful, however, to be familiar with the basic rubrics of Jewish thinking about warfare. The textual tradition explicitly mentions three categories of war: (1) *Milchemet reshut* are discretionary wars deployed for the aggrandizement of political leaders' reputation or geographic expansion of a polity; (2) *Milchemet mitzvah* are commanded wars like defensive warfare; (3) *Milchemet chovah* are obligatory wars and are also defensive in nature.<sup>5</sup> We also suggest that there is a fourth category of war which is not explicit in the texts: (4) *milchemet asur*—forbidden warfare, which ought not be fought. For this chapter's purposes, our discussion is of 'defensive warfare' tactics, which uniformly fall under the rubric of commanded wars (*milchemet mitzvah*).

Hence, this chapter probes texts, both legal and ethical in orientation, in search of a Judaic perspective on how best to defend against contemporary terrorism. After glancing at the paradigmatic biblical case of terrorism, we explore other methodological challenges in speaking about terrorism from within the Judaic tradition. We then contextualize the rest of the discussion in what is called extraordinary warfare, meaning the military struggle to defend against opponents employing illegitimate means such as terrorist tactics. The bulk of this chapter surveys two levels of defense in extraordinary war: strategic and tactical. Of the former, attention is given to proportionality, privileged spaces, and privacy. Of the latter, two levels (collective and individual) of punishment subdivide into permitted and prohibited tactics. After briefly highlighting shared themes with other religious traditions, the conclusion emphasizes Judaic ethical difficulties in thinking about and exercising power when defending against modern terrorism.

## THE CONCEPT OF TERRORISM IN THE JUDAIC TRADITION

Let us first describe a Judaic perspective of events which closely resemble today's concept of terrorism, that is, deliberate human attacks against civilians. A biblical

example—the story of Amalek and its attack on Israelites—will allow us to understand that there are important moral and spiritual components to be considered in conjunction with the physical and legal aspects of surviving terrorist attacks.

In the wilderness at Rephidim, the tribe of Amalek launched a surprise and unprovoked lethal attack against straggling and defenseless Israelites trudging through the desert.<sup>6</sup> The text does not express why Amalek attacked the Israelites, but we can surmise that it was done to assert political and military dominance by means of intimidation. Centuries later, the prophet Samuel enjoined King Saul to exact a penalty against the tribe of Amalek for this assault: “*Now go, attack Amalek, and proscribe all that belongs to [that people]. Spare no one, but kill alike men and women, infants and sucklings, oxen and sheep, camels and asses!*”<sup>7</sup> When Saul did not fully carry out the command, Samuel rebuked him. Samuel reminded Saul that as sovereign over Israel and on a mission enjoined by God, Saul’s obedience to God took precedent over petty political concerns like people wanting war spoils.<sup>8</sup>

A superficial reading of these accounts suggests that Amalek conducted a terrorist attack. The Israelite response can be rightly understood as proper defense. But a lengthier look at the case is necessary, for it raises serious issues about terrorism and the conditions according to which it should be counteracted. A more elaborated argument would entail a discussion about the applicability of statutes of limitations, the rightful authority to exact punishment, the strategic and tactical extent of that punishment against people and nonhumans, the balancing of countervailing (political) interests, and the issue of accountability.

More important than those caveats are the *theological* implications of this case. Whereas Amalek attacks without cause and ought to be militarily defeated, the key point is that such defense is neither solely in human hands, nor is it done exclusively for human purposes. Though the Israelites do the actual battling against Amalek, their fight is part of God’s war throughout the ages as it is God who will blot out the memory of Amalek from under heaven.<sup>9</sup> It is God’s eternal task to eradicate humanity of Amalek (e.g., terrorism), just as it is humanity’s responsibility to secure themselves against terrorists.<sup>10</sup>

## METHODOLOGICAL ISSUES

The example cited above clearly shows that a comprehensive approach to terrorism from a Judaic perspective requires a combination of laws and ethical principles, all couched in a theological paradigm. There are difficulties in reading the Jewish textual traditions in light of today’s armed conflicts and, as we have seen, superficial readings render misleading conclusions. Therefore, it is necessary to address some methodological concerns before attempting to examine practical hypotheticals of modern day conflicts from a Judaic perspective. In this chapter, we draw attention to four specific methodological challenges: (1) the general geopolitical and historic context, (2) Israel’s existence, (3) internal extension, and (4) external extension. The meaning and boundaries of each of these issues is discussed as follows:

### General Geopolitical Context

Contemporary Jewish scholars must contend with the fact that the bulk of Judaic literature comprising normative laws and ethical principles, especially on warfare, emerged in geopolitical worlds radically different from today.

For example, the notion of sovereignty is particularly troublesome. Though some materials originated in (or speak of) a Jewish monarchy sovereign in a circumscribed location, the majority of the texts were written in, to and for situations when Jews were

not burdened with political sovereignty.<sup>11</sup> In regard to military conflict itself, Jewish governmental monopoly on violence as a form of conflict mediation was confined to periods of Jewish geopolitical dominance. Those periods, however, were quite a long time ago, ending with the Roman conquest of the Hasmonean Kingdom in 37 BCE. The strategies, tactics, technologies, and materials of warfare during those periods differ radically from our contemporary circumstances and, consequently, do not comport to modern legal instruments or sensibilities.

Although it would be easy to dismiss these texts for their ancientness and outmoded character, this would silence the Judaic tradition that has nonetheless survived innumerable conflicts and has much to say about conflict mediation generally. So, despite these historical differences between the texts' times and today, reading ancient texts *as if* they and we exist in the same geopolitical context helps to produce a longitudinal and cohesive conversation in which we can participate.

### Israel's Existence

On the other hand, importing ancient legal and ethical texts as unimpeachable rulings for modern warfare begs the question especially in regard to Israel. Some modern scholars equate modern Israeli popularly elected leadership to the ancient divinely appointed kings or to the *Sanhedrin*, a court of rabbis elected by their peers. In so doing, they render modern Israeli governments accountable to ancient *halakhah*—Jewish law.<sup>12</sup> Others apply *halakhah* directly to Israel generally without questioning if this comports with Israel's legal self-conception.<sup>13</sup>

Israel makes our conversation problematic to the extent that it influences Jewish self-perception. This, because some Jews (and gentiles as well) think that the state's exercise of power is synonymous with the exercise of Judaism. This fallacy, however, ignores the fact that Israel does not see itself bound to the Judaic tradition. In fact, it functions as most other nation-states and should be understood as such, and not as a Jewish polity incomparable to others.<sup>14</sup> What Israel does or does not do militarily in defense against terrorism, be it from Jews or gentiles, has little bearing on or reflection of Judaic textual traditions or normative Judaic sensibilities.<sup>15</sup>

Because the government, judiciary, military, and even nongovernmental organizations all understand Israel to function independent of *halakhah*, we cannot conclude that Israeli governmental policy or military behavior is tantamount to Judaism. So, as to avoid ambivalence, apologetics, or criticism of official IDF (Israeli Defense Force) policies and practices, and because this chapter seeks a *Judaic* perspective on terrorism, we bracket them out here so as to focus on the Judaic tradition.

### Internal Extension of *Halakhah*

A third methodological concern is internal to *halakhah* itself. Is it reasonable to elaborate internal analogies in order to apply the Judaic tradition to today's issues? To what extent can laws explicitly discussing actions in one arena be applied to actions in another? More specifically, are *all* rules pertaining to an individual automatically applicable to the collective (and vice versa)?<sup>16</sup> As a matter of principle, a sophisticated analysis of Judaic laws and ethics goes to great length to discuss them according to their arenas without extending them to others. There are, however, exceptional cases in which concepts, laws, and procedures can be instructive by analogy. In these instances, a sophisticated approach applies such analogies only to comparable arenas in which they are found.

### External Extension of *Halakhah*

How does *halakhah*, a mandatory legal system enjoined upon Jews, apply to gentiles? Certainly, many laws on armed conflict speak of Jews warring against gentiles. But what of laws about Jews in conflict with fellow Jews—can these be applied to gentiles? Conversely, to what degree is it reasonable to ask or require a gentile to comport with Jewish law?

A possible solution is that Jewish perspectives about warring with gentiles should be confined only to those laws explicitly mentioning gentiles. Such an approach unnecessarily curtails the breadth and depth of Jewish legal and ethical thinking about war and terrorism. On the other hand, inasmuch as *halakhah* and corollary ethical principles enable human beings to be ever more holy as God is holy, perhaps it is reasonable to extend Jewish law and ethics to gentiles. This theological argument, however, can be easily undermined by claims of paternalism and colonialism, particularly because gentiles are not expected to uphold the entirety of the *halakhic* system.<sup>17</sup> This concern comes to the fore especially on issues of personal status (i.e., birth, conversion, marriage, and burial).

However, on issues of war and peace, and to the degree that the Judaic tradition conceives all humanity—Jews and gentiles alike—obliged to uphold at least general moral standards, the issue of external extension does not require curtailing our study only to those texts explicitly mentioning gentiles. Instead, because terrorism is a mode of conflict *prosecution* that any group or individual, Jewish or gentile, can employ, this external challenge is put aside so as to consider the broadest scope of Jewish thinking on these issues. Hence, although we acknowledge there is a great amount of disagreement on the applicability of *halakhah* to gentiles, this chapter is based on the assumption that the Jewish tradition knows no general boundaries in this respect on this issue.

All the arguments expressed above make clear that this is a theoretical exercise. It is *hypothetical*, inasmuch Jewish law is not currently binding upon any military in the world today. What would a military force do in the face of terrorism *if* indeed it were bound by Jewish textual traditions? It is to this question we now turn.

## CONCEPT OF EXTRAORDINARY WARFARE FROM A JUDAIC VIEWPOINT

For all intents and purposes, the following discussion assumes *hora'at sha'ah*—a state of emergency—like war. In regard to warfare generally, the Jewish textual tradition offers a broad array of material discussing *jus ad bellum* as well as *jus in bello* issues. In other words, the tradition constructs standards that must be met *prior* to engaging in war with rightful opponents, and certain strategies and tactics are proscribed and others permitted *during* the execution of different categories of war. An important restriction exists here. This chapter's concern is not *normal* warfare but *extraordinary* warfare. Extraordinary warfare is for our purposes the military struggle to defend against opponents employing illegitimate means such as terrorist tactics.

This premise has critical theoretical and practical consequences. Major assumptions fall by the wayside in extraordinary warfare. For instance, *who* combatants are is blurred. In earlier eras, differentiating military personnel from noncombatants could be done with a quick glance at an individual's garb. Today, even invasive scans cannot pinpoint precisely who considers him- or herself militarily involved in a conflict. Similarly, *how* people fight has also changed. Prior rules and guidelines for strategies and tactics no longer adequately

describe or predict contemporary violent conflict behavior. Moreover, though the reasons *why* people take on certain risks, especially lethal ones, are not all new, the prevalence of certain rationales, like religious fundamentalisms and hyper-nationalisms, marks a different tenor in modern warfare than found previously.

Altogether, these novelties challenge whether traditional Jewish legal and ethical texts on warfare can and should be applied, by analogy or by extension, to contemporary warfare. How does the Judaic tradition contend with *extraordinary* warfare? The Book of Maccabees tells us. When Mattathias and his friends learn that coreligionists are being slaughtered by gentiles because they refuse to fight on the Sabbath, they cry: "*If we all do as our kindred have done and refuse to fight with the gentiles for our lives and for our ordinances, they will quickly destroy us from the earth.*" The group quickly concludes: "*Let us fight against anyone who comes to attack us on the Sabbath day; let us not die as our kindred died in their hiding places.*"<sup>18</sup> Whereas the bible describes the community making this policy decision, Josephus, the early historian of Jews, shifts the emphasis onto the figure of Mattathias himself.<sup>19</sup>

Prior to this attack, the rule was that no Jew could carry a weapon on the Sabbath, which obviously rendered the Jewish community militarily vulnerable at least one day a week. This policy reflects early rabbinic opinion that one's business travels and a community's military campaign (also requiring travel) must be planned so as to protect the Sabbath.<sup>20</sup> Like boats at sea, wars already begun need not stop for Shabbat; yet normal wars cannot begin on Shabbat.

The significance, therefore, of the Macabbees narrative lies on the textual acknowledgment of the alteration of the old rules of warfare. The narrative highlights conflicting critical values: the rule of (old) law on the one side and the needs of an immediate emergency situation on the other. What we learn is that the Judaic tradition has considered the case that *in certain circumstances even the rules of warfare may be bent or abandoned so as to preserve the public body.*<sup>21</sup>

Not only can the rules of war be changed, those very innovations emerge from a deliberative and inclusive process instead of dictatorial authority. In those times, people could consider their options and discuss them with each other. But the nature of extraordinary national emergencies, ancient and modern alike, may preclude meaningful and inclusive deliberation. Hence, Jewish sages throughout the centuries declare that defensive wars are *milchemet mitzvah* (commanded wars), and that Jewish leaders have the prerogative to make unilateral decisions on behalf of the community.<sup>22</sup>

Now we know that laws of warfare *may* be bent in order to best defend the community from belligerent opponents. But, who is a *legitimate* military opponent? The use of lethal force is not sufficient to constitute a combatant.<sup>23</sup> A distinction should be made between legal and illegal combatants. A *legal combatant* is one who rightfully employs lethal or injurious force, like in a normal war setting. An *illegal combatant* is one who unrightfully uses lethal or injurious force regardless of context. This definition differentiates someone using force in legitimate self-defense from a suicide bomber, i.e., a terrorist. Though the Judaic tradition grants some flexibility when dealing with illegal attackers *in principle*, there are also *real* boundaries of what is and is not acceptable defense.

## STRATEGIC PRINCIPLES

The strategic level addresses general guiding principles that shape the motive, nature, and scope of specific actions. The principles assist leaders in making decisions to the

degree principles demarcate boundaries of appropriate behavior outside of which actions are considered illegal or immoral or both. Regarding extraordinary warfare, the Judaic tradition raises three general principles of concern: *proportionality*, *privileged spaces*, and *privacy*. Each of these principles hones the development of specific tactics that will be discussed below.

### Proportionality

Judaism acknowledges the principle of proportionality, at least in the realm of self-defense.<sup>24</sup> The central tenet of the principle of proportionality is inevitability. An unintended result from a particular maneuver, *davar she'eino mitkaven*, is permitted as long as that result is *not* inevitable.<sup>25</sup> If, however, that double-effect will necessarily ensue, and if that double-effect is itself a forbidden act, then the initiating maneuver itself is prohibited.<sup>26</sup> This principle is important and has many potential applications.<sup>27</sup>

Related to proportionality is the rationale of vengeance or retribution, that is, reactive defense. The vast majority of Jewish scholars acknowledge that defensive wars are by definition commanded wars (*milchemet mitzvah*), and that commanded warfare is the only operable legal category of warfare today.<sup>28</sup> This is generally so today inasmuch as the Nuremberg judgments consider aggressive war to violate international law and defensive war does not. The Jewish tradition explicitly addresses the question of permissible defense, though it provides different—even contradictory—ways with respect to the level of harm that can be inflicted.<sup>29</sup>

A last comment should be made about preemptive defensive wars. Not all defensive wars are technically reactive to an initial attack. The Jewish tradition does permit anticipating an attack and preemptively disarming an imminent threat.<sup>30</sup> Once again, the proportionality principle is relevant. Anticipatory defensive attacks *must be only as intrusive as is necessary* to defuse an imminent threat. Excessive force is prohibited even in the face of extraordinary situations.<sup>31</sup> Disproportionate defense, whether reactive or proactive, is overwhelmingly discouraged within the textual tradition.

### Privileged Spaces

Turning to the battlefield itself, the Torah recognizes that warfare occurs in both rural and urban settings. But, are there privileged spaces within these combat zones? Are there locations in which fighting must not happen? In this respect, the tradition provides important insights with respect to the immunity of criminal prosecution and punishment in religious shrines, and the invulnerability of criminals in shelter cities.

Are religious shrines protected places? The trajectory of biblical and rabbinic thinking on this matter arcs from the affirmative to the negative. From as early as the revelation at Mount Sinai, altars offer asylum for anyone but willful criminals.<sup>32</sup> Someone who inadvertently killed another could ostensibly exit the jurisdiction of the profane world by entering an altar and touching it.<sup>33</sup> Finding sanctuary in an altar, known as ‘grasping the horns of the altar’ (*yechazek b'karnot hamizbeach*), was a protection upheld as late as King David. His son, Solomon, however, recognized this institution’s potential threat to civil authority, and shifted the jurisdiction of the profane world to reach even to the altar to pursue criminals as well as political dissidents.<sup>34</sup> When Solomon built the Temple, he ruled that only priests could enter the innermost shrines. Laymen, especially criminals of any sort, could not find sanctuary there.<sup>35</sup> By the Second Temple period, the idea of the shrine offering asylum no longer appeals because it renders any refugee subject to

the death penalty.<sup>36</sup> A third century *halakhic midrash* reiterates the biblical rule that willful criminals can find no sanctuary at the altar.<sup>37</sup> And the Talmud a few centuries later asserts that even priests guilty of crimes cannot find protection within the Temple.<sup>38</sup> It follows from this historical arc that religious institutions today do not offer special protection for people, whether priest or layperson, legal combatant, or terrorist.

Yet the idea of protected locations was generally not obliterated. The Torah commands the establishment of cities of refuge (*'arei miklat*—asylum cities) to which certain classes of criminals can flee and be protected from punishment.<sup>39</sup> Blood redeemers, those permitted by law to avenge a wrongful death, are not allowed into these cities to pursue guilty criminals. Instead, criminals can live freely within the confines of these cities; moreover, they should be provided means of livelihood while there.<sup>40</sup> If criminals exit these cities within a particular time period they are no longer protected and can be avenged by blood redeemers.<sup>41</sup> Not every criminal is afforded enduring protection within these cities. Only those who *inadvertently* killed someone may obtain such asylum.<sup>42</sup>

Historically, the institutionalization of asylum cities was well entrenched by the First Temple period. Later biblical texts about Israel's restoration (like Ezekiel), however, do not mention cities of refuge, possibly because the institution of blood redeemers was by then virtually eliminated and made asylum itself obsolete. Though the *idea* of privileged location persists within the Judaic textual tradition, the historical *practice* of this institution faded.<sup>43</sup> Whereas shrines in particular and cities in general no longer afford protection during wartime, the only space possibly endowed now with *sancta contagion* is a hospital, although this may also be debatable.

### Privacy

Another dimension related to privileged spaces is privileged information. The Jewish tradition frames this topic in the form of personal privacy. The idea of personal privacy and the attitude that privacy ought to be protected are, at least biblically, ancient, and universally applicable. This is well symbolized in the story of Noah's nakedness and his reaction to the disrespectful attitude shown by his son Ham.<sup>44</sup> Just as information regarding the body is privileged information, so too are the happenings in a private home.<sup>45</sup> Privacy of home life enjoys *a priori* protection and can be compromised only by the consent of the individuals whose privacy would be affected. In regard to information outside the bounds of a home, letters may not be read without permission, and even accidentally opening letters is considered criminal.<sup>46</sup>

In brief, private information is privileged information and is not available for public scrutiny, unless and only if the persons involved give their consent. Extrapolating from these texts, it is possible to say that public policies circumscribing civil liberties of privacy (like wire-tapping) are possible only to the degree they are explicitly endorsed by the affected public themselves.

A final caveat is necessary. These strategic principles of proportionality, privileged spaces and privacy, offer guidance for mediating violent conflicts. They do not, however, address the legality or morality of specific actions. Their purpose is to provide an overarching moral and legal framework within which political and military leaders can assess which maneuvers best reflect Judaic values. Given these guidelines, it is therefore incumbent upon modern leaders to choose the most efficacious tactics appropriate for particular conflicts. It is to these particulars we now turn.



## PRACTICAL HYPOTHETICALS: COLLECTIVE AND INDIVIDUAL PUNISHMENTS

Two levels of tactical responses to contemporary armed conflict are considered here. On the level of *collective punishment*, the general issue relates to holding responsible a community as a whole for individual terrorists' actions. Such tactics deliberately involve people who are not terrorists, and property that does not belong to the wrongdoers themselves. In this respect, several questions become relevant: what can Judaism say about detaining family members of terrorists, destroying property associated with terrorists, and destroying livelihoods of communities surrounding terrorists? Next, at the level of *individual punishment*, the focus is on the terrorist: what can Judaism say about interrogation, torture, and the value of information gathered thereby?

### Collective Punishment: Individual Versus Collective Responsibility

Is it possible to hold a community responsible for some individual's—terrorist—crime? Some contemporary scholars endorse this notion,<sup>47</sup> relying on interpretations of the story of Simeon and Levi killing inhabitants of Shechem in retribution for the rape of their sister Dinah.<sup>48</sup> Perhaps they reach this conclusion from a premodern assumption that the acts of an individual can be attributed to the whole community or nation.<sup>49</sup> On the other hand, a different interpretation emphasizes pursuing communal honor after someone has been shamed.<sup>50</sup>

Both approaches nonetheless impose the guilt of an individual criminal upon the collective. Though both rationales emerge from *aggadic*, or literary, material and not *halakhic* or legal material and we may be tempted to disregard their legal merit altogether, we cannot completely ignore the fact that they are employed by contemporary scholars to justify *intentional* collateral damage. The issue at hand is less the material these arguments depend on, and more the legal principle of punishing people for a crime they did not commit.<sup>51</sup> To illustrate, idolatry is a biblically based capital crime for which a whole community and its environs may be punished.<sup>52</sup> Some sages say that collective punishment is justified because *some* people enticed *others* to idolatry, while others wonder whether this truly means *every* person in the suspect town deserves such punishment.<sup>53</sup> Either way, it would be difficult to argue that the Judaic textual tradition prohibits collective punishment for an individual's crimes.

Contrast this with a countervailing biblical principle that each person individually accrues legal and ethical culpability regardless of what others in a community or family have done. For example, Abraham challenges God's plan to destroy Sodom by holding God accountable to the standards of justice God seeks in humanity.<sup>54</sup> Whereas here the tradition acknowledges the *theoretical* principle of collective punishment with the assumption that God is the only one who may enact it, its *practical* application may be applied only upon a collection of guilty persons. Even God must preserve the innocent from amongst the guilty. This principle of individualized punishment is clearly established in the tradition.<sup>55</sup> From this, it is unreasonable to punish lethally family members for the crimes of one member.

On the other hand, the tradition finds it reasonable to consider the family accountable for the moral upbringing of that wayward member.<sup>56</sup> This punishment, however, is to be nonlethal so as to teach a lesson to the erring individual, to the criminal's family members, as well as to surrounding neighbors. Obviously this does not mean that arbitrary or punitive detention or punishment is obligatory; it merely establishes permission for this

particular tactical maneuver. Rigorous calculation may show that nonlethal collective punishment is neither the most effective nor efficient response to deterring or defending against terrorists.

As is obvious, the tradition is divided in respect to holding a community accountable for an individual's offense. Disparate interpretations preclude a unified view on this point, giving space for competing possibilities. A noncontroversial conclusion, nonetheless, is plausible: holding a family morally responsible for an individual's action, albeit a restricted yet potentially useful tactic, is morally and legally reasonable.

### Collective Punishment: Destroying Property

A different tactic of collective punishment—destroying the homes and property of terrorists—may prove less effective against extant terrorists than for deterring others from choosing to become terrorists themselves. Once again, there is no explicit provision in regard to this tactic. Hence, in order to answer whether it is valid to destroy someone's property from the Judaic perspective, it is necessary to rely on analogies that leave considerable room for disagreement.

For instance, as we have discussed above, it is reasonable to destroy belongings of a whole family of an idolater regardless whether the family supported the idolater in any meaningful way. Idolatry is identified and evaluated from the assumption of God's monopoly to determine what proper or improper worship is. Nevertheless, this line of argumentation is problematic because it assumes that a terrorist is tantamount to an idolater, which is not necessarily true.

On the other hand, there is also great difficulty with the fact that terrorism can be conceived of as a version of conflict *prosecution*, alongside those modes that have developed and been accepted by the vast majority of the geopolitical world as 'normal' versions of warfare. Because there is no monopoly on how to fight conflicts, labeling one form of conflict prosecution, or another as a perversion does little to mediate the conflict itself; instead, it adds emotional and moral fuel to the fire.

To avoid this troublesome argument, a more useful analogy for modern terrorists is the *rodef*—a criminal with lethal intent actively pursuing an intended victim. The trajectory of the textual tradition asserts that Jews are not merely permitted but legally obliged to intervene and prevent a *rodef* from lethally attacking an intended victim.<sup>57</sup> In this sense, there are several ways to conceive the destruction of the terrorist's property as a legitimate action. For instance, if oneself is being pursued, one is permitted to destroy the pursuer's property but not others' so as to prevent the impending lethal attack.<sup>58</sup> Greater leniency is provided for an intervener attempting to save the pursued.<sup>59</sup> What matters is that interveners should not be too concerned about property when their primary motive is to save an intended victim's life—this is the principle of *pikuach nefesh*.<sup>60</sup>

Nevertheless, though the category of *rodef* correlates better to contemporary terrorists than idolaters, it is not a perfect fit. One weakness is that the discussion of personally defending against or of intervening to prevent *rodifim* from actualizing their lethal attack on intended victims exists primarily in the realm of *personal* self-defense and *personal* intervention. It may be unreasonable, therefore, to extend this analogy to undergird *national* defense policies. On the other hand, at the national level, a sovereign has the right to confiscate and destroy private property during wartime.<sup>61</sup> The sovereign is granted dispensation not to abide by the general principle of not destroying someone else's property to save one's own or another's life. Just as this applies to confiscating Jewish property, all

the more so is it reasonable to conclude that the sovereign's entitlement to destroy an opponent's property during wartime is indisputable.<sup>62</sup>

### Collective Punishment: Destroying Means of Livelihood

This leads directly to a third form of collective punishment, the destruction of livelihood. The general principle here is the prohibition known as *bal tashchit*—the proscription of wanton destruction.<sup>63</sup> Whoever does engage in such tactics transgresses the command not to destroy.<sup>64</sup> For Maimonides, at least, destroying either homes *or* property necessary for sustenance is prohibited. However, he submits that the punishment from biblically sanctioned lashings should be left to the discretion of a rabbinic court. This shift suggests that, while religiously damned before the fact (*l'hatchilah*), this transgression may be politically palatable afterwards (*b'diyavad*) in the eyes of a human court. We can derive from this teaching that there is an overall prohibition of denying civilians, even those in an opponent's camp, access to sustenance and sustaining livelihoods. This prohibition holds only as long as the opponents agree to *all* the conditions offered.<sup>65</sup>

This tactic is problematic. It appears to be a method to prevent possible future attacks upon one's own citizenry, a special type of anticipatory defense against *possible* danger. This is *preventive* defense, as distinct from *preemptive* defense against *probable* and impending danger. This particular tactic is not a legitimate form of defense against attacks already suffered because it functions as a form of retributive defense that is itself prohibited. As Dorff<sup>66</sup> observes, this permission countenances the possibility of not distinguishing between combatants and noncombatants which is also stridently condemned.

To complicate the situation, the above cases of collective punishment assume terrorists act as emissaries for one family, group, community, or nation. In *halakhah*, the sending out of an emissary as one's representatives called *shelichut*. According to the Talmudic principle *ein shaliach l'davar aveirah*, a Jewish emissary is culpable for the crime committed whereas a principal agent (the one who sent that person) is not.<sup>67</sup> Extending this principle to our case, however, assumes that "a gentile (unlike a Jew) can serve as a proxy for evildoing."<sup>68</sup> And it also assumes that the principals supporting a criminal emissary are culpable as well for that individual's crime. These statements are hotly contested among contemporary scholars, for a gentile emissary may not have the legal status of *shelichut* at all and therefore acts as a free agent, and hence no one else should be held accountable for a terrorist's actions.

### Individual Punishment: Interrogation

In regard to individual punishment, apprehending an individual terrorist may not adequately defend a population from other terrorists' activity. Yet, a captured individual may be a fount of information about imminent and future attacks by others. Accessing this information provokes three questions: (1) what can Judaism say about interrogation of criminals generally, (2) to what degree are torture techniques permitted, and (3) what is the value of the intelligence once it is divulged?

The Talmud delineates specific rules about what constitutes credible information in a court case and how to go about acquiring that information from witnesses.<sup>69</sup> Extracting confessions for normal court procedures may be done by using mild physical discomfort such as binding and stocks.<sup>70</sup>

These normal juridical procedures may not be sufficiently timely or efficient for cases of terrorism. If we use the analogous category of *mosrim*—informers bent on endangering Jews—we may find *halakhic* precedence more suitable for our case of a captured terrorist.

As a side note, we should be aware that *mosrim* refers to *Jews* informing on fellow Jews to gentiles, and not about *gentiles* informing against Jews or fellow gentiles. Medieval emergency courts of selectmen (*berurei averot*) developed special procedures to gather evidence and testimony regarding *mosrim*.<sup>71</sup> Nonlethal methods were preferred to dismantle the threat posed by a *moser*, like denunciation or banishment, general bans, and tattoos.<sup>72</sup> These nontraditional investigative measures could be employed only as long as these courts seek the truth and prevent damage.<sup>73</sup>

However, not all medieval sages support these nonlethal and noninjurious methods of protecting Jews against informants. For instance, Maimonides understands killing a *moser* before that person informs to be a religious obligation.<sup>74</sup> This religious duty and merit devolve onto *individuals*, not courts or militaries. He hereby condones the practice of individual Jews taking the law into their own hands. Moreover, if a *moser* is captured after already divulging potentially damaging information against Jews to others, it is, in Maimonides' opinion, prohibited to lethally injure that individual unless and until it is proven *in court* that that person indeed informed. Also, Maimonides records that some Jewish communities had the practice of extraditing their informants to gentile courts for punishments.<sup>75</sup>

In addition to these nonlethal physical interrogatory methods, courts also employed deception to extract information.<sup>76</sup> Deceitful interrogation, however, risks transgressing the biblical prohibition of putting a stumbling block before the blind.<sup>77</sup> Deception may also lead to "stealing the good sense" of another (*genevat da'at*), which is also prohibited.<sup>78</sup> On the other hand, it may be necessary to be "crafty with the crafty" and engage in deceitful tactics so as to protect Jews. For example, if one draws legal implications from the narrative of the Book of Esther, it is possible to say that national survival warrants desperate measures of deception.<sup>79</sup> Legally, it is permissible to use deceit entrap someone suspected of engaging in or enticing others to engage in illegal and/or immoral activity (like idolatry).<sup>80</sup>

Entrapment, for Maimonides, might be too late: like with *mosrim*, he would rather have people use lethal intervention preemptively to stop a *mesit* (an enticer to idolatry) from urging others toward transgressive behavior.<sup>81</sup> But he does not render such lethal preemptive intervention a religious obligation (*mitzvah*); he merely says this tactic is legally permissible—for courts and not for individuals. Nor does he say that such tactics are the most effective or efficient means of protecting a society.

### Individual Punishment: Torture

Though some nonlethal and deceptive methods of extracting information from dangerous people are permitted, the question of employing torture (deliberately injurious tactics) is more problematic.<sup>82</sup>

Torture techniques to extract intelligence might be justified by the concept of *rodef*, the pursuer with lethal intent, introduced earlier. It is legally permissible to prevent a pursuer from engaging in unlawful behavior by using lethal force to stop him.<sup>83</sup> Maimonides renders this preemptive intervention obligatory.<sup>84</sup> The significance of this teaching is that Jews do not need to wait for courts to intervene to save someone's life. Individual agency is paramount for protecting someone else's life. Moreover, one who *can* intervene and does not, transgresses the biblical command not to stand idly on the blood of your neighbor.<sup>85</sup>

We should note, however, that not every person has the capacity to intervene. There may be some who are exempt from this responsibility because they lack the skills necessary to intervene successfully. Hence, Maimonides stops short of saying that *all* Israelites

are absolutely religiously obliged to preemptively kill *rodfim in every case* when other tactics may be (more) effective and efficient.<sup>86</sup>

Maimonides permits both (a) deliberately (and significant) injurious intervention to save a life from a *rodef already* on the attack and (b) deliberately injurious intervention *prior* to a criminal actualizing a lethal attack.<sup>87</sup> Even though an individual's criminal thoughts are sufficient grounds to justify deliberately injurious intervention, Maimonides nonetheless distances himself from saying that any and every mode of deliberately injurious intervention is justifiable. That is, saving a victim from a criminal's intention is justified in principle, but one must be careful that one's own intervention is not egregious or sloppy.

Consonant with the strategic principle of proportionality discussed above, unnecessarily brutal intervention is not merely damnable, according to Maimonides, but is itself a capital crime according to the Talmud.<sup>88</sup> Differentiating unreasonably injurious intervention from reasonably injurious intervention is critical, as it distinguishes between those who uphold the law and those who transgress it. A sixteenth century law code concludes: should less-injurious methods suffice to prevent a *rodef* from actualizing intended harm, not only are those methods preferred but also anyone using more force is culpable for unnecessary aggression.<sup>89</sup>

Returning to the issue of torture itself, we must ask the question if the category of *din rodef*—laws of intervention to protect against a lethal attack—justifies imposing deliberately injurious interrogatory techniques on modern terrorists. Though answering in the affirmative may be tempting given the above discussion, this conclusion is not tenable for several reasons. A *rodef* is one person pursuing another, and that victim is identifiable and thus known. Modern terrorists, though, rarely intend to attack just one individual, and, because of terrorists' clandestine strategies, hardly ever are the intended victims identifiable either prior to or even during an attack. More importantly, the laws of intervention speak in terms of single citizens acting extrajudiciously—of “taking the law into their own hands” outside the court system, military tribunal, or police investigation. Though the principle of employing deliberately injurious intervention is permissible for *individuals* in limited circumstances, these laws do not permit *governments* (or their instrumentalities) to use these same tactics. (Unless, that is, one thinks it reasonable to extend laws pertaining to individuals to also shape national policies—a step that is legally, philosophically, and ethically questionable.)

But surely defending a population from criminal activity is the duty and prerogative of a government and its instrumentalities. It appears, therefore, the Judaic tradition can countenance the use of deception and mild physical pressure to extract information from an individual terrorist.<sup>90</sup> Whether the police, military, or judicial court, governmental instruments are permitted or enjoined to use such nonlethal methods, they are to do so with great humility and discretion.<sup>91</sup> Even (gentile) criminals are due basic respect; deliberately inflicting them undue suffering compromises not only their basic humanness, but also undermines the reputation of the Judaic tradition generally.<sup>92</sup> Hence, speaking on behalf of modern Jewry, contemporary rabbinic associations across the spectrum of Judaism condemn deliberately injurious interrogation—or torture.<sup>93</sup>

### Individual Punishment: Worth of Intelligence from Torture

Even if someone or a court obtains information from a terrorist in captivity, what is the value of that data? In capital cases like terrorism, self-incrimination, even when given voluntarily, is forbidden and must be disregarded. This is based on the biblical injunction “*not to join hands with the guilty to act as a malicious witness.*”<sup>94</sup> The sages of the

Talmud made this a principle. If one admits to acceding to an act deserving the death penalty, one is considered wicked (*rasha*) and thus disqualified as acting as a witness. Furthermore, because each person is considered a relative to oneself, no one can engage in self-incrimination.<sup>95</sup> Therefore, whatever information a terrorist divulges cannot be used against that same individual.<sup>96</sup>

But what of that individual's information generally—is *any* of it credible, even if it does not implicate that very person? Maimonides delineates ten classes of people who are not legally competent to offer testimony, one of which is the wicked (*harasha'im*).<sup>97</sup> The wicked are those who willfully engage in transgressive behaviors like criminal activity.<sup>98</sup> That terrorists and their collaborators willfully engage in transgressive behavior disqualifies whatever testimony they might provide: their information is legally vacuous. For those who may be coerced into terrorist activity, their information does contain legal merit. Despite the nonlegal status of such data, information extracted from willful terrorists may be the only source available to curtail or prevent life-endangering attacks and therefore should be taken seriously—albeit with a grain of salt.

## CONCLUDING THOUGHTS AND RELIGIOUS PARALLELS

This survey of methodological, strategic, and tactical issues in the Judaic tradition resonates with other religious (Christian and Islamic) traditions' approaches to dealing with modern terrorism. For example, the principle of discrimination appears common. Militaries are obliged to differentiate true combatants from civilians. The latter's protection is to be zealously guarded. Unnecessarily harming civilians incurs religious disdain or damnation as well as legal punishment. Another commonality is proportionality. Tactics employed to defend a polity from external aggression are to be reasonably measured so as only to dismantle the threat. Because excessive response is prohibited—a position clearly articulated in the Judaic tradition—cathartic retribution is therefore proscribed. Should vengeance be appropriate, it is only God's to manifest, not humanity's.<sup>99</sup> The traditions also share the principle that the only kind of warfare potentially religiously justifiable in the modern world is a defensive war. Aggressive warfare for personal or geopolitical gain is prohibited, at least according to the trajectory of the Judaic tradition. Anticipatory defense is permitted only in certain circumstances.

There remain, of course, issues and themes needing greater clarity. For example, deciding which tactics constitute preventive detention is complex. Certainly the argument to preventively detain proven criminals is reasonable, as precedent is found both in the detention of the mentally insane who endanger themselves and/or others and in the detention of recidivist sexual offenders. In a related fashion, is quarantining a famously bellicose population to a village, geological area, or in a prison, all considered the same according to religious traditions? If it is politically or practically impossible to extract people with criminal intent from a larger population, what are the limits of permissible collective detention?

Timing is another critical issue. The Jewish legal tradition often speaks in terms of *l'hatchilah*—before the fact, and *b'diyavad*—after the fact, when discussing limits to behavior. As an illustration, the tradition delineates what, from the outset, are the limits of interrogation. If an individual (already convicted of having intent to murder) dies during interrogation, the tradition says that, though that person's death is morally damnable, those causing that person's death are not punishable by a judiciary. This does *not* mean that killing proven criminals is condoned by the Judaic tradition. On the contrary,

it means that the tradition abhors unnecessary physical force in defense of a community's welfare. (Moreover, the textual tradition has all but made capital punishment a null option; no Jewish court, including Israeli courts, may put someone to death.) Clarifying *jus in bello* prior restraints and subsequent consequences of breaches of those laws may manifest greater conformity to the ROE (rules of engagement) endorsed by law-promoting and law-abiding governments and their militaries.

A third area deserving further attention is prevention. Terrorists, like all other human beings, respond to stimuli. There may be a matrix of stimuli that, in varying degrees and circumstances, constitute sufficient cause for some people to choose terrorist behavior to mediate perceived and real conflicts instead of other (less violent) methods. Some sample causes include socioeconomic grievances, geopolitical impotence, religious fervor, and ultranationalism. Identifying the causes for the terrorism, a community suffers may help governments devise policies that prevent people from practising terrorist tactics. For example, investing in communities economically and politically may assuage grievances and dissuade people from pursuing terrorist behavior. Attending to the causes of terrorism in a preventive manner may relieve a government of resorting primarily to military defense mechanisms, mechanisms that have proven to be economically, physically, morally, and emotionally costly. Preventive diplomatic defense, as is biblically enjoined, may be the most effective means of eradicating terrorism from the outset and in the end.

As indicated earlier, it is possible to avoid these texts and issues altogether by invoking certain general principles that undergird one's position in favor of or against particular strategies or tactics. But this practice unnecessarily silences the rich Judaic textual tradition that reflects upon the real struggles and conflicts Jews have faced throughout their history. In order to honor the past and its textual legacy, it is necessary for us to engage these texts, however much we may find them upsetting to our modern sensibilities in this regard.

It is possible, however, to use the textual tradition and its principles in ways that are malignant. Often, Jews bent on using the textual tradition for lethal personal or political purposes invoke principles as dogma. Two cases in the 1990s are particularly telling illustrations of how dogmatic readings of the textual tradition endanger innocents. In 1994, Baruch Goldstein, a physician by training, gunned down twenty-nine Muslims praying in a mosque in Hebron before he was killed by Muslim interveners. Despite general and overwhelming condemnation from Jews around the world about this unprovoked attack on unarmed civilians, a few rabbis and lay leaders in Israel and North America praised Goldstein's murderous action and death as an act of martyrdom (*kiddush hashem*). The second, feeding off the virulent tenor of the first, was the assassination of then Israeli Prime Minister Yitzhak Rabin by Yigal Amir in 1995. In his defense hearings, Amir admitted that he was merely following *din rodef*—of the obligation to intervene on behalf of an intended victim being pursued by a criminal with lethal intent. That is, Amir considered Rabin a *rodef*—a position publicly proffered by rabbis during the Oslo negotiations—and his was a religiously mandated duty to intervene lethally.<sup>100</sup> What Amir failed to do was consider the overwhelming breadth and depth of the tradition's positions regarding those perceived as *rodfim*: if intervention is truly necessary, *nonlethal* intervention is the first and laudable course of action (and a broad range of nonlethal actions are put forward); only as an absolute *last resort* should lethal intervention be considered. That Goldstein and Amir "took the law into their own hands" highlights the danger of both relying upon and permitting civilian extrajudicial conflict resolution. Obviously, and it need not be expanded upon: such myopic abuse of the textual tradition is not exclusive to the

Jewish tradition; extremists and literalists imposing their blinkered readings of religious texts are found in virtually every community.

For these reasons, wrestling with the broad Judaic textual tradition is especially important when exercising (military) power. With mighty hands comes great(er) responsibility to understand one's own legal and moral foundations. For Jews, the Jewish textual tradition offers a solid and yet complex grounding, particularly in regard to warfare. The tradition entails a rich array of laws and principles, some of which can be treated as *jus cogens*—laws unabrogable under any circumstances, yet most of which function in the realm of realism and can be altered only under limited conditions. It is incumbent upon Jews and Jewish polities to appreciate that permission to employ a particular tactic does not automatically render it obligatory, effective or efficient. If anything this survey has shown, it is that the Judaic tradition expresses anxiety about exercising military power. On the whole, the tradition is loath to advocate or require action compromising the dignity of an agent, victim, bystander, and God. Because the overall thrust of the Judaic tradition is toward preserving life, should an emergency arise, bending the ROE in extraordinary warfare is permissible as long as it is within the bounds of maintaining the dignity of all—including enemy combatants. Such limits to human agency are critical reminders that humans are not, and ought not act like, God. The tradition is clear: when forced to defend, do so only in a manner that is appropriate for mighty *human* hands.

## NOTES

BT, Babylonian Talmud; CCAR, Central Conference of American Rabbis (Reform); ISC, Israeli Supreme Court; MT, Mishneh Torah, by Maimonides; SA, Shulkhan Arukh, by Karo; RA, Rabbinical Assembly (Conservative); RCA, Rabbinical Council of America (Orthodox); RHR, Rabbis for Human Rights; RRA, Reconstructionists Rabbinical Association; YT, Jerusalem Talmud.

1. Deuteronomy 26:8.

2. Exodus 3:19–20; see Rashi, Ramban, and Ralbag, ad loc.

3. Boaz Ganor, "Defining Terrorism: Is One Man's Terrorist Another Man's Freedom Fighter?" 2004 (accessed at <http://www.ict.org.il/articles/define.htm>, June 30, 2005).

4. This relativistic practice, demonstrated here by contemporary rabbinic association resolutions, facilitates avoiding positions found in the normative textual tradition that may be considered morally, intellectually, or politically questionable or dangerous in today's milieu. For example, there are some principles which obviously hinder the use of some forms of violence: The principle *betzelem elohim*, that all are created in the image of God, is invoked to render (many forms of) violence morally reprehensible and thus to be avoided—like torture (CCAR 2005; RHR 2005; RRA 2005); The principle to love one's neighbor (*ahavtah l're'echa camochah*) can also be invoked to limit violence (RCA 2005), and; the value of preserving self-esteem (*marchivin da'ato*) can hold sway against arguments supporting collective punishment like home demolitions (CCAR 2004). Conversely, other principles can be deployed to justify *expanding* military options. The principle of *pikuach nefesh*—the imperative to save human life—usually permits that which is otherwise prohibited or undesirable—even in times of war. E.g., Yanki Tauber, "Land for Peace?" 2004; CCAR 1999.

5. There is disagreement about the requirements of these last two categories; for example, whether everyone in a community is obliged to engage in military battle, or only those who are physically capable should fight. Another dispute is about the classification of anticipatory defense. Depending on the nature of the threat, some sages consider anticipatory attacks within the realm of commanded wars, others view them as optional. This distinction is important because a significant difference between the last two categories and the first is that the latter two do not require a political sovereign to attain approval from other leadership institutions; discretionary wars can *only* be instigated after this consent has been obtained. Because these other (religious) leadership



institutions no longer exist and thus cannot grant approval, the category of discretionary war no longer exists in reality. Hence, if anticipatory warfare is merely discretionary, then it is not a legally viable option for a national military strategy.

6. Exodus 17:8–17; Deuteronomy 25:17–19.

7. I Samuel 15:3.

8. *Ibid.*, 15:4–35.

9. Exodus 17:14–16.

10. *cf.*, Deuteronomy 25:19; Numbers 24:20; *Targum Onkelos* at Numbers 24:20; Rashi at Numbers 24:20; Ibn Ezra at Deuteronomy 25:19.

11. Nonetheless, throughout their history Jews were often obliged by host cultures to engage in self-policing and taxation, and to provide for their own social welfare services—issues about which the rabbis spilled a great deal of ink. These texts present *ideal* governing practices; and because these texts do not tell what was *actually* practiced by the people their historicity or veracity is questionable.

12. For example, Reuven Kimelman, “War,” in *Frontiers of Jewish Thought*, ed. S. T. Katz, (Washington, DC: B’nai B’rith Books, 1992), 309–32.

13. Such methods ignore the fact that Israel’s founding documents do not bind the country to *halakhah*. This is particularly true in regard to issues of armed conflict, as Israeli governments determine what the Israel Defense Forces (IDF) should do considering taking *halakhah* in their deliberations. Even the Israeli Supreme Court only occasionally invokes *halakhah* to adjudicate the legal boundaries of IDF action (e.g., ISC 1999, on torture techniques during interrogation); only when no precedent in Israeli law suffices may the court resort to *halakhah*, British common law and general notions of justice, to reach a final ruling, e.g., A. Soloveichick, “Wagging War on Shabbath,” *Tradition*. 20/3: 179–87 (1982).

14. A case in point is Alan Dershowitz’s *The Case for Israel* (Hoboken: Wiley, 2003), in which he argues against the apparent international double-standard applied to Israel generally and Israeli military maneuvers in particular. Though Dershowitz succeeds in making a strong modern and secular legal argument, he fails to offer any thoroughgoing analysis of traditional Jewish texts or sensibilities on these issues. See also Alan Dershowitz, *Why Terrorism Works* (New Haven: Yale university Press, 2002); Alan Dershowitz, “Tortured Reasoning,” in *Torture: A Collection*, S. Levinson, ed. (New York: Oxford university Press, 2004).

15. For example, *B’tzelem*, an Israeli human rights organization, critically addresses Israeli interrogatory tactics without invoking the Judaic tradition in its argumentation.

16. Self-defense illustrates this internal extension challenge. Some scholars think it appropriate to extend *halakhot* about personal self-defense to other arenas like communal and national defense. See Jonathan Crane, “Command Self-Defense: An Ethical Puzzle,” (paper presented 2003 at the Society for Jewish Ethics), note 10. They justify this move either by literary comparison or by an appeal to reason. However, there are cases where analogies become more problematic. For instance, it would be unreasonable to ask a community to uphold laws of humility enjoined upon individuals. The converse is similarly challenging, because the community has the right to levy taxes but individuals therein do not (see Walter Wurzbarger, *Ethics of Responsibility: Pluralistic approaches to covenantal ethics* (Philadelphia: Jewish Publication Society, 1994), 93; David Novak, *Covenantal Rights: A Study in Jewish Political Theory*, (Princeton: Princeton University Press, 2000), 209–11).

17. The great medieval sages Maimonides and Nahmanides disagree precisely on this issue of external extension. Though both concur that gentiles are bound to moral laws (generally called the *mitzvot b’nei noach*—the Noahide laws or commandments), they diverge on who is responsible for holding gentiles accountable to these moral laws. Maimonides argues that when Jews have political sovereignty over gentiles, Jews should enforce even the Noahide laws upon gentiles. Nahmanides sees gentiles as more independent than that: gentile moral agency does not need Jews (see discussion in David Novak, *Jewish Social Ethics* (New York: Oxford university Press, 1992), 187ff).

18. I Maccabees 2:39–41.

19. “There were about a thousand [who were slaughtered by the military of King Antiochus], with their wives and children, who were smothered and died in these caves; but many of those that

escaped joined themselves to Mattathias, and appointed him to be their ruler, who taught them that unless they would [fight on Shabbat], they would become their own enemies, by observing the law [so rigorously], while their adversaries would still assault them on this day, and they would not then defend themselves; and that nothing could then hinder [their attackers] but they [the Jews] must all perish without fighting. This speech persuaded them; and this rule continues among us to this day, that if there be a necessity, we may fight on Sabbath days." *Antiquities of the Jews*, 12.6.2/275–76.

20. Disagreement, of course, exists on this point. Our Rabbis taught: One may not set out in a ship less than three days before the Sabbath. This was said only [if it is] for a voluntary purpose, but [if] for a *mitzvah* [a religious obligation], it is well; and [the Jew] stipulates with [the gentile owner of the ship] that it is on condition that he will rest [on the Sabbath], yet he does not rest: this is Rabbi's view. R. Simeon b. Gamaliel said: It is unnecessary. But from Tyre to Sidon it is permitted even on the eve of Sabbath. Our Rabbis taught: Gentile cities must not be besieged less than three days before the Sabbath, yet once they commence they need not leave off. And thus did Shammai say: until it falls, even on the Sabbath. (BT *Shabbat* 19a).

21. Yet neither the Books of Macabbees nor Josephus are canonized in normative Jewish textual collections like the *Tanakh*, Talmud or *midrashim*. Though it may be logical to dismiss these texts because of their extracanonical status, they are nonetheless embraced by the Jewish tradition, historically and in scholarship, and their lessons, especially this one, deserve inclusion here.

22. For example, MT *Melachim U'Milchamoteihem*, chap. 5, 6.

23. Though Jews are commanded not to murder (Exodus 20:13; Deuteronomy 5:17), killing, albeit a criminal offense, is permitted in certain circumstances like self-defense (BT *Sanhedrin* 72a).

24. BT *Sanhedrin* 72a; Rashi ad loc.; Asher b. Yehiel. *Piskei HaRosh* on BT *Baba Kama* 3:13; R. Israel Isserlein, *Pesakim U'Ketuvim*, 208. Some scholars assert that this principle pertaining to individuals ought to constrain legislative policies for the community writ large (e.g., Cohn 1977)—a question-begging argument, as stated earlier.

25. BT *Beitzah* 23b.

26. *Tosafot*, cited by *Hiddushei HaRan*, BT *Sanhedrin* 84b. A modern scholar therefore concludes, "military action which of necessity will result in civilian casualties cannot be justified on the contention that the killing of innocent victims is unintended, since the loss of those lives is the inescapable result of such action." J. David Bleich, "Nuclear War Through the Prism of Jewish Law: The Nature of Man and War." In *Confronting Omnicide*, ed. D. Landes (Northvale: Jason Aronson, 1991), 218. Conversely, only unforeseen, unintended and not-illicit collateral damage may be permitted, though it certainly is discouraged and is morally liable. Such *accidental* collateral damage may be suffered upon a population during and only during the pursuit of a legitimate target.

27. To illustrate this principle, let us imagine an attack on a vehicle full of people. Should that vehicle be full of military personnel only, it is permissible to attack them with lethal intention and effect (unless there are nonlethal ways of securing their capitulation). If, however, half of the people riding in the vehicle are military personnel and the other half civilians, then this principle would forbid a lethal attack on that vehicle as a whole. This is because the death of innocent civilians would be the *inevitable* outcome of an attack on the whole vehicle, regardless if those civilians' deaths were unintended. If it were possible to use great precision and to attack (lethally) *only* the military personnel in that vehicle, then such an attack would be permitted. If by chance civilians were unintentionally hurt (even mortally) in this precision attack, those casualties would be permissible because they were not inevitable. Obviously an attack on a vehicle full of civilians is prohibited and morally condemned by the Judaic tradition.

28. For example, YT *Sotah* 8.10/23a; MT *Melachim U'Milchamoteihem* 5.1.

29. Consider the case of the destruction of an enemy's city as a vengeful strategy. The command by the prophet Elisha to the kings of Israel and Judah to "*smite every fortified [Moabite] city and every choice city, and you shall fell every good tree and stop up all wells of water, and every fertile field you shall ruin with stones*" seems to counter the Deuteronomic command *against* wanton destruction of a city and environs when laying siege against a city (II Kings 3:19; Deuteronomy 20:19). The nineteenth century Rabbi Meir Leibush Malbim argues that these texts can be reconciled according to the *intention* of the military. "Battling against it to capture it"

(Deuteronomy 20:19)—this is added because siege may be made against the city in order to destroy it and make it uninhabitable as a city. Therefore, the explanation is that the intention should only be to capture the city to inhabit it, but this consideration is eliminated if they want to destroy the city as in the case of Moab. [II Kings 3:19] (*Sefer HaTorah VeHaMitzvah* (Jerusalem 1957). Found in David Novak, “Nuclear War and the Prohibition of Wanton Destruction,” in *Violence and Defense in the Jewish Experience*, 100–20, ed. S.W. Baron and G.S. Wise (Philadelphia: Jewish Publication Society, 1991), 104. That is, *if one intends to destroy a city altogether then the prohibition against wanton destruction or retribution for the sake of inflicting harm does not apply. On the other hand, vengeful strategies are proscribed should one desire to capture a city and keep it standing. A further condition, opined by the fifteenth century Rabbi Elijah Mizrahi, is whether the siege is undertaken as a maneuver in a defensive or offensive war. If the latter, then the city may never be demolished en toto; in a defensive war the city is to be razed (Sefer Otzar Ha-Paryushim Al Ha-Torah: Mizrahi* (New York, 1965). Found in Novak 1991, 104). Hence, in theory, only when a Jewish polity *already* suffers unwarranted attacks may it destroy completely a city it is besieging in a defensive campaign. This permission, however, is not an obligation.

30. Kehati *Mishnah Sotah* 8.7; R. Abraham Isaiah Karelitz, *Hazon Ish, Orach Chayyim-Mo'ed*, 114: 2; R. Israel Lipschutz, *Tiferet Israel, Mishnah Sotah* 8.7; David Frankel, *Shiyurei Korban*, addenda to *Korban Ha-Edah* on YT *Sotah* 8.10; CCAR *Responsa* 5762.8 “Preventive War.”

31. See Bleich, “Preemptive War in Jewish Tradition.” *Tradition* 21, no. 1 (Spring 1983): 3–41.

32. *He who fatally strikes a man shall be put to death. If he did not do it by design, but it came about by an act of God, I will assign to you a place (makom) to which he can flee. When a man schemes against another and kills him treacherously, you shall take him from My very altar (mizb'chi) to be put to death* Exodus 21:12–14.

33. cf., Rashi ad loc.

34. *Adonijah, in fear of Solomon, went at once [to the Tent of Adonai] and grasped the horns of the altar. It was reported to Solomon: “Adonijah is in fear of King Solomon and has grasped the horns of the altar, saying, ‘Let King Solomon first swear to me that he will not put his servant to the sword.’” Solomon said, “If he behaves worthily, not a hair of his head shall fall to the ground; but if he is caught in any offense, he shall die.” So King Solomon sent and had him taken down from the altar. He came and bowed before King Solomon, and Solomon said to him, “Go home” (I Kings 1:50–53). When the news reached Joab, he fled to the Tent of the Adonai and grasped the horns of the altar—for Joab had sided with Adonijah, though he had not sided with Absalom. King Solomon was told that Joab had fled to the Tent of Adonai and that he was there by the altar; so Solomon sent Benaiah son of Jehoiada, saying, “Go and strike him down.” Benaiah went to the Tent of Adonai and said to him, “Thus said the king: Come out!” “No!” he replied; “I will die here.” Benaiah reported back to the king that Joab had answered thus and thus, and the king said, “Do just as he said; strike him down and bury him, and remove guilt from me and my father’s house for the blood of the innocent that Joab has shed. . . . So Benaiah son of Johaiada went up and struck him down. And he was buried at his home in the wilderness I Kings 2:28–31, 34.*

35. The formula *kol hanoge’a yikdash* (anything [but not anyone] that touches. . . becomes sanctified”) teaches that the contagion of sancta does not apply to persons; therefore, the altar itself does not extend sanctuary for asylum seekers. See Exodus 29:37, 30:26–29; Leviticus 6:11, 20; Excurses 75 in Milgrom’s *JPS Torah Commentary: Numbers* (Philadelphia: JPS), 505.

36. Nehemiah, 6:10–11; Numbers 4:15, 17:27.

37. Michilta, *Mishpatim*, 21:14.

38. BT *Yoma* 85a.

39. Numbers 35:9–32; Deuteronomy 19; Joshua 21.

40. Deuteronomy 4:42; BT *Makkot* 10a; YT *Makkot* 6.

41. MT *Nezikin* 5.11, 6.8.

42. Maimonides in the twelfth century acknowledges that though at one time willful killers also sought asylum in cities of refuge, now the practice is to extradite them for trial and possible capital punishment. “Originally, a manslayer with intent or without intent would flee immediately to one of the cities of refuge. The court (bet din) of the city in which the killing took place sends and fetches

him from there and try him . . . If he is condemned to death they will execute him . . . If he is exonerated they will set him free . . . If he is condemned to exile, he is sent back to his place" MT *Rotzeach U'shmirat Nefesh* 5.7.

43. For example, Ephraim Urbach, "Jewish Doctrines and Practises in Halakhia and Aggadic Literature," in *Violence and Defenses in the Jewish Experience*, 87–112, ed. S. W. Baron and G. S. Wise (Philadelphia: Jewish Publication Society, 1977); Emanuel Rackman, "Talmudic Insights on Human Rights," *Judaism* 1/2 (April 1977) 158–63.

44. Genesis 9:20–26.

45. Rules about building houses next to each other stipulate that windows should be situated in such a way to prevent voyeurism into adjoining homes because seeing is considered an injurious action (BT *Baba Batra* 22a–b; Tur, *Choshen Mishpat*, 154:17). On the other hand, a neighboring homeowner may permit such an opportune window (SA, *Choshen Mishpat* 154:17).

46. *Sefer Kolbo* 116; Rav Chayyim Shabbetai, *Sefer Torat Chayyim* 3:47.

47. For example, Meir Batiste, "Collective Punishment," in *Crossroads: Halakhah and the Modern World*, vol. 5 (Jerusalem: Zomet Institute, 1999), 233–50; Ya'acov Blidstein, "The Treatment of Hostile Civilian Populations: The Contemporary Halakhic Discussion in Israel," *Israel Studies* 1, no. 2 (September 30, 1996): 27–45; Ehud Luz, "'Jewish Ethics' as an argument in the public debate over the Israeli reaction to Palestinian terror," *Israel Studies* 7, no. 3 (Fall 2002): 134–57.

48. Genesis 34.

49. A fifteenth century explanation: [The children of Jacob and the people of Shechem] are considered as two nations, therefore they were allowed to make war, like the law of a nation which comes to make war against another nation, which the Torah allowed. . . even though only one [individual] of them did [the act] . . . and thus it is in all wars. . . even though there are many who did not do [anything], this makes no difference. As they belong to the same nation which did them harm, they are allowed to wage war against them (Rabbi Judah Loew of Prague (Maharal). *Gur Aryeh* to Genesis 34:14).

50. The modern arguments also invoke a version of this story from the nineteenth century in which Dinah's brothers are imagined to speak to each other: "Since we are few in number and strangers in the land, and they have begun to lash out at us, as in this act of treating our sister as a whore, if we keep silent they will do with us as they wish, so we must show them that we are capable of revenge against whoever harms us" (Malbim, *HaTorah VehaMitzvah* to Genesis 34:31).

51. Writing specifically about this case of Shechem, Batiste asserts, "*Halakhists* [strict legal scholars] fundamentally reject punishing a person for a sin he himself did not commit. Therefore they were forced to attribute the killing of the people of Shechem to some wrongdoing on the part of the Shechemites themselves." See "Collective Punishment," 237. Later sages, desiring to justify *on halakhic grounds* Simeon's and Levi's attack on Shechem, had to construct a crime the Shechemites could be construed as doing—a crime worthy of being put to death—and to read that crime *into* the biblical text so as to provide scriptural foundation for apparent collective punishment.

52. Deuteronomy 13:13–17.

53. Maimonides, for example, rules that children and wives of idolaters are to be killed as ancillaries to the crime of idolatry (MT *Avodah Zarah* 7.4, 7.6; *Moreh Nevukim* 1:54). This differs from earlier texts that posit that if women are to be killed they should be killed for their own crimes; or that children are to be saved no matter what; or that neither wives nor children of idolaters should be harmed and only property is eligible for destruction (e.g., *Tosefta, Sanhedrin* 14.1; *Mishnah Sanhedrin* 10.2). It is possible Maimonides bases his opinion on another text which asserts that, irrespective of whether family members were ancillaries to the crime, they are to be destroyed: their innocence or guilt is irrelevant (*Sifrei Deuteronomy* 94). Moreover, Maimonides thinks that the culpability of certain sins or crimes bleeds onto children and property alike: "There are sins for which the punishment is inflicted on the sinner in this world, on his person or on his property or on his young children, since a man's young children, who have no mind of their own and have not reached the age of responsibility for observing the commandments, are like his property; the verse

“[a] person shall be put to death only for his own crime” (Deuteronomy 24:16) applies only when the child becomes a man. MT *Teshuvah* 6.1.

54. Genesis 18:25. Similarly, when Korah unrightfully challenges Moses’ leadership and God threatens to annihilate the whole community, Aaron and Moses plead, “*O God, Source of the breath of all flesh! When one man sins, will You be wrathful with the whole community?*” Numbers 16:22.

55. In regard to idolatry, only that individual who engages in it or entices others to idolatry is to be killed (Deuteronomy 13:7–12). Moses summarizes the principle of individualized punishment for an individual’s guilt: “*Parents shall not be put to death for [the crimes of their] children, nor children be put to death for [the crimes of their] parents: a person shall be put to death only for his own crime*” (Deuteronomy 24:16). Ezekiel echoes this sentiment and augments it with the contrapositive—an individual’s goodness remains with that person: “*The soul that sins shall die; the son shall not bear the iniquity of the father with him, neither shall the father bear the iniquity of the son with him; the righteousness of the righteous shall be upon him, and the wickedness of the wicked shall be upon him*” (Ezekiel 18:20). That is, guilt (or righteousness) cannot be transmitted (at least through the generations).

56. BT *Sukkah* 56b.

57. For example, BT *Sanhedrin* 73a; MT *Rotzeach U’Shmirat Nefesh* 1:6.

58. MT *Chovel U’Mazik* 8.13; but see also BT *Baba Kama* 60b.

59. If one chases after a *rodef* to rescue the intended victim, and one breaks property of the *rodef* or of anyone else, he is exempt. This matter is not strict law but is an enactment so that one will not refrain from rescuing [intended victims] or lose time through being too careful when chasing a *rodef*. MT *Chovel U’Mazik* 8.14.

60. It should be noted, however, that permission to destroy property of a *rodef* is granted only during the chase; destroying property at any other time is a criminal offense.

61. BT *Sanhedrin* 20b; Rashi ad loc. [The king] may burst through [the fences surrounding private fields or vineyards] to make a road and no one may take issue with him. There is no limit [in breadth] to the road the king [may make]. Rather, it may be [as wide] as necessary. He need not make his road crooked because of an individual’s vineyard or field. Rather, he may proceed on a straight path and carry on his war. MT *Melachim U’Milchamoteihem* 5.3.

62. BT *Baba Kama* 60b.

63. According to the *locus classicus* biblical text on warfare, trees surrounding a city under siege may not be destroyed; only nonfruit-bearing trees may be cut for military purposes (Deuteronomy 20:19–20). On the other hand, no matter how gruesome a war becomes, no permission is granted for burnt earth tactics, as attested by ancient Jewish historians. See Josephus’ *Against Apion*, II:30/211–13; Philo’s *The Special Laws*, IV:224–27.

64. The sentiments of *bal tashchit* are also found in a *midrash* on the biblical injunction to engage in diplomacy before besieging a city: *When you draw close to a city*—scripture speaks here of a discretionary war—*unto a city*—not a metropolis nor a village—*to fight against it*—not to reduce it through lack of food or water nor to slay its inhabitants through disease—*then proclaim peace unto it*—great is peace for even the dead require peace. *Sifre*, Deuteronomy 20:10.

65. *And if [the city] will not make peace* [i.e., accept all the terms] *with you, but will make war against you*—scripture informs you that if it will not make peace with you, it will eventually (*l’sof*) make war against you—*then you shall besiege it*—even by reducing it through lack of food or water or by slaying its inhabitants through disease. *Sifre*, Deuteronomy 20:12.

66. Dorff, “Bishops, Rabbis, and Bombs,” in *Confronting Omnicide: Jewish Reflections on Weapons of Mass Destruction*, ed. D. Landes (Northvale: Jason Aronson, 1991), 176.

67. BT *Kiddushin* 43a.

68. Batiste, “Collective Punishment,” 248.

69. For example, BT *Sanhedrin* 40a.

70. BT *Baba Metziah* 24a; BT *Baba Batra* 167a; *Responsa* of Simon b. Tzemah Duran, 3:168, cp. n. 1; see also Passamaneck, *Police Ethics and the Jewish Tradition* (Springfield: Charles C. Thomas Publishers, 2003), 126, 155.

71. *Responsa Ribash* #234–239, 373, 376.

72. Rosh, *Responsa* 17:8; Maharam of Rothenburg, *Responsa*, Ed. Prague #485; Moses b. Israel Isserles, *Choshen Mishpat* 388:10; BT *Baba Kama* 117a; Simeon b. Tzemah Duran, *Tashbetz* 3:158; *Takkanot Va'ad Arba Aratzot*, in Assaf, *Ha-Onshin Acharei Hatimat Ha-Talmud*; Baer, Spain 2 (1961):130, 264ff.

73. See *Responsa Rashba* 3:393.

74. Maimonides claims that a *moser* may be killed anywhere, even at the present time when we do not try cases of capital punishment, and it is permissible to kill him before he has informed: As soon as one says he is to inform against someone's person or property, even if it were a trivial amount of property, he surrenders himself to death [to be killed]. He must be warned and told, "Do not inform," and if he is stubborn and replies, "No! I will inform against this person," it is a religious duty (*mitzvah*) to kill him, and he who hastens to kill him acquires merit. MT *Chovel U'Mazik* 8:10.

75. If any [*moser*] oppresses a community and troubles them, it is permissible to send him to gentile authorities to be beaten, imprisoned and fined. But, if [a *moser*] troubles only an individual, he must not be handed over. Although it is permissible to physically punish a *moser*, it is forbidden to destroy his property, for it belongs to his heirs. (MT *Chovel U'Mazik* 8:12). What matters for Maimonides is that a particular *moser* must pose a substantial threat to a plurality in a community before that informer is exposed to gentile punishment (this, because gentile courts were responsible for meting out punishments for civil crimes; Jewish courts primarily handled issues of personal status and religious transgressions). A particular criminal may not pose a sufficiently substantial threat to warrant extradition or any of these kinds of punishments.

76. For example, BT *Sanhedrin* 43b; JT *Sanhedrin* 23b; *Bamidbar Rabbah* 23:5.

77. Leviticus 19:14; BT *Pesachim* 22b; BT *Avodah Zarah* 6a.

78. SA *Choshen Mishpat*, 227–40.

79. See Passamaneck, *Police Ethics and the Jewish Tradition*, 133–54.

80. A *mesit* is a [seducing] layman, and the one seduced is also a layman. [The *mesit*] says, "There is an idol in a particular place; it eats this, it drinks this, it does so much good and so much harm." For all whom the Torah condemns to death no witnesses are hidden to entrap them, except for this one. If he incites two [to idolatry], they themselves are witnesses against him, and they bring him to a court and stone him. But if he enticed one, and that one responds "I have friends who desire [to engage in idolatry, so tell them too]." If he was cunning and declined to speak before them, witnesses are hidden behind a partition, while he who was incited says to him, "Make your proposal to me now in private." When the *mesit* does so, the other replies, "How shall we forsake our God in Heaven to go and serve wood and stones?" Should he retract, it is well and good. But if he answers, "It is our duty [to worship idols], and it is good for us," then the witnesses stationed behind the partition take him to court and have him stoned. If he says, "I will worship it," or [other phrases suggesting idolatry, guilt is incurred] *Mishnah*, at BT *Sanhedrin* 67a; see also MT *Avodah Zarah* 5:2.

81. MT *Sanhedrin* 11.5.

82. See Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford: Stanford University Press, 2003), chap. 3.

83. *Mishnah*, *Sanhedrin* 8:7 at BT *Sanhedrin* 73a.

84. Regarding the *rodef* pursuing a fellow with lethal intent, even if that *rodef* is a minor, every Israelite is commanded (*mitzvin*) to save the pursued from the *rodef* even at the expense of the *rodef's* life. MT *Rotzeach U'Shmirat Nefesh* 1:6.

85. Leviticus 19:16. Any person who can save a person's life (*kol ha'yachol l'hatzil*) but fails to do so, he transgresses [the negative commandment] "do not stand [idly] on your neighbor's blood." Likewise, anyone who sees a colleague drowning at sea or being attacked by robbers or by a wild beast and could save that person or could hire others to save that person [but does not, is equally in transgression]. Likewise, anyone who hears gentiles or informers (*mosrim*) conspiring to harm a colleague or planning a snare for him, and does not inform him or notify him [of the danger, is equally in transgression]. Likewise, anyone who hears of a gentile or a man of force [who has a complaint] against a colleague, and he could appease [the aggressor] on behalf of his colleague, but he

fails to do so [is equally in transgression]. Likewise in all analogous instances, the one who [fails to] act transgresses “do not stand [idly] on your neighbor’s blood.” MT *Rotzeach U’Shmirat Nefesh* 1:14, 1:15; SA *Choshen Mishpat* 426:1.

86. MT *Rotzeach U’Shmirat Nefesh* 1:7; see also SA *Choshen Mishpat* 425:1.

87. The intent of the verse [“you must cut off her hand, you may not show pity” (Deuteronomy 25:12)] is, whenever a person intends to strike a colleague (*hachoshev l’hacot chavero*) with a blow that could kill him, the pursued should be saved by “[cutting off the] hand” of the *rodef*. If this cannot be done, [the victim] should be saved by taking the *rodef*’s life, as the verse continues, “you may not show pity.” MT *Rotzeach U’Shmirat Nefesh* 1:8.

88. Regarding the intervener pursuing a *rodef* who himself is trying to kill another, should it be possible to save [the intended victim] by [injuring] one of the attacker’s limbs but [the intervener] does not save [the victim] in this manner, the intervener should be killed on this account (*neharag ‘alav*). BT *Sanhedrin* 74a.

89. SA, *Choshen Mishpat* 421:13.

90. In his thoroughgoing analysis of Judaic approaches to police ethics, Passamaneck makes the following observation about interrogation practices: “Severe bodily torture was simply not part of any traditional [Jewish] interrogatory process, or any other legal process, though some degree of duress was clearly acceptable.” *Police Ethics and the Jewish Tradition*. (Springfield: Charles C. Thomas Publishers, 2003), 126. He concludes: “The [Jewish] tradition recognizes, without any particular negative comment, the practice of confinement and some sort of physical pressure, though not severe bodily torture, to extract confession in some pecuniary matters. A system that would permit this approach surely would not refrain from the use of lies or other modes of deception against persons whose conduct has rendered them suspect. . . . But there are many forms of deception that are licit and these the tradition need not reject when properly used. The tradition would thus appear to endorse the ‘crime control’ view of deception in law enforcement so long as deception is indeed targeted toward those who in fact are highly suspect in some criminal enterprise or who in fact do engage in criminal activity. The tradition draws a very bright line between the law abiding and the nonlaw abiding, much as police officers do in the modern world, and the non-law abiding, now as then, are, or should be, identified by their actual behavior.” *Ibid.*, 155–56.

91. MT *Sanhedrin* 25:1.

92. *Ibid.*, 24:10.

93. CCAR 2005; RHR 2005; RRA 2005; compare RA 2005. See note 4 above.

94. Exodus 23:1.

95. BT *Sanhedrin* 9b.

96. MT *Sanhedrin* 18:6; Rackman, “Talmudic Insights on Human Rights,” *Judaism* 1, no. 2 (April 1952): 158–63; Susser 1980; Arnold Enker, “Duress as a Defense to Murder,” in *Rabbi Joseph H. Lookstein Memorial Volume*, ed. L. Landman (New York: Ktav, 1980), 111–17; Fletcher 1991; Steven H. Resnicoff, “Criminal Confessions in Jewish Law,” *Jewish Law Commentary: Examining Halachah, Jewish Issues and Secular Law*, 2004; CCAR 1989.

97. MT *Edut* 9:1.

98. *Ibid.*, 10:2–4.

99. For example, Ezekiel, chap. 25; Romans 12:19; compare to *Surah* 8 about fighting fairly.

100. Allan Brownfield, “Mirror-Image Jewish and Islamic Religious Extremists Threaten Israel’s Movement Toward Peace,” in *Washington Report on Middle East Affairs*, 1999; Milton Viorst, *What Shall I Do with This People? Jews and the Fractious Politics of Judaism* (New York: The Free Press, 2005).