

# *War and Peace in the Jewish Tradition*

EDITED BY

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and Joel B. Wolowelsky

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“What is this Bleeting of  
Sheep in My Ears”:  
Spoils of War /  
Wars that Spoil

*Moshe Sokolow*

**PREFACE:<sup>1</sup>**

The title of this essay comprises the challenge that the prophet Shemuel issued to King Shaul (1 Samuel 15:14) to justify his actions in sparing the life of Agag, King of Amalek, and helping himself to the spoils of Amalek. The permission or prohibition of spoils of war serves in this essay as a code word for the concern of ancient, medieval, and contemporary Jewish law and ethics with the often irreversible and irremediable consequences of the force of martial arms.

The essay focuses, in a series of parallel inquiries, on: the Biblical textual evidence and its straightforward, contextual,

Interpretation; the subsequent development of these texts in Talmud, Midrash, and medieval *parshanut* (exegesis); and the treatment of militarism and morality in modern and contemporary Jewish thought.

### A. ARE SPOILS OF WAR PERMISSIBLE? THE BIBLICAL EVIDENCE<sup>2</sup>

Taking spoils is generally permitted by the Torah. Indeed, we are enjoined to “enjoy the spoils of your enemy which the Lord your God gives you” (Deut. 20:14).<sup>3</sup> This principle was practiced by the Israelites throughout the Biblical period. After the battle against Midian, the Israelites plundered, “all their animals, and all their livestock, and all their wealth” (Numbers 31:9), and after defeating Og, King of the Bashan, they “retained as booty all the cattle and the spoil of the towns” (Deut. 3:7).<sup>4</sup> During the time of Yehoshua, “the Israelites took the cattle and the spoil of the city [Ai] as their booty, in accordance with the instructions that the Lord had given Yehoshua” (Joshua 8:27). King David and his officers “dedicated some of the booty of the wars to maintain the house of the Lord” (1 Chr. 26:27),<sup>5</sup> after a rout of the Cushites during the reign of King Asa “very much spoil was taken” (2 Chr. 14:12), and following King Yehoshafat’s great victory over Ammon, Moab, and Se’ir, we are told that “for three days they were taking booty, there was so much of it” (ibid., 20:25).<sup>6</sup>

In practice, soldiers and noncombatants shared the spoils. After the battle against Midian, God instructed Moshe to “take an accounting of the spoils” and to divide them equally between the soldiers and the rest of the community (Numbers 31:25 ff).<sup>7</sup> King David subsequently made it an official policy, declaring: “The share of those who took to battle and the share of those who remained in the rear will be equal” (1 Samuel 30:24). The only exceptions were the Levites, who received no share at all.<sup>8</sup>

\* \* \*

On the other hand, six specific incidents in the Bible restrict or denounce the enjoyment of spoils.

(1) When Abraham returned from his successful pursuit of the four Mesopotamian kings, the King of Sedom offered him the property of Sedom and Amorah in exchange for the people whom he had rescued. Abraham issued a flat refusal, declining to accept even a token of his victory, saying: "I swear to the Lord, God Most High, Creator of heaven and earth, that I will not take so much as a thread<sup>9</sup> or a sandal strap, lest you say, 'It is I who made Avram rich,'" *"im mi-hut ve-ad serokh na'ul ve-im ekah mi-kol asher lakh"* (Gen. 14:22–23).

(2) After Shimon and Levi avenged their sister Dinah's honor by slaying the men of Shekhem, they plundered the town (*"Benei Yaakov ba'u al ha-halalim va-yavozu ha-ir asher tim'u et ahotam,"* Gen. 34:27).<sup>10</sup> Yaakov was incensed by their behavior and condemned his sons for dishonoring and endangering him: "You have brought trouble on me (*akhartem oti*), making me odious among the inhabitants of the land" (Gen. 34:30). He promptly demanded of his household to get rid of the spoils and undergo ritual purification (35:2).

(3) The punishment of a subverted city (*ir niddahat*) is extremely harsh. The guilty inhabitants, along with their cattle, are put to the sword and all that is inside the city is "proscribed" (*"herem,"* Deut. 13:16). We must "burn the town and all its spoil" (*ibid.*, 17), and beware "let nothing that has been proscribed stick to your hand" (*ibid.*, 18).

(4) Just before the walls of Yeriho are toppled, Yehoshua orders the people, on the pain of death, to "beware of that which is proscribed" (*"herem,"* Joshua 6:18), lest "you will cause the camp of Israel to be proscribed and bring calamity (*akhartem*) upon it" *ibid.*).<sup>11</sup>

(5) On the eve of Shaul's battle against Agag, Shemuel orders the proscription of everything Amalekite. "Spare no one, but kill alike men and women, infants and suckling, oxen and sheep, camels and asses" (2 Samuel 15:3).<sup>12</sup> And when he rebukes Shaul for his "defiance of the Lord's will" (*ibid.*, 19), Shemuel levels the specific accusation of "why did you swoop down on the spoil?" (*"va-ta'at el ha-shalal,"* *ibid.*).

(6) Finally, the Jews of Persia declined to plunder their enemies (Esther 8:11). While they exercised their right of self-defense, the Jews “did not lay hands on the spoil” (*bizzah*) neither in Shushan proper (ibid., 9:10), nor in the provinces (ibid., 16).

From all of the above cases, it appears that while sharing spoils is essentially sanctioned, the exercise of that right is frequently curtailed and even denounced. Twice (*ir niddahat* and Amalek) we find looting called “evil in God’s eyes” (i.e., defiance of His will), and refraining from looting is called “correct in God’s eyes.” Twice (Abraham and Mordekhai-Esther), an individual and a community are cited approvingly for declining to benefit from spoils which were rightfully theirs,<sup>13</sup> and in two additional cases (Shekhem and Yeriho), the illegal or dubious acquisition of spoils is denounced as defiling and calamitous.

## B. AN EXPLANATION

Why were these exceptions made to the rule of spoils?

(1) The treatments of both Amalek and the *ir niddahat* are sufficiently alike<sup>14</sup> to allow an explanation in common: An effective way to eradicate infamy is to obliterate everything with which it was associated. The mere relationship of possession to possessor suffices, in such cases, to transfer the stigma that attached to one onto the other. To belong to an Amalekite, or to a subverted city, is, axiomatically, to suffer its fate and its consequences.

(2) Yaakov’s vilification of his sons over despoiling Shekhem and Yehoshua’s excoriation of Akhan for looting Yeriho (Joshua 7:19 ff.), also share an explanation: sully the name and reputation of Israel among the gentiles. Yaakov was concerned with the impression the incident would leave on the neighboring Canaanites and Perizites, and feared that the righteous justification for the execution of the town’s males, “Should our sister be treated like a whore?” (Gen. 34:31) – would be compromised if it were to become known that his sons had seemingly turned noble revenge into personal profit.<sup>15</sup>

Yeriho, like Shekhem before it, marked the Israelites' first contact with the indigenous population of their land. God had originally promised that "all the peoples of the earth shall see that the Lord's name is proclaimed over you, and they shall stand in fear of you" (Deut. 28:10). Yehoshua, like Yaakov, conscious of first impressions, decreed that "all the silver and gold and objects of copper and iron are consecrated (*kodesh*) to the Lord" (Joshua 6:19). Were even one Israelite to realize personal gain therefrom, the gentile nations would lose their awe of Israel's aura of divinely ordained purpose, making the task of the conquest all the more arduous and costly, a premonition realized all too well at the Ai.<sup>16</sup>

A significant linguistic link between Yaakov and Yehoshua consists of the verb *akhar* (cf. C2), to cause calamity, which features prominently in both episodes.<sup>17</sup>

(3) The antithesis of taking spoils illegally is declining to share in legitimate spoils, and that is the counterpoint provided by the examples of Abraham and Mordekhai-Esther to the incidents of Shekhem, Yeriho, and Amalek.

Abraham spurns a share of the wealth he recovered. He says gallantly: "For me, nothing but what my servants have used up" (Gen. 14:24), deferring entirely to his allies. "As for the share of the men who went with me – Aner, Eshkol, and Mamre – let them take their share" (ibid.).<sup>18</sup> While virtue is, proverbially, its own reward, the Torah hastens to point out in the very next verse that "some time later the word of the Lord came to Abram in a vision, saying, "Fear not, Abram...Your reward shall be very great" (ibid., 15:1).

The Megillah of Esther emphasizes reversals, one of which is the matter of the spoils.<sup>19</sup> The king's original instructions regarding the 13<sup>th</sup> of Adar massacre of "all the Jews, young and old, children and women" (3:13) included the provision, "to plunder their possessions" (*u-shelalam la-voz*; ibid.), and so it was proclaimed as law (3:14). When the tables are turned, a law, identical in every detail, is again promulgated, now empowering the Jews to massacre and exterminate their attackers "together with women and children" (8:11), and

providing the right “to plunder their possessions” (*u-shelalam la-voz*; *ibid.*). The Jews of Persia and Media, like their forefather Abraham, repudiate the right and spurn the spoils. They content themselves with “light and gladness, happiness and honor” (8:16).<sup>20</sup>

### C. MIDRASH AND PARSHANUT

The denunciation of plunder is sharpened in the Midrash and in medieval Biblical exegesis. In each of these six cases, the point is made and reiterated that spoils of war have a corruptive and corrosive influence on ethical, moral, and, ultimately, halakhic behavior. Concomitantly, the sources expand the approbation awarded for restraint from rightful spoils.

(1) Abraham’s marshalling his forces prior to pursuing the four kings is referred to by the Torah as “*va-yarek et hanikhav*” (Gen. 14:14; JPS: “he mustered his retainers”), on which the Midrash elaborates by focusing on the antonymic meanings of *va-yarek*: to fill and to empty: “Rabbi Simeon ben Lakish says: He filled them up with precious stones and pearls.”<sup>21</sup> For what purpose, ask the Tosafot? “So that they would not be motivated by money, but concerned [only] with rescuing lives.”<sup>22</sup>

(2) Yaakov’s condemnation of his sons (*akhartem oti*) is interpreted in one Midrash as “the barrel contained clear water and you sullied it,”<sup>23</sup> and another Midrash, extending the metaphor, adds that “the essence of *akhar* is a kind of confusion; something that complicates the peace and restores strife.”<sup>24</sup>

Yaakov feared the danger to his sons from within themselves as much as he feared the danger that now threatened his family from the neighboring tribes; he was aware of the potentially disruptive and contaminating effect which morally dubious behavior has on those whose practice it. As a third Midrash comments on this selfsame process of moral deterioration: “He who spills gentile blood will eventually shed Jewish blood, while the Torah was given to sanctify His great name.”<sup>25</sup>

As we shall discuss below (D7), the strife which was initiated

by the brothers' act of *akhar* was fraternal, and its disastrous consequence was these same brothers' subsequent attempt to murder Yosef.<sup>26</sup>

(3) The spoils of the *ir niddahat*, as noted above, were to be utterly destroyed. "Let nothing which has been doomed stick to your hand...in order that the Lord may turn from His blazing anger and show you compassion...for you will be heeding the Lord your God" (Deut. 13:18–13). The Mishnah (*Sanhedrin* 10:6) comments: "For as long as evildoers exist (God's) anger exists. Once the evildoers perish, the anger disappears."

And the Gemara (*Sanhedrin* 113b) adds: "Who are these evildoers? Rav Yosef says: thieves."

Difficult as it may be to imagine, it was suspected that there were unscrupulous people who would even stoop to steal the spoils of an *ir niddahat*. Such infamy, it was feared, would reignite God's indignation, which would remain kindled until the thieves were caught and punished.

In the context of our suggestion that righteousness is undermined by ungainly personal profit (B2, C6), it pays to note the continuation of the Mishnah, which instructs:

Property held by the righteous who reside within that city is to be destroyed, while that held by those who reside outside the city is to be spared.<sup>27</sup>

The Gemara asks:

Why does the Torah require that property held within the city by righteous residents must be destroyed? Since their money motivated them to live there in the first place, let it be destroyed.<sup>28</sup>

According to this Gemara, even the righteous suffer on account of their association with the city. While they are personally spared the fate of its guilty inhabitants, they must pay a price for having

allowed monetary considerations to override their moral sensibilities. To own property within a corrupt and potentially subverted society is not, by itself, actionable; to reside within that city in order to oversee that property and enhance its value, however, is an offense which requires retribution.

(4) When Israel suffers a reversal at Ai, God's message to Yehoshua is that it is the consequence of sin. "They have stolen; they have broken faith! ...I will not be with you any more unless you root out from among you what is proscribed" (Joshua 7:11–12). Yehoshua casts lots among all the tribes, clans, and houses, eventually singling out Akhan as the perpetrator. "Tell me," he says to Akhan, "what you have done" (v. 19). According to the Midrash, Akhan confesses:

"It is true; I have sinned against the Lord" (v. 20). Not this alone, but I have trespassed (*ma'al*) against other (spoils) before. Yehoshua said: "Do not hold anything back from me" (v. 19). Akhan replied: "I saw among the spoil..." (v. 21); I saw what was written in the Torah: "And enjoy the spoil of your enemy" (Deut. 20:14). And do not think that I acted out of poverty for I am the richest man in my tribe. Right away, "Yehoshua sent messengers...to the tent...and displayed (the spoils) before the Lord" (vs. 22–23). Yehoshua said before God: 'Master of the universe. These are the things that prompted Your anger against Your children. Here they are!' Yehoshua acted on his own initiative and God concurred, and His anger was removed from Israel.<sup>29</sup>

Akhan failed to understand that Yehoshua's specific ban on the spoils of Yeriho<sup>30</sup> superseded the Torah's general sanction of plunder and for this he, and all of Israel, were punished. Only when Akhan is put to death, "and all Israel pelted him with stones" (v. 25), is the situation remedied and, as promised by the Mishnah cited above, "the anger of the Lord subsided" (v. 26).

(5) Citing Yaakov's blessing to Shaul's ancestor, Binyamin, the Mi-

drash equates “In the evening he divides the spoil” (*yehallek shalal*; Gen. 49:7), with “Shaul died for the trespass (*ma’al*) that he had committed against the Lord in not having fulfilled the command of the Lord” (1 Chr. 10:13).<sup>31</sup> Of that trespass, another Midrash notes:

Rabbi Eliezer ha-Moda’i says: God swore upon His throne not to leave a single descendant of Amalek beneath heaven, in order that people should never say “this camel is Amalekite, this sheep is Amalekite.”<sup>32</sup>

Assuming God’s oath is a metaphor for sacrosanctity, Rabbi Eliezer’s interpretation is clearly aligned with the Biblical text in which Shemuel’s denunciation of Shaul for plundering Amalek<sup>33</sup> is described as “defiance of the Lord’s will” (*ha-ra be-einei Hashem*; 1 Samuel 15:19).

Medieval *parshanut* expands upon the Midrash. Abrabanel, for one, comments:

The verse: “the memory (*zekher*) of Amalek” (Deut. 25:19) indicates that nothing shall remain of them, nor should their spoils be taken, so that the name of Amalek should no longer be remembered... This [verse] is truly whence Shemuel derived [his order to Shaul], “proscribe all that is theirs” (1 Samuel 15:3), as clearly as though God had expressly commanded him in this respect<sup>34</sup>...in order that no one should think that this war was like all others in which spoils, booty, and slaves were to be taken. He commanded the proscription of everything so that anyone hearing how the Israelites enjoyed none of the spoils would recognize and understand that their only intention was proscription on account of what Amalek did to Israel upon their exodus from Egypt.<sup>35</sup>

(6) The Talmud saw Mordekhai and Esther’s confrontation with Haman as compensation and atonement for Shaul’s mishandling of Agag and Amalek:

What did the Judean (*Yehudi*) do to me, and how did the Benjaminite (*Yemini*) repay me?...David declined to kill Shim'i [ben Gera], from whom Mordekhai was descended...Shaul failed to kill Agag, from whom Haman, the oppressor of Israel, was descended.<sup>36</sup>

Medieval exegesis extends this comparison a step further. Ralbag [Gersonides] writes:

It appears that the intention behind proscribing Amalek, as per God's command to Israel not to benefit from any of their possessions, was to underscore the fact that the divine intention was only revenge for what Amalek did to Israel upon their exodus from Egypt...to deter others from committing the same evil...But when Shaul and Israel took the spoils, they demonstrated that their intention was not revenge but selfish gain (*le-ho'il le-atzmam*), and this contradicted the divine will. It would appear that it was precisely for this reason that the Jews, during the time of Mordekhai and Esther, restrained themselves from taking any of the spoils of their enemies.<sup>37</sup>

Similarly, Rabbi Bahya:

The straightforward meaning of "hand upon the throne of the Lord" (Exodus 17:19) is that God requires every reigning king of Israel to take an oath to wage the Lord's war against Amalek. This means that all the spoils of this war are forbidden to be enjoyed (*asur be-hana'ah*); they all belong to God and not to man. This is why Shaul was punished...and this is why Mordekhai took care not to enjoy the spoils of Haman, who was a descendant of Amalek.<sup>38</sup>

### **In Partial Summary:**

Abraham pays his soldiers in advance lest the desire for booty become an obstacle to the rescue operation. Yaakov condemns the

looting of Shekhem for the dangerous precedent it established of adulterating moral rectitude with monetary gain. Thieves were not beyond looting even an *ir niddahat* after its population was executed, incurring a divine wrath which subsided only with their elimination<sup>39</sup> – as further attested by the kindred case of Akhan at Yeriho. Finally, Shaul's error in allowing the plunder of Amalek leads to his downfall, and requires a compensatory act of restraint on the part of his descendants, Mordekhai and Esther.

#### **D. MODERN JEWISH THOUGHT: PURITY OF ARMS, PURITY OF PURPOSE**

The following Midrash provides a fascinating, albeit problematic, precedent for the modern and contemporary clarification of the moral dilemmas occasioned by the various calls to arms in Jewish history:

“Don't overdo goodness and don't act the wise man to excess” (Eccl. 7:16). This applies to Shaul when he “advanced as far as the city of Amalek” (1 Sam. 15:5). Rav Huna and Rav Benaya said that (Shaul) began to debate with his Creator, saying: God said, “Now go and attack Amalek” (op. cit., v.3). [Shaul countered:] Even if the men (of Amalek) sinned, did the women sin? Did the children? Did the cattle, oxen, and donkeys sin? A heavenly voice came out and said: “Don't overdo goodness” beyond your Creator.<sup>40</sup>

Since none of the preceding soliloquy is explicit in the Biblical text – and little else is even implicit – it would appear that the moral reservations it expresses are more likely those of the *darshanim* than of Shaul. Caught on the horns of a moral dilemma of their own making, they introduce the notions of absolute and relative morality in order to resolve the conflict they have themselves created between Shaul's ostensibly laudable moral stance and the immutable historical fact of his chastisement and punishment. Shaul, they submit, was “*overly* righteous.” In other circumstances, questioning the morality

of slaying women, children, and animals, would be commendable;<sup>41</sup> in the face of an absolute divine imperative, however, it becomes an unpardonable act of hubris.

Moreover, from the conclusion drawn in the continuation of this Midrash, it appears that misplaced moralizing becomes, paradoxically, demoralizing:<sup>42</sup>

Rabbi Simeon ben Lakish says: Whoever acts compassionately where cruelty is called for will eventually act cruelly when compassion is required. And where did [Shaul] act cruelly instead of compassionately? To wit: "And he [Shaul] put Nob, city of priests, to the sword" (1 Sam. 22:19), and Nob should not have been treated like the seed of Amalek.<sup>43</sup>

The Sages add: Whoever acts compassionately where cruelty is called for, will eventually be called to account. To wit: "And Shaul and his three sons died" (1 Sam. 31:6).

\* \* \*

In the last section of this essay we shall examine several modern and contemporary analogues to the deliberation imputed to Shaul by the Talmud and Midrash. Based upon some of the same episodes and proof texts cited in the previous sections, these writers display similar moral sensitivity and exhibit similar despair over the contamination of moral rectitude through the wanton lust for spoils and the exercise of power.

(1) Samson Raphael Hirsch comments:

The contrast with Amalek is necessary for the education of Israel and the development of its own identity until it reaches perfection.<sup>44</sup>

The nature of that perfection lies in the eventual triumph of divinely ordained morality over the situational ethic imposed by the force of arms. He continues:

Not Amalek, per se, but the memory and legend of Amalek, betoken evil to the moral future of humanity. As long as mankind's annals sing the praises of military heroes; as long as those who stifle and destroy human satisfaction are not doomed to oblivion; untold generations will look admiringly upon those warriors and encourage their emulation in praise of violent deeds.

Amalek's reign in this world will come to an eventual and final end only when divine morality becomes the sole criterion for deeds large and small, and the recognition of morality increases in the world in equal, not opposite, proportion to greatness and strength. As man's greatness and valor increase, so shall the guilt he will bear for transgressing the laws of morality, and the crimes of mighty nations will be detested the more their perpetrators grow powerful.

In effect, this is the ultimate purpose of God's supervision of history.<sup>45</sup>

(2) On Abraham's "arming" of his men (C1) the Talmud noted:

Rav Abahu said in the name of Rav Elazar: Why was our patriarch Abraham punished and his descendants oppressed by Egypt for 210 years? Because he impressed [Torah] scholars (*talmidei hakhamim*) into military service (*angaria*).<sup>46</sup>

Andre Neher elaborates:

In arming his disciples, he was necessarily emptying them of the content of the Torah in which he had for years been educating (training, initiating) them.<sup>47</sup>

And of the *amora* Shemuel's view: "He filled them with gold" (*hori-kan be-zahav*), he adds:

He overlaid them with precious stones in order that their ob-

jective should be disembarrassed (purged, emptied) of every spirit of booty hunting, and might find its one and only proper motivation in the will to rescue those in danger. That is to say, Abraham was at pains to eliminate all lure of economic advantage – the factor that constitutes an accessory inducement to go to war, as potent as it is criminal.<sup>48</sup>

(3) The Midrash explains that the “tools of lawlessness” (*kelei hamas*; Gen. 49:5), for which Yaakov excoriates Shimon and Levi, refer to implements of war “stolen” from Esav,<sup>49</sup> and it metaphorically transforms the sword and bow with which Yaakov “took” the city of Shekhem from the Amorites (Gen, 48:22) into *mitzvot* and “good deeds” (*ma’asim tovim*).<sup>50</sup> Neher adds:

What they (Targum, Midrash, and Talmud) are concerned is to avoid the ethically embarrassing association of Yaakov’s name and Yaakov’s achievements with an enterprise that was, from start to finish, one of violence.... And so, by dint of weeding the episode of Shekhem right out of the text, there is achieved one of the finest pieces of pacifist transmutation effected by Jewish exegetical alchemy.<sup>51</sup>

(4) The condemnation of “the hands of Esav” is echoed by Yeshayahu Leibowitz:

Therefore in our moral-religious soul searching, we neither justify nor apologize for wartime bloodshed, per se (in which our own blood was shed more than our enemies’). The great problem arises in the manner of the conduct of the war – which continues unabated to this day – and of what follows it. The problem is great and complex. Since permission has been granted us for the “profession of Esav” (*umanuto shel Esav*), the distinction between permitted and forbidden, justifiable and unconscionable, has become very fine...and it is incumbent upon us to check and examine whether we have crossed the line or not.<sup>52</sup>

(5) In this same vein, Irving Greenberg has written:

The bitter Jewish experience (of the Diaspora, in general, and the Holocaust, in particular) taught that while it is true that “power corrupts, and absolute power corrupts absolutely,” absolute powerlessness corrupts even more...

On the other hand, given the corrupting effects of power, Jews cannot be given a blank check in that exercise any more than any other group. It is racism to believe that Jews are congenitally incapable of doing evil to others.... If memories of the Holocaust are only used to justify Jewish behavior and never to challenge and judge it, then it will be dismissed as propaganda.

The memory of our past torment must lead us to greater efforts to treat others with consideration and ethical sensitivity.<sup>53</sup>

(6) R. Ahron Soloveichik discusses several moral and halakhic ramifications of the episode involving Shaul and Agag. Among them is the matter of the *kal va-homer* (a *fortiori* inference) from the law of the broken-necked heifer (*eglah arufah*: Deut. 21:1 ff), which is imputed to Shaul by both the Talmud and Midrash:<sup>54</sup> “If in the case of a single victim [of homicide] the Torah requires an *eglah arufah*, how much more so must all those [Amalekite] lives [require atonement]?”

Rav Ahron asks:

It appears strange that Shaul had to resort to the Halakhah of *eglah arufah* to prove that murder is to be abhorred. Why could he not have proven his point from “do not murder” (*lo tirtzah*) or “do not stand [idly] upon the blood of your neighbor” (Lev. 19:16)?<sup>55</sup>

His answer is based upon the Talmudic interpretation of the “confession” of the city elders (Deut. 22:7):

We do not assume that the slain person was killed illegally. We assume that he was starving and attempted armed robbery in order to obtain food. The one attacked could have surrendered his money and prevented [the] killing. The Torah, however, took into account human frailty and anticipated that a person would defend his own money. Since a burglar shows himself capable of murder in case his intended victim offers resistance, the Torah permits killing a robber. Such a killing is suspected when an *eglah arufah* is brought. The killing was not forbidden, but it would have been better for a man not to kill in defense of property. *Kapparah* (atonement) through *eglah arufah* is required.

Thus Shaul saw from *eglah arufah* that killing, even where permitted, is better avoided.<sup>56</sup>

(7) On the occasion of the discovery of the Jewish “underground” (*mahteret*) in 1984, Rabbi Yehudah Shaviv wrote in *Nekudah*, the organ of the settlements in Judea, Samaria, and Gaza:

It is surprising to find Yaakov first offering piercing moral criticism of Shimon and Levi (Gen. 49:5–7) only many years after the fact... Why didn't he react at the time of the incident? Why, at that time, did he raise only pragmatic concerns (i.e., Gen. 34:30)?

The answer can be found in both the text and its exegesis. It is written: “For in anger they slew men (*hargu ish*) and at their pleasure they maimed oxen (*ikkru shor*)” (Gen. 49:6), on which Rashi, following the Sages, comments: “‘Men’ refers to Hamor and the people of Shekhem; ‘Oxen’ means that they sought to maim Yosef, who was called ‘Ox’ (cf. Deut. 33:17).”

Not for naught did Yaakov combine these two different and distant events, for he saw a line leading directly from the slaying of the men of Shekhem to the desire to kill Yosef. True, the men of Shekhem deserved to die; but that was not why Shimon and Levi slew them. They were seeking a release for their rage and anger.

Whoever feels free to let his anger out even on guilty gentiles will ultimately try to commit fratricide, for rage has no bounds and no limits. Whoever breaches the walls of morality in an all-consuming rage will ultimately breach it entirely, and something which began in rage and in anger will turn into deliberate action; to, God forbid, an accepted norm of life.

One who kills a gentile in anger, will eventually try to kill a Jew, deliberately.<sup>57</sup>

### E. AMALEK AS THE EVIL WITHIN US

R. Shaviv's focus on the pernicious effects which unregulated violence ultimately unleashes on its own perpetrators leads us to the contemplation of a final theme: Amalek, the evil within us. The proposition embodied in this theme is that the externalization of evil is but an immature and preliminary step to the eventual, mature, recognition that the real source of evil resides within us and that it is evil internalized that most sorely needs extirpation.<sup>58</sup>

Nowhere is this theme developed with greater pathos and poignancy than in the sermon delivered in the Warsaw Ghetto on *Shabbat Zakhor*, 1942, by R. Kalonymos Shapira. Basing himself on the text of the *Mekhilta*: "Neither the name nor the throne [of God] is complete until the seed (*zera*) of Amalek is destroyed,"<sup>59</sup> he asks:

It should have stated: "Until Amalek is destroyed." [The seed of Amalek] implies until we destroy what Amalek implants (*zore'a*) in us, because those seeds remain even after Amalek itself is destroyed.

The Sabbath, profaned by so many of Israel, God forbid, under the duress of Amalek's persecution, will remain profaned by many of them, and its sanctity violated, for a long time to come...The abstention from forbidden foods will not be observed so scrupulously by so many of them if, God forbid, they fail in its observance in the time of Amalek. And will those youngsters who are forced to miss Torah study, who don't know whether they are still alive because of their anguish and

persecution, God forbid, will they ever return to their prior preoccupation with the Torah?<sup>60</sup>

### Afterword:

The contemporary significance of the sources and interpretations we have cited is abundantly clear. Even while engaged in morally defensible, even halakhically mandated activities, a Jew must be ever vigilant to maintain his singularity of purpose, and on constant guard against its adulteration or erosion.<sup>61</sup> The eradication of Amalek from without must always be accompanied by the extirpation of the Amalek within. As the martyred R. Shapira concluded his sermon:

Even after Amalek is destroyed, neither His name nor His throne is complete until the seed of Amalek, the seeds it implants in us, are destroyed. Therefore He said: "I shall surely destroy" (*mahoh emheh*; Ex. 17:14) because the doubling of the verb indicates immediacy... "I shall surely destroy," speedily, so that not many seeds will remain behind.<sup>62</sup>

### An Ethico-Halakhic Epilogue:

What justifies the taking of spoils in the first place? Granted that it is practiced universally, but what legal and moral grounds sanction spoils of war rather than proscribe them as grand larceny?<sup>63</sup>

Rapaport (op. cit.) cites a responsum<sup>64</sup> which justifies the royal practice of granting charters (fiefdoms?) on the grounds that "it is the right of kings (*hok ha-melakhim*) upon forcibly conquering a country in war, that all houses, fields and vineyards belong to [the king] and the people become his tributaries," linking this to a provision made by Rambam (*Gezeilah* 5:13), which exempts royal expropriation from the category of larceny (*einah gezel*). Accordingly, Rapaport writes:

Two principles underlie acquisition by acts of war. (A) brute force (*ha-koah ve-ha-alimut*), in which the victor overcomes the vanquished by "force of arms" (*ba-koah ha-milhamah*);

(B) the fact that the force is exercised by a king, rather than by a private individual, constituting “the right of kings.” Clearly, the king, in this context, represents the entire public...and personifies it...There is, therefore, a fundamental partnership of two principals in the acquisition of spoils. (A) the public, by means of the king; (B) the soldiers and their camp who constitute the source of the “force of arms.”<sup>65</sup>

Based on the last stated principle, the sanction and division of spoils of war in the contemporary period would follow historical precedent in some respects and diverge in others. With the state, rather than the king, representing and personifying the public, a constitutionally declared war would entitle the exercise of “the right of kings” and the expropriation of spoils, in general, would therefore be sanctioned.

The division of the spoils, however, would present a novel twist. In the pre-modern period, soldiers were entitled to their personal share in half of the spoils because they fought with private, personal weapons and therefore constituted an independent element in the sanctioning equation called “the force of arms.” With all weapons of war today – including side arms! – being the property of the state, soldiers must be regarded as agents of the state – rather than “independent contractors” – and their automatic entitlement to spoils would be questionable.

While the state – like the king – has the option of awarding spoils to individual soldiers, “there would, in any event, be a prohibition of larceny on any soldier who helped himself to any spoils or plunder.”<sup>66</sup>

### **TOHAR HA-NESHEK: SPOILS OF WAR AND THE PURITY OF ARMS**

The following is the operative definition of looting and spoils of war that is in current force in the Israel Defense Forces.<sup>67</sup>

#### **Looting**

Looting is the theft of enemy property (private or public) by indi-

vidual soldiers for private purposes. In ancient times, conflicting conceptions were held. On the one hand, the Bible presents an approach that sees looting as a negative act, as, for instance, in the Akhan Affair (Joshua, 7), in which Akhan was put to death because he had taken of the consecrated spoils. On the other hand, looting was permitted in other civilizations, and even served as a means for the ruler to generate motivation among the soldiers to fight, as they looked forward to the looting.

Today, at any rate, looting is absolutely prohibited. The Hague Conventions forbid looting in the course of battle as well as in occupied territory. The Geneva Conventions contain provisions banning the looting of the wounded, sick, shipwrecked, civilians, and cultural property. Looting is regarded as a despicable act that tarnishes both the soldier and the IDF, leaving a serious moral blot. Section 74 of the Military Jurisdiction Law forbids looting, prescribing a punishment of ten years' imprisonment in respect thereof. During the Galilee War, there were unfortunately cases of looting of civilians in Lebanon, including a case where even officers – a major and captain – were demoted to the rank of private and given a long prison term.

### **Spoils of War:**

Over the years, the weapons arsenal of the IDF has grown as a result of capturing spoils courtesy of the Arab armies. Some of them, such as the RPG and Kalashnikov, the T-54, "Ziel" trucks, and 130 mm guns were even introduced into operational use in the IDF.

Other interesting items include an Iraqi MIG 21 plane, whose pilot defected to Israel, and guns captured in the Yom Kippur War and subsequently directed against the Egyptians. The crowning achievement was the case involving the capture of an Egyptian radar coach in the War of Attrition, brought intact to Israel.

One must distinguish between looting and taking spoils of war. Seized weapons, facilities, and property belonging to the enemy's army or state become the property of the seizing state. Private property that does not belong to the state is immune to seizure and conversion to booty. Nevertheless, a military commander is allowed to seize private property if this serves an important military need.

For example, a commander may commandeer a civilian vehicle to evacuate wounded urgently or take possession of a house porch if this is necessary for carrying out surveillance.

## NOTES

1. An earlier, partial version of this essay appeared in *Ma'ayanot* vol. XI, "On Teaching *Tanakh*" (1985; Hebrew), 194 ff.
2. We will concern ourselves only with "spoils of war," i.e., booty taken from Israel's vanquished enemies after battle, and not with such treasures as may have come into Israelite possession by default, such as the Egyptian loot that surfaced after the drowning in the sea (*bizzat ha-yam*) and the hidden "Amorite" treasures they were destined to discover, unaided, in the homes of the conquered peoples. See Deut. 6:10–11, *Hullin* 17a, and *Bava Metz'ia* 25b.
3. Radbaz (Responsa, vol. 4, #205), in an attempt to rehabilitate – as witnesses for a bill of divorce – people who commit larceny against gentiles (*geneivat ha-akum*) suggests that this verse may be interpreted as granting license to such action. It is difficult to tell whether he accepts this argument judicially or only rhetorically. Cf. Yaakov Ariel: "Theft from a Non-Jew in War" (Heb.), *Tehumin* 23 (5763/2003): 11 ff.
4. According to Ramban (Numbers 31:23), the war against Sihon and Og was distinct from the one conducted against Midian. Since the land occupied by Sihon and Og was part of the "promised" land, their victory entitled them to all the spoils, without reservation, including – according to the Talmud (*Hullin* 17a) – such prohibited items as pork loins. The battle against Midian, however, was waged primarily to exact vengeance for the episode at Shittim – and not for the acquisition of territory – therefore they refrained from plundering things that were prohibited to them, including all Midianite vessels, *kelei Midian*. See the responsa of Radbaz (vol. 6 #2205), and *Sho'el u-Meishiv* (vol. 1 #246) who elaborate on the theme considerably. For a thorough halakhic discussion of spoils, cf. R. Shabbetai Rapaport: "The Division of Spoils of War," (Heb.) *Arakhim be-Mivhan Milhamah* (1985), 199–207.  
The *Sifrei* to an adjacent verse (31:11) grants the Midianite spoils yet another distinction: "They brought all the spoils and booty, human and animal, to Moshe and to Elazar the Kohen." This indicates that they were righteous men of probity who were not suspected of larceny. Unlike the situation wherein "the Israelites violated the proscription" (*herem*; Joshua 7:1), here they brought all the spoils to Moshe. (Cf. Ariel, *op. cit.*, 13 #1.)
5. According to *Sifrei* (*Shoftim* #161), "all the people would place their plunder before [the king] and he would select first." This parallels the *Mekhilta's* observation – apropos of Pharaoh (*Beshalah*, *Va-Yehi* 1; ed. Horovitz-Rabin p. 89) – that: "It is generally customary for a king (*derekh melakhim*; later [*Shirah* 7, p. 140]: *nimusei malkhut*) that the people gather up all the spoils and place them before him, and he gets first pickings." David's conduct in the matter of spoils is adduced to his virtue. In *Sefer*

*ha-Ikkarim* (4:26), R. Yosef Albo creates a contrast between Shaul, who “fell upon” the spoils, and David, who first offered the people their share (1 Sam. 30:26).

Rambam (*Hilkhot Melakhim* 4:9) codifies the division of spoils, awarding the king half, up front (*mahatzeh be-rosh*), with the balance divided between the soldiers and civilians. Rapaport (*op. cit.*), 201, suggests that the king’s share was intended to cover the expense of maintaining the army and the sanctuary and, as such, were exempted from the prohibition of “he shall not accumulate too much silver and gold” (Deut. 17:17).

According to 1 Chr. 18:11, David also dedicated spoils taken from the Amalekites. Since, as we shall shortly see (A5), it was forbidden to take Amalekite spoils – even to dedicate them to the Lord! – it may be that the reference here is to the spoils of Tziklag that David recovered from the Amalekites. To wit: “David rescued everything the Amalekites had taken...Nothing of theirs (Tziklag) was missing... spoil or anything else...David recovered everything” (1 Sam. 30:18–19).

Similarly, Mordekhai and Esther’s possession of “the house of Haman” (Esther 8:2) can be justified on the grounds that it was first expropriated by King Ahashverosh (8:7), thereby annulling its (presumed) Amalekite provenance. Cf. S.Y. Zevin: *Le-Or ha-Halakhah* (Jerusalem, 1957), 43.

6. The victories of Asa and Yehoshafat came to be regarded as two of four “classic” illustrations of divine military intervention. See *Lam. Rabbah* (*Petihta* #30; ed. Buber p. 32).
7. *Ba’al Halakhot Gedolot* maintained that the war against Midian sets precedent while *Noda be-Yehudah* (II, *Yoreh De’ah* #201) regards it as *sui generis*. Further re: distribution, cf. *Iggerot Moshe Yoreh De’ah* I, #216.

The subsequent stipulation that “soldiers took their own plunder” (vs. 53) is interpreted by Rashi (vs. 32.) to indicate that moveable goods (*metaltelin*) were kept individually and not subject to communal division. See Rapaport, “The Division of Spoils,” 200. American law defines spoils of war as: “enemy movable property lawfully captured, seized, confiscated, or found, which has become United States property in accordance with the laws of war” (*United States Code*, Title 50: War and National Defense; Chapter 39: Spoils of War).

8. Rambam associates this prohibition – along with the one which forbids the Levites landed estates (*Sefer ha-Mitzvot*, prohibition #170, and *Hilkhot Shemittah ve-Yovel* 13:10) – with Deut. 18:1: “neither *kohanim* nor *leviyyim*, the entire tribe of Levi, shall have either a share (*helek*) or a portion (*nahalah*) among Israel.” As pointed out by Yoel bin Nun: “*Spoils of War in Israel*” (Heb.), *Alon Shevut* 5/10, the frequent use of the word “share” (*helek*) to signify spoils of war, may be behind this association.
9. Abraham’s use of *im...ad* (“from...to”) implies a contrast between *hut* and *serokh na’al* that the words “thread” and “shoelace” fail to convey. It is likely in this case that *hut* refers not to just any thread, but the cord that held the traditional Middle-Eastern headdress in place, providing a clear contrast to the strap that was used to bind the sandals and implying all-inclusivity. Their equivalent usage in conventional English would be akin to “from head to toe.”
10. The use of *Benei Yaakov* in v. 27, as opposed to Shimon ve-Levi in v. 25, has the

exegetes split on which sons participated in the plundering (see, *inter. alia.*, Ibn Ezra, Rashbam, Ramban). Whether the “*elohei ha-nekhar*” could have had their idolatrous associations nullified, or Yaakov acted with stringency (*hihmir*), is discussed in responsa *Kol Mevasser* (1:23).

11. Whether Yehoshua acted rashly in imposing a unilateral ban on the spoils of Yeriho (*Sanhedrin* 43b–44a, Rashi s.v. *ata garamta lahem*) is moot. (Cf. responsa *Be-Tzel he-Hokhmah* 1:27, who distinguishes between this proscription and the voluntary foregoing of spoils in Numbers 21:2–3.) The sacrosanctity of *herem* is also discussed by the Netziv in his commentary on *Shir ha-Shirim* (4:1) – which, by the way, also contains several of his opinions on how Israelite armies were organized and administered.
12. The appearance here of camels is consistent with the desert origins of Amalek. Rambam (*Guide* 3:39), explaining the laws of redemption of the first-born, cites the spoils of Midian – which included only sheep, cattle and donkeys – as more representative of those times, since camels and horses “are generally found only among individuals and only in a few places.”
13. A kindred episode is narrated in 2 Chronicles 28, apropos of a smashing victory that Pekah ben Remaliah, king of Israel, obtained over Ahaz, king of Judah. After a battle that saw 120,000 (!) Judeans killed – including the king’s son, chamberlain and viceroy – and 200,000 women and children (!) taken captive, “they also took a large amount of booty from them and brought the booty to Samaria” (vs. 8). On their return, they were met by the prophet, Oded, and several Samaritan notables, who persuaded them to release their captives, “for the wrath of the Lord is upon you” (vs. 11), and “it would mean offending the Lord” (vs. 13). The soldiers relinquished their captives and booty, and the Samaritan notables used the booty to clothe the captives whom they conducted to the city of Yeriho, where they released them.  
It is noteworthy that the phrase *haron af* [*Hashem*], (“the wrath of the Lord,” vss. 11 and 13) appears in two subsequent episodes (2 Chronicles 29:10, 30:8), both of which also focus on the fate of captives. As noted below, it also features prominently in the consequences of an *ir niddahat* (C3) as well as in story of Akhan (C4).
14. Compare, in particular, Deut. 13:16 and 1 Samuel 15:3.
15. Malbim (1 Samuel 15:19) cites the “profit motive” as the cause for Shaul’s plunder of Amalek: “*ki yetzer hemdat ha-rekhush hittah libbekha mi-mitzvat Hashem.*” On its further dangers, see C3.
16. The idea that dubious moral behavior, let alone outright sin, makes Israel vulnerable to attack and defeat, is explicit in the Midrashic treatment of the proximity of “Amalek came and fought with Israel” (Ex. 17:8) to “The Israelites quarreled and ... tried the Lord, saying, ‘Is the Lord present among us or not?’” (v. 7). Cf., *inter. alia.*, *Pesikta Rabbati* (cpt. 13), *Pirkei de-Rabbi Eliezer* (cpt. 44), and *Mekhilta* (Ex. 17:8). The latter stipulates that “enemies attack only in the wake of sin and transgression” (*she-ein ha-soneh ba elah al ha-het ve-al ha-aveirah*), and offers the additional opinion that the location of the Amalekite attack, Refidim, symbolizes that “the Israelites relinquished their grasp on the Torah” (*rafu yedeihem min ha-Torah*).

The penetration of the Israelite aura of invincibility is similarly treated by the

Midrash *Tanhuma*, apropos of the ambiguous verb “*karkha*” (Deut. 25:18; JPS: “surprised you”) that is used to describe the Amalekite attack:

The Sages say: “*karkha*,” he cooled you off before others. Rabbi Hunia said: This resembles a boiling hot bath that no one could enter. Along came a scoundrel and jumped in. While he got scalded, he cooled it off for others. Here, too: When Israel left Egypt, God split the sea before them and drowned the Egyptians, frightening all the other nations, to wit: “Now are the clans of Edom dismayed” (Ex. 15:15). Once Amalek came and attacked them, despite getting what they deserved they cooled Israel off before the nations of the world.

17. While acknowledging that Israel had to wage a war of conquest on account of sin, R. Kook assigns the blame to a different sin (*Orot*, p. 14):

Were it not for the sin of the golden calf, the gentile inhabitants of Israel would have made peace with Israel.... No wars would have ensued. Instead, the inclination would have been toward peace, as in the Messianic era. But sin interfered and this has been delayed for thousands of years.

See, also, Yehoshua 7:25 and 1 Chr. 2:7 where Akhan's name is actually given as Akhar. A related use of *akhar* appears in 1 Sam. 14. Shaul had adjured his men not to eat until nightfall (v. 24), but Jonathan, who was absent, tasted some honey (v. 27). Upon being rebuked, he blames Shaul for having weakened his troops, saying “My father has brought calamity on the people (*akhar avi et ha-aretz*)...If only the troops had eaten today of the spoils captured from the enemy, the defeat of the Philistines would have been greater still” (vs. 29–30).

18. According to the Midrash (*Gen. Rabbah* cpt. 43), David's division of spoils (cited earlier) was patterned after this precedent: “... and so it was from that day and above” (1 Samuel 30:25; cf. Rashi *ad. loc.*). R. Yudan said: The verse (in Samuel) doesn't state “[from that day] forward” *ve-hala'ah*, but “above” *le-ma'alah*. From whom did [David] learn? From his ancestor, Avraham, who said, “Save only that which the young men have eaten and the portion (*helek*) of the men who accompanied me” (Genesis 14:24).
19. Other “reversals” include the manifold ways in which Haman, the viceroy, is humbled, while Mordekhai, the relative unknown, is elevated. Mordekhai, who sought no reward for saving the king's life, was made viceroy (10:3) and dressed in regal finery (8:15), while Haman – who thought that no one was more deserving of honor than he (6:5) – while not exactly hoist on his own petard, is surely impaled on his own stake, just as he had prepared to do to Mordekhai (7:10). Given this emphasis on “tit for tat,” it would befit the symmetry of the plot for Haman to be disheveled as the antithesis of Mordekhai's sartorial upgrading. Although no such reference is made explicitly in the text, Talmudic Aggadah provides one. According to *Megillah* 16a, Haman's daughter is reported to have thrown a chamber pot on her father's head – thinking he was Mordekhai – hence his return home “hiding his head” (6:12).
20. Invisible in the Biblical text, but not lost from aggadic sight, is the identification

of Haman “the Agagi” (Esther 3:1) with the Amalekite king, Agag. Assuming the identification is historical and was known to the Jews of Persia, it could explain their reluctance to enjoy the spoils that fell to them on account of his instigation. Cf. the commentary of Rabbi Bahya ben Asher cited below (c6).

21. Gen. Rabbah 43:2.
22. *Sukkah* 31b, s.v. *yarok*. Also cf. Tosafot, *Hullin* 47b, s.v. *elah yerukah*.
23. Gen. Rabbah 80:10 “*tzelulah haytah he-havit ve-akhartem otah*”.
24. *Midrash Sekhel Tov*, Gen. 34:30 (ed. Solomon Buber [Berlin, 1900], 195).
25. *Seder Eliyahu Rabbah* cpt. 28. Also cf. d8, *infra*.
26. *Midrash Gen. Rabbah* (cpt. 99) and *Tanhuma* (*Va-Yehi*, 9), identify Simeon and Levi, the perpetrators of the massacre at Shekhem, as the brothers who first schemed to do Yosef in. This identification is both textual and logical. Gen. 37:19 speaks of “brothers” (*ish el ahiv*), as do 34:25 (*ahei Dinah*) and 49:5 (*ahim*) – both of which refer explicitly to just those two. Logically, ten brothers, maximum, could fall under suspicion. The four sons of the concubines were Yosef’s friends (37:2) and are therefore excluded. Reuben (37:21 and 42:22) and Judah (37:26) were principally and openly opposed to the murder; Issachar and Zevulun, it may be reasoned, would hardly have spoken first in the presence of their older brothers. That leaves just Simeon and Levi to take the blame.
27. *Sanhedrin*, *op. cit.*
28. *Sanhedrin* 112a.
29. *Num. Rabbah* 23:6. According to this Midrash, Yehoshua had prohibited the spoils of Yeriho on his own initiative – on the analogy between the “first” of the spoils and the “first” of the dough (*hallah*), which is consecrated to God – and God concurred. Indeed, Yerushalmi *Berakhot* (9:5) refers to this as one of three things that were enacted by a “lower” court (*beit din shel mattah*) and ratified by the “supreme” court (*hiskim Ha-Kadosh Barukh Hu imahem*).
30. R. David Kimhi (Radak, *ad. loc.*) cites an alternative Midrashic tradition (*Tanhuma Mas’ei* 5), according to which the spoils of Yeriho were prohibited – at Yehoshua’s initiative, with divine acquiescence – because the conquest took place on Shabbat. [Tzitz Eliezer, citing Radak, concludes, “We should derive a beneficial practice (*hanhagah tova*) from this case and consecrate to God any booty that falls into our hands as the result of a conquest that may take place on Shabbat” (vol. 3, sec. 9, chapter 2, #12).]

Gersonides (Ralbag, *ad. loc.*) offers an alternative consideration, suggesting that the spoils were prohibited in order to forestall the possibility that the Israelites would relate any future financial success to the wealth obtained from Yeriho, which, in turn, could conceivably lead to their positive reevaluation of idolatry. This very reason, he adds, also accounts for the prohibition against rebuilding Yeriho.

Malbim (*ad. loc.*) cites the miraculous nature of the victory as the core reason for the prohibition (“Since the conquest was through a divine miracle, it was appropriate that its booty be sanctified to God, Who conquered”) and specifically exempts the property of Rahav – who is cited in the continuation of the verse – from the confiscation of the city’s spoils in general.

(On the question of whether the battle for Yeriho was fought on Shabbat, cf. Yehudah Eisenberg: “*The Conquest of Yeriho*” [Heb.] [data.ac.il/data/tanach/melech/8.htm](http://data.ac.il/data/tanach/melech/8.htm).)

31. *Gen. Rabbah* 99:3. Regarding *m a'al* (trespass), see section C4.
32. *Mekhilta*, Exodus 17:16.
33. Samuel's caustic use of “swooping” to plunder (1 Samuel 15:19; *va-ta'at el ha-shalal*) is identified by Nahmanides (Ramban, Lev. 19:26) with the prohibition against eating blood: “Because of the abundance of spoil of cattle, as soon as their blood was spilled on the ground, they tore off their limbs and ate them before life had entirely left the animals.” The phrase is also treated as opprobrium by R. Yosef Albo (*Sefer ha-Ikkarim* 4:26) in creating a contrast between Shaul, who “fell upon” the spoils [personally], and David, who, unselfishly, first offered the people their share, as noted above (n. 5).
34. Abrabanel's emphasis on the divine origin or, at least, divine status of Shemuel's instructions, appears to be aimed at Maimonides who, in the Introduction to his Commentary on the Mishnah, gives these instructions as an example of a prophetic, i.e., non-divine, initiative, *Divrei Soferim*.
35. Abrabanel, 1 Samuel 15:3.
36. *Megillah* 12b–13a.
37. Ralbag, 1 Samuel 15:6.
38. R. Bahya, Exodus 17:19. Also cf. n. 17, above.
39. Compare *Torah Temimah* (Deut. 13:18, #61): “According to *Semahot* (2:9), ‘stealing from *herem* is comparable to murder or idolatry,’ which accounts for these thieves being called ‘evildoers.’” Cf. n. 24, above.
40. I have followed the text of the Midrash *Eccl. Rabbah* 7:16, rather than the Talmudic text in *Yoma* 22b. Cf. Moshe Sokolow: “Autonomy versus Heteronomy in Moral Reasoning, The Pedagogic Coefficient,” *Hazon Nahum* (NY, 1997), 659 ff.
41. Neither the Midrash nor medieval exegesis was oblivious to the moral dilemmas that inhere in the Biblically mandated treatment of Amalek and the seven nations occupying Canaan, of whom it was commanded “You shall not let a soul remain alive” (Deut. 20:16). Maimonides (Guide 1:54) says: “Do not think that this deed is an atrocity or an act of vengeance; rather it is rationally compelling...to eliminate all obstacles that would prevent the attainment of perfection, i.e., (knowledge) of God.”

[Elsewhere in the Guide (3:11), Maimonides lists irrationality and ignorance as the cause of war and violence, stating: “Just as a blind man who cannot see, stumbles, injures himself, and causes harm to others...Groups of people, due to their stupidity, grievously harm themselves and others...Through knowledge of truth – enmity and strife are averted and people will no longer harm each other. The reason for the disappearance of hatreds, hostility and struggles is people's awareness, at that time, of the Divine truth.”]

Bahya ben Asher (Deut. 20:16) argues: “If your heart urges you to suggest that we are acting cruelly towards innocent children...in fact, it is not cruelty but a righteous act of self-preservation.”

In several Midrashim (eg., *Pesikta Rabbati* and *Pesikta de-Rav Kahana to Parashat Zakhor*), we find the ostensible cruelty towards Amalek juxtaposed with the Torah's demand for cordial relations with others who have harmed Israel, particularly Egyptians and Edomites. Maimonides, too, as though anticipating the charge of racism towards the "seed of Amalek," points out (Guide 3:50) that the commandment of eradication applies to Amalek only as a consequence of his historical activities, and doesn't even extend to other ethnic/racial Edomites.

42. *Eccl. Rabbah*, 7:16.
43. Cf., in particular, 1 Samuel 15:3 and 1 Samuel 22:19.
44. S.R. Hirsch, Exodus 17:13.
45. *Ibid.*, v. 14.
46. *Nedarim* 32a.
47. Andre Neher: "Rabbinic Adumbrations of Non-Violence: Israel and Canaan," *Studies in Rationalism, Judaism, and Universalism* (London, 1966), 184. In contrast to the opinion of Rav: "He emptied them of Torah" (*horikan be-Torah*), Rashi (*Nedarim*, *ad. loc.*) says: "(Abraham) taught them Torah"
48. *Ibid.*, 183.
49. *Gen. Rabbah* 98:9.
50. *Ibid.*, 97:6. Targum Onkelos, similarly, renders: "My prayers and supplication," and likewise *Baba Batra* 123a.
51. Neher, "Rabbinic Adumbrations," 196. Rabbinic tradition, however, is not monolithically pacifistic. As demonstrated by the alternative view presented in this Midrash (*Gen. Rabbah* 98:9 and 80:10), violent military action in defense of life – and even property, as we shall shortly see – is not only condoned, it is imputed to Yaakov himself:

R. Nehemiah says: Yaakov wished that his sons had not committed that deed...but once it was done he said: "Am I to abandon my sons to the gentile nations?" What did he do? He took up sword and bow and stood at the entrance to Shekhem, saying: "If they come to attack my sons I shall defend them."

Rashi comments, in the same vein: "When Shimon and Levi slew the men of Shekhem, all the surrounding nations came to attack them, so Yaakov armed himself to oppose them."

52. Yeshayahu Leibowitz: "After Kibiya" (Hebrew), in *Torah u-Mitzvot ba-Zeman ha-Zeh* (Tel Aviv, 1954), 170. [Kibiya was the site of an IDF reprisal for an Arab terrorist attack on Israel.] The passage is translated somewhat differently – but to the identical effect – in *Judaism, Human Values and the Jewish State* (Cambridge MA, 1992), 187–188.
53. Irving Greenberg. *The Ethics of Jewish Power* (National Jewish Resource Center, 1984), 1–3. I have found no more striking application of this "ethical sensitivity" than the following sentiment expressed by Rabbi Immanuel Jacobovits ("The Morality of Warfare," *Leylah* vol. 2 no. 4 (1983):

A medieval Jewish source movingly tells us that the one hundred shofar sounds at our New Year's services corresponds to the one hundred groans by the

mother of Sisera (Judges 5:28) when she saw her son killed in his battle against the Israelites.

Sisera was a brutal tyrant, wreaking terror on our people. His death was our salvation. Yet, he had a mother, and to this day we hear her cries and recall her grief over the death of her child.

Even terrorists have mothers, and we must not be indifferent to their anguish. This is but one of the remarkable features of Judaism in an effort to ensure that even war does not harden us to the point of not caring for the loss and suffering of our enemies.

[In our context, it is worth noting that the concern of Sisera's mother for her son's tarrying at the battle is deflected by her servants, who suggest that he is preoccupied with "dividing up the spoil" (*yehalleku shalal*; Judges 5:30).]

54. *Yoma* 22b and *Eccl. Rabbah* 7:16, cf. n. 40, above.
55. R. Ahron Soloveichik: "The Mitzvah of Destroying Amalek" (compiled by Lee H. Michaelson) *Ha-Mevaser* (Student Organization of Yeshiva University, March 9, 1967). [The question is raised, in a somewhat different context, in his *Logic of the Heart, Logic of the Mind* (Jerusalem, 1991), 171.]
56. *Ibid.* The answer is based upon the Talmudic discussion of *eglah arufah* in *Sotah* 43b. Deut. 21: 7 states: "And [the elders of the nearest town] shall pronounce this declaration, 'Our hands did not shed this blood...'" The Talmud asks: "Would it ever occur to us that the elders of the court are murderers? Rather, 'Our hands did not shed' means that they did not send the stranger on his way without provisions." The reference to armed robbery is an allusion to Exodus 22:1: "If the thief is tunneling (*ba-mahteret*) and he is beaten to death, there is no bloodguilt in his case."
57. "*Ha-horeg goy be-harono, sofo mevakesh le-harog Yehudi be-ratzon*," Yehudah Shaviv: "The Lost Honor of Dinah, the Daughter of Leah," *Nekudah* 81 (14 December, 1984), 23. Shaviv relies, in part, on the Midrash cited above (C2), and, in part, on the commentary of Ramban on Yaakov's blessing.
58. Tzvi Kurzweil notes that according to R. Yisrael Salanter, "transformation" is preferable to "extirpation:"

It is also worth noting that R. Yisrael distinguishes between the sublimation (*kibbush*) of the inclination to evil and its repair (*tikkun*), i.e., transforming evil into good. He emphasizes that transformation (*hafeikhah*) is preferable because "it is impossible at all times to reach the quality of heroism of conquest that makes it insufferable." Also, "the sublimated qualities are capable of poisoning the intellect."

The poison that sublimation injects into man's spiritual forces is reminiscent of the pejorative results of the "delay of gratification."

"The Psychological Roots and Educational Significance of the Mussar Movement. Based on the Writings of Rabbi Israel Salanter," (Heb.), in *Hinnukh ha-Adam ve-Ye'udo* (Jerusalem, 1978), 217–228 (especially 223).

"Transforming the impulse of man, which was evil from his youth" (cf. Ramban,

- Deut. 30:6, 28:42, *et. passim.*), is also the basis for the view of R. Avraham bar Hiyya on how to overcome “the factors that produce war and killing in this world;” *Hegyon ha-Nefesh, Sha’ar* 4). See Aviezer Ravitzky: “Peace,” in Arthur A. Cohen, Pierre Mendes-Flohr (eds.): *Contemporary Jewish Religious Thought* (NY, 1987), 695.
59. “Ein Hashem shalem ve-ein ha-kise shalem ad she-yimheh zar’o shel Amalek;” Interestingly, a variant reading in the Midrash *Lekah Tov* substitutes “evildoers” (*resha’im*) for “the seed of Amalek” [based, perhaps, upon 1 Samuel 15:8: “Go and utterly destroy the evildoers, the Amalekites” (*et ha-hatta’im et Amalek*), thus adding force to the identification of Amalek as the personification of evil.
60. Kalonymos Kalman Shapira, *Esh Kodesh* (Jerusalem, 1960), 169–170.
61. This point is also made by the *Sefat Emet* in a homily on *Parashat Toledot* (Petrokov, 1905; 105–106):

The Sages attributed the verse “save me from treacherous lips” (Ps. 120:2) to Yaakov at the time he was required to say, “I am Esau, your firstborn” (Gen. 27:19). The righteous man, who adheres to the truth even as he is obliged, on occasion, to use untruth... needs divine assistance not to become a willing adherent of treachery, (God) forbid. By saying “save me,” Yaakov sought not to become attached to the untruths he was about to utter.

62. Shapira, *Esh Kodesh*, p. 170.
63. This question is dealt with in an essay by Yoel bin Nun (cf. n. 8, *supra.*), which he composed (remarkably!) in December 1973 during his IDF service in the city of Suez.
64. Radbaz, vol. 3, #968 (533).
65. *Ibid.*, 203 ff.
66. *Ibid.*, 207. Hugo Grotius: *On the Laws of War and Peace*; Chapter Six, #10, writes in a similar vein:

A distinction must be made between actions in war, that are really of a PUBLIC NATURE, and the acts of INDIVIDUALS occasioned by public war: by the latter, individuals acquire an absolute and direct property, in the things which they take, and by the former, the state makes those acquisitions.

67. *Laws of War in the Battlefield*: Israel Defense Forces, Department of International Law, Military Law School (1998; Unclassified), Chapter 6: Acts Prohibited On the Battlefield; Looting and Spoils of War (69–70).

[http://www.idf.il/hebrew/organization/patzar/atar1/mls1/pirsumim/warfare/warfare\\_e.pdf](http://www.idf.il/hebrew/organization/patzar/atar1/mls1/pirsumim/warfare/warfare_e.pdf)

Also cf. Ehud Luz: *Wrestling with an Angel: Power, Morality, and Jewish Identity* (Yale University Press, 2003) on the influence Jewish tradition has had on military affairs and kindred issues in the Zionist movement and the State of Israel.