

Just War and Moral Equivalency
By Rabbi Dr. Barry Freundel

As I write today (Wednesday, July 16), the possibility of an Israeli ground incursion into Gaza has become more of a real possibility. (In fact, the ground war has actually begun before this was able to be sent out.) If that occurs the situation will become even uglier, with far more danger, death, and destruction undoubtedly becoming part of the landscape.

Before we get to that point, if it is to come, I want to go back to some of the things I discussed previously in this space and add some additional relevant sources. I do this in an effort to respond to some things that have been said and done in reaction to the situation in Israel, and that I think are very troubling.

In a previous message, I reminded us that despite being under pressure and perhaps filled with anger at some of the things we have seen and heard, the true test of who we are comes in remaining true to our values, beliefs and halakhic principles in the face of these emotionally difficult times. This becomes particularly important when defenders of Hamas and the Palestinians raise the issue of "proportionality," and point to the fact that more than two hundred have died on one side and only one on the other. It is important to reiterate that any death is a tragedy that should be avoided if at all possible, but dressing up those concerns in the moral terms of "proportionality" simply distorts what this doctrine is and where it comes from.

The doctrine is part of Augustine's just war theory (though its earliest appearance may be in the Indian epic, the Mahabharata,) but despite claims to the contrary, it does not appear in either Jewish or Muslim teaching as reflected in the Torah and the Quran.

The relevant Torah verses (Deuteronomy 20:19-20) are (emphasis mine):

When you besiege a city a long time, in making war against it to take it, you shalt not destroy the trees thereof by wielding an axe against them; for you may eat of them, but you shalt not cut them down; for is the tree of the field a man, that it should be besieged by you? Only the trees of which you know that they are not trees for food, them you may destroy and cut down, that you may build bulwarks against the city that makes war against you, until it fall.

The Jewish standard is that one fights with the aim of defeating the enemy and thoroughly degrading their capacity to make war. Nonetheless, that imperative comes wrapped in a statement that mandates protection of the food supply and the environment, even when it might aid the war effort to be less careful about those things. In short, this text puts limits on war making (there are other texts that add other restrictions) but those restrictions cannot, despite the claims of some, be described as proportionality.

The relevant verses in the Quran (Surah 2:190-194) read:

Fight in the cause of Allāh those who fight you but do not transgress: for Allāh loves not transgressors. And slay them wherever you catch them, and turn them out from where they have turned you out; for tumult and oppression are worse than slaughter; but fight them not at the Sacred Mosque [Al-Masjid Al-Harām, the sanctuary at Mecca], unless they (first) fight you there; but if they fight you, slay them. Such is the reward of those who suppress faith. But if they cease, then Allāh is Oft-forgiving, Most Merciful. And fight them on until there is no more tumult or oppression, and there prevail justice and faith in Allāh; but if they cease, let there be no hostility except to those who practice oppression.

This is pretty similar to the Torah text (for us surrender is covered elsewhere in the Bible), and again despite exegetical attempts to the contrary, contains goals of defeat or capitulation, but not a hint of proportionality.

It is ironic almost to the point of being humorous (except that it is deadly serious) to see Muslims challenging Jews with a Christian doctrine to which neither Muslims nor Jews really subscribe. Even more ironic is that this is not even an accurate reflection of what Augustine taught, or of how the Church has traditionally understood the doctrine of proportionality. One can find somewhat different definitions of proportionality as it appears in Augustine's theory in different works, and everyone agrees that there is a difference of meaning when one is planning the war and when the war is actually being fought, but no serious scholar thinks it means allowing a parallel number of casualties on your side to those you are inflicting on the other.

In John Mark Mattox's book *St. Augustine and the Theory of Just War*, he defines proportionality as:

Augustine acknowledges the horrors of war in a way that suggest he believes that, given the choice, the evil effects of war should be minimized; and to that extent, he advocates observance of the *jus in bello* principle of proportionality. War is horrible enough, even under the best of circumstances, and anyone who is not moved to sorrow upon contemplation of the evils which war entails is a just object of pity as one who has 'lost all human feeling.' For this reason, Augustine urges soldiers not to induce gratuitous suffering. Even in the special case of a war fought to mete out divine retribution, the aim is not merely to give one's enemies their just deserts, but 'to lead them back to the advantages of peace.' Augustine may well be the first figure in the just-war tradition to offer a version of what is now known as 'the doctrine of military necessity': that armies can justly take such violent actions as may be necessary to accomplish their assigned task, consistent with the aim of restoring peace and order. Augustine admonishes, 'let necessity, therefore, and not your will, slay the enemy who fights against you.' His point is that the doctrine of military necessity specifies the upper bounds of permissible violence-not the lower bounds. As a consequence, he urges that the taking of lives in war ought to be minimized to the greatest extent possible; and by so doing, he gives recognition

to the founding principle upon which all future developments in the doctrine of *jus in bello* are based:

For he whose aim is to kill is not careful how he wounds, but he whose aim it is to cure is cautious with his lancet; for the one who seeks to destroy what is sound, the other that which is decaying... [W]hat is important to attend to but this: who were on the side of truth, and who were on the side of iniquity; who acted from a desire to injure, and who from a desire to correct what was amiss?

This suggests that Augustine generally would object to requirements such as unconditional surrender on the grounds that such demands could not be made of an enemy state consistent with the right intention to minimize the shedding of blood.

While the last paragraph would not fit with either the Torah or Quran texts we have cited, the rest of what he has written is completely in line with what Israel is doing, and thoroughly violated by Hamas' actions. I think this is important for us to know as the cries of "proportionality" will only grow louder if a ground incursion occurs and the delta between the number of Palestinian and the number of Jewish casualties grows as it almost surely will.

The second issue of concern which I have also discussed previously, (which can be very seductive though pernicious), is the attempt to find moral equivalency between the two sides in what they are doing. This has often been used by enemies of Israel to diminish Israel's international standing and to ignore Israel's extraordinary attempts to fight its wars with moral tactics in everything it does. It also helps to justify actions on the other side that are patently immoral by any standard, but that are now deemed to be equivalent to what Israel is doing.

Criticism of the inability to draw appropriate moral and ethical distinctions is a theme that one finds frequently in Jewish literature. For example, Saturday night in the amidah we add the blessing of Havdallah (Atah Honantanu that divides the Sabbath from weekdays), into the blessing for wisdom (atah honen). Many sources explain that the ability to make appropriate distinctions (havdallah) and wisdom are inextricably joined. Therefore drawing false moral equivalency is, at the very least, an "unwise" act.

Similarly, at least three Biblical figures fall victim to the failure to draw appropriate distinctions: Cain, Korah and Saul. Cain and his brother Abel offer sacrifices to God. Abel offers his from the "first born (or best quality) of his sheep and from their fat (the best parts of them)", and his offering is accepted. Cain, on the other hand, brings an indiscriminate offering from "the fruit of the ground" without any concern for quality or presentation. God rejects his offering and in his ensuing envy, Cain kills Abel.

Second is Korah, whose soul according to mystical sources, came from the same divine source as Cain's. His rebellion against Moses was predicated on the claim

that Moses and Aaron were no better qualified to lead the Jewish people than anyone else. Again there was no attempt at making an appropriate discriminating choice and as a result hundreds of people died that day and the next.

Third is King Saul, himself one of the most tragic characters in the Bible. He defeats and essentially destroys Amalek, the terrible congenital enemy of the Jews. But because he was unable to discriminate between appropriate and inappropriate uses of compassion he allowed their king Agag to survive. That allowed him to procreate and the result was Haman, and perhaps other enemies of the Jews down through history.

In all these cases, whether it was distinguishing appropriate from inappropriate gifts to God, leadership qualities, or who is and who isn't worthy of compassion, the use of incorrect judgments that equated things that should not have been considered equal, created major and tragic consequences. That is what I fear will and has begun to happen.

This past week in several major cities in the US, in some places in Israel, and possibly in a location in Kuwait, there were gatherings termed "Fast for peace" that asked people of all faiths to come together on the 17th day of Tammuz and one day of Ramadan that fell on the same day, to join the two experiences of fasting and pray for peace.

Conceptually, the idea is truly lovely and very seductive as peace is a yearning that we should all have, as is coming together to experience and appreciate other people, (I won't raise the issue of joining in the prayers of other belief systems, which may be problematic). Some of the formulations I saw of this project were fine and truly sounded worthy of either full participation, or if there were halakhic objections, at least expressions of support. Unfortunately, on the ground the program contained far too much moral equivalency for me to be comfortable with it.

The advertisement I saw began with the words:

"In the past month the Jewish and Muslim communities have been shattered by the terrorist killings of four boys: Naftali Frenkel, Gilad Shaer, Eyal Yifrah, and Muhammed Abu Khdeir."

I will cite Senator Chuck Schumer of NY in response to this claim:

"In fact, there is no moral equivalence between the actions and reactions of Israel and Hamas and the Palestinian community to the violence that has occurred. Two glaring examples stand out. The first revolves around the difference between Israel and the Palestinian community's reactions to the horrible kidnapping and cold-blooded murder of four boys, three Israeli and one Palestinian. No doubt the loss of these children is one beyond words. Both incidents were abhorrent. But the reaction on both sides was not the same.

How did Hamas and too many diverse parts of the mainstream Palestinian community respond to the kidnap and murder of three young Israelis? They cheered. The official Hamas spokesman called the kidnappers "heroes." The mother of one of the suspected kidnappers, Abu Aysha, said, "If he [my son] truly did it - I'll be proud of him till my final day."... Those who killed the Israeli boys have not been found, and the cooperation of Palestinian authorities in the hunt for them has been lukewarm at best. Compare that to the reaction of the Israeli people to the murder of the Palestinian teenager. Israelis were aghast. Prime Minister Benjamin Netanyahu immediately called the murderers "terrorists" who committed deeds equal to the terrorism on the other side and said that Israel must find "who is behind this despicable murder." The Israeli government has made every effort to bring those responsible to justice, and there are now six arrests. While each side has its fanatics, it's how the societies deal with those fanatics that counts."

When I looked a little further into this event I discovered a "Statement of Purpose" for it online. While much of this document contained beautiful statements of moral principles (there were some small bumps along the way), the very last point it made brought my concern home in dramatic fashion. The line in question reads:

This month is not the first Ramadan or Tammuz to witness nonsensical, unholy violence in the Holy Land.

There it was! All the violence going on is unholy and nonsensical. Hamas' indiscriminate rocket fire at population centers, commercial aviation, and a nuclear reactor is as unholy and nonsensical as the iron dome system and the attempts by Israel to diminish Hamas ability to fire rockets, while simultaneously warning any inhabitants in the area that they are coming before they attack.

Not surprisingly to me, the website makes no mention of Israel's acceptance and Hamas' rejection of the Egyptian peace proposal. In the search for moral equivalency, unfortunately, such things often get lost because they upset the "equivalence."

I anticipate that the some may question whether the "nonsensical, unholy violence [of Tammuz]" they were referring to was only the four boys. Unfortunately for that suggestion, the three Israelis were kidnapped and apparently killed on 14 Sivan some 16 days before Tammuz and 33 days before the Fast of Tammuz, which is what this statement focuses on in parallel to Ramadan as a fasting time. Also the statement at one point translates Tammuz as July while the kidnapping/murder was on June 12.

Further, every statement must be viewed in a larger context, and I fear that while Israel is at war and under rocket fire, this statement leaves the impression we are taking legitimate self-defense and saving of lives and placing it all in the general "violence is nonsense" category. At a time when this equivalence is far too prevalent in the media and around the world, we must go the extra mile not to contribute to it.

I don't blame those who supported or attended the "Fast for Peace" events. I truly understand how seductive and desirable the sentiments expressed by the publicity and website were; I was drawn to them myself. But at this critical juncture we need to be particularly careful. Moral equivalence statements and events, no matter how otherwise benign and positive, can easily lead to dreadful results, as in the Biblical stories. It is, in fact, a long tradition of those opposed to Israel to try and negate any claim of moral superiority on its part. The next step is then to delegitimize its existence.

It is hard at times like this not to be drawn to messages of hope, peace, and morality, but our first imperative is to respond with wisdom and discernment. Proportionality, as it is being used in many places, is not Jewish, not Muslim, not Augustinian, and most of all not moral. So too, calls for peace that include, however subtly, statements of moral equivalency are dangerous and frustrate finding a path to a just peace rather than just a cessation of hostilities. It is our sometimes difficult but necessary burden at this time to guard against approaches of this type that ultimately fail the goal of true peace rather than promoting it.

These are difficult times with tensions running high in Israel and the Diaspora. The best way to deal with that tension (in addition to prayer, which I discussed last week) is to talk and learn and raise questions. In that spirit, I hope people will feel free to come to me with other thoughts and opinions.