

Torah Table Talk – The Observant Life **Polity and Piety: The Ethics of Warfare**

Military Service, by Rabbi Michael Graetz , Page 476

Parshat B'midbar, Numbers 1:1-4:17

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I. Introduction

At first glance, it may seem strange to the contemporary reader to learn that the *Torah* has so much to say about the law and ethics of warfare. Beyond the discussion of whether or not it is ethical to wage war, the *Torah* and the rabbinic tradition have something to say about behavior in times of war: conscription, the taking of booty, the treatment of women, environmental concerns in warfare, and even the proper hygiene and deportment in the Israel camp. These laws are found throughout the *Torah*; they were later discussed in the *Talmud* and codified in Maimonides' *Mishneh Torah*. Because Judaism is concerned not only with promoting piety but creating a polity, Judaism addresses the unsavory realities of political life. Nations attack one another; sometimes the Israelites found it necessary to attack their neighbors. The behavior of individual soldiers as well as that of the armed forces were of great concern to our ancestors. Jews were expected to follow God's rules in all situations, even in times of national crisis. Today, with the existence of a Jewish army, these laws have become significant if Israel is to be a state shaped by Jewish values.

Rabbi Graetz points out, however, that some of these laws are deeply troubling to us such as the commandment to carry out a policy of genocide against Midian. One must view the biblical and rabbinic laws of warfare not as the final word but as part of a continuing discussion that Jews participate in today. What is fascinating for us is to see the extent to which the Israeli Defense Force has built a code of ethics on the sacred texts of Judaism - and to what extent Israel lives up to the values of *Torah*

Numbers 1:2-3 Take a census of the whole Israelite community by the clans of its ancestral houses, listing the names, every mail, head by head. You and Aaron shall record them by their groups, from the age of twenty years up, all those in Israel who are able to bear arms (*kol yotzei tzava*).

II. Sources and Resources

- a) *All...who are able to bear arms*: This tells us that one may not be conscripted into military service until he is twenty years old and up. **The *Torah* says: “Count (lit., Lift up the head) of the whole community of Israel;” as they say to the king’s executioner: Lift off this one’s head!”** (*Rashi Commentary, ad locum. The section in bold does not appear in the standard Rashi but appears in Alkebetz edition and in Nahmanides*)
- b) It is possible that the explanation of this age requirement for army service is that one is not strong enough for battle under twenty, as the sages stated: “A twenty year old to pursue.” (*Pirkei Avot 5:21*) However, it is possible that the meaning of *kol yotzei tzava* is “All who go out to congregate in the assembly,” for the young lads (under twenty) do not congregate amid the people. Every gathering is called a *tzava*...Therefore scripture will specify battle or war when it speaks of battle or war when it speaks of soldiers (the term is not reserved for an army)... (*Ramban, Nahmanides’ Commentary ad locum*)
- c) **The Census and Its Totals**: Military censuses are frequently attested under the monarchy... Amazia's census also began at age twenty. In the classical world, military service began at twenty in Sparta, eighteen in Athens, and seventeen in Rome. A head count of the troops took place regularly before a campaign and at its conclusion to determine the missing. (*Jacob Milgrom, The JPS Torah Commentary, Numbers, Excursus 2*)
- d) **The Encampment**: In later Israel the war camp was arranged in the round (cf. 1 Sam. 17:20; 26:5-7) Assyrian reliefs of the first millennium also favor circular shape. The closest parallel to Israel's wilderness camp is the Egyptian camp of Ramses II (the probable Pharaoh of the Exodus). Pharaoh's camp, like that of Israel, is also square in shape. Strikingly, his tent is in the center...it must be remembered that Pharaoh was considered a

God and his tent was a sanctuary...and had to be protected against human and demonic defilement... (*Jacob Milgrom, The JPS Torah Commentary, Numbers, Excursus 3*)

- e) When you take the field against your enemies and see horses and chariots ...the priest shall come forward and address the troops. He shall say to them, "Hear O Israel! You are about to join battle with your enemy. Let not your courage falter..." Then the officials shall address the troops as follows: "Is there anyone who has built a new house but has not dedicated it? Let him go home... Is there anyone who has planted a vineyard but never harvested it? Let him go home... Is there anyone who has paid a bride-price for a wife but who has not yet married her? Let him go back home...Is there anyone afraid and disheartened? Let him go back to his home, lest the courage of his comrades flag like his..." (*Deuteronomy 20:1-9*)
- f) When you approach a town to attack it, you shall offer it terms of peace... (*Deuteronomy 20:10*)
- g) When in your war against a city you have to besiege it a long time in order to capture it, you must not destroy its trees, wielding the ax against them. You may eat of them but you may not cut them down. Are trees of the field human to withdraw before you into the besieged city? Only trees that you know do not yield food may be destroyed, you may cut them down for constructing siege works against the city that is waging war on you, until it has been reduced. (*Deuteronomy 20:19-20*)
- h) When you take the field against your enemies and the Lord your God delivers them into your power and you take some of them captive, and you see among the captives a beautiful woman and you desire her and would take her to wife, you shall bring her to your house, and she shall trim her hair, pair her nails, and discard her captive garb. She shall spend a month's time in your house lamenting her father and mother; then you may come to her and possess her and she shall be your wife. Should you no longer want her you must release her outright; you must not sell her for money since you had your will of her, you must not enslave her. (*Deuteronomy 21:10-14*)
- i) When you go out as a troop against your enemies, be on guard against anything untoward...Since the Lord your God moves about your camp to protect you and to deliver your enemies to you, let your camp be holy. (*Deuteronomy 23:10-15*)
- j) (*Sotah*, Chapter 8, offers an analysis of the priestly declaration of exemption from conscription based on Deut. 23. It then concludes:) To what does all the foregoing apply? To voluntary wars, but in wars commanded by the *Torah*, all go forth even a bridegroom from his chamber and a bride from her canopy. Rabbi Judah says: To what does the foregoing apply? To wars commanded by the *Torah* (*mitzvah*); but in obligatory wars (*hovah*) all go forth, even a bridegroom from his chamber and a bride from her canopy. (*Mishnah Sotah 8:7*)
- k) A king should not wage other wars before a *milchemet mitzvah*. What is considered a *milchemet mitzvah*? The war against the seven nations who occupied *Eretz Yisrael*, the war against Amalek, and a war fought to assist Israel from an enemy which attacks them. Afterwards, he may wage a *milchemet hareshut*, i.e. a war fought with other nations in order to expand the borders of Israel or magnify its greatness and reputation. There is no need to seek the permission of the court to wage a *milchemet mitzvah*. Rather, he may go out on his own volition and force the nation to go out with him. In contrast, he may not lead the nation out to wage a *milchemet hareshut* unless the court of seventy one judges approves. (*M. Maimonides, Mishneh Torah, The Laws of Kings and Their Wars, chapter 5*)

III. Reflections

There are many passages in the *Torah* with which we might begin a discussion of the ethics of military service. I have chosen to begin this discussion with the census which we find in the opening chapters of Numbers. While the commentators were not of one mind on this topic, it would appear that both the structure of the Israelite camp as well as the purpose of the census of males over twenty years served the purpose of creating an army. The book of Numbers opens in the 'second month of the second year' after the exodus from Egypt. The people of Israel have received the *Torah*, built the tabernacle and inducted the *kohanim* into the service to God. They are now prepared to begin the trek to the land of Canaan. At the very least, the structure of the camp was established to protect the most precious asset of the nation. Just as the Pharaoh dwelled at the center of the camp, so the Israelites established a camp in which God was at the center. Having a sacred tent at the center of the camp also

meant that there had to be a standard of behavior for living in the Israelite camp. This was not just a military camp but a sacred space.

The fact that the Israelites began their military service at the age of twenty is also of interest. If we consider the fact that people probably married much earlier than we do in biblical times, twenty would have marked a point in life when the men would have already been married and established families. While it would have been tragic if they were killed in battle, there would be comfort in knowing that they left behind offspring to take their place. We tend to think about military conscription at eighteen - before a young man or woman has time to establish himself or herself. It is interesting to note, then, Rashi's ominous comment comparing the language of the *Torah* for the census, "lift up the head," with the language that the executioner used for his victim, "lift up his head."

Sources *e* through *i* are examples of the type of legislation in the *Torah* with regard to military service. Much of this legislation is in *Parshiot Shoftim* and *Ki Tetzei*. But the *Torah* is not always consistent in what it has to say about these topics. Rabbi Graetz discusses the genocidal campaign against the Midian recorded in Numbers 31. When the army returns with captive women and children, Moses berates the soldiers and insists that they put all women who have had carnal relations to death as well as all male children. This is contrast to the passage in Deuteronomy which allows the man to marry a woman taken captive in war while insisting that she must be accorded certain rights. The *Torah* also takes for granted that soldiers may take spoils of war - it even specifies that the spoils must be shared with the *kohanim*. The *Torah* suggests that there are rules in times of warfare both within the camp of Israel and in relation to how the enemy is to be treated. It also suggests that before they engage in military action, the Israelites do whatever they can to find a peaceful solution to their differences.

Drawing on biblical legislation as well as Talmudic discussions, Maimonides expands on the ethics of military service. Because this is *Torah*, the ethics of warfare and military service is fair game for interpretation and debate by all members of the Jewish community and not just those who serve in the military. This has far reaching implications for contemporary Jewry around the world. Zionism is a project of the entire Jewish people and not just those who make aliyah. Each of us can have something to contribute to our understanding of the Jewish state. Obviously, those who serve in the military and have made their home in Israel have a greater stake in the topic. But that does not mean that as people who engage in *Torah* we do not have a right to engage in this discussion as well. "The Ethical Code of the Israel Defense Force" represents the latest chapter in this conversation. Rabbi Graetz includes part of this document in his essay. You can find the full document on line at: http://zionism-israel.com/hdoc/IDF_Ethical_Code.htm.

IV. **Halakhah L'Ma'aseh** (*Practical implications for Jewish living*)

Quotes from "The Observant Life," Military Service

- The census described in the opening chapters of the Book of Numbers is clearly taken in order to prepare an army, and the fact that a similar process is recorded in later biblical books suggests that there must have been some sort of compulsory draft in ancient Israel...
- While the draft is presented as universally applicable to all men in the right age categories, Deuteronomy 20 does isolate four specific categories of individuals who are formally exempt from military service...the Rabbis restricted these exemptions to army service in discretionary war.
- Although one can make a good scriptural case for always seeking to resolve conflict through peaceful means, the modern notion of conscientious objection to war does not exist in Jewish law....
- (According) to the *Va'ad Hahalakhah* of the Rabbinical Assembly of Israel...Since modern Israel is constantly engaged in a legitimate war of defense for its own survival, no one capable of military service can legitimately be considered exempt.
- The standing orders of the general staff of the IDF...concerning booty and wanton destruction of property have as their epigraph Deut. 23:15...This is understood as a sacred obligation to ensure that the army conducts itself according to the principles of ethical and just behavior.
- Jewish law regarding armies is predicated on the existence of a ruling king, a functioning priesthood, and the existence of a government of *Torah* sages, all of whose authority derives directly from God...one might suppose that modern Jews would have difficulty serving in an army created by a secular state.

Questions to Ponder

1. How do Rashi and Ramban differ in their understanding of the word *tzava*? If the assembly of Israelites that are counted in Numbers is not military what other purpose might it serve?
2. Given the nature of war, why have rules at all? How can one group abide by a code of ethics that is not shared by both parties in the conflict? What should one do if the other party takes advantage of one's standards to create an unfair advantage?
3. The Talmud and Maimonides speak about obligatory (or commanded) wars vs. discretionary wars. Consider some of the recent conflicts involving the United States. How would you define these conflicts: obligatory or discretionary? How about recent conflicts between Israel and its neighbors?
4. How do the rules for waging war that we find in the *Torah* compare with the Geneva conventions? (See: http://www.ppu.org.uk/learn/texts/doc_geneva_con.html) What areas does Jewish law consider and what areas are missing from Jewish law?
5. How do the rules of military service in Judaism reflect the fact that Judaism is more than just a religion but primarily focused around a polity, a community?

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The Observant Life - Topics for weekly Study

*Here are the topics from The Observant Life assigned as we read B'Midbar. It was hard connecting a Parshah with the remaining chapters in the book.
Any thoughts on better chapter assignments?*

Date	Parshah	The Observant Life Topic & opening page
May 18, 2013	<i>Naso</i>	<i>Torah Study 81</i>
May 25, 2013	<i>B'ha'alotekha</i>	Contracts 540
June 1, 2013	<i>Shelah lecha</i>	Civic Morality, 439
June 8, 2013	<i>Korah</i>	Intellectual Property 571
June 15, 2013	<i>Chukkat</i>	Commerce 491
June 22, 2013	<i>Balak</i>	Interfaith Relations 727
June 29, 2013	<i>Pinchas</i>	Crime and Punishment 458
July 6, 2013	<i>Mattot-Masei</i>	Taxation 551