

Judaism and the Ethics of War, Reuven Kimelman

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Dedicated to

אחינו כל בית ישראל  
הנתונים בצרה ובשביה  
העומדים בין בים ובין ביבשה,  
המקום ירחם עליהם  
ויוציאם מצרה לרווחה,  
מאפלה לאורה, ומשעבוד לגאולה,  
השתא בעגלה ובזמן קריב.

I think this is better:

Our brethren, the whole house of Israel,  
who are subject to agony and captivity  
however holding up, on sea and on land.

May God have mercy on them

and deliver them

from distress to alleviation,  
from darkness to luminescence,  
from detention to redemption,  
Now, promptly, right away.

And may we say "Amen."

## types of wars

The Jewish ethics of war focuses on two issues: its legitimation and its conduct.

The Talmud classifies wars according to their source of legitimation.

Biblically mandated wars are termed Mitsvah wars. מלחמת מצוה

Wars undertaken at the discretion of the Sanhedrin are termed discretionary. מלחמת רשות

There are three types of mandatory wars:

- 1, Joshua's war of conquest against the seven Canaanite nations,
2. The war against Amalek,
3. Defensive wars against an already launched attack.

1. Discretionary wars are usually expansionary efforts undertaken to enhance the political prestige of the government or to secure economic gain.

## preemptive strikes as self-defense (Rashi and Meiri)

This understanding of anticipatory defense allows for a counterattack before the initial blow falls.

Under the terms of modern warfare, for example, if an enemy were to launch a missile attack, the target country could legitimately retaliate even if the enemy's missiles were still inside their borders.

The doctrine of anticipatory defense even allows for a preemptive strike as long as the order has been issued for their launch.

## authorization to declare war?

Defensive wars, the country is under attack, are authorized by the head of government.

Discretionary wars are authorized by the Edah/Sanhedrin

(= the legal embodiment of popular sovereignty, ergo, the people's representative).

Before endangering the populace, the ruler's arguments for war have to be checked by the Sanhedrin's assessment of the people's interest.

Being the more disinterested party, it is positioned to assess the people's interest.

Such a system of countervailing powers allows the interest of the ruler and the interest of the people to be part of the Sanhedrin's calculation to consent to war.

## the ethical conduct of war

### Who Is Subject to Immunity? What Is Subject to Destruction?

The estimation of one's own losses and one's own interest is insufficient for validating discretionary war. The total destruction ratio required for victory must be considered. This assessment involves a "double intention"; that is, the "good" must appear achievable and the "evil" reducible. For example, before laying siege to a city, a determination must be made as to whether it can be captured without destroying it. There is no warrant for destroying a town for the purpose of "saving" it.

### The other rules for sieges follow similar lines of thought:

Indefensible villages may not be subjected to siege.

Negotiations with the enemy must precede subjecting a city to hunger, thirst, or disease for the purpose of exacting a settlement.

Emissaries of peace must be sent to a hostile city for three days.

If the terms are accepted, no harm may befall its inhabitants.

If the terms are not accepted, the siege may not begin until the enemy has commenced hostilities.

Even after the siege is laid, no direct cruelties against the inhabitants may be inflicted, and a side must be left open as an escape route.

**Philo**, reflecting this concern for the military ambiguity of moral scruples, sounds a note of caution in his summary of the biblical doctrine of defense:

All this shows clearly that the Jewish nation is ready for agreement and friendship with all like-minded nations whose intentions are peaceful yet is not of the contemptible kind which surrenders through cowardice to wrongful aggression.

**Philo** extends the prohibition against axing fruit bearing trees to include vandalizing the environs of a besieged city:

Indeed, so great a love for justice does the law instill in those who live under its constitution that it does not even permit the fertile soil of a hostile city to be outraged by devastation or by cutting down trees to destroy the fruits.

**Josephus** expands on the prohibition to include the incineration of the enemy's country and the killing of beasts employed in labor. Despoiling the countryside without direct military advantage comes under the proscription of profligate destruction.

**Abraham Ibn Ezra** (1089–1164) on Deuteronomy 20:20:

fruit trees are singled out as a source of life.

War is no license for destroying what is needed for human life. later,

**Maimonides** extended the prohibition to exclude all wanton destruction:

Also, one who smashes household goods, tears clothes, demolishes a building, stops up a spring, or destroys articles of food with destructive intent, transgresses the command "You shall not destroy" (based on Deuteronomy 20:19).

For **Maimonides**, controlling the destructive urges provoked by war against nonhuman objects cultivates control of the destructive urge against humans.

Later, the **Sefer HaHinukh** (mitzvah 529/530) states

that the prohibition against wanton destruction was meant

"to teach us to love the good and the purposeful and to cleave to it so that the good will cleave to us and we will distance ourselves from anything evil and destructive."

### **Immunity of the non-combatant**

There are two *a fortiori* arguments for the immunity of noncombatants.

1. The Biblical prohibition against axing fruit trees during a siege.
2. The fourth side of a besieged city must be left open,

If (unarmed) soldiers have the chance of becoming refugees, then surely noncombatants and other neutrals do.

The principle may be stated as committing no harm to those who intend no harm.

Thus, **Abarbanel** says with regard to the immunity of women and children:

"Since they do not make war they do not deserve to die in it."

In sum, as **Philo** notes: "The Jewish nation when it takes up arms, distinguishes between those whose life is one of hostility, and the reverse.

For to breathe slaughter against all, even those who have done very little or nothing amiss, shows what I should call a savage and brutal soul.”

Missing categories:

**Just war theory:** Just Cause, legitimate authority, and right intention

**Proportionality and Last Resort**

Next session:

The Human Dimension in War: The Image of the Soldier and the Humanity of the Enemy

Concerns: safeguarding the moral character of the soldier and preserving the human image of the enemy.

imposing on mandatory wars the limitations of discretionary war

exemptions from military service

The application of the Amalek category