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LAWS OF WAR IN THE BIBLE AND FORMATIVE RABBINIC LITERATURE

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Thesis Submitted in Partial Fulfillment of
Requirements for Ordination

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The responsibility for any errors in translation or analysis of the texts is wholly my own.

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Introduction

What was the Jewish view of war during the formative Rabbinic period? Under what conditions is it permissible? How must it be conducted? Who may be drafted to fight?

Early Rabbinic sources treat these issues as they would apply in the Jewish state. Whether they do, or ought to, apply to non-Jewish states is an issue which must be resolved elsewhere. The laws the rabbis enacted regarding war could not be implemented, because they no longer lived in a sovereign Jewish state. Their laws, however, do reflect their understanding of Judaism as it would theoretically be applied in the Jewish state.

Besides this "applied Judaism", rabbinic attitudes are reflected in non-legal, aggadic literature. A statement about the total rabbinic view of war cannot be made without consideration of aggadah. Rather than attempt such a total view, I will deal with legal literature in isolation, to determine how the law would function and what its effect would be. The extent that these laws indicate an evolution in attitude from their Biblical bases will be discussed. Differences within the rabbinic sources will also be noted. Sources that will be discussed are Bible, Mishnah, Tosefta, Sifre Devarim, Midrash Tannaim, and the Babylonian Talmud.

This study begins with an examination of the collection of war-laws in Deuteronomy 20:1-20; 21:10-14. The body of Rabbinic legislation connected to each of the Deuteronomic

laws will then be considered. Attitudinal trends will be reviewed in the Conclusion. Numbers in parentheses following text citations refer to the location of the untranslated texts in the Appendix.

I. The Deuteronomic Code of War

A. Introduction

While instances of war are found frequently in the Bible, laws of war are few. Those which are clearly identifiable as such are: Num. 10:9; 31:21-30; Dt. 7:1-2; 20:1-20, 21:10-14.

Dt. 20:1-20; 21:10-14 is the only collection of laws covering various aspects of war, and having the characteristics of a code. That is, its literary structure connects these laws in a series, even if they were originally distinct and unrelated. This connectedness is accomplished by description of pre-battle ritual, and further, by the sequence of war.

The pre-battle ritual describes a series of authorities, each of whom perform their assigned task. Hence, laws placed in their respective mouths, which may have had separate origins, are combined into a single continuous description.

The structure of the passage consists of the following elements:

1. An introduction (20:1)
2. Pre-battle ritual (20:2-9)
3. When to negotiate and when to do battle, and what to do in each case (20:10-18)
4. What may not be done in battle (20:19-20; 21:10-14)

These rough groupings indicate how the final editor of our current text, arranged the laws to follow the sequence of war. The use of an introductory verse further demonstrates that this passage was designed to be a Code of War, specifying important laws that must be followed when going to war.

B. The Laws

1. The Priest's Invocation

1) When you take the field against your enemies, and see horses and chariots--forces larger than yours--have no fear of them, for the Lord your God, who brought you from the land of Egypt, is with you. 2) Before you join battle, the priest shall come forward and address the troops. 3) He shall say to them, "Hear O Israel! You are about to join battle with your enemy. Let not your courage falter. Do not be in fear, or in panic, or in dread of them. 4) For it is the Lord your God who marches with you to do battle for you against your enemy, to bring you victory."

Dt. 20:1-4 (1)

The literary setting for the entire Code of War is the extended address which Moses delivers to the Israelites. This address is made prior to the crossing of the Jordan, that is, at the point when the Israelites are preparing to occupy the "Promised Land."

31) For you are about to cross the Jordan to invade and occupy the land which the Lord your God is giving to you. When you have occupied it and are settled in it, 32) take care to observe all the laws and rules that I have set before you this day.

Dt. 11:31-32 (2)

Moses' initial command, then, is in anticipation of the imminent battles which the Israelites faced. He exhorts them to fight fearlessly, while preparing them for frightening encounters-- "horses and chariots--forces larger than yours." He also reiterates a central doctrine of the nation, the presence of God within its midst. He reminds the people that God brought them out of Egypt, a feat considerable enough to warrant confidence in God's ability to triumph over foreign armies.

Next begins a description of a three-rung chain of authority, each having its own role to play in the conduct of war. The three authorities are: the priest (hakohen); the officials (hashotrim); and the army commanders (sarei hatzva-ot). The first two have ceremonial functions, while the latter are accorded no specific responsibility. This attention to ceremony and proper ordering of authority, and the absence of any details concerning the actual command of the troops, is an indication of the editor's interests. Of greatest importance to the editor was the hierarchy which places army commanders in a subservient position to officials, and these below the priest. Since God fights war on behalf of Israel, the ritual which assures God's partnership is of greater significance than the details of how troops should fight. This is not to say that the Israelite army lacked training or systematic battle tactics; only that the editor was not interested in these.

The first of the authorities is the priest. We are given no indication whether the High Priest, an ordinary priest, or a special war priest is being described. The role of the priest is to deliver an invocation to the troops, amounting to a "pep-talk" before going into battle. He reassures the troops by reminding them that God is in their midst, and will fight on their behalf.

The central concern expressed in verses 1-4, is to inspire the troops to do battle, because of God's presence. This concept of God's presence

in the camp, and God's saving power in battle, is a recurrent theme of Deuteronomy.

1) Hear, O Israel! You are about to cross the Jordan to invade and dispossess nations greater and more populous than you: great cities with walls sky-high; 2) a people great and tall, the Anakites, of whom you have knowledge; for you have heard it said, "Who can stand up to the children of Anak?" 3) Know then this day that none other than the Lord your God is crossing at your head, a devouring fire; it is He who will wipe them out. He will subdue them before you, that you may quickly dispossess and destroy them, as the Lord promised you.

Dt. 9:1-3 (3)

Even if this concept is not new in Deuteronomy, it is none the less an important doctrine to it. Perhaps this is an expression, on the part of the priesthood, of their title to ultimate authority. While endorsing military enterprise, the editor gives all the credit to God, not the army. The intention must be to persuade the reader faithfully to observe God's commandments, to insure that God will do battle on Israel's behalf.

15) Since the Lord your God moves about in your camp to protect you and to deliver your enemies to you, let your camp be holy, let Him not find anything unseemly among you and turn away from you.

Dt. 23:15 (4)

The priest's rank as the first functionary in the pre-battle ritual, suggest a priestly origin for this Code of War. The priesthood would also be most concerned that the camp remain holy. The Code of War, then, may be understood as a document wherein the priesthood asserts its authority even in the conduct of war. Perhaps the Code is also a priestly legitimization of war as a necessary concomitant to nationhood. Rather than leave to others the primary de-

cisions of war--who is in charge, who must fight, when war may be declared, what may be done with the spoils, and how war may be fought--the priesthood issued this code, asserting their own conditions.

The Code may be seen as an attempt by the priesthood to limit the powers of the king. Clearly, the priests themselves do not have the capability of conscripting or maintaining an army. The king has the control of the civil administrators, i.e. the "officials"; and the military "commanders". Furthermore, conquest and defense are necessary to the stability of the priestly institution. The priesthood must legitimate military activity in their own self-interest, without relinquishing their position of ascendancy over the king. Even though the extent of the priesthood's actual involvement in war would be limited to an invocation, or some pre-battle ritual, the priests will not grant the king ultimate authority in matters of war.

The king was, to a certain extent, reliant on the support of the priesthood. It would have been difficult to persuade the populace to go to war without the participation of God. The priests were necessary especially during their periods of great strength with the populace. However, the danger existed that, with military success, the king's power would grow. Mercenaries could be hired, and reliance on the priesthood would be lessened, with a subsequent decline in the priesthood's influence. Hence, the priesthood is left in the ambivalent

position of both wanting the king to be successful at war, and yet not wanting him to grow too powerful by it.

The role of the priest in war may indeed have been to ensure God's participation on the Israelite side. This is how the battle against the Philistines is described:

7) When the Philistines heard that the Israelites had assembled at Mizpah, the lords of the Philistines marched out against Israel. Hearing of this, the Israelites were terrified of the Philistines 8) and they implored Samuel, "Do not neglect us and do not refrain from crying out to the Lord our God to save us from the hands of the Philistines." 9) Thereupon Samuel took a suckling lamb and sacrificed it as a whole burnt offering to the Lord; and cried out to the Lord in behalf of Israel, and the Lord responded to him. 10) For as Samuel was presenting the burnt offering and the Philistines advanced to attack Israel, the Lord thundered mightily against the Philistines that day. He threw them into confusion, and they were routed by Israel.

I Sam 7:7-10 (5)

Here Samuel performs the ritual sacrifice which gets God's attention, or incurs favor with God, resulting in God coming to the rescue of the Israelites. Some differences are worth noting between these accounts. First, Samuel offers a sacrifice, whereas the priest in Deuteronomy does not. Second, Samuel calls to the Lord, which the priest in Deuteronomy does not; and makes no invocation to the troops, which the priest in Deuteronomy does. Finally, the Israelites were "terrified", which they are commanded not to be in Deuteronomy. All this points to the idealization of war ritual at the hands of the Deuteronomist.

Whereas Samuel portrays an earlier form of cultic ceremony preceeding battle, in a period of national mobilization, Deuteronomy reflects a later setting. The pre-battle sacrifice is eliminated, while exemptions become articulated.

It appears that the priesthood must defer to royal command of the army, yet attempts to impose its own restrictions on that command.

Von Rad points to the "pronounced warlike spirit" which pervades the entire book of Deuteronomy.¹ The speech of the priest in 20:3-4 is seen by von Rad as a summary of the other "war sermons" found in 7:16-26; 9:1-6; 31:3-8. These, he says, were necessary exhortations during Josiah's reign, when the kingdom lacked the resources to maintain a mercenary army, and was "obliged to return to the old method of the levy of the free peasants".²

Seen in this light, the idealization of war in the hands of the literary, and essentially non-military, priesthood, becomes more understandable. Their participation was necessary to advance the general levy, while they, in turn, promoted their own self-interests.

The delineation of exemptions, which follows the priest's sermon, further supports this reconstruction. While the exemptions do not enhance the king's fighting capability, they do placate a populace wary of conscription, by guaranteeing that no one will have to serve who really "should" not. Whether these exemptions and pre-battle rituals were actually observed, and to what degree, would depend on the degree to which the king was obliged to obey the priesthood.

2. Exemptions

The second rung of authority are the officials. These read a list of mandatory exemptions, i.e. categories of individuals who must return home, and may not fight in the war. This passage has a repetitious quality which suggests that it was designed for public recitation.

5) 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 back to his home, lest he die in battle and another dedicate it. 6) Is there anyone who has planted a vineyard but has never harvested it? Let him go back to his home, lest he die in battle and another initiate it. 7) Is there anyone who has paid the bride-price for a wife, but who has not yet married her? Let him go back to his home, lest he die in battle and another marry her."

Dt. 20:5-7 (6)

Though these exemptions appear here in the form of a checklist, they can not be found elsewhere as abstract law. Only with regard to marriage is there any similar law mentioned in the absolute.

5) When a man has taken a bride, he shall not go out with the army or be assigned to it for any purpose; he shall be exempt one year for the sake of his household; to give happiness to the woman he has married.

Dt. 23:5 (7)

This law clearly refers to one who has consummated his marriage (yikach...isha), and who is henceforth exempt for a honeymoon of one year. This follows immediately on another law concerning the marital relationship, and should therefore not be understood as a verse which belongs in the Code of War. It

is, rather, an apparent attempt to reiterate the war law regarding new marriages in the context of marriage laws. Yet the two laws are not the same. The first exempts the man prior to the actual marriage, while the latter exempts the man subsequent to the actual marriage.

Again, we are struck by the idealized war ritual being developed by the Deuteronomist. The categories specified would have resulted in the exemption of huge numbers of soldiers. There is an implicit suggestion that those in the prime of their lives are most likely to be exempted from service, which is inconceivable. The ordering of the exemptions makes this implication clear: One first builds a house, then plants a vineyard, then takes a wife. The act of "settling down" is set up in opposition to the conduct of war. The author clearly wished to stress the value of domestication. It cannot be presumed that he had a great interest in waging war.

These exemptions form a reassurance on the part of the priesthood, that conscription will not be forced upon an unwilling populace. Israelites will presumably be more willing to fight if they know they will not be taken away from their homes, just as they are starting to enjoy a measure of successful, independent adulthood. Additionally, the exemptions promote settlement, and discourage a king from waging war, by eliminating the prime candidates for conscription.

Von Rad suggests that this section (5-7), is the earliest element of the text, retaining an old superstition that "anyone who had anything to inaugurate, was threatened to an unusual extent by demons".³ This ancient superstitious basis, says von Rad, is replaced with a more "humane reason" by the Deuteronomist. Regardless of the dating of these verses, it is not necessary to assume that they refer to any superstitious ritual. These exemptions are drawn from commonly understood prototypes of settled life.⁴ That is the meaning assigned to these three categories by Deuteronomy itself.

15) But if you do not obey the Lord your God to observe faithfully all His commandments and laws which I enjoin upon you this day, all these curses shall come upon you and take effect:

30) If you pay the bride-price for a wife, another man shall enjoy her. If you build a house, you shall not live in it. If you plant a vineyard, you shall not harvest it.

Dt. 28:15, 30 (8)

This is found in a list of curses, all drawn from common elements of natural, domestic life. Similarly, in Jeremiah and Isaiah:

5) Again you shall plant vineyards
On the Hills of Samaria;
Men shall plant and live to enjoy them.
Jer. 31:5 (9)

21) They shall build houses and dwell in them,
They shall plant vineyards and enjoy their fruit.
22) They shall not build for others to dwell in,
Or plant for others to enjoy.
Is 65:21-22 (10)

Inasmuch as these examples are drawn upon by the prophets, it must be assumed that they formed part of the cultural idiom for a secure home life. That Deuteronomy uses the same examples suggests that they were, indeed, well known beforehand. The Deuteronomist uses the popular idiom in order to reassure the populace that war will not prevent them from enjoying their just desserts. There is no reason to look for more specific justifications, e.g. the threat of demons, behind these three examples.

If one has somehow not found a way out of battle in the preceeding three exemptions, one is left one final out:

8) The officials shall go on addressing the troops and say, "Is there anyone afraid and disheartened? Let him go back to his home, lest the courage of his comrades flag like his."

Dt. 20:8 (11)

Given the absence of any parameters on what constitutes disqualifying fear, and the absence of any requirements of proof, the impression is overwhelming that these exemptions were not meant to be implemented. Rather they serve as an ideal set of regulations for the ideal Israelite army. Such an army is fearless, and free of those who suffer from debilitating fear. It is difficult to imagine that an initial command would be given to "have no fear", and then immediately be followed by recognizing, without restriction, soldiers who claim to be too frightened to fight.

Not only is the ideal army fearless, it is free of anyone who "should not" be there. That is, the ideal

army, in the Deuteronomist's view, would not force one to leave home, if one has not yet finished significant acts which one has begun, i.e. building, planting, or marrying. People who are afraid should not have to fight, either. This ideal army, though, would retain its strength because God would be fighting with it. No doubt these exemptions were viewed as being the "right" path to doing battle, and their exercise would ensure God's willingness to fight on their behalf.

A word on the technical meaning of the fourth exemption: Emotions, both passing, and more permanent dispositions, are frequently expressed in the Bible in physiological language. The abdomen, or heart (lev, levav) is an indicator of one's stamina and fortitude. Confidence and courage are evident to the beholder in one's posture, especially in the upright, firm chest. The Biblical man of war ought to have the proverbial "heart of stone", i.e. tough in mind and body.

The term "yimas", from the root "masas", means "to melt".

21) So they gathered it every morning, each as much as he needed to eat; for when the sun grew hot, it would melt (v'namas).

Ex. 16:21 (12)

Applied to the heart/abdomen, it indicates the opposite of courage, depicted by an unfirm, trembling (i.e. melting) torso. Thus, we read:

28) What kind of place are we going to? Our kinsmen have taken the heart out of us (heymasu et l'vaveynu) saying, 'We saw there a people stronger and taller than we, large cities with walls sky-high, and even Anakites.' Dt. 1:28 (13)

When we read that the danger of enlisting a "yare v'rach levav" is that he will cause his comrades' hearts to melt, it is apparent that it is this kind of "disheartening" talk which constitutes the danger. It is easiest to assume that there is no difference between a "yare" and a "rach levav", since both give rise to melted hearts. Rather, these constitute a hendiadys, referring to a person of unbridled fear. "Rach", soft, conveys the same image as the melted heart. This is clear from the parallel in Chronicles:

26) But say this to the king of Judah who sent you to inquire of the Lord; ' Thus said the Lord God of Israel: As for the words which you have heard, 27) since your heart was softened and you humbled yourself before God when you heard His words concerning this place and its inhabitants, and you humbled yourself before Me and tore your clothes and wept before Me, I for my part have listened, declares the Lord.
II Ch 34:26-27 (14)

Far from being specific like the previous exemptions, the one who is inexorably afraid is an ill-defined category. Considering that 1) the preceeding exemptions were common idiomatic expressions of the "good life", while the latter is not; and, 2) the superfluous introduction of the latter, "The officials shall go on addressing the troops...", it may be concluded that the exemption of the fearful constitutes an addition of the Deuteronomist to an extant list. The addition of a less-defined, more widely applicable exemption further argues for the idealization of war, as told by those

who are unconcerned with the practicality of the exemptions. Exemption of the fearful constitutes the ultimate reassurance to a population wary of conscription.

Were these exemptions ever put into practice? Nowhere in the Bible do we find mentioned either the ritual of the officials reading the exemptions, or the actual exemption of people in the first three categories. Regarding the fearful, however, we read:

2) The Lord said to Gideon, "You have too many troops with you for Me to deliver Midian into their hands; Israel might claim for themselves the glory due to Me, thinking, 'Our own hand has brought us victory.'
3) Therefore, announce to the men, 'Let anybody who is timid and fearful turn back as a bird flies from Mount Gilead.'" Thereupon 22,000 of the troops turned back and 10,000 remained.

Jud 7:2-3 (149)

It will be noted that Gideon acts as a result of an ad hoc command of God, not out of obedience to an existent law. Nonetheless, the Deuteronomic logic is present--God does battle, and humans should not take the credit for victory.

It is clear from this single case that it is the exception which proves the rule. Though the prototype of the inexorably afraid may have existed prior to Deuteronomy, like the prototypes of the good life, it was never implemented as a legitimate exemption, nor were the other exemptions ever implemented. The author of Judges had no delusions about the impact of this exemption--over two thirds of the troops opted to return home. It was not shameful; it was expected that such an offer would be accepted by the majority of soldiers.

We can find an example of application of these exemptions in the Apocrypha. According to I Maccabees:

And after this Judas appointed leaders of the people, captains of thousands, and captains of hundreds, and captains of fifties, and captains of tens. And he said to them that were building houses, and were betrothing wives, and were planting vineyards, and were fearful, that they should return, each man to his own house, according to the Law. (I Macc 3:55-56)

In this text, the author claims that Judah Maccabee diligently observed Toraitic law. He follows the division of authority outlined in Dt 1:15, as well as the exemptions in Dt. 20:5-8. While it is possible that, as a fundamentalist military leader, Judah did indeed observe the letter of the law; more likely, the author of I Maccabees sought to portray Judah's piety by this example.

The third rung of authority are the army commanders.

9) When the officials have finished addressing the troops, army commanders shall assume command of the troops.
Dt. 20:9 (15)

There is no specified ritual for the army commanders to perform. Their command, then, must be presumed to refer to the actual conduct of war. The absence of any regulations concerning their method of command is a sign that the author knew or cared little about the conduct of war. The author is primarily concerned that, before any army commanders take over, all the proper ritual has been accomplished. The author further indicates to the reader that, though he may take orders from the commanders, the commanders do not have the final say.

Who were the "officials", and who were the "commanders"? Some insight into their respective roles is provided elsewhere in Deuteronomy:

15) So I took your tribal leaders, wise and experienced men, and appointed them heads over you: chiefs of thousands, chiefs of hundreds, chiefs of fifties, and chiefs of tens, and officials for your tribes. 16) I further charge your magistrates as follows, "Hear out your fellow men, and decide justly between any man and a fellow Israelite or a stranger.

Dt. 1:15-16 (16)

It would appear that "chiefs" (sarei), the same word which is translated "commanders" in Dt. 20, are those entrusted with supervision of various divisions of troops. The "officials" (shotrim) are mentioned without being connected to this troop organization, and yet they are differentiated from the "magistrates" (shofteichem). The officials and magistrates are again linked:

18) You shall appoint magistrates and officials for your tribes, in all the settlements that the Lord your God is giving you, and they shall govern the people with due justice.

Dt. 16:18 (17)

While it is more or less clear that the magistrates are responsible to "hear out your fellow man", the role of the officials is less clear. Phillips⁵ says "The Hebrew 'shotrim' refers to court officials who would have been in charge of all aspects of its administration including the enforcement of judgement." This fits well with our understanding of the officials as royal representatives in the pre-battle ritual. According to von Rad,⁶ they were responsible for conscription of soldiers from the populace. It may be, though, that "shoftim v' shotrim" is a hendiadys, referring not to distinct

occupations, but to "judges who keep records".

3. Negotiations

Following the instructions pertaining to pre-battle arrangements (The Invocation; Exemptions), the Code moves to the stage of confrontation with the enemy.

10) When you approach a town to attack it, you shall offer it terms of peace. 11) If it responds peaceably and lets you in, all the people present there shall serve you at forced labor.

Dt. 20:10-11 (18)

These regulations presumably restrict rampant pillaging. An offer to accept surrender must precede an attack. If the town surrenders, there is no attack. While there may be some practical considerations involved in this law, e.g. preserving Israelite lives, or obtaining the greatest economic benefit from a captured town; more likely, the intent is to insure the good behavior of the Israelite army. This "godly" army should fight only as a last resort, if the enemy refuses to see the futility of war against God's army. The theme of proper conduct, devoid of rape, pillage and plunder is further developed below in Dt. 21:10-14.

A city which rejects surrender would be attacked.

12) If it does not surrender to you, but would join battle with you, you shall lay siege to it; 13) and when the Lord your God delivers it into your hand, you shall put all its males to the sword. 14) You may, however, take as your booty the women, the children, and the livestock, and everything in the town--all its spoil--and enjoy the use of the spoil of your enemy which the Lord your God gives you.

Dt. 20:12-14 (19)

If the city is conquered, it is done so by God--"when the Lord your God delivers it into your hand". Men are not to be captured, but to be killed. This cannot be for economic

Towns within the Promised Land were doomed to utter destruction, called "herem". That is, they were offered up as a sacrifice to God. The entire town was burned as a holocaust offering. The reason is clearly stated: To prevent the spread of idolatry. The holocaust is a "just dessert" for the doomed idolators: Because they sacrificed to false gods, they will be sacrificed themselves to the one true God. While there is no question that the author is expressing absolute intolerance of idolatry within the Promised Land, this reaffirms the non-proselytizing nature of these wars. No attempt is being made to gain greater numbers of adherents to the Israelite faith.

This intolerance of idolatry is the topic of an earlier sermon by Moses:

1) When the Lord your God brings you to the land that you are about to invade and occupy, and He dislodges many nations before you--the Hittites, Girgashites, Amorites, Canaanites, Perizzites, Hivites, and Jebusites, seven nations much larger than you--2) and the Lord your God delivers them to you and you defeat them, you must doom them to destruction: grant them no terms and give them no quarter. 3) You shall not intermarry with them: do not give your daughters to their sons or take their daughters for your sons. 4) For they will turn your children away from Me to worship other gods, and the Lord's anger will blaze forth against you and He will promptly wipe you out. 5) Instead this is what you shall do to them: you shall tear down their altars, smash their pillars, cut down their sacred posts, and consign their images to the fire.

Dt. 7:1-5 (21)

Here, the full context of the total annihilation of the Canaanites is explained. The command to "doom them to destruction" is accompanied by the command to "consign their images to the fire". Idolatry is singled out as the greatest

threat posed by the native population, not counterattack. No doubt, it was idolatry, and not war, which threatened the society of the Deuteronomist.

The command to annihilate the native population is depicted as the most significant command in the covenant between God and Israel. If it is fulfilled, the Israelites will be blessed. If it is not done, they will be cursed. The statement that the conquest would procede "little by little" (Dt. 7:22) may be an indication that it had not been completed by the time of the Deuteronomist. Hence, the moral for the reader would have been: Until we remove all the idolators from this land, we will not receive our covental promise.

Idolatry as a greater threat than war, reflects the concerns of the priesthood. Idolatry posed the greatest threat to their authority. On the other hand, the king would have much greater concern with foreign attack and internal insurrection. Deuteronomy reflects the lukewarm attitude of the priesthood toward the king. It tolerates foreign conquest, but demands the king's diligence in ridding the land of idolatry. No doubt this concern arose as a result of some kings' tolerance of idolatry, which served to undermine priestly authority. Likewise, this attitude on the part of the priesthood would naturally be characterized by the kind of idealization of war already noted.

The book of Joshua cites numerous battles in which the

"herem" was implemented. However, the cases are inconsistent in the extent to which the Deuteronomic law was carried out. Jericho is utterly destroyed, except for its metal objects (Jos 6:15-10); Ai's inhabitants are killed, and the town burned down, but spoils are taken (Jos 8:26-28); later, none of the towns are said to have been burnt down except Hazor (Jos 11:13-14). Even though all of these towns' inhabitants were said to have been killed, this could not have in fact been the case, as we read:

20) All the people that were left of the Amorites, Hittites, and Perizzites, who were not of the Israelite stock--21) those of their descendants who remained in the land and whom the Israelites were not able to annihilate--of these Solomon made a slave force, as is still the case.

I K 9:20-21 (22)

The reality was that the Israelites could not completely annihilate the Canaanites. Their conquest had to be accomplished "little by little". The continued presence of idolatry was explained by the inadequate fulfillment of the herem. Furthermore, the herem law provides a rationale for enforcing the centralization of the cult. Its use by the Deuteronomist, then, is geared toward the interests of the priesthood, and not necessarily a doctrine of premeditated genocide.

4. Preservation of Trees

19) When in your war against a city you have to besiege it for 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 must not cut them down. Are trees of the field human to withdraw before you into the besieged city? 20) Only trees which 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.

De. 19:19-20 (23)

War, according to the Deuteronomist, was not an unrestricted action, in which destruction of any kind was permissible in pursuit of victory. Trees are singled out for special protection, probably because they constituted the most valuable natural resource threatened by war in that time. It is clear that an unstated ethic of fairness is appealed to, and not an inherently significant status that belongs to trees. That is, trees are not sacred. It is wrong to cut them down because they have a right to live, and are incapable of defending themselves. Only because the thought of attacking a defenseless object is disgraceful, does the analogy work.

There is, nonetheless, a sense of relativism in the law. Shade trees are deemed to be of less value than fruit trees, and therefore expendable in the greater cause of victory over the enemy. However, destruction of defenseless trees may not be done capriciously. It must be purposeful, in the interests of the siege.

The preservation of trees adds to the idealization of war at the hands of the priesthood. War should only be conducted

in a manner least abusive of the environment. This stands in contrast to the kind of instruction which a king might give to his army, namely, to be concerned with inflicting the most devastating damage possible to one's enemy. The law further exemplifies the Deuteronomist's positive attitude toward domestication.

In fact, the one example we have of warfare connected with defoliation indicates that it was not an uncommon tactic:

24) They entered the Israelite camp, and the Israelites arose and attacked the Moabites, who fled before them. They advanced, constantly attacking the Moabites, 25) and they destroyed the towns. Every man threw a stone into each fertile field, so that it was covered over; and they stopped up every spring and felled every fruit tree... II K 3:24-25 (150)

Certainly, the Israelites did not observe the Deuteronomic law of preservation of trees. Deuteronomy, though, most likely shaped its ideal war out of the realia of ancient warfare, including defoliation.

5. Captive Women

The Code is interrupted in our text by Dt. 21:1-9, dealing with rituals concerning unsolved manslaughter. The close proximity of the "Captive Women" passage to the preceding Code, and the fact that it follows in the sequence of war events begin described (Pre-battle Ritual; Negotiations; Conquest and Spoils; Preservation of Trees), makes it probable that the subject of the deposition of captive women was originally part of the Code of War.

10) 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, 11) and you see among the captives a beautiful woman and you desire her and would take her to wife, 12) you shall bring her into your house, and she shall trim her hair, pare her nails, 13) and discard her captive's garb. She shall spend a month's time in your house lamenting her father and mother; after that you may come to her and possess her, and she shall be your wife. 14) Then, 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.

Dt. 21:10-14 (24)

The tone expressed here is similar to the tone of restraint against the excesses of war in the rest of the Code. Soldiers are forbidden to rape women in the enemy's town. They are required to marry them, and in so doing remove them from the status of slave. Furthermore, captive women are entitled to a period of mourning. These laws are clearly designed to limit the behavior of soldiers to do only what would be permitted by a God-fearing people. Since God gave the enemy to us, we are bound to treat them as God would want.

Hence, captive women are guaranteed a certain dignity, not unlike the basic rights of defenseless trees noted above. They may not be sold off once they have been married by their captor; they are entitled to their freedom.

The permission to marry captive women is at odds with the set of instructions concerning Canaanite towns in Dt. 7:1-4 (see above). There, captive women of Canaanite towns may not be married by Israelites.

The threat of idolatrous influence is too great to allow intermarriage, according to Dt. 7. It may be conjectured that the laws of "Captive Women" apply only to non-Canaanite towns, since in Canaanite towns they would not let a "soul remain alive" (Dt. 20:16). But since there is no specific mention in the Dt. 21:10-14 passage of applicability only in non-Canaanite towns, it is impossible to know whether this is a contradiction or a separate case. Even Dt. 7:1-4 itself suggest a contradiction. How will the Israelites marry Canaanite women if they have "doomed them to destruction"? This passage reflects the retrospective view of the Deuteronomist. In depicting the instructions of Moses prior to the conquest of Canaan, he forewarns against the threat which intermarriage posed in his own time.⁷ Had the Canaanites been destroyed, and had you not married them, the Deuteronomist says, we would not be threatened by their idolatry today.

C. The Role of the Deuteronomist

Von Rad has noted the subservient nature of the kingship as portrayed in Deuteronomy.⁸ The limits of the king's powers are delineated in Dt. 17:14-20. Significantly, we are told that "When he sits on the throne of his kingdom, he shall write for himself in a book a copy of this law, from that which is in charge of the Levitical priests..."

The Code of War may have been part of this very book which the king is enjoined to follow. Priestly in origin, it places limits on the king's powers, while granting him limited authority.

In sum, the Deuteronomist was a priest or group of priests, who set down laws by which they expected the king to abide. The Code of War contains those elements of greatest concern to the priesthood. These elements may be identified as:

1. The supreme authority of the priesthood;
2. The ultimate reliance on God for victory; with the concomitant necessity of obeying God's laws and deferring to the wishes of God's servants, i.e. the priests;
3. The limitation of conscription so as to make it palatable to the populace;
4. The identification of acceptable spoils;
4. The primacy of idolatry as the greatest threat.

Had the Code emanated from royal or military circles,

it may be presumed that these laws would be different, and that the Code would have greater emphasis on other features. While the priesthood may have been able to compel the king to adopt their Code of War, we cannot assume that it was therefore implemented as written. We may be reading a statement of ideal military conduct, emanating from circles which lacked the means to effect these policies in practice.

II. War in Rabbinic Legislation

The rabbis faced the task of interpreting the laws of the Torah for their own situation. The rulings they rendered tell us about the attitudes they held, and how these attitudes evolved.

Rabbinic literature, encompassing rulings from the first century B.C.E. to the sixth century B.C.E., follows the changing attitudes of the Jewish people as it moved from sovereignty to a vassal state, to a community in exile. These changes left their impression on laws of war. In particular, the way the rabbis understood and interpreted the Deuteronomic Code of War evolved over time, and differed according to place.

To best view the development of rabbinic legislation on war, all laws which are based on, or serve to explicate, the Deuteronomic Code of War, will be examined. The laws will be discussed according to the Deuteronomic law to which they are related.

A. The Priest's Invocation

1. Chaplain of the Army

It was necessary to the rabbis to identify the priest who was to give the invocation. On reading Deuteronomy 20:2, one assumes that a specific priest is being called upon, because of the definite article "the priest", not a priest. Who is the priest? The Torah nowhere identifies which priest should assume this role.

By the rabbinic period, though, this priest had taken on a definite identity. He was called "the anointed for battle" (mashuach milchamah). That is, he was a priest specifically ordained for that post, not an ordinary priest; he was a "Chaplain of the Army".

"Before you join battle, the priest shall come forward"-
This is the Chaplain of the Army (mashuach milchamah).
Mishnah (M.) Sotah 8:1 (25)

The status of this priest is compared to the status of the officers vis a vis their superiors, i.e. it is an appointed post.

"The priest shall come forward..."
This is the army chaplain.
Can any priest serve (as Chaplain of the Army?)
Scripture says - "And the officers spoke".
Just as officers are appointed, so too are Chaplains
(of the Army) appointed.
Midrash Tannaim (M.T.) 20:2 (26)

One example is given to identify a holder of the office:

"For the Lord your God is he that goes with you" (Dt. 20:4)
This is the Name, which is put in the ark, as it is said:
"And Moses sent them to the war, a thousand from each

tribe, together with Phinehas, the son of Eleazar, the priest, with the vessels of the sanctuary and the trumpets for the alarm in his hand. " (Num. 31:6)

This teaches that Phinehas was anointed for war.
Tosefta (Tos) 7:17 (151)

Whatever Phinehas' actual responsibility, the Tosefta makes use of his title to substantiate the existence of the institution of army chaplain. Significantly, Phinehas is not called "anointed" in Numbers. It is impossible to know if he held any of the responsibilities assigned him by the rabbis.

The Talmud finds it necessary to distinguish further the army chaplain from the High Priest:

Our rabbis taught: "The priest shall come forward and address the troops." (Dt. 20:2)

Can any priest do it?

Scripture says: "Then the officials shall address..." (Dt. 20:5)

Just as the officers are appointed, so, too, must the priest be appointed.

I might think that it means the High Priest.

This is similar to the case of an officer. Just as an officer has a superior appointed over him, so, too, does the priest have a superior appointed over him.

But does not the High Priest, too, have a superior in the king?

We are referring here to his (the High Priest's) service in the Temple (where he has no superior).

I might say that the Deputy (High Priest) (is the appointed one).

He is not, since the Deputy is not appointed, as it is taught:

Rabbi Hanina said: What is the role of the Deputy of the priest? If the High Priest should become disqualified, he takes his place.

Talmud (T.) Sotah 42a (27)

On the one hand, one would be tempted to say that the laws indicate that an actual position of this title existed, perhaps post-biblically. This would account for the wealth of laws describing the relative rights of the army chaplain

as compared to the High Priest and ordinary priests (e.g. which priestly garments he may wear - T. Yoma 72b). However, it is clear that the position is a post-biblical development, whether real or hypothetical. It may be that the necessity of identifying "the priest" in Dt. 20:2 left the rabbis with a host of decisions that had to be made regarding this character, who is otherwise undefined in the Torah. That is, if a particular priest holds the office of army chaplain, to which priestly benefits is he entitled? While an analysis of the army chaplain's status vis a vis his colleagues is not relevant to the task he is assigned in the Deuteronomic Code of War, these issues had significance throughout the rabbinic period, especially in the Talmud.

2. Speech in Hebrew

The rabbis were concerned that the priest's speech (Dt. 20:3-4) be said in Hebrew.

These are said in the Holy Language:
The announcement of the first fruits; declaration of release; blessings and curses; the Priestly Blessing; the Blessing of the High Priest; the King's Reading; the reading over the atoning calf; and the Chaplain of the Army at the time when he speaks to the people.
M. Sotah 7:2 (28)

When the Chaplain of the Army addresses the troops, he speaks in the Holy Language, as it says:

...
"and address the troops" (Dt. 20:2)-
In the Holy Language.
M. Sotah 8:1 (29)

"and address the troops"-
In the Holy Language.
M.T. 20:2 (30)

How does he prove this (that the priest addresses the people in Hebrew?)

He bases it on the phrase "and speak".

Elsewhere, it says, "As Moses spoke, God answered him in thunder" Ex. 19:19).

Just as in this verse it means in the Holy Language, so, too, there it means in the Holy Language.

T. Sotah 42a (31)

The use of Hebrew indicates the formal ritual character which the rabbis ascribed to the invocation. Instructions may be given in the vernacular, i.e. Aramaic; but sacred exercises ought to be performed in sacred language. Hence, the connection of the invocation with these other sacred rituals. The rabbis shared the view that the ritual nature of the invocation took priority over its practical exhortatory function. That is, it was less important, in the rabbis' eyes, that the troops be convinced to fight fearlessly; fulfillment of the command to deliver the invocation, (presumably as written in Dt. 20:3-4) is of primary significance.

3. Identity of the Enemy

The rabbis understood these laws to apply when Israel was at war with its "enemy". To whom does the term "enemy" apply? One view sought to distinguish foreign enemies from rivals within the Israelite nation.

"He shall say to them: 'Hear, O Israel! You are about to join battle with your enemy'" (Dt. 20:3) - and not against your brother. Not Judah against Shimon, nor Shimon against Benjamin, for if one were to fall into the other's hands, they would have mercy on them, as it says:

"Then the men named above proceeded to take the captives in hand, and with the booty they clothed all the naked among them-they clothed them and shod them and gave them to eat and drink and anointed them and provided donkeys for all who were failing and brought them to Jericho, the city of palms, back to their kinsmen. Then they returned to Samaria."

You are fighting against your enemies, that should you fall into their hands, they would show no mercy on you.

M. Sotah 8:1 (32)

Sifre Devarim repeats M. Sotah 8:1 verbatim, with the addition of:

As it says: (Jud 21:3)

"...and they said, 'O Lord God of Israel, why has this happened in Israel, (that one tribe must now be missing from Israel?)'";

after which he returned the tribe to its place.

And not like the case which reads: (II Ch 28:8-11)

"The Israelites captured 200,000 of their kinsmen, women, boys, and girls..."

A prophet of the Lord by the name of Oded was there, who went out to meet the army on its return to Samaria.

He said to them,

'Because of the fury of the Lord God of your fathers against Judah, He delivered them over to you, and you killed them in a rage that reached Heaven. Do you now intend to subjugate the men and women of Judah and Jerusalem to be your slaves?...

Now then, listen to me, and send back the captives you have taken from your kinsmen...'"

Sifre Devarim (S.D.) 20:3 (33)

It appears that these rabbis were concerned that the laws of war not be viewed as applicable to civil wars. In contrast, we have a series of interpretations identifying the enemy variously as some form of Israelite or gentile:

"against your enemy."

Rabbi Josia said: "Your enemy"-

This means the gentiles, since we read that the gentiles are called enemies, in every place, as it is written:

"When you go to war against your 'enemies'."

Rabbi (Nathan) (Jonathan) said:

Scripture is referring to an apostate Jew.

Abba Hanin in the name of R. Eliezer maintained that Scripture is referring to a convert who has returned to his corruption.

Rabbi Isaac said:

Scripture refers to an Israelite son. And why does Scripture say: "your enemy"? If he hits his son, or makes strife with him, he is for the moment his enemy.

M.T. 20:1 (34)

The same interpretations of "enemy" can be found in Mechilta, Mishpatim, 20, with the traditions in a different order. The order of these four follows the degree of legitimacy the enemy has as an Israelite, from least to most.

These interpretations make little sense in the context of war. One cannot wage war against an individual, nor does the example of one's own son seem plausible. Rather than view these rulings as actual opinions of the rabbis on the enemy against whom war would be waged, they are probably opportunities for the rabbis to define who the "enemy" they faced was, albeit in a non-military context. Rabbi Josia viewed gentiles as the enemy; Rabbi Nathan/Jonathan viewed apostasy

as a greater threat; Abba Hanim saw the greatest enemies of Israel among insincere converts; Rabbi Isaac is the furthest removed from war. In calling one's son an "enemy", he is apparently using that epithet to criticize those who are harsh in dealing with their children.

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4. Two Speeches

All the rabbinic sources agree that the passage describing the priest indicates that there were two speeches by the priest, not one, as a simple reading of the text yields. The proof is based on the repetition in Dt. 20:2-3 of "before...battle".

"Before you join the battle..."

Could this mean the day on which they were to enter battle?

When it says: "He shall say to them, 'Hear, O Israel! You are about to (join battle...)'"

It means the day on which they were to enter battle.

Then why does Scripture read: "Before you join the battle..."?

Because when they reach the border, the priest explains to them these rules.

M.T. 20:2 (35)

A combination of considerations could have gone into this ruling. By specifying that the priest has two functions, to explain the exemptions and to deliver the invocation, the priest is awarded the status that formerly was the possession of the officials. This will be clearer below when the officials are discussed. It does suggest a concern on the part of the rabbis to ascribe real authority to the priests, and to remove it from the representatives of the king.

The "rules" which the priest recites at the border could only be the exemptions, and is understood as such by the Tosefta.

He speaks to them twice, once at the border and once in the war.

What does he say at the border? Whoever hears, let him listen to the regulations of the priest of war,

and may he be exempted.

In the regulations before battle, what does he say? "Hear, O Israel! You are about to join battle with your enemy,...Is there anyone who has built a new house, etc." (Dt. 20:3, 5)

Tos. Sotah 7:18 (36)

Sifre Devarim, like Midrash Tannaim, does not include that lone exemption tagged on to the speech immediately preceding battle.

"Before you join battle"

Could this mean the day on which they were to enter battle?

If, when it says:

"He shall say to them, 'Hear, O Israel! You are about to join battle...'" -

It means the day on which they were to enter battle;

Then, why does Scripture read:

"Before you join battle..."?

Because, when they arrive at the border, the priest begins explaining these rules to them, and he says, "Hear, O Israel..." S.D. 20:2 (37)

The Talmud also understands this to be the meaning of the passage.

"Let not your courage falter. Do not be in fear, etc." (Dt. 20:3).

Our rabbis taught: He addresses them twice-once at the border, and once prior to battle. At the border, what does he say? Hear the war regulations and return home. Prior to battle, what does he say? "Let not your courage falter. Do not be in fear, or in panic, or in dread of them."

T. Sotah 42a-b. (38)

It is reasonable to think that our Tosefta text is corrupt, and that all the other texts borrowed from the same original baraita.

A second consideration in ruling that there were two speeches may have been the impracticality of granting

exemptions on the day of battle. No doubt the rabbis sensed the contradictions of demanding fearlessness, (Dt. 20:3) and condoning admissions of fearfulness (20:8). Separating the ritual into two speeches made the process of exemption and encouragement more feasible.

5. Ineligibility of the Disabled

According to both Sifre Devarim and Midrash Tannaim, those who have certain disabilities are disqualified from military service.

"Nor must you show pity: life for life, eye for eye, (Tooth for tooth, hand for hand, foot for foot). (Dt. 19:21)

When you go to war..." (Dt. 20:1)

From this, Rabbi Akiba derived that the disabled may not go to war.

M.T. 19:21-20:1 (39)

Rabbi Yosi the Galilean said:

How do we know that one is not permitted to go to war unless he has his hands, feet, eyes, and teeth?

Scripture says:

"Nor must you show pity: life for life, etc.

"When you go to war..."

S.D. 19:21-20:1 (40)

Both rulings rest on the sequence of verses at the end of Dt. 19 and the beginning of Dt. 20. There is no immediate problem with these verses, that is explained by this ruling. Rather, the ruling reflects a concern on the part of these rabbis, for which these verses provide a convenient proof-text.

Their intention is to exclude the disabled from military service. It is possible that this reflects a humanitarian concern for those who would be unable to function or stand in great danger, during war. More likely, the disabled were likely viewed as a burden to an efficient fighting force. Their exclusion may be bound up with the rabbinic perception of the ideal army: fearless, and physically and emotionally

unhindered. Just like those who are incapable of devoting themselves completely to the war effort because of unfinished business at home, or because of their burden of fear (see below, II.B. Exemptions); so, too, the disabled are physically incapable of devoting their complete strength to the war effort, according to the rabbis.

A textual problem may be noted here: Akiba is quoted in Midrash Tannaim, usually attributed to the Ishmaelite school, while he is not the tradent for the same position in Sifre Devarim, which belongs to the Akibaite school. This case deserves attention for the study of these respective text's development.

6. Fighting with Horses and Chariots

While the Deuteronomist exhorts soldiers to have courage, because God will fight for them, the rabbis feared that such faith might be taken to an extreme:

"and you see horses and chariots and numerous troops" (Dt. 20:1)

Just as they go out against you with horses and chariots, so, too, shall you go out against them with horses and chariots.

Just as they go out against you with numerous troops, so, too, shall you go out against them with numerous troops.

M.T. 20:1; S.D. 20:1 (41)

The rabbis mandated that the Israelite army be able to match the strength of its enemy. The belief that military strength will not be necessary because of God's part in any military campaign is negated. It appears that the rabbis held to a doctrine of parity in military strength, and a willingness to exercise that strength.

7. Optional and Obligatory Wars

Making use of the distinction between the treatment of Canaanite and non-Canaanite towns, (Dt. 20:10-18), the rabbis developed a rudimentary system for classifying wars according to their purpose. They agreed that in some wars, the exemptions detailed in verses 5-8 apply, and in other wars they do not apply. They disagreed on the appropriate terminology, and perhaps application, of these classifications.

Concerning what are these things said?

Concerning Milchemet haReshut; but in a Milchemet Mitzvah everyone goes (to war); even the bridegroom from his wedding chamber, and the bride from her wedding canopy.

Rabbi Judah said: Concerning what are these things said?

Concerning a Milchemet Mitzvah; but in a Milchemet Chovah everyone goes (to war); even the bridegroom from his wedding chamber, and the bride from her wedding canopy.

M. Sotah 8:7 (42)

The Mishnah applies to the exemptions of verses 5-8, but Sifre Devarim repeats the same ruling in relation to verse 1:

"When you take the field against your enemies";
Scripture speaks about Milchemet Reshut.

Rabbi Judah said: Concerning what are these things said?

Concerning a Milchemet Mitzvah; but in a Milchemet Chovah, everyone goes (to war); even the bridegroom from his wedding chamber, and the bride from her wedding canopy.

S.D. 20:1 (43)

Concerning what are these things said?

Concerning Milchemet haReshut; but in a Milchemet Mitzvah everyone goes (to war); even the bridegroom from his wedding chamber, and the bride from her wedding canopy.

S.D. 20:9 (44)

It is not clear from these texts whether what Rabbi Judah called a Milchemet Mitzvah, equalled what everyone else called a Milchemet Reshut; or if Rabbi Judah disagreed with the rabbis about exemptions in a commonly understood Milchemet Mitzvah, and postulated a third category of war called Milchemet Chovah. The Tosefta favors the former interpretation.

Rabbi Judah used to call the Milchemet Reshut a Milchemet Mitzvah; but in a Milchemet Chovah everyone goes (to war), even the bridegroom from his wedding chamber, and the bride from her wedding canopy.
Tos. Sotah 7:24 (45)

According to this view, Rabbi Judah believed that wars called "Permissible" (Reshut) by the rabbis, are actually "Commanded" (Mitzvah); those called "Commanded" by the rabbis (Mitzvah), are actually "Obligatory" (Chovah). It is apparent that these distinctions are less theological statements about the nature of war, than merely alternative terms. Certainly, Rabbi Judah accepted the same bi-polar distinction of wars, implying some which must be fought, and others which need not be fought.

The Talmud repeats this conclusion, but adds another interpretation as well:

"Regarding what are these things said? Regarding a Milchemet haReshut, etc." (M. Sotah 8:7)

Rabbi Yochanan said: A (Milchemet) Reshut in the language of the rabbis, is called a (Milchemet) Mitzvah by Rabbi Judah. The (Milchemet) Mitzvah of the rabbis is called a Milchemet Chovah by Rabbi Judah.

Raba said: Everyone agrees that the wars of Joshua were Chovah. Everyone agrees that the wars of the House of David for expansion were Reshut. They differ over the extermination of the heathens, to prevent their advance upon them. One calls them Mitzvah, and the other

calls them Reshut; the significant issue being the exemption from the performance of commandments (sp. to return from battle) accorded to those engaged in the performance of a (more important) commandment.
T. Sotah 44b (46)

Rabbi Yochanan concurs with the Tosefta, but Raba dissents. Raba prefers to see three categories of war: Reshut, Mitzvah, and Chovah. In Raba's view, Rabbi Judah agreed with the rabbis on terminology, but disagreed over the application of exemptions to these categories. Raba claims that a Milchemet Chovah (Obligatory War), on one extreme, admits no exemptions; and that a Milchemet Reshut (Permissible War), on the other extreme, does admit exemptions. According to Raba, both the rabbis and Rabbi Judah accepted this distinction, and disagreed only over the intermediate category of Milchemet Mitzvah (Commanded War). Rabbi Judah held that exemptions did apply, while the rabbis said they do not. Raba's system is in contradiction with the earlier Tosefta, though, as well as lacking any support from Deuteronomy itself. What Raba proposes as the two extreme poles--wars of expansion (Reshut) and wars of conquest in the Promised Land (Chovah)--are readily identifiable in both Deuteronomy and the Tannaitic sources, even though the names may differ. Raba's intermediate category (Mitzvah) is too ill-defined to be useful in determining what position Judah held vis a vis the rabbis. Is the "extermination of the heathens" to take place within or without the Promised Land? If within, it would be identical with the wars of conquest enjoined upon Joshua, called Chovah, by Raba; if without, it would be Reshut. Did Raba believe

that war against heathens within the land, but after the conquest, is "Commanded" but not "Obligatory"? If this is what he meant, the distinction is entirely of his creation. It does not appear that either the rabbis or Rabbi Judah were aware of such a tripartite division.

7.a. Milchemet Reshut by Decree of Sanhedrin

In spite of Rabbi Judah's different terminology, the rabbis consistently dealt with the implications of Permissible War (Milchemet Reshut). They determined that Permissible War could be declared only by consent of a Sanhedrin of seventy-one.

A Milchemet haReshut may not be declared, except by a court of seventy-one.

M. Sanhedrin 1:5 (47)

The absence of any process whereby an Obligatory War (Milchemet Mitzvah) could be declared, is an indication that the rabbis considered Obligatory War to need no declaration. That is, the rabbis viewed the conditions for Obligatory War to be evident from the text (Dt. 20:15-18): Any Canaanite town was cause for Obligatory War. No Sanhedrin would be necessary, because the conditions for engaging in Obligatory War were empirically verifiable.

Permissible War, on the other hand, is not commanded by the text. It therefore requires the exercise of judgement to be legitimated. Such judgement naturally falls to the Sanhedrin. In contrast to Deuteronomy, the rabbis restrict the right of the king to declare war. Though this right is not granted explicitly in Deuteronomy, there is no indication of such a restriction. While the king is assumed to have the authority to declare war, the rabbis subject that right to their own approval. In this way, they greatly limit the

implicit freedom of a king to go to war. Given that these laws were composed during a period in which the community lacked any legitimate kingship, it is not surprising to find the Sanhedrin expressing the primacy of their authority.

The Talmud expands on this division of authority:

"Milchemet haReshut may be declared only by consent of a court of seventy-one." (M. Sanh. 2:4)
Whence is this derived?

Rabbi Abahu said: When Scripture says, "But he shall present himself to Eleazar the priest (who shall on his behalf seek the decision of the Urim before the Lord. By such instruction they shall go out and by such instruction they shall come in, he and all the Israelites, the whole community." (Num. 27:21); "he" is the king; "and all the Israelites" is the Chaplain of the Army; "the whole community" is the Sanhedrin.

T. Sanhedrin 16a (48)

The mood over the procedure for declaring Permissible War, and the absence of concern regarding Obligatory War, leads to the conclusion that the rabbis considered Permissible War to be the only kind of war ever likely to be fought. This is especially evident when considering that Deuteronomy provides no formal procedure for either decision, yet the rabbis chose to describe one procedure and neglect the other. At the very least, the only operative category was Permissible War. Obligatory War was relegated to non-existence, or at least insignificance.

7.b. Rules of Milchemet Reshut

The rules of conduct in battle specified by the rabbis also apply only to Permissible War, and none are specified for Obligatory War. This supports the view that the rabbis were not concerned over the means whereby Obligatory War would be fought, or declared.

When the army fights a Milchemet Reshut, it is permissible to take dry wood.

Rabbi Judah ben Batirah said: In any case, oxen which are killed must be buried there.

Tos. Eruvin 3:6 (49)

If this ruling, which serves the interests of successful warfare, applied to Permissible War, it would seem apparent that it would apply to Obligatory War as well. The fact that it is mentioned as a rule of Permissible War, indicates that this is the only kind of war conceivable to the rabbis. To discuss Permissible War was, to them, synonymous with discussing all war. Perhaps they viewed Obligatory War as having an entirely different set of regulations. If so, then these were thought to be unknown, perhaps because only God knew how these wars were to be fought. In any case, such rules were simply of no consequence, suggesting that Obligatory War had become an inconceivable possibility by the time of the rabbis.

The Talmud discusses the extent of the permission to appropriate wood:

"They are permitted to steal dry wood."

This is one of Joshua's rulings, as the Master said: Ten rulings did Joshua decree-that they may graze (their flocks) in (others') pastures, and collect wood from their fields.

But there, it means only thornbushes; here, it means all wood.

Or, perhaps there it means connected bushes, and here it means detached wood.

Or, perhaps there it means green wood, and here it means dry wood.

T. Eruvin 17a (50)

This debate suggests a layer of restriction on the ruling of the Tosefta. That is, even without an agreement on the meaning of "dry wood", it appears that some Amoraim considered even this tactic too permissive.

Finally, the area of hygiene was also regulated:

One who engages in a Milchemet haReshut digs a pit and sits on it, then digs up dirt and covers over the pit, as it says: "You shall dig a hole with it, and cover up your excrement." (Dt. 23:14)

Tos. Megillah 4:25 (51)

Even here, a basic regulation is discussed as if it applied only to Permissible War. Could this rule have been ignored during Obligatory War, because of the compelling nature of the command to exterminate the Canaanites? If so, it would seem that this distinction would be mentioned, to avoid the confusion of would-be soldiers. More likely, this issue would not have been cause for confusion, because the rabbis assumed that the only scenario necessary to describe was Permissible War. Soldiers would not have to worry about the hygiene of the camp in Obligatory War, because they would never find themselves in one. Additional laws concerning the conduct of Permissible War will be discussed below, in connection to the Preservation of Trees (II.E)

II. B. Exemptions

The rabbis sought to define the extent and limits of the exemptions granted in Dt. 20:5-9. Though differing on some aspects of the exemptions, there is an overall tendency to:

- 1) Give concrete definition to the categories given in Deuteronomy; and, 2) Extend the application of the exemptions beyond the literal meaning of the text.

1. House

The Mishnah seeks to define what is meant by a house, and whether it must be literally built.

"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 back to his home'", etc. (Dt. 20:5)

Whether it be a shed for straw or a barn for cows, or a shed for wood, or a storehouse.

Whether he builds it, or purchases it, or inherits it, or is given it as a gift.

M. Sotah 8:2 (52)

The Mishnah understands house figuratively, as any structure which houses something. It had to be a permanent residing place of something, though not necessarily human beings. Mere additions, though, were not considered "houses":

These are the ones who do not return home:

One who builds a guardhouse, exedra, or porch...

M. Sotah 8:3 (53)

That is, a house is a free-standing shelter for people, animals, produce or supplies.

Nor is it necessary that it be newly built. It must only be newly acquired. However, some limits were placed on legitimately "new" acquisitions.

Rabbi Yehudai said: Even the one who has rebuilt a house on its original foundations, does not return.

Rabbi Elazar said: Even the one who builds a brick house in the Sharon, does not return.

M. Sotah 8:3 (54)

It is not "new" if it was there once before. Nor is it legitimate to claim exemption for building new houses if the ground is incapable of supporting them, i.e. in the Sharon, requiring that they be rebuilt periodically.

The Tosefta takes a more lenient view of conditions qualifying for exemptions:

If his house falls and he rebuilds it, he must return.

Rabbi Judah said: If he inaugurates anything new in his house, he must return; if he does not, he does not return.

Rabbi Elazar said: Residents of Sharon are not permitted to go home, because they repair them twice every seven (years).

Tos. Sotah 7:18 (55)

In contrast to the Mishnah, rebuilt homes are considered new here. Furthermore, Rabbi Judah, who held the more conservative view in the Mishnah, here takes a more liberal position than the Mishnah, considering all new additions to houses to qualify. Rabbi Elazar's position remains the same, though, with the necessary explanation.

Sifre Devarim shows how the Mishnah's ruling was derived from the text of Deuteronomy:

"Is there anyone who has built..."

One might presume this refers only to one who builds. How do I know it includes one who inherits, buys, or is given (a house) as a gift? Scripture says: "Is there anyone who has built..."

"House".

I might think this refers only to a house. How do I know to include one who builds a shed for straw, or a barn for cows, or a shed for wood, or a storehouse? Scripture says: "a house". Since a house is a protective structure, the verse excludes those structures which do not protect.

"But has not dedicated it".

Except a robber.

S.D. 20:5 (56)

Sifre Devarim maintains the Mishnah's extension of house, as well as its limits, and gives us the abstract definition of house which is missing from the Mishnah. It

also adds a category of illegitimate acquisition, i.e. robbery, which disqualifies one for exemption.

The Talmud repeats Sifre Devarim almost verbatim, with the addition of some dissenting views:

"What man is there who has built a new house, etc."
(M. Sotah 8:2)

Our Rabbis taught: "who has built."

I derive only the case of one who builds. How do I derive the cases of one who buys, inherits, or receives as a gift? Scripture says: "What man is there who has built a (new) house?"

I derive only the case of a house. Whence do I know to include a barn for straw, a stable for cattle, a wood-shed, or a storehouse? Scripture says: "who has built"--whatever (structure may be erected).

I might include one who builds a guardhouse, exedra, or porch. Scripture says: "a house". A house being a place suitable for dwelling, (it includes only) those places suitable for dwelling. Rabbi Eliezer ben Yaakov said: A house, in its usual sense.

T. Sotah 43a (57)

Rabbi Eliezer ben Yaakov takes the word "house" literally, in contrast to the other more lenient rabbinic texts. At the same time, the Talmud quotes a baraita greatly extending the limits of a "new house":

"The following are not exempt: One who builds a guardhouse". (M. Sotah 8:3)

It is taught: If he adds a single layer of bricks to it, he is exempt.

R. Eliezer said: But one who builds a brick house in Sharon is not exempt.

It is taught: Because they had to rebuild them twice every seven (years).

T. Sotah 44a (58)

This leniency is compatible with Rabbi Judah's position in the Tosefta. The disqualification of houses in the Sharon remains unchanged.

The Talmud also indicates the minimum size necessary for a house to qualify one for exemption.

Who is the authority for that which our Rabbis taught : "A house which is not four cubits is free from the obligations of Mezuzah, and parapet, does not contract levitical uncleanness from leprosy, is not redeemable among the dwelling-houses of a walled city, nor does one return on its account from the array of war, nor need an Erub be prepared for it, nor Shittuf, nor does one place therein an Erub nor make of it an extension between two cities, nor can brothers or partners divide it? Must we say that it agrees with Rabbi (who regards a Sukkah of less than four cubits square as invalid) and not with the Rabbis? No! One can even say that it agrees with the Rabbis. The Rabbis say it (that a structure less than four cubits is valid) only with regard to a Sukkah which is a temporary abode, but with regard to a house which is a permanent abode, even the Rabbis admit that if it has an area of four cubits square, people dwell therein (i.e. it can be regarded as a house); otherwise, they do not dwell therein.

T. Sukkah 3a-b (59)

That is, a house, like a Sukkah, must be at least four cubits square, to be legitimate for legal purposes. Thus, the Talmud maintains a picture of the minimal limits of a house, both in dimension and in function, for the purposes of exemption. At the same time, it retains dissenting views on even these significant extensions of the Biblical "house".

The Talmud pursues the exclusion of the robber, in light of the exemption of the "afraid and disheartened".

"but has not dedicated" is not written, rather, "but has not dedicated it", to exclude the robber.

Is this to say that (this teaching) is not in agreement with Rabbi Yosi the Galilean? For Rabbi Yosi the Galilean said: "disheartened" refers to one who is afraid of the transgressions he has committed. (Dt. 20:8). Even if you agree with Rabbi Yosi the Galilean, consider the case of one who has repented, and paid (the stolen property's) price; he would thus be considered the purchaser and be exempt. But since he originally acquired it through theft, he is not exempt.

T. Sotah 43a-b (60)

The hypothetical argument runs that one who is a robber, though not legitimately acquiring a house, would nonetheless be exempt as one "disheartened." (M. Sotah 8:5). But, for one to be disheartened, they would have to be repentant, which could result in making him a legitimate purchaser. The Talmud maintains that it is Deuteronomy's intent to disqualify a robber's possible exemption as one "disheartened". This is a limitation on the more lenient Mishnah.

2. Vineyard

As with the exemption based on the newly built house, the rabbis extended the literal sense of the exemption based on the unharvested vineyard. They adopt a lenient understanding of both "planting" and "vineyard", as they did with "building" and "house".

"Is there anyone who has planted a vineyard, but has never harvested it?" (Dt. 20:6)

Whether he has planted a vineyard, or if he has planted (at least) five fruit trees, and even if they are of the five species (but not all of the same);

Whether he plants, or bends, or grafts, or purchases, or inherits, or is given as a gift.

M. Sotah 8:2 (61)

Regarding a vineyard, the Mishnah proposes a most liberal definition, i.e. even if the constituent elements of the vineyard are not all of the same species. This definition perverts the commonly understood meaning of vineyard, or even orchard. It does, however, establish minimum limits on the size of the orchard.

These are the ones who do not return home;...

One who plants four fruit trees, or five shade trees;

M. Sotah 8:3 (62)

The action of planting, like that of building, is also liberally defined. It is taken to mean any act which will bring about new acquisition of a plant. This is identical to the "new acquisition meaning of "to build" in the first exemption.

In comparison of the two mishnayot, a pattern becomes evident. The Mishnah seeks to define the predicate and the

direct object of the verses in Deuteronomy, so as to determine legally applicable limits as to what will constitute a valid case for exemption. In the process of this definition, the Mishnah takes the verb and noun in a figurative sense, with the result that a considerably greater number of exemptions would result than a literal reading would yield.

The Tosefta gives a ruling which goes beyond the Mishnah in its liberal definition of a vineyard. It also adds an opposing opinion.

"Is there anyone who has planted a vineyard but has never harvested it?" (Dt. 20:6)

One who plants five fruit trees, from among the five species, even if in five different rows, must return.

R. Eliezer said: The text implies only one who has planted a vineyard.

Tos. Sotah 7:18 (63)

The Mishnah does not consider what shape a vineyard must have to be considered legitimate. The Tosefta notes that it need not conform to our common image of a vineyard/orchard, but may be randomly planted. The Tosefta extends what might otherwise be conjectured as the logical limit of a vineyard, i.e. that it be planted in rows. The same greater liberality of definition characterized the ruling of the Tosefta on the house exemption. The dissenting view of R. Eliezer echoes the same literal interpretation of R. Eliezer ben Yaakov in T. Sotah 43a, where he treats the definition of "house" literally. These two, then, may have been one and the same person.

Sifre Devarim repeats the same homiletic structure it applied to the house exemption.

"Is there anyone who has planted..."

I might think this refers only to one who planted. How do I know it includes one who inherits, buys, or is given (a vineyard) as a gift? Scripture says: "Is there anyone who has planted..."

"a vineyard"

I might think this refers only to a vineyard. How do I know it includes one who plants five fruit trees, or even the five species of grain? Scripture says: "who has planted."

Does this include even one who has planted four fruit trees, and five bare trees? Scripture says: "a vineyard."

R. Eliezer ben Yaakov says: I accept only a vineyard. "but has never harvested it?"
Except one who grafts.

S.D. 20:6 (64)

Sifre Devarim shares the figurative understanding of the exemption with the Mishnah. As in the house exemption, though, it also adds some limits to those found in the Mishnah. In this case, it excludes some forms of agriculture which might be construed as "planting" in the figurative sense. This stands in direct contradiction to the Mishnah. It adds further definition to the minimum size of a vineyard/orchard.

The literalism of R. Eliezer ben Yaakov here is both similar to his literal stance in the above Talmud passage, and identical to the position of R. Eliezer in the Tosefta. It may then be presumed that the Tosefta gave us only the shortened form of the rabbi's name.

Midrash Tannaim gives another restriction on the interpretation of "to plant".

"but not (yet) harvested it"
 Except for a robber and for partners.
 M.T. 20:6 (65)

This seems to come from the same source as the ruling against a robber in Sifre Devarim on the house exemption. It is odd that the exclusion of the robber is shared by both texts, but not regarding the same exemption.

The Talmud repeats Sifre Devarim up through the opinion of R. Eliezer ben Yaakov.

"Is there anyone who has planted a vineyard, etc."
 Our Rabbis taught: "who has planted."
 I derive only the case of one who plants. Whence do I know to include one who buys or inherits, or receives as a gift? Scripture says: "Is there anyone who has planted a vineyard."

I derive only the case of one who plants a vineyard. Whence do I know to include one who plants five fruit trees, or even of other varieties? Scripture says: "who has planted."

I might conclude that it includes one who plants four fruit trees and five shade trees. Scripture says: a vineyard.

Rabbi Eliezer ben Yaakov said: "vineyard", literally.

T. Sotah 43b (66)

After this, the Talmud seeks to reconcile the differing views of the Mishnah and Sifre Devarim, regarding the inclusion of bending and grafting in the definition of "to plant".

It does not read "but has never harvested"; rather, but has never harvested it", to exclude one who bends or grafts.

But we have the teaching: It is the same whether one plants, or bends, or grafts! (M. Sotah 8:2)

Rabbi Zeyra said Rav Hisda said: There is no contradiction. One refers to prohibited grafting, and the other refers to permissible grafting. What is permissible grafting? If I say it is grafting a young shoot onto a young shoot, he would be exempt on account of the first young shoot. Therefore, it means grafting a young shoot onto an old stem. But what about Rabbi Abahu's saying: If a young shoot is grafted onto an old stem, the young

shoot is annulled by the old stem, and the law of orlah does not apply to it (i.e. it is considered old, and may be eaten from during the first three years.)

Rabbi Jeremiah said: It must refer to a young shoot grafted onto a young shoot, as in the case of one who planted the first stem for a hedge or for timber, as we are taught: He who plants for a hedge or for timber is exempt from the law of orlah.

What is the distinction that a young shoot is annulled when grafted onto a young shoot? In the former case, if he changes his mind about its purpose, it cannot return to its former state (of orlah); whereas in the latter case, if he changes his mind, it can return to its former state, since it is like a plant which grows of itself. As we are taught: When they grow of themselves, they are liable to orlah. But let him explain (the Mishnah as dealing with) the case of a vineyard belonging to two partners (and not of the example of R. Jeremiah). One returns on his account, and the other returns on his account.

Rav Papa said: This means that the exemptions from war do not apply to common owners of a single vineyard. Why is this different from five brothers, one of whom dies in battle, thereby exempting the rest? In this case, "his wife" can apply to each one of them; but in the other case, "his vineyard" cannot apply to both of them.

Rav Nachman bar Yitzchak said: It refers to one who bends a tree into a vegetable garden. There is a similar teaching: If one bends a tree into a vegetable garden...

Rabban Shimon ben Gamliel permitted it in the name of Rabbi ben Gamda, the man of the town of Acco. But the sages prohibited it.

When Rav Dimi came, he said in the name of Rabbi Yochanan, "Whose statement is it?" It comes from Rabbi Eliezer ben Yaakov. But did not Rabbi Eliezer ben Yaakov say "'vineyard', literally"? So, too, should 'planted' be understood literally. If one plants, he is (exempt); if he bends or grafts, he is not.

T. Sotah 43b (67)

As with all the rabbinic sources, the Talmud takes a lenient view of "planting", as though it means any form of acquisition--"buys, or inherits, or receives as a gift." This broad definition includes things which are far removed from planting. Yet when it comes to including a process

closely related to planting-"bending or grafting"-the Talmud becomes literal, and claims that these are not really planting! They use Rabbi Eliezer ben Yaakov to support this position, but this takes his opinion out of context. From the placement of Rabbi Eliezer ben Yaakov's opinion in the Tosefta and in Sifre Devarim, it is clear that he speaks only of a literal interpretation of "vineyard", not of "planting". The Talmud seeks to exclude bending and grafting for reasons other than literalism, as is clear from the unchallenged acceptance of buying, receiving, and inheriting as legitimate forms of "planting". Thus, they do not really share Rabbi Eliezer ben Yaakov's literalism.

The Talmud's actual concern here is not with qualifications for exemption from battle. Rather, its primary concern is the extent of the orlah. By ruling that bending and grafting are not forms of new planting, the resulting fruits are exempt from orlah. That is, they may be eaten the first year in which they appear. This ruling would have tremendous economic benefits for an agrarian community. More produce would be available, because farmers would not have to wait three years, before their new crops could be harvested, if they had been grafted or bent. It is this important economic consideration that prompts the debate over appropriate legal language. Overall, the Talmud expresses the common rabbinic extension of qualifications for exemption from military service.

3. Wife

The Mishnah extends the exemption of a bride-groom to include some situations not necessitated by a literal reading of Deuteronomy.

"Is there anyone who has paid the bride-price for a wife, etc." (Dt. 20:7)

Whether he has betrothed a virgin or a widow; even if he is the brother-in-law obliged to marry her, even if he hears that his brother has died in battle, he must return. All of these listen to the speech of the Chaplain of the Army, and return (home), (and from there) they supply water and food (to the soldiers), and repair the roads.

M. Sotah 8:2 (68)

A wide range of definitions is given here to the Hebrew aras, which would literally mean "paid for". The Mishnah adopts a figurative redering, as in the exemptions concerning house and vineyard, which permits almost any kind of acquisition of a new wife as valid for exemption. The Mishnah also tells us what kind of alternative service these exemptees must perform.

The Mishnah goes on to exclude some categories of possible acquisition from valid exemptions:

These are the ones who do not return home...

One who marries his divorced wife; a High priest who marries a widow; a common priest who marries a divorcee or a halutza; an Israelite who marries a bastard or a Nethinah,* an Israelite bastard or a Nathin who marries an Israelite daughter.

None of these return home.

M. Sotah 8:3 (69)

* Nethinah/nethin - descendant of the Gibeonites; forbidden to Israelites for intermarriage. (Jastrow, p. 943)

As with the vineyard, these exclusions primarily serve the purpose of defining legitimate forms of marriage. They are only secondarily limits on the legitimate exemption of the engaged bridegroom. The Mishnah otherwise pursues the pattern of extending the Deuteronomic exemption already established in the preceeding cases.

The Tosefta takes a more lenient view than the Mishnah, as it did in the preceeding exemptions.

"Is there anyone who has paid the bride-price for a wife, (but who has not yet married her?)"
(Dt. 20:7)

The same applies, whether he marries her, or fulfills the levirate marriage, or even to five brothers-in-law to the widow, or even to five brothers who hear that their brother dies--all of them return.

Tos. Sotah 7:19 (70)

Not just the brother-in-law of a widow, but all five brothers-in-law are exempt. While this might have been possible under the Mishnah's ruling, its mention in the Tosefta explicitly exempts a greater number of people.

At the same time, the Tosefta limits the period of applicability of this exemption.

If one hears during war that his brother died, and he is not yet serving his term of duty, he is exempt. Once he begins serving his term, he is no longer exempt.

Tos. Sotah 7:22 (71)

This time limit applies only to the case of the levirate marriage. It could not apply to any other of the examples of the wife exemption. Nor could the Tosefta have so limited the house or vineyard exemptions, since these are conditions

which cannot be initiated after one has left home. The Tosefta thus brings a uniformity to the exemption procedure, by restricting it to the pre-battle period.

Sifre Devarim repeats the Mishnah almost verbatim.

"Is there anyone who has paid the bride-price for a wife".

Whether he has betrothed a virgin or a widow. Even if she is due her brother-in-law, even if he hears that his brother has died in battle, he must return.

"but who has not yet married her?"

(That is), the one appropriate for him.

Exceptions: one who remarries his divorced wife; the High Priest who marries a widow; a common priest who marries a divorcee or one released; an Israelite who marries a bastard or a Nethinah; a bastard or a Nathin who marries a daughter of Israel.

"Let him go back to his home."

Let him go and listen to the speech of the Chaplain of the Army, and then return (home).

S.D. 20:7 (72)

The only regulation missing is the Mishnah's specification of alternative service. We find this opinion in Midrash Tannaim.

"Let him go back to his home."

All of these listen to the speech of the Chaplain of the Army, then return (home), where they supply water and food (for the troops) and repair the roads.

M.T. 20:7 (73)

Sifre Devarim nowhere specifies any alternative service. The soldier is merely instructed to return, and forewarned that he will die in battle if he does not. The Mishnah does not give us this emphasis on the obligation to obey the exemptions.

Sifre Devarim repeats the reason in each of the preceding

exemptions, with additional explanation:

"Let him go back to his home:
 Let him go and listen to the speech of the Chaplain
 of the Army and then return.
 "Lest he die in battle:
 If he does not listen to the speech of the priest,
 in the end he will die in battle.
 S.D. 20:6 (75)

This is a significantly different approach than the Mishnah's. It emphasizes the reason for obeying the law, rather than the practical role exempted citizens would play in war.

The Tosefta contains both the Sifre Devarim and the Mishnah/Midrash Tannaim versions.

R. Shimon said: Anyone who hears the priest's regulations, and does not exempt himself, will ultimately fall by the sword, and cause Israel to fall with him, and cause them to be exiled from their land, into the nations of the world; as it says: "and another marry her." (Dt. 20:7)

Might this simply mean that an uncle or cousin will marry her? It says here: "another"; and it says there: "another (nation)" (Dt. 28:32). Just as there it means a gentile, so, too, here it means a gentile.
 Tos. Sotah 7:22 (76)

There are some who report and are exempted; some who report and are not exempted; and some who do not report at all. Whoever is among those who report and are exempted, pay the town-tax, and supply water and food during the war, and repair the roads. The rest report and are not exempted.

Tos. Sotah 7:23 (77)

There is no contradiction in these positions, though they are drawn from separate sources. The Tosefta identifies the author of the Sifre Devarim version as R. Shimon, who comes from the Akiba School.

The Talmud maintains the position of the Mishnah, regarding those who do and do not qualify for exemption:

"Is there anyone who has paid the bride-price for a woman, etc."

Our rabbis taught: "who has paid the bride-price for..." It is the same if he has betrothed a virgin, or a widow, or a childless widow. Even if there are five brothers, and one dies in battle, the rest are exempt. It does not say "betrothed", but rather, "betrothed her", to exclude the High Priest who has married a widow; or an ordinary priest who has married a divorcee or a halutzah; or an Israelite who has married a bastard or Nethinah or a bastard or a Nathin who has married an Israelite woman.

T. Sotah 44a (78)

The Talmud continues with an argument similar to that which it raised regarding the robber:

Is this to say that this teaching is not in agreement with that of Rabbi Yosi the Galilean? For Rabbi Yosi the Galilean said: "Afraid and disheartened" refers to one who is afraid on account of his transgressions. Even if you bring up Rabbi Yosi the Galilean's rule, (there is no contradiction) because Rabbah said: He is not guilty until he has slept with her. For what is the meaning of "he shall not take" (Lev. 21:14)? So that he does not profane (his seed). Therefore, he is not punished until he sleeps with her.

T. Sotah 44a (79)

Would not, the Talmud asks, one who has engaged in a prohibited marriage be exempt as one "afraid and disheartened"? Only, Rabbah answers, if he had actually committed the crime by having slept with her. But until the prohibited marriage is consummated, the bridegroom is not exempt, while other bridegrooms of legitimate marriage would be exempt.

This argument is in line with the Talmud's discussion of the house exemption, which excluded the robber. The point

of both discussions is to limit exemptions only to those who act in accordance with the law. Exemptions are not given to those who commit an illegal act.

4. Alternative Service Not Required

The Mishnah lists some categories of exemption whose subjects do not ever report for duty.

The following individuals do not move from their place:

One who has built his house and dedicated it;
 One who has planted a vineyard and harvested it;
 One who has married his fiancée, or one who has fulfilled the Levirate marriage;
 As it says: "He shall be exempt one year for the sake of his household." (Dt. 24:5)

"his household"-this is his house;
 "he shall be"-this is his vineyard;
 "to give happiness to his wife"- this is his wife;
 "he has married"-to his sister-in-law.

These do not supply water or food, and do not repair the roads.

M. Sotah 8:4 (80)

The Mishnah interprets Dt. 24:5 so as to establish an additional category of exemption. Individuals who have completed the act for which they were exempt, but who have not finished the year following that act, are exempt. Furthermore, they do not even report for duty, nor are they required to perform alternative service.

This ruling is derived from the double exemption of the newly-wed bridegroom--once before his marriage is consummated (Dt. 20:7); and again for a year after the marriage is consummated (Dt. 24:5). This extended exemption is then applied to both house and vineyard. The act of dedication or harvesting ceases to be the end-point of one's exemption. It is now the mid-point, to be followed by a period of even more stringent exemption. The ideal of having lived with something/someone for a proper period of time takes priority over

a mechanical view of a specific act which will instantly remove one from exemption. The result is to encourage people further to engage in and complete these acts in order to enjoy a full exemption both from military and alternative service.

The Tosefta repeats the same point as the Mishnah:

I derive from this only the case of one who builds a house, and has not yet dedicated it; plants a vineyard and has not yet harvested it; and pays for his bride but has not yet consummated the marriage--all of whom report and are exempted.

How do I know then, that if one builds a house and dedicates it, and twelve months have not passed; if one plants a vineyard and harvests it, and twelve months have not passed; if one marries his wife and consummates his marriage, and twelve months have not passed--one must not even leave home? Scripture says: "When a man has taken a bride, (he shall not go out with the army...)" (Dt. 24:5)

This rule is already stated! Why does the text reiterate it? To teach that, just as one who has paid the bride-price for a wife and has married her, but has not spent twelve months with her, does not leave home; so, too, one who builds a new house and dedicates it, or one who plants a vineyard and harvests it, and twelve months have not passed, does not leave home.

Tos. Sotah 7:20 (153)

These are the cases which bar one from reporting for duty:

One who builds a house and dedicates it; plants a vineyard and harvests it; pays for a bride and marries her; but has not completed a full twelve months--these do not report at all; they do not pay the town-tax, nor do they supply water or food during the war; and they do not repair the roads.

Tos. Sotah 7:24 (81)

The Tosefta adds to the Mishnah one additional point:

Those exempt from alternative service are also exempt from paying the town-tax. This is probably not a significant difference, just the mention of another element of the defense of the town from which these cases are exempt.

Sifre Devarim supports this point.

"When a man has taken a bride" (Dt. 24:5)

I could derive from this only the case of a virgin. Whence do we know to include a widow, or one waiting for her brother-in-law to marry her. Scripture says: "to give happiness to the woman."

If so, why does it say a new (wife)?

It means, one who is new to him.

Excluded are: one who remarries his divorced wife; a High Priest who marries a widow; a common priest who marries a divorcee or one released from the levirate marriage; an Israelite who marries a bastard or a Nethinah; and a bastard or Nathin who marries an Israelite woman.

"He shall not go out with the army."

I might have thought that this means he will not serve in the army, but he will supply weapons, water, and food (to the troops). Scripture says: "or be assigned to it for any purpose."

If he may not be assigned to it for any purpose, perhaps even one who builds a house and has not dedicated it, planted a vineyard and not harvested it, paid for a wife but not married her, are included.

Scripture says: "he". He may not be assigned to it; all these others may.

"he shall be exempt (one year) for the sake of his household"--this is his house;

"he shall be"--this is his vineyard;

"to give happiness to the woman"--this is his wife;

"he has married"--to fulfill the levirate marriage.

S.D. 24:5(82)

While not mentioning a town tax, Sifre Devarim talks about supplying weapons, not mentioned in either the Mishnah or the Tosefta. All of these elements--supplying food, water, weapons, money, road repair, and guarding walls (see below, M.T. 24:5), form a general description of a total amnesty on service of any kind, which was supposed to be granted to these individuals. The different texts merely highlight different examples of this amnesty. Midrash Tannaim gives all the examples of defense listed in the other texts.

"he shall be exempt one year for the sake of his

household."

As it says: all its fruit (Lev. 19:24). Just as there it refers to a vineyard, so, too, here it (yih'yeh) refers to a vineyard.

"he has married"

From this verse were derived those who do not leave their homes: One who has built a house and dedicated it; planted a vineyard and harvested it; married his fiancée; until a full year has passed.

They do not supply water or food, they do not repair the roads nor guard the walls; they do not pay the town tax, as it says: "one year".

M.T. 24:5 (83)

These rulings underscore the degree to which the rabbis sought to extend the exemptions. Not only are individuals exempt if they have not completed certain major enterprises which they have begun, they are even "more" exempt, by not having to perform alternative service, for one year after having technically completed the task.

The Talmud gives the same definition to a legitimately "new wife" as Sif Devarim.

"The following do not report at all: One who has built a house and dedicated it, etc." (M. Sotah 8:4)

Our rabbis taught: "A new wife." I derive only the case of a new wife. Whence do I know to include a widow, or a divorcee? Scripture says: "wife"--whosoever. If so, why does Scripture say: "a new wife"? It means, she who is new to him. It thus excludes one who remarries his divorced wife, because she is not new to him.

Our Rabbis taught: "he shall not go out with the army." Can he serve in the army if he does not go to war, but supplies water and food, and repairs the roads? Scripture says: "or be assigned to it for any purpose." Can I include also one who has built a house and not dedicated it; planted a vineyard and not harvested it; betrothed a wife and not slept with her? Scripture says: "him"--he may not be assigned; but the others may be assigned.

Since it is written, "he may not be assigned," why does it say, "he shall not go out with the army"? So that a transgression would involve two prohibitions.

T. Sotah 44a (84)

In addition to repeating the exemption from performance of alternative service, the Talmud adds a word of emphasis to that exemption: to violate the exemption is a double transgression.

5. Afraid and Disheartened

The Mishnah records a controversy over the meaning of the fourth exemption.

"The officials shall go on addressing the troops and say, 'Is there anyone afraid and disheartened? Let him go back to his home...' (Dt. 20:8)

Rabbi Akiba said: "afraid and disheartened" in its literal sense, i.e. one who cannot stand in the midst of battle and see a drawn sword.

Rabbi Yosi the Galilean said: "afraid and disheartened"--that is, one who is frightened of his transgressions. For this reason, the Torah includes him with the other three reasons, so that it might appear that he had returned on account of one of them.

Rabbi Yosi said:

The High Priest who marries a widow; the common priest who marries a divorcee or a "released" woman; an Israelite who marries a bastard or a Nathin who marries an Israelite woman--these are "afraid and disheartened."

M. Sotah 8:5 (85)

Rabbi Akiba gives a strict rendering of the exemption. Yosi haGalili gives a looser interpretation. Akiba's definition would result in the shame of cowardice. Yosi the Galilean's definition singles out not those whose cowardice is great, but those whose guilt over their sins is great. They are saved embarrassment, according to the Mishnah, because no one will ever know if they returned on account of their guilt, or for one of the other exemptions. Of course, this same statement would apply to Akiba's definition as well.

..

Rabbi Yosi tells us what Yosi the Galilean meant by "afraid and disheartened." This interpretation, as we saw above, gave rise to a significant controversy over the exemption of those who had engaged in an illegal act.

The Tosefta repeats both Akiba's and Yosi the Galilean's definition.

"The officials shall go addressing the troops and say, 'Is there anyone afraid...?' (Dt. 20:8)

This means one who fears because of the sin which he has committed; as it says: "In time of trouble, why should I fear the encompassing evil of those who would supplant me?" (Ps. 49:6). This is the opinion of Rabbi Yosi the Galilean.

Rabbi Akiba said: "afraid", literally. And why does Scripture say, "and disheartened?" Even the mightiest hero, if he be compassionate, he is exempt. As it says, "lest the courage of his comrades flag like his."

Tos. Sotah 7:22 (86)

The Tosefta renders Akiba's definition in terms of "compassion", not cowardice. Thus, Akiba, as represented in the Tosefta, would exempt those who do not wish to kill, not just those afraid of being killed.

Sifre Devarim gives additional opinions on the afraid and disheartened.

"Is there anyone afraid and disheartened?"

"The officials shall go on addressing..."

Why does it say all these things? So that all the cities of Israel will not be made desolate, as Rabban Yochanan ben Zachai said.

Come and hear how concerned God is about human dignity, on account of the one who is afraid and disheartened. When he returns, they will say: Perhaps he built a house; perhaps he planted a vineyard, perhaps he betrothed a wife.

All of these must bring evidence, except for the afraid and disheartened, whose proof (he carries) with him. He hears the clanking of the armor, and he is terrified; the neighing of horses, and he trembles; the sound of trumpeting horns, and he is frightened; he sees swords being drawn, and waters run down his legs.

"Is there anyone afraid and disheartened?"

Who is withholding a secret transgression.

"Let him go back to his home."

Rabbi Akiba said: "afraid and disheartened" in its literal sense.

Rabbi Yosi the Galilean said: "afraid and disheartened"--that is, who is disabled.

"lest the courage of his comrades flag like his."
 This teaches that if one of them feared for the transgressions he had done, they would all be coming and going.

S.D. 20:8 (87)

Sifre Devarim gives Rabban Yochanan ben Zachai's view that the exemption of the afraid and disheartened, as well as the other exemptions, are for the safety of towns that would be empty and unprotected. The "saving face" nature of the fourth exemption is also reiterated. Those claiming exemption as "afraid and disheartened" are considered to be their own evidence, and are not required to prove their qualification, while all other exemptees must prove their claims.

Yosi the Galilean's definition of the "afraid and disheartened" as "one who is disabled" repeats the exemption of the disabled he gives in S.D. 19:4. There, however, the disabled are not called "afraid and disheartened." Nor is this quote (S.D. 20:8) compatible with Mishnah, Tosefta, or Sifre Devarim which all give Yosi the Galilean's definition of "afraid and disheartened" as "the one who is frightened of his transgressions". It seems likely that the version in Sifre Devarim is mistakenly copied from Yosi the Galilean's quote regarding the disabled. The subsequent verse, "if one of them feared for the transgressions he had done, they would all be coming and going," more clearly follows from the "frightened of his transgressions" definition. Finkelstein (Sifre Devarim, p. 236) has one edition of the text in which Rabbi Meir Ish Shalom renders the end of the

verse: "as is taught elsewhere" i.e. in the Mishnah.

Midrash Tannaim gives a stronger condemnation of the "afraid and disheartened."

"The officials shall go on addressing the troops and say, 'Is there anyone afraid and disheartened?'"
Who cannot hold up in the throes of war, to see a drawn sword, according to Rabbi Akiba.

Rabbi Yosi the Galilean said: "afraid and disheartened"-this is the one who fears for the sins which are in his hands.

"Lest the courage of his comrades fail"

Which teaches that if he does not do battle with his whole heart, he is as one who sheds everyone's blood. About him it is said: "Cursed be he who is slack in doing the Lord's work! Cursed be he who withholds his sword from blood." (Jer 48:10)

M.T. 20:8 (88)

Here, the afraid and disheartened are considered not just a bad influence, but a lethal liability to an army. It is imperative that they not be present on the battle field, or they stand to do great damage to the cause.

The Talmud reconciles the opinions of Akiba, and Yosi the Galilean.

What is the difference between Rabbi Yosi and Rabbi Yosi the Galilean? They differ over the (inclusion of) Rabbinical prohibitions. With whom does the following teaching accord? "One who speaks between placing the two tefillin has transgressed, and is exempt under the war-regulations." It accords with Rabbi Yosi the Galilean. Who taught the following? Our Rabbis taught: One who hears the sound of trumpets and is terror-stricken; the crash of shields, and is terror-stricken; the drawing of swords, and the water flows between his knees, is exempt. Can we ascribe it to Rabbi Akiba and not to Rabbi Yosi the Galilean? Even Rabbi Yosi the Galilean admits this case, because it says: "lest the courage of his comrades flag like his."

T. Sotah 44b (89)

According to the Talmud, Rabbi Yosi the Galilean includes Rabbinical prohibitions among the transgressions that will exempt one from battle. Rabbi Yosi, on the other hand, includes only Toraitic prohibitions. Hence, the baraita which recognizes an exemption based on the transgression of speaking "between placing the two tefillin" (a Rabbinic prohibition) must accord with Yosi the Galilean. The baraita describing the reactions of one who is afraid to the sounds of battle, however, is tied to the literal meaning of afraid, in the style of Rabbi Akiba. Yet, the Talmud maintains, Yosi the Galilean could not have meant to exclude this literal sense from also qualifying one for exemption.

6. Army Commanders

The sources all speak of the same authority delegated to army commanders:

"When the officials have finished addressing the troops, army commanders shall assume command of the troops." (Dt. 20:9)

And at the perimeters of the troops. They placed strongmen before them, and others at their rear, with iron axes in their hands; and whoever wished to leave, they were permitted to beat his back; for the beginning of defeat is flight, as it says: "Israel fled before the Philistines, and the troops also suffered a great slaughter." (I Sam 4:17) And elsewhere it says: "the men of Israel fled before the Philistines and (many) fell, etc." (I Sam 31:1)

M. Sotah 8:6 (90)

"When the officials have finished".

They placed strongmen in front and behind them, with iron axes in their hands, and whoever tried to turn back, they had permission to beat him until he was humpbacked; because the beginning of defeat is flight; as it says: "Israel fled before the Philistines and the troops also suffered a great slaughter."

S.D. 20:9 (91)

"when the officials have finished addressing the troops, army commanders shall assume command of the troops."

Do you mean: "at the head of the people" means at their perimeters, or at the head, literally? When it says: "For it is the Lord your God who goes with you", this refers to the Ark which is at the head. Hence, I interpret "at the head of the people" as at its perimeters. From here we learn that after they finish delivering all these regulations they appoint army commanders over them; one sergeant for every ten soldiers, at their front and rear, with clubs.

M.T. 20:9 (92)

The rabbis thus recognized a need for military discipline, in spite of the great number of exemptions they granted. This fits well with the limitation, noted above, that exemptions take place prior to battle. After that, soldiers are expected to do battle whole-heartedly, and to follow orders.

C. Negotiations and Conquest

Only in the Midrashei Halacha do we find laws pertaining to Negotiations and Conquest. These laws deal with the extent and limits of the army's permitted actions. Though there is some controversy, the general tendency is to urge caution, diminishing the prospects of war.

1. When to Attack

Midrash Tannaim emphasizes the Deuteronomic command to offer peace.

"When you approach a town (to attack it...)"
(Dt. 20:10)

Why does it say this? Because, when it says: "When you take the field against your enemies..." (Dt. 20:1), I might infer that the fighting begins at that time. Scripture, however, states: "When you approach a town to attack it, you shall offer it terms of peace." To show that one begins by offering it peace.

M.T. 20:10 (93)

"If it does not surrender to you..." (Dt. 20:12);
I might infer that you should initiate the fighting. Scripture says: "but would join battle with you." When it begins to fight with you.

M.T. 20:12 (94)

Not only are surprise attacks prohibited; pre-emptive strikes are forbidden as well. Only if the town has been offered a chance for peaceful surrender and has refused or if the town attacks first may it be attacked.

Further on, the text indicates that the Israelites must make repeated efforts to make peace.

"When in your war against a city you have to besiege it for a long time..." (Dt. 20:19)

Why is this said? Because it says: "When you approach a town to attack it..." I might have thought that if they offer it peace one day, (and it is not accepted), they may begin to attack it. However, Scripture says: "When in your war against a city you have to besiege it for a long time..."

M.T. 20:19 (95)

Furthermore, they may not attack unless they are sure of winning.

"To capture it" (Dt. 20:19)

If you know that you are capable of capturing it, you are permitted to engage it in battle; but if not, you are not permitted to engage it in battle.

M.T. 20:19 (96)

These restrictions amount to a considerable deterrence to engaging in "Permissible War". Having to offer peaceful terms several times, waiting to be attacked first, and fighting only when sure of victory, would severely hamper efforts toward territorial conquest.

Sifre Devarim, as a whole, expresses a similar caution.

"If it does not surrender to you, but would join battle with you," (Dt. 20:12).

Scripture informs you that if it does not make peace with you, in the end it will wage war with you.
S.D. 20:12 (97)

Another interpretation:

"When you besiege a city" means that one must offer peace two or three days, so that they might not be engaged in battle. Hence, it says: "David stayed two days in Ziklag." (II S 1:1)
S.D. 20:19 (98)

While pre-emptive strikes are not prohibited, repeated offers of peace are necessary.

Sifre Devarim records two contradictory rulings on permissible tactics of warfare.

"to attack it"--and not to starve it, nor to cause it to perish from thirst, nor to cause it to perish from disease.

S.D. 20:19 (99)

"You shall lay siege to it"--even to starve it, even to cause it to perish from thirst, even to cause it to perish from disease.

S.D. 20:12 (100)

The text indicates a familiarity with methods of siege warfare that might avoid armed confrontation. In the first case, these methods are deemed impermissible. Perhaps this is due to a sense that such means do not indicate good faith in God's power to save. Certainly, such a ruling would have

disinclined the Israelites from engaging in attacks on foreign towns, if the law left no way out of armed conflict. In contrast, the latter ruling seems to represent a view that all methods of siege warfare are permissible. It may be that the first ruling applies to the intention with which the army may approach a town, whereas the second ruling applies to the actual conduct of war, in which "anything goes." It is also possible that the two rulings represent differing views, and that the editor sought to include both arguments.

3. How a City Must Respond

According to Sifre Devarim, a city must entirely surrender, in order to prevent attack.

"If it responds peaceably" (Dt. 20:11)

Can it be just a part (of the city)? Scripture says: "and lets you in"--all of it, and not just part of it.

"all the people present there"--including the Canaanites therein.

"shall serve you at forced labor"--If they say, "We will serve you, but not pay taxes." Do not accept their terms, until they accept both conditions.

S.D. 20:11 (101)

Their surrender must be unconditional, which meant that they would pay taxes and submit to the labor-draft. The Canaanites however, are apparently accorded the same status as a town's inhabitants, unlike the treatment of Canaanite towns, in which they would be killed.

Midrash Tannaim further stipulates that the surrender must be realized in deed.

"If it responds peaceably"

I might infer that (the response) may be oral. Scripture says: "and lets you in". It must respond with action, not with words.

M.T. 20:11 (102)

4. Avenue of Escape

Midrash Tannaim records a controversy over the method of warfare.

"You shall lay siege to it" (Dt. 20:12)
That is, surround it on all four sides.
Rabbi Nathan said: Allow them an avenue of escape.
M.T. 20:12 (103)

The baraita holds that a town may be completely surrounded, which would result in the town being faced by either war or surrender. Rabbi Nathan holds that the town's inhabitants must have an option to save their lives, even if they are not willing to surrender.

5. Spoils

Sifre Devarim discusses the fate of the town's inhabitants, and its spoils.

"You shall put all its males to sword." (Dt. 20:13)

I might infer that this includes even baby boys, for when it says: "Only the women, children, and livestock (may you take for booty)"; it refers only to female children. However, whereas in Midian, where the women were killed but the girls were spared; here, where the women are spared, is it not just that the girls, too, be spared? Therefore, "children" must refer to boys. But how does one derive that (a boy) who does battle with you (may be killed)? Scripture says: Only the women, children, and livestock.

S.D. 20:13 (104)

"...and everything in the town--all its spoil, you may take as your booty." (Dt. 20:14)

I might have thought that their spoils are forbidden. Scripture says: "You may take as your booty, and enjoy the use of the spoil of your enemy."

S.D. 20:14 (105)

Though adult males are killed in towns against which war has been declared, women, girls, and boys who do not fight, are spared. The text also emphasizes the legitimacy of taking spoils, as a positive command. Midrash Tannaim reiterates this point, with the stipulation that spoils be taken only after the conquest is complete.

"All its spoil you may take as booty."

I might infer that one may plunder from the outset. Scripture says: "and enjoy the use of the spoil of your enemy which the Lord your God gives you."

That is, after you take possession (of the town).

M.T. 20:14 (106)

This was, no doubt, to discourage rampant plundering, and to further the interests of the orderly conduct of battle.

The Mishnah clarifies the need for waiting until the conquest is complete before dividing the spoils.

(A king) sends out (his army) to (fight) a Milchemet ha'Reshut, by consent of the court of seventy-one. He may cut out a path, and no one may prevent him. The king's road has no limits. And anyone who plunders, must place (their booty) before him, and he takes the choice part. He may not take unlimited wives; only up to eighteen. Rabbi Yehudah said: He may take unlimited wives, so long as they do not corrupt him. Rabbi Shimon said: Any one who corrupts him, he may not marry. If so, why does it say: "He may not take unlimited wives?" (Dt. 17:17) Not even Abigail. "He may not take unlimited numbers of horses" (Dt. 17:16), except for his chariots. "He may not take excessive silver and gold" (Dt. 17:17), except for weaponry. He shall write a Torah scroll for himself. When he goes to war, he shall take it with him. When he returns, he shall return it with him. When he passes judgement, it is with him. When he dines, it faces him, as it says: "It shall be with him, and he shall read it all the days of his life."

M. Sanhedrin 2:4 (107)

The king is entitled to first pick of the spoils. Even he, though, is not permitted unlimited plunder. He is bound to exercise restraint, and to follow the law at all times. These rulings demonstrate the great concern the rabbis had with the potential for abuse of military power. They restrain the impulse to attack, to plunder, and even the king's greed. In the view of the rabbis, these excesses of war must have seemed to threaten the stability of their institution, just as the priest's feared the power of the king in the Deuteronomic Code of War. They demand the king's good behavior, by commanding that "when he goes to war, he shall take (the Torah) with him."

D. Canaanite Towns

The Midrashei Halacha delineate different regulations for the Seven Canaanite Nations from the towns in foreign countries. This is in keeping with the distinction made in Deuteronomy.

1. The Application of War Laws to Various Populations

Sifre Devarim distinguishes the Seven Nations for separate treatment in war.

"Thus you shall deal with all towns that lie (very) far (from you)." (Dt. 20:15)
The distant cities are included in this ruling, but not the near cities.

"Towns that do not belong to the nations hereabout."

The towns of these nations are not included in this instruction.

S.D. 20:15 (108)

That is, the Seven Nations are not to be given the same treatment as those towns "that do not belong to the nations hereabout."

Midrash Tannaim indicates that the Deuteronomic war laws even apply to foreign nations in the promised land.

"Thus you shall deal with all towns that lie very far from you."

I derive from this only those (towns) which lie distant (geographically). How do I know it refers to those which are distant by descent from tribes which were expelled? Scripture says: "In the towns of the latter peoples, however, which the Lord your God is giving you as a heritage."

M.T. 20:15 (109)

These nations, like the Ammonites and the Moabites, are entitled to the same treatment as foreign nations, even though they reside in Israelite territory. This is based upon the specific mention by name of the Seven Nations as groups deserving different treatment in war.

2. Ban of Death

Sifre Devarim and Midrash Tannaim differ over the total proscription of the inhabitants of Canaanite towns.

"In the towns of the latter people, however, you shall not let a soul remain alive."

By the sword.

S.D. 20:16 (110)

"No, you must proscribe them." I might have thought that their booty is prohibited. Scripture says: "houses full of all good things" (Dt. 6:11)

S.D. 20:17 (111)

"Lest they lead you into doing"--which teaches that, if they repent, they are not to be killed.

"and you stand guilty before the Lord your God".

If you do not do all that is said here, you will be called guilty to the Lord your God.

S.D. 20:18 (112)

Sifre Devarim permits the taking of booty, and allows for the possibility that even the Canaanite town's inhabitants may be saved if they repent.

Midrash Tannaim takes a stricter stand.

"You shall not let a soul remain alive."

I might think this applies unless they make peace; Scripture says: "Only."

M.T. 20:16 (118)

Why must this be done? "Lest they lead you into doing all..." What if they make peace, and agree not to serve idols? Scripture says: "and you stand guilty before the Lord your God." Hence, even if they agree not to serve idols, you are not permitted to devise an artifice and thereby enslave them.

M.T. 20:18 (114)

Midrash Tannaim makes no mention of spoils. It clearly prohibits accepting any terms of peace. This must reflect a disagreement between the two schools, not so much over the rights of Canaanites, as over the literal interpretation of

the Deuteronomic text. The Ishmaelite school, in Midrash Tannaim, maintains a more literal interpretation. The Akibaite school, in Sifre Devarim, allows for greater interpretation, in keeping with the general leniency of the rabbinic sources.

3. Girgashites

The Deuteronomic law fails to mention all seven of the Canaanite nations. Both Midrashei Halachah include the seventh nation, the Girgashites.

"No, you must proscribe them."
This is a positive commandment.

"The Hittites and the Amorites, the Canaanites and the Perizzites, the Hivites and the Jebusites."

Whence do we know to include the Girgashites? Scripture says: "as the Lord your God has commanded you." You should interpret: A command is stated here, and a command is stated there. Just as Scripture speaks of seven nations in its command there, so, too, Scripture speaks of seven nations in its command here.

M.T. 20:17 (115)

"The Hittites and the Amorites, the Canaanites and the Perizzites, the Hivites and the Jebusites."

When it says: "as the Lord your God has commanded you" it means to include the Girgashites.

S.D. 20:17 (116)

E. Preservation of Trees

The Midrashei Halacha significantly augments the Deuteronomic legislation on the preservation of fruit trees during sieges. In addition to extending the literal sense of the text, the rabbis also placed limits on the extent of the prohibition against cutting fruit trees down.

1. Applies Only to Milchemet Reshut

Sifre Devarim holds that the prohibition against destroying fruit trees applies only to a Milchemet Reshut/Permissible War.

"When you besiege a town" (Dt. 20:19)
 Scripture is speaking of a Milchemet haReshut.
 "a town" and not a city;
 "a town" and not a village.
 S.D. 20:19 (117)

It may be presumed that in Obligatory Wars, the rabbis believed that even this destruction was permitted.

It is not clear what is meant by the restriction of the law to a town. Perhaps the rabbis believed that, in attacks against the larger city, or the smaller village, destruction of fruit trees was permitted. It may also be that this is a restriction of warfare altogether, to towns only. That is, that a siege could not be declared against a city, perhaps because of its futility, or against a village, perhaps because of its unfairness.

2. Destruction by Any Means

To destroy fruit trees by any means is prohibited by Sifre Devarim.

"to capture it by force"--and not to obliterate it; "you must not destroy its trees, wielding the ax against them." I might derive from this that it applies only to (destruction by) ax. How do I know that to divert its source of water (is also prohibited)? Scripture says: "You must not destroy its trees"--That is, in any way.

"you may eat of them"--a positive commandment.
"but you must not cut them down"--a negative commandment.

S.D. 20:19 (118)

The sense is that the Deuteronomic law is against destruction, not just cutting down.

Midrash Tannaim shares the same understanding of the Deuteronomic law.

"Do not destroy its trees." That is, trim them.
"wielding the ax against them." That is, cutting them down.

"You may eat of them, but you must not cut them down." This means uprooting. From these, it is derived that the one who uproots a tree transgresses three negative commandments.

M.T. 20:19 (119)

This text deduces a further prohibition against destroying trees, not limited to a siege.

3. Obstructing Trees

If a fruit tree poses an obstacle, it may be cut down, according to Sifre Devarim.

"To withdraw before you into the besieged city.
Therefore, if it prevents you from entering the
besieged city, cut it down.

S.D. 20:19 (120)

We see from this that these rabbis did not take a literal approach to the Deuteronomic law. They chose to evaluate each case according to the worth of the tree as opposed to the necessity to conduct successful warfare. This can be seen as a concession to the need to conduct a siege in whatever manner necessary. This has been noted above regarding permissible tactics. (S.D. 20:12). This text also reflects the concern that rampant destruction not be allowed. Only when there is a specific military gain may trees be destroyed. Nonetheless, fruit trees are accorded greater status than shade trees:

"Only trees which you know"--this is a fruit tree.
"that it is not a fruit tree."--this is a shade tree.

If we are ultimately to include fruit trees, (for destruction), why does Scripture say: "fruit trees"? To teach that a shade tree should be (cut down) before a fruit tree, even if it is worth more.

S.D. 20:20 (121)

Even here, though, it is only when the tree can be put to use in the war effort that it may be cut down. Rabbi Elazar further emphasizes that the trees one cuts down must be for utilitarian purposes, not just for the sake of wanton destruction.

Rabbi Elazar, in the name of Rabbi Shimon, held the opinion that where Scripture says: "that one you may destroy and cut down." i.e. you may make from it chests.

"for constructing siegeworks against the city,"--
you may make engines and catapults to use against it.

S.D. 20:20 (121)

4. Battle on Shabbat

From the permission to construct siegeworks from felled trees, a ruling is made on warfare during Shabbat.

"Many days"

"Days"--two;

"Many"--three;

Hence we learn that a gentile city may not be besieged fewer than three days before Shabbat.

And one may not begin attacking a city on Shabbat; rather, (one begins) three days before Shabbat. And if they have surrounded it, and Shabbat occurs, Shabbat does not interrupt their war. This is one of three rulings which Shammai the Elder derived:

A ship does not sail in the Great Sea, except three days before Shabbat. Regarding what is this said? Regarding a long journey; but on a short journey (it is permissible) to sail (less than three days before Shabbat).

S.D. 20:19 (122)

"Until it has been reduced"--even on Shabbat.

S.D. 20:20 (123)

It is not permitted to begin a siege on Shabbat, but it may be continued on Shabbat. Rabbi Elazar's statement that siegeworks may be constructed from the trees, concludes in the latter quote, that even the construction of siegeworks may continue on Shabbat, until the city "has been reduced."

Midrash Tannaim reiterates the same point:

"for constructing siegeworks"--whether on Shabbat or weekdays.

How should I interpret: "Those who desecrate the Shabbat shall die" (Ex. 31:14)? This applies to everything but a Milchemet Reshut. Perhaps it applies to a Milchemet Reshut as well? How, then, would I interpret: "for constructing siegeworks?" On any day but Shabbat. Perhaps it applies to Shabbat as well? Scripture says: "until it has been reduced." That is, even on Shabbat (you may construct siegeworks).

Rabbi said: This is one of the things from which Shammai the Elder taught: one may not sail a ship in the Great Sea, except three days before Shabbat. About

what is this said? About a long distance. But if it is a short distance, it may sail even on Erev-Shabbat. One may not attack a city beginning on Shabbat, but at least three days before Shabbat. If they surround it and Shabbat falls, Shabbat does not interrupt the war.
M.T. 20:20 (124)

This text attempts to show that, though the laws of Shabbat apply even during war, the needs of war are exempt from Shabbat restrictions. While not stated in Deuteronomy, this practice had probably been well-established since the Hasmoneans. Tcherikover⁹ notes that the Hasmoneans abolished the prohibition of self-defense on Shabbat (I Macc 2:39ff), because of the failure of the Hasidic revolt due to their Shabbat. The same principle is expressed in the Tosefta.

When the army engages in a Milchemet ha'Reshut, they are not to commence the siege of a city less than three days prior to Shabbat. If they have already begun, they do not cease, even on Shabbat. This is how Hillel the Elder interpreted "until it has been reduced."

Tos. Eruvin 4:7 (125)

The Talmud recognized the priority of defensive warfare over Shabbat observance.

"Whoever leaves in order to rescue, may return home."

Even further (than 2,000 amah?) Haven't we already stated that one may go no further than 2,000 amah? Rav Yehudah said Rav said: He may return with his weapon. What, then, is the question? Is the act of rescue different (from the other cases in which travel up to 2,000 amah is permitted?) If there is a question, it is this: Originally, (witnesses of the new moon) could not move all day. Rabban Gamiel the Elder ordained that they may move about 2,000 amah in any direction. And not only are (witnesses) so permitted, but also a midwife coming to deliver, and one who comes to rescue from invaders, or from a river, or from collapse, or from fire--all these are considered as

residents (of the town to which they have traveled), and are allowed 2,000 amah in any direction. But not more than 2,000 amah? It says: Whoever leaves in order to rescue, may return home. Even further (than 2,000 amah!) But Rav said: He may return with his weapon. Rav Yehuda said Rav said: When Gentiles attack Israelite cities, they may not defend against them with weapons, nor may they desecrate the Sabbath on their account. There is also a teaching to this effect: When Gentiles attack, etc. Regarding what is this said? When they come for monetary gain. But when they come to endanger lives, they may defend with weapons, and desecrate the Sabbath on their account. In cities on the border, even if the enemies come not to endanger lives, but merely to take straw and stubble; (our soldiers) may defend against them with weapons, and desecrate the Sabbath on their account. Rav Yosef bar Maniyumi said Rav Nachman said: Babylonia is considered as a city on the border. It means: Nehardeah. T. Eruvin 45a (126)

Weapons may be used in defense of a city on Shabbat, and even carried to that city and back. These rulings reflect a particular sensitivity to the relative value of Shabbat observance. The Talmud views security, especially along the border, as a concern which overrides the Shabbat. The Talmud recognized the priority of defensive warfare over Shabbat observance.

F. Captive Women

The rabbis went a great deal further than Deuteronomy in restricting inhumane treatment of captive women. Though permission is still granted to the captor to take women in the captured town, the regulations limit how many women he may take and what he may do with them. The laws also extend her rights. The resulting legislation would function to discourage soldiers from taking women altogether, even though they are permitted.

1. Canaanite Women

According to Sifre Devarim, these Deuteronomic laws governing captured women extend even to the Canaanite women living in foreign towns.

"When you go to war" (Dt. 21:10)
 Scripture refers here to a Milchemet haReshut.
 "and you take some of them captive"--including
 the Canaanites therein.

S.D. 21:10 (127)

The application of these rules only in a Permissible War parallels Sifre Devarim's discussion of trees, which are protected only in a Permissible War as well. It is clear that in an Obligatory War, all the inhabitants would be killed. Hence, no laws concerning captive women were necessary for Obligatory Wars.

The treatment of Canaanite women also parallels Sifre Devarim 20:11, in which all Canaanite inhabitants of foreign towns are accorded the same status as the towns' non-Canaanite inhabitants. The inclusion of Canaanite women indicates the rabbis' desire to limit the application of the herem only to Obligatory Wars. A stray Canaanite did not merit death.

2. Marriage to Captive Women

The rabbis sought to emphasize that the deserved position of a captive woman was that of wife.

"When you go to war..." (Dt. 21:10)

Why is this said? Because it says: "You may take as your booty the women, the children, and the livestock..." (Dt. 20:14) But we do not know from this that it is permitted to make wives of them. Hence, Scripture says: "When you go to war... and you see among the captives..." Scripture intends to teach proper procedure so that you may make wives of them.

M.T. 21:10 (128)

The midrash indicates that Deuteronomy's intent is to teach one how to go about finding a bride during war. It goes on to indicate that certain conditions must be met first.

"and the Lord your God delivers them into your power and you take some of them captive: (Dt. 21:10)

If they are given over to you, you are permitted to take them captive; and if not, you are not permitted to take them captive.

M.T. 21:10 (129)

"and you desire her" (Dt. 21:11)--

Her, and not her companions.

"and would take her"--

Your relationship with her is a legal marriage.

"as a wife"--

One may not bring home two: one for himself, and one for his father or for his son.

M.T. 21:11 (130)

First, captives may be taken only if the Israelites are victorious. This discourages the taking of captives before a decisive victory has been won, which we noted was a concern of Midrash Tannaim 20:14, on the taking of spoils. It also implies that raids on border towns, to steal women or goods, are prohibited.

A woman is taken to mean one who is married or unmarried. This follows from the assumption that in a captured town, all the males would be killed. In that case, even married women would no longer have their husbands.

It was also assumed that, where Deuteronomy specifies "a woman of beauty", this did not limit captors to taking only beautiful women. The right to take women, beautiful or ugly, married or unmarried, is taken to be an inherent prerogative of the victorious army. Given this permission, the rabbis chose to discourage the excesses that would naturally arise in the aftermath of victory. Like Midrash Tannaim, Sifre Devarim permits only taking captives for oneself, and not for others.

Midrash Tannaim also prohibits the act of rape itself.

"You shall bring her into your house."

"One must not force her (to yield to him) during the war.

M.T. 21:12 (133)

The Talmud reiterates these themes:

Our Rabbis taught: "And you see among the captives"--when taking her captive;

"a woman"--even married;

"of beauty"--the Torah only provided for human passions. It is better for Israel to eat flesh of (animals) about to die, yet ritually slaughtered, than flesh of dying animals which have perished;

"and you desire"--even if she is not beautiful;

"her"--but not her and her companions;

"and would take her"--thou hast marriage rights over her;

"to wife"--(teaching) that he must not take two women, one for himself and another for his father, or one for himself and another for his son;

"you shall bring her into your house"--teaching that he must not molest her on the (field of) battle.

T. Kiddushin 21b-22a (134)

Second, one must select the particular woman one desires. It is unacceptable to take any one; it must be "her, and not her companions."

She is to be made into a wife, with all the legal ramifications implied in that status. This is a more forceful statement than the one preceeding it, that one "may make wives of them."

Finally, one may take only one woman. One may not even bring home an extra captive for someone else. This prevents a soldier from collecting women, either for his own pleasure, or to give or sell to others, as was probably a common practice. The result is prevention of the reduction of these women to the status of mere objects or chattels.

Sifre Devarim adds some further restrictions as well as definitions of some terms.

"and you see among the captives"--at the moment of capture;

"a woman"--even if she is a married woman;

"of beauty"--I might infer that this only applies to one who is at that moment pleasant. How do I know that it applies even if she is ugly? Scripture says: "and you desire her"--even if she is not a woman of beauty.

S.D. 21:11 (131)

"You shall bring her into your house"--and not to another's house.

S.D. 21:12 (132)

Sifre Devarim adds the stipulation that a claim may be made for a captive only immediately upon capture. Hence, women could not be brought home for soldiers or others to choose from.

Altogether, this legislation establishes strict controls on the permitted actions of a captor. Especially with regard to number, this is a significant limitation on the Deuteronomic law.

3. Captive Women's Rights

The captive woman is entitled to certain specified treatment.

"and (she shall) do her nails".

According to Rabbi Akiba, even though there is no proof-text for this, you must observe it.

M.T. 21:12 (135)

"she shall trim her hair, and do (v'astah) her nails."

Rabbi Eliezer said: She shall cut (her nails).

Rabbi Akiba said: She shall grow (her nails).

Rabbi Eliezer said: "Do" is said regarding the head, and "do" is said regarding the nails. Since "to do one's hair" means to cut it, therefore "to do one's nails" means to cut them.

Rabbi Akiba said: "Do" is said regarding the head, and "do" is said regarding the nails. Just as "to do one's hair" is disgraceful, so, too, "to do one's nails" is disgraceful.

And Rabbi Eliezer's proof-text is: "Mephiboseth, the grandson of Saul, also came down to meet the king. He had not pared his toenails, or trimmed his moustache..."

S.D. 21:12 (136)

The controversy appears to be whether the captive should be made more or less beautiful. If more beautiful, it may be considered for her own benefit. If less beautiful, it is certainly not so much to punish her, as to make her less appealing to her captor. This latter opinion is pursued further in Sifre Devarim.

"and discard her captive's garb"--which teaches that one should remove her nice clothes, and clothe her in widow's garments. For the gentiles are cursed, because their daughters adorn themselves in order to lure others to them.

"She shall dwell in your house."

In the house which you make use of." So that he meets her when he goes in and out. She is like a bare-head, and he sees her in her disheveled state.

S.D. 21:13 (137)

The text stresses that the captive woman be made less appealing, which would certainly have discouraged the captor.

This is emphasized by placing her in his path "in her disheveled state."

A period of mourning is considered the captive's right.

"She shall lament her father and mother a month's time." Literally, her father and mother, according to Rabbi Eliezer.

Rabbi Akiba, however, said: Her father and mother are none other than idolatry, as it says: "They said to wood, 'You are my father'" (Jer. 2:27)

"a month's time"--thirty days.

Another interpretation:

Month--one;

Days--two. Hence, three months. One month for the nice clothes (which attracted him); (one month) for her beauty; (a third month) to ascertain if she is pregnant. Rabbi Akiba says: In order to distinguish the child's parentage (between first and second husbands). Rabbi Eliezer said: Literally, one month. Why? So that (he will see) the daughter of Israel adorned, while she is disfigured.

S.D. 21:13 (138)

Though Rabbi Akiba considers this to be less than honorable mourning, he refrains from suggesting that it not be observed. The overriding theme of restraint is expressed in the restriction of three months before intercourse is permitted. This also protects a child from the possibility of questionable parentage, and allows for conversion of the child if it is of totally gentile parentage. Rabbi Eliezer emphasizes the discouraging effect of seeing the captive in mourning, and the hopeful outcome that one will choose an Israelite woman instead.

In Midrash Tannaim, this ruling is tempered by the possibility of the captive converting.

"after that you may come to her and possess her."
 In what case does this apply? If she does not agree to convert. But if she agrees (to convert), she shall undergo immersion, after which she is immediately permissible.

M.T. 21:13 (139)

That is, a woman who has become an Israelite is seen in the same favorable status as other Israelites.

Sifre Devarim adds some further cautions:

"After that you may come to her and possess her," that is, if you do not follow all these regulations concerning her before you come to her, you have committed an act of prostitution.

"After that you may come to her and possess her," You may have nothing to do with her, except to fulfill the commandment of intercourse.

S.D. 21:13 (140)

These harsh words both condemn those who hastily ignore the provisions, which are designed to discourage him in the first place; and limit his contact with her after she has become permissible to him. That is, as an intermarriage, this relationship is accorded a second-class status.

4. Release of Captive Women

Sifre Devarim regards the captive woman as entitled to all the rights of a married woman, even in divorce.

"You must release her outright." (Dt. 21:14)

And not (give her) to her god's temple.

"You must release her"--by a bill of divorce, according to Rabbi Yonatan. And if she is sick, one must wait until she recovers. How much more so, then, regarding the daughters of Israel, who are holy and pure?

"You must not sell her for money."

I derive only that one may not sell her for money. Whence do we know that one may not give her away as a gift, nor make of her a favor? Scripture says: You must not sell her for money."

"You must not enslave her."

You may not use her.

"Since you had your will of her."

Even after a single time.

S.D. 21:14 (141)

Once a man has married her, he is obligated to give her a get. She can no longer be treated as a slave, as this would reduce the act of intercourse to one of rape and not one of consummation of marriage.

Midrash Tannaim debates whether it is prohibited to sell the captive woman, even if intercourse has not taken place.

"since you had your will of her, you must not enslave her."

You must not enslave her if she does these things. Does Scripture really mean he cannot sell her as a slave if she has done all these things, or is it only if he has had intercourse with her? But if you say this, she is his wife anyway (since he had intercourse with her). Hence, when it says: "Since you had your will of her, you must not enslave her." It means, if she does all of this, even without intercourse taking place; according to Rabbi Yoshia.

Rabbi Yonatan said: Does Scripture mean after intercourse, or even if she only does these things?

Scripture says: "and (he) took her and lay with her by force." (Gn 34:2) You can interpret this as rape, and that as rape. Just as rape means after intercourse there, so, too, rape means after intercourse here.

M.T. 21:14 (152)

According to Rabbi Yoshia, a captive woman cannot be enslaved, no matter if she has had intercourse with her captor or not. Rabbi Yonatan takes the view of Sifre Devarim: Once the marriage has been consummated by intercourse she is entitled to the status of wife. Rabbi Yoshia's opinion indicates a debate on this issue, the outcome of which would affect the desirability of taking captives. A soldier was taking a risk in taking a woman captive, according to Rabbi Yoshia's opinion. If she turned out to be undesirable as a wife--he could not even get money for her. He was either burdened with supporting her, or he would have to give her a get, perhaps with alimony and other benefits.

G. Other War Laws

A number of laws may be found in the Mishnah, the Tosefta, and the Talmud, which pertain to war, but are not based on the Deuteronomic Code of War. In most cases, these laws reflect the same tendencies as were apparent in dealing with the laws we have already examined. These laws are mostly not dependent on an interpretation of specific war injunctions in Deuteronomy. They do not form part of the continuous evolution of the laws of conduct of war, even though they may share some of the same attitudes. The full significance of each law would be apparent only in the context of other laws dealing with their primary concerns, e.g. property protection, use of idolatrous materials, etc. A few of these laws will be noted for their connection to the recurrent themes of the laws of war already studied.

1. Real Estate

War altered the status of property which had been confiscated from a Jew by a non-Jew (the Sikarikon) and then sold to another Jew. According to the "law of Sikarikon", the prior owner of the confiscated property may reclaim his property from the new owner, depending on the procedure by which the new owner purchased it from the Sikarikon.

The law of the Sikarikon does not apply in Judah during wartime; after wartime Sikarikon does apply. How (does the law of Sikarikon work?) If one purchases from the Sikarikon first, and afterward purchases (the same property) from the owner; his purchase is annulled. If he purchases first from the owner, and afterward purchases from the Sikarikon, his purchase is valid. If one purchases from a husband (property which he has given to his wife), and afterward purchases from the wife; his purchase is annulled. If he purchases first from the wife, and afterward from her husband; his purchase is valid. This was the first ruling on this matter.

The subsequent court ruled: One who purchases from a Sikarikon, must give the owners a quarter (of the property). When does this apply? If the owners do not have the means to purchase the property back. But if they do have the means to purchase it back, they are entitled to do so (from the one who bought the property from the Sikarikon). Rabbi called a court, which decided that if the Sikarikon has possession for twelve months, whoever is first to purchase it is entitled to it; however, he must give the owners a quarter of it.

M. Gittin 5:6 (142)

The law of Sikarikon does not apply in the land of Judah, for the sake of the settlement of the land. With regard to what is this said? In regard to those killed prior to or during the war; but in regard to those killed after the war, the law of Sikarikon applies.

If one buys first from the Sikarikon, and after from the owner, the purchase is valid. If one buys first from the owner, and after from the Sikarikon, the purchase is invalid. If the owner puts a lien on his property, his purchase is valid. This was the first ruling on this matter.

Our teachers said: If one purchases, and there are no objections, he gives the owners a quarter of the land, and a quarter of the price. The owners have priority: If they have the means, they come before all others.

Rabbi convened a court, which differed: If the Sikarikon retains possession for twelve months, whoever comes first gives the owners a quarter of the property and a quarter of the price. The owners have priority: If they have the means, they come before all others.

Tos. Gittin 5:1 (143)

The Mishnah and the Tosefta differ on the order of purchases necessary. The Tosefta qualifies the case of one purchasing "first from the owner, and after from the Sikarikon." If the owner puts a lien on his property, i.e. guarantees alternative property in its place, in case he wishes to reclaim the primary property, then the purchase is valid. Presumably, the owner indicates, in giving a lien, that he means to do business, and is not selling out of fear.

If there was no Sikarikon for those killed in the war, is it possible that there should have been after the termination of the war? Rav Judah said: It means that the rule of Sikarikon was not applied. For R. Assi has stated: They (the Roman Government) issued three successive decrees. The first was that whoever did not kill (a Jew on finding him) should himself be put to death. The second was that whoever killed (a Jew) should pay four zuz. The last was that whoever killed a Jew should himself be put to death. Hence in the first two (periods), (the Jew), being in danger of his life, would determine to transfer his property (to the Sikarikon), but in the last (period) he would say to himself, Let him take it today; tomorrow I will sue him for it.

T. Gittin 55b (144)

The law of Sikarikon makes it possible for landowners to regain property lost under duress. By suspending the law in wartime, Judeans are held responsible for the physical protection of their property. If a landowner relinquishes his property during war, he has no claim to priority in repurchasing it, nor can he claim compensation from the new owners. In addition to reinforcing defense, the suspension

of Sikarikon fosters resettlement to war. Judeans will more readily purchase property from the Sikarikon who appropriated it, if they are not obligated to then return it to its original owners.

2. Sale of Horses

During war, certain "fair market value" laws were suspended.

It has been taught, Rabbi Judah ben Bathyra said: The sale of a horse, sword, and buckler on (the field of) battle are not subject to overreaching, because one's very life is dependent upon them.

T. Baba Metzia 58b (145)

Since a soldier's life depends on his horse and armaments, he will knowingly pay in excess of their value in order to obtain them. Hence, it can be assumed that his purchase was made with full knowledge of their normative value. He may not, therefore, sue the seller for taking advantage of his ignorance.

Elsewhere, the Talmud applies Judah ben Bathyra's ruling to the sale of horses to gentiles.

Nachum the Mede said: During war, it is permissible to sell a male or old horse (to idolators). They said to him: Let the matter be left undiscussed. But do we not have a reference to the same opinion held by ben Bathyra?

As it says: Ben Bathyra permits (the sale of) a horse. Ben Bathyra makes no distinction between male and female; whereas the other (Nachum) does distinguish between male and female; hence, he agrees with the rabbis. But the rabbis prefer to leave the matter undiscussed.

T. Avodah Zarah 7b (146)

Nachum the Mede claims that one may sell a male horse to gentiles, since it will be too unruly for use in war; and an old horse will be too slow for battle. The rabbis, however, fear the use of horses for sacrifice and bestiality, and hence do not wish to permit their sale. Rather than outrightly prohibit their sale, though, and possibly antagonize their gentile neighbors, they "prefer to leave the matter undiscussed".

3. Women

Rabbi Eliezer ben Jacob says: How do we know that a woman should not go to war bearing arms? Scripture says, "A woman must not put on man's apparel." (Dt. 22:5)
T. Nazir 59a (147)

The Talmud prohibits armed military service for women. The implication is twofold--women are ineligible for combat, but subject to some kind of duty, e.g. providing food, repairing roads, etc.

III. Conclusion

The relative consistency of Rabbinic legislation on war makes it possible to draw some conclusions about the attitudes that shaped the laws. These attitudes are reflections of the political, social, and economic situation of the authors. The key to understanding the rabbinic mindset toward war is the recognition that they never had the occasion to fight a war under the terms envisioned in the Bible. They had no legitimate king, no standing army, no priesthood, and no war-fighting capabilities after the Bar Kochba revolt. For this reason, war-laws were largely hypothetical. The rabbis could afford to be idealistic about the conduct of war. In this, they are like the priestly authors of Deuteronomy. The priests, though, operated under the assumption that wars would be fought, and that they should approximate the ideal they had created. The rabbis ordained laws for a future restored kingdom.

The priesthood ordained war-laws that served their own interests. Their doctrine limited the king's powers (I.B.1) and promoted settlement activities at the expense of expansionism (I.B.2). They singled out idolatry as the only object of mandatory military activity (I.B.3.). The rabbis gave even less legitimation to war, though they recognized it as theoretically possible. Their laws show an antipathy toward militarism that accords well with their situation. Pacifism served their ends better than militarism, while under foreign rule. Furthermore, the power of the rabbinate would be

diminished were a Jewish kingdom to be established. Hence, the king is treated similarly by the rabbis as he was by the priests. War is all but taken from the king's hands and given over to the Sanhedrin (II.A.7.a.).

The rabbis raised the authority attached to the priest, as a way of diminishing the king's role in war (II.A.4.). They created a system for categorizing wars, as Obligatory or Permissible, and then restricted the possibilities of fighting Permissible Wars (II.A.7.) They greatly extended the exemptions to be granted in Permissible Wars (II.B.), even to the point of considering the "compassionate" to qualify for exemption (II.B.5.). The obligations of those exempted are delineated, while some are considered exempt even from this alternative service (II.B.4.). War is a restricted activity, in which some forms of battle, and some acts of plunder are prohibited (II.C.). The capture of women is greatly limited in comparison to the Biblical text (II.F.). Emphasis is placed on steps which must be taken to prevent war (II.C.1.).

Rabbinic legislation on war serves to diminish the possibility and attractiveness of waging war in the Jewish state, over the already anti-militarist doctrine of the priesthood. They developed their inherited legal tradition in light of their own situation, reducing war to a significantly less desirable option, should it ever be possible.

Even the symbolic representation of war was restricted,
as we learn from the Mishnah:

One may not go out on the Sabbath with a sword,
bow, shield, lance, or spear. If one does go out,
one is liable to a sin-offering. Rabbi Eliezer says,
they are his adornments. The sages said, they are
nought but an embarrassment, as it says, "And they shall
beat their swords into ploughshares and their spears
into pruning-hooks; nation shall not take up sword
against nation; they shall never know war." (Is 2:4)

M. Shabbat 6:4 (148)

Footnotes

1. Rad, Gerhard von, Deuteronomy, p. 24
2. ibid, p. 25
3. ibid, p. 132
4. Carmichael, Calum M., The Laws of Deuteronomy, p. 126.
5. Phillips, Anthony, Deuteronomy, p. 16.
6. Rad, Gerhard von, Studies in Deuteronomy, p. 51
7. Plaut, Gunther W., The Torah: A Modern Commentary, p. 1381
8. Rad, Gerhard von, Deuteronomy, p. 118-120
9. Tcherikover, Victor, Hellenistic Civilization and the Jews, p. 204-205

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Appendix

- 10 כי תצא למלחמה על איבִי־יָדִי וּרְאִיתָ סוֹס וְרֶכֶב עִמִּי רַב
 מִמֶּנּוּ לֹא תִירָא מֵהֶם כִּי יִהְיֶה אֱלֹהֶיךָ עִמָּךְ הַמַּעֲלֶה מִצְרַיִם מִצִּרְיִים
 11 וְיִהְיֶה קִרְבְּכֶם אֶל־הַמִּלְחָמָה וְנָגַשׁ הַכֹּהֵן וְדִבֶּר אֶל־הָעָם׃ 12 וְיֹאמַר
 אֱלֹהִים שְׁמַע יִשְׂרָאֵל אֲתֶם קִרְבִּים הַיּוֹם לַמִּלְחָמָה עַל־אִיבֵיכֶם אֶל־
 13 יָגִיד לְבַבְכֶם אֶל־תִּירָאוֹ וְאֶל־יִתְחַפְּזוּ וְאֶל־תִּשְׁרָצוּ מִפְּנֵיהֶם׃ 14 יָבִי
 יִהְיֶה אֱלֹהֵיכֶם הַחֲלֹף עִמָּכֶם לַהֲלָחֵם לָכֶם עִם־אִיבֵיכֶם לְהוֹשִׁיעַ
 אֲתֶכֶם׃ 15 וְדִבְרוּ הַשָּׁטָרִים אֶל־הָעָם לֵאמֹר מִי־הָאִישׁ אֲשֶׁר בָּנָה
 בֵּית־חֹדֶשׁ וְלֹא חָנָטוּ יָלְךְ וְיָשָׁב לְבֵיתוֹ פְּרִימוֹת בַּמִּלְחָמָה וְאִישׁ
 אַחֵר וְחָנָטוּ׃ 16 וּמִי־הָאִישׁ אֲשֶׁר־נָטַע כָּרֶם וְלֹא חָלְלוּ יָלְךְ וְיָשָׁב
 לְבֵיתוֹ פְּרִימוֹת בַּמִּלְחָמָה וְאִישׁ אַחֵר וְחָלְלוּ׃ 17 וּמִי־הָאִישׁ אֲשֶׁר־
 אָרַשׁ אִשָּׁה וְלֹא לָקָחָהּ יָלְךְ וְיָשָׁב לְבֵיתוֹ פְּרִימוֹת בַּמִּלְחָמָה וְאִישׁ
 אַחֵר יִקְחָנָהּ׃ 18 וְהַסְפּוּ הַשָּׁטָרִים לְדַבֵּר אֶל־הָעָם וְאָמְרוּ מִי־הָאִישׁ
 הַיָּדֹא וְהַיָּלֵלֵב יָלְךְ וְיָשָׁב לְבֵיתוֹ וְלֹא יָמַס אֶת־לֵבָב אָחִיו
 כִּלְכָּבוֹ׃ 19 וְיִהְיֶה כִּכְלֹחַ הַשָּׁטָרִים לְדַבֵּר אֶל־הָעָם וּפָקְדוֹ שָׁרִי
 צִבְאוֹת בְּרֹאשׁ הָעָם׃ 20 כי תִּקְרַב אֵלֶי־עִיר לַהֲלָחֵם עָלֶיהָ 21
 וְקָרְאתָ אֵלֶיהָ לְשָׁלוֹם׃ 22 וְיָהֲרֹא אִם־שָׁלוֹם תַּעֲנֶנּוּ וּפְתַחְתָּהּ לָךְ וְיָהֲרֹא
 כָּל־הָעָם הַנִּמְצָא־בָּהּ וְהָיוּ לָךְ לִמָּס וְעַבְדֶּיךָ׃ 23 וְאִם־לֹא תַשְׁלִים
 עִמָּךְ וְעִשְׂתָּה עִמָּךְ מִלְחָמָה וְצָרָתָ עָלֶיהָ׃ 24 וְתִתְּנָה יְהוָה אֱלֹהֶיךָ
 בְּיָבֶיךָ וְהָפִיתָ אֶת־כָּל־זִכְרוֹנָה לְפִי־חֶרֶב׃ 25 רַק הַנָּשִׁים וְהַטָּף
 וְהַבְּהֵמָה וְכָל־אֲשֶׁר יִהְיֶה בְּעִיר כִּי־שָׁלַלָה תָּבוֹז לָךְ וְאָכַלְתָּ אֶת־
 שָׁלַל אִיבֶיךָ אֲשֶׁר נָתַן יְהוָה אֱלֹהֶיךָ לָךְ׃ 26 כִּן תַּעֲשֶׂה לְכָל־עָרִים
 הַרְחֹקֹת מִמֶּנּוּ מֵאֹד אֲשֶׁר לֹא־מַעֲרִי הַנְּזִים־הָאֵלֶּה הֵנָּה׃ 27 רַק
 מַעֲרֵי הָעָמִים הָאֵלֶּה אֲשֶׁר יִהְיֶה אֱלֹהֶיךָ נָתַן לָךְ נִחְלָה לֹא תַחֲזִיק
 כָּל־נֶשְׁמָה׃ 28 כִּי־הַחֶרֶם תַּחֲרִימֶם יִחְזָקִי וְהָאֱמֹרִי הַכְּנַעֲנִי וְהַפְּרָזִי
 הַחִתִּי וְהַיְבוֹסִי כָּאֲשֶׁר צִוָּה יְהוָה אֱלֹהֶיךָ׃ 29 לִמְעַן אֲשֶׁר לֹא־
 יִלְמְדוּ אֲתֶכֶם לַעֲשׂוֹת כָּכָל־תּוֹעֲבֹתָם אֲשֶׁר עָשׂוּ לְאֱלֹהֵיהֶם וַחֲטָאתָם
 לִיהוָה אֱלֹהֵיכֶם׃ 30 כי תִּצְוֶה אֵלֶי־עִיר וְיָמִים רַבִּים לַהֲלָחֵם
 עָלֶיהָ לְתַפְשָׁהּ לֹא־תִשְׁחָתֹךְ אֶת־עֵצָהּ לַעֲדֹךְ עָלֶיהָ נִרְוֹן כִּי מִמֶּנּוּ תֹאכַל
 וְאִתּוֹ לֹא תִכְרַח כִּי הָאָדָם עֵץ הַשִּׁדָּה לָכֵא מִפְּנֵיךָ בַּמִּצּוֹר׃ 31 רַק
 עֵץ אֲשֶׁר־חֹדֶעַ כִּי־לֹא־עֵץ מֵאֲכָל הוּא אִתּוֹ תִשְׁחָתֹךְ וְכָרְתָּ וּבְנִיתָ
 מִצּוֹר עַל־הָעִיר אֲשֶׁר־הוּא עָשָׂה עִמָּךְ מִלְחָמָה עַד רַדְתָּה׃ 32

15 אחרים לעבדם: ס 15 יהיה אם לא חשמע בקול יהוה אלהיו
 לשמר לעשות את כל מצותיו וחקתיו אשר אנכי מצוה היום
 16 ובאו עליה כל הקללות האלה והשיגה: 16 ארור אתה בעיר
 הימים ואין מושע: 30 אשה תארש ואיש אחר ישללה בית חבנה
 ולא תשוב בו כרם חטע ולא תחלקנו: 31 שורף טבוח לעיניו: 31

5 עוד חטעי כרמים בהרי שמרון יטעו נטעים וחללתי:

21 ובנו בתים וישבו ונטעו כרמים ואכלו פריהם:
 22 לא יבנו ואחר ישוב לא יטעו ואחר יאכל
 כי כימי העץ ימי עמי ומעשה ידיהם יבלו בחירי:

21 עד בקר וגרם תולעים ובאש וקצף עליהם משה: 21 וילקטו
 22 אתו בבקר בבקר איש כפי אכלו ותמי השמש ותמס: 22 והיו

להשמירנו: 28 אנה ונעזנו עלים אחינו המסו את לבבנו לאמר 28

עם גדול ורם ממנו ערים גדלות ובצורת בשמים וגם בני ענקים
 30 ראינו שם: 29 ואמר אלכם לא תערצו ולא תיראון מהם: 30 והנה

26 ידיהם ותתן חמתי במקום הזה ולא חבנה: 26 ואל מלך יהודה
 השלח אתכם לירוש ביהוה כה תאמרו אליו ס כה אמר
 27 יהוה אלהי ישראל הדברים אשר שמעתי: 27 יען רף לבבך
 ותכנע ומלפני אלהים בשמעך את דבני ילי על המקום הזה ועל
 ישרי ותכנע לפני ותקע את בנך ותבך לפני וגם אני שמעתי
 28 נאם יהוה: 28 הנני אספך אל אבותי ונאספת אל קברתיך

הַדְּבָר אֲשֶׁר־דִּבֶּרְתָּ לַעֲשׂוֹת: ¹⁵ וְאַתָּח יֵאָחֵד רֹאשׁ שְׂבָטֶיכֶם אֲנָשִׁים ¹⁵
 חֲכָמִים יְדָעִים וְאַתָּן אַתֶּם רֹאשִׁים עֲלֵיכֶם שְׂרֵי אֲלָפִים וְשָׂרֵי מֵאוֹת
 וְשָׂרֵי חֲמִשִּׁים וְשָׂרֵי עֶשְׂרִית וְשָׂטְרִים לְשִׁבְטֵיכֶם: ¹⁶ וְאַצְוֶה אֶת־ ¹⁶
 שְׂפָטֵיכֶם בְּעַת הַהוּא לֵאמֹר שִׁמְעֵי בֵּין־אַחֵיכֶם וְשִׁפְטֶתֶם צֶדֶק בֵּין־
 אִישׁ וּבֵין־אָחִיו וּבֵין גֵּר: ¹⁷ לֹא־תִכְדּוּ פָנִים בַּמִּשְׁפָּט כִּקְטֹן כְּגֹדֶל ¹⁷

(16)

¹⁸ שְׂפָטִים וְשָׂטְרִים תִּתֵּן־לָהֶם בְּכָל־שְׁעָרֶיךָ אֲשֶׁר־יִהְיֶה אֱלֹהֶיךָ ¹⁸
 נָתַן לָהֶם לְשִׁבְטֶיךָ וְשִׁפְטוּ אֶת־הָעָם מִשְׁפַּט־צֶדֶק: ¹⁹ לֹא־תִטָּה ¹⁹

(17)

יִהְיֶה אֱלֹהֵינוּ כְּאֲשֶׁר צִוָּנוּ: ⁷ כִּי יָבִיֵאֵךְ יְהוָה אֱלֹהֶיךָ אֶל־ ⁷
 הָאָרֶץ אֲשֶׁר־אַתָּה בֹּא־שָׁמָּה לְרִשְׁתָּהּ וְנִעַל גּוֹיִם־רַבִּים מִפְּנֶיךָ
 הַחֲתִי וְהַגֵּר וְהָאֹמֶלִי וְהַכְּנַעֲנִי וְהַפְּרָזִי וְהַחִיִּי וְהַיְבוּסִי שְׂבָעָה
 גּוֹיִם רַבִּים וְעִצּוֹמִים מִמֶּךָ: ² וְנִתְּנָם יְהוָה אֱלֹהֶיךָ לְפָנֶיךָ וְהַכִּיתָם ²
 הַחֲרָם הַחֲרִיִּם אֹתָם לֹא־תִכְרֹת לָהֶם בְּרִית וְלֹא תִחַנֵּם: ³ וְלֹא־י ³
 תִּתְחַתֵּן בָּם בְּתוֹךְ לֹא־תִתֵּן לָבֶנּוּ וּבִתּוֹ לֹא־תִקַּח לְבָנָהּ: ⁴ כִּי־יִסִּיר ⁴
 אֶת־בְּנוֹ מֵאֶחָיו וְעַבְדּוֹ אֱלֹהִים אֲחֵרִים וְיָחֳרָה אִף־יְהוָה בָּכֶם
 וְהִשְׁמִידָה מִמֶּךָ: ⁵ כִּי־אִם־כֹּה תַעֲשֶׂה לָהֶם מִזְבְּחֹתֵיהֶם תִּחַצּוּ ⁵
 וּמִצְבֹּתֵיהֶם תִּשְׁכְּרוּ וְאֲשִׁירֵיהֶם תַּעֲדֹעֹן וּפְסִילֵיהֶם תִּשְׂרֹפֹן בָּאֵשׁ:

(21)

וּבְלִבְנוֹן וּבְכָל־אֶרֶץ מְשֻׁלָּתוֹ: ²⁰ כָּל־הָעָם הַנּוֹתָר מִן־ ²⁰
 הָאֹמֶלִי הַחֲתִי הַפְּרָזִי הַחִיִּי וְהַיְבוּסִי אֲשֶׁר לֹא־מִבְּנֵי יִשְׂרָאֵל הֵמָּה:
²¹ בְּנֵיהֶם אֲשֶׁר נָתַרו אַחֲרֵיהֶם בָּאֶרֶץ אֲשֶׁר לֹא־יָכְלוּ בְנֵי יִשְׂרָאֵל
 לְהַחֲרִיקָם וַעֲלָם שְׁלֵמָה לְמַס־עֹבֵד עַד הַיּוֹם הַזֶּה: ²² וּמִבְּנֵי־

(22)

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ס"ט כִּי־תַעֲשֶׂה הַיָּשָׁר בְּעֵינֵי יְהוָה: ׀ ׀ ׀¹⁰ כִּי־תֵצֵא לְמִלְחָמָה
 ׀ ׀ עַל־אֹיְבֶיךָ וְנָגְדוּ יְהוָה אֱלֹהֶיךָ בַּיָּדַי וְשָׁבִיתָ שְׁבוּיִם: ׀ ׀ וְרָאִיתָ
 ׀ ׀ בַּשָּׂבִיָּה אִשְׁתִּי־יֹפֶת־תָּאֵר וְחִשְׁקָתָּ בָּהּ וְלִקְחָתִּי לָךְ לְאִשָּׁה: ׀ ׀ וְהִבֵּאתָהּ
 ׀ ׀ אֶל־תּוֹךְ בֵּיתְךָ וְנִלְחָהּ אֶת־רֹאשָׁהּ וְעָשָׂתָה אֶת־צַפְרָנֶיהָ: ׀ ׀ וְהִסְרָהּ
 אֶת־שְׂמֶלֶת שָׂבִיָּה מֵעָלֶיהָ וְנִשְׁבְּהָ בְּבִיתְךָ וּבְכִתְּהָ אֶת־אֶבְיָהּ וְאֶת־
 אִמָּהּ יָרַח יָמִים וְאַחֵר כֵּן תָּבֹא אֵלֶיהָ וּבְעִלְתָּהּ וְהָיְתָה לָךְ לְאִשָּׁה:
 ׀ ׀ וְהָיָה אִם־לֹא תַפְצֹתָ בָּהּ וְשִׁלַּחְתָּהּ לְנַפְשָׁהּ וּמָכַר לֹא־תִמְכְּרָנָהּ:
 ׀ ׀ בְּכֶסֶף לֹא־תִתְּעַמְרִי בָּהּ תַּחַת אֲשֶׁר עָוִיתָהּ: ׀ ׀ כִּי־תִחְלוּן: ׀ ׀

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׀ ׀ וַיֹּאמֶר יְהוָה אֶל־נָדָעוֹן רֹב הָעָם אֲשֶׁר אִתְּךָ מִתַּחַת אֶת־מִדְּיָן בְּיָדָם:
 ׀ ׀ פֶּן־יִחַפְּאוּ עָלַי יִשְׂרָאֵל לֵאמֹר יָדִי הוֹשִׁיעָה לִּי: ׀ ׀ וְעָתָה קְרָא נָא
 בְּאָזְנֵי הָעָם לֵאמֹר מִי־יָרָא וְחָרַד יֵשֵׁב יִצְפֹּר מִדֶּהֱרֵי הַגִּלְעָדִי וַיֵּשֶׁב
 מִן־הָעָם עֹשְׂרִים וְשָׁנִים אֶלֶף וְעֶשְׂרֵת אֲלָפִים נִשְׁאָרוּ: ׀ ׀ וַיֹּאמֶר:

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׀ ׀ וַיִּבְאוּ אֶל־מִחְנֶה יִשְׂרָאֵל וַיִּקְמוּ יִשְׂרָאֵל וַיָּכּוּ אֶת־מוֹאָב וַיִּנָּסוּ
 מִפְּנֵיהֶם יוֹבָב־בֶּהֱ" וְהָפֹחַ אֶת־מוֹאָב: ׀ ׀ וְהָעָרִים יִהְיוּ וְכָל־
 חִלְקָהּ שׁוֹבָה יִשְׁלִיכוּ אִישׁ־אֶבְנוֹ וּמִלְאוּהָ וְכָל־מַעְיָן־מַיִם יִסְתַּמּוּ
 וְכָל־עֵץ־טוֹב יִפִּילוּ עַד־הַשְּׁאִיר אֶבְנֶיהָ בְּקִיר חֲרָשָׁתִּי וַיִּסָּבּוּ

מסנה ב'

[ואלו נאמריו בקדשון הקדש: מקרא בכורים, ונחליצה,
ברכות וקללות, ברכת להנים, וברכת פהן גדולה,
יפרשת הקלד, ופרשת עגלה ערופה, ומשום מקלטה
בשעה שהוא מדבר אל העם.]

(28

מסנה א'

משום מקלטה בשעה שמדבר אל העם - בקדשון

הקדש הנה מדבר, שנאמר (דברים כ. ב. ג.): [מהנה
קקרבכם אל המקלטה ונגש הלהן] - זה כהן משום
מקלטה [ודבר אל העם - בקדשון הקדש]. ואמר
אלהם שמע ישראל אתם קרבים היום למקלטה של
אויביכם - ולא של אחיכם. לא יהודה של שמעון,
ולא שמעון של בנימין, שאם תפלו בידם ירממו
עליכם, כמה שנאמר (דברי הימים ב כח. טו): [ויקמו
האנשים אשר נקבו בשמות נחזיקו בשביתה וכל

(25

(29 (32

מִצְרָמִיָּהֶם הִקְבִּישׁוּ מִן הַשָּׂלָל וַיִּקְבְּשׁוּם וַיַּנְעֲדוּם וַיֹּאכְלוּם
וַיִּשְׁקוּם וַיִּסְכּוּם וַיַּנְהִלוּם בְּחַמְרִים לְכֹל כּוֹשֶׁל וַיִּבְיֵאוּם
יָרְחוֹ עִיר הַתְּמָרִים אֶצֶל אַחֲמֵיהֶם וַיֵּשְׁבוּ שָׁמָּה. עַל
אֲזִיכֵיכֶם אֲתֵם הוֹלְכִים, שָׂאֵם תִּפְּלוּ בְיָדָם, אֵין מִרְחָמִין
עֲלֵיכֶם. [אֵל יִרְבֵּךְ לְבַבְכֶם אֵל תִּירָאוּ וְאֵל תַּחֲפוּז וְגוֹיִ
(דְּבָרִים כ. ג.) אֵל יִרְבֵּךְ לְבַבְכֶם - מִפְּנֵי צְהֲלַת סוּסִים
וְצִחְצוּחַ תְּרֻבוֹת. אֵל תִּירָאוּ - מִפְּנֵי הַגָּפֶת תִּרְיִסִין
וְשִׁפְצַת הַמַּלְאָכִין. אֵל תַּחֲפוּז - מִקּוֹל קִרְנוֹת. אֵל
תַּצְרֹצוּ - מִפְּנֵי קוֹל צְנוּחוֹת. כִּי הִ' אֱלֹהֵיכֶם הוֹלֵךְ
עִמָּכֶם (שֵׁם ש. ט. ד) - הֵן בְּאֵין בְּנִצְחוֹנוֹ שֶׁל בֶּשֶׁר וְדָם,
וְאֲתֵם בָּאִים בְּנִצְחוֹנוֹ שֶׁל מְקוֹם. פִּלְשֵׁתִים בָּאוּ בְּנִצְחוֹנוֹ
שֶׁל גְּלִית, מָה הָיָה סוּפֹר לְסוּף נֶפֶל בְּתֻרְבָּה, וְנִפְּלוּ
עִמּוֹ. בְּנֵי עַמּוֹן בָּאוּ בְּנִצְחוֹנוֹ שֶׁל שׁוֹבָה, מָה הָיָה

סוּפֹר לְסוּף נֶפֶל בְּתֻרְבָּה, וְנִפְּלוּ עִמּוֹ. וְאֲתֵם אֵי אֲתֵם
כֵּן. כִּי הִ' אֱלֹהֵיכֶם הוֹלֵךְ עִמָּכֶם לְהַלְחֵם לָכֶם
וְגוֹי - זֶה מַחְנֶה הָאָרוֹן.

מִשְׁנֵה ב'

[וְדִבְרוּ הַשּׁוֹטְרִים אֶל הָעָם לֵאמֹר מִי הָאִישׁ אֲשֶׁר
בָּנָה בֵּית תְּדֹשׁ וְלֹא תָנֻכוּ יָדָךְ וְיִשָּׁב לְבֵיתוֹ וְגוֹי
(שֵׁם ש. ט. ה) - אֶחָד הַבּוֹנֶה בֵּית הַתְּקֵן, בֵּית הַקָּרָה,
בֵּית הַעֲצִים, בֵּית הָאוֹצְרוֹת, אֶחָד הַבּוֹנֶה, וְאֶחָד
הַלּוֹקֵם, וְאֶחָד הַיּוֹרֵשׁ, וְאֶחָד שֹׁנֵם לֹא מִתְּנֶה. [וְיָמִי
הָאִישׁ אֲשֶׁר נָטַע כֶּרֶם וְלֹא חָלְלוֹ וְגוֹי (שֵׁם ש. ט. ו) -

(52)

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אֶחָד הַנוֹטֵעַ כֶּרֶם, וְאֶחָד הַנוֹטֵעַ תְּמָרָה אֵילָנִי מֵאֲדָלָה,
וְאֶפְסוּ מִתְמַשֶּׁת מִיָּנִין, אֶחָד הַנוֹטֵעַ וְאֶחָד הַמִּכְרִיף,
וְאֶחָד הַמִּכְרִיב, וְאֶחָד הַלּוֹקֵם, וְאֶחָד הַיּוֹרֵשׁ, וְאֶחָד
שֹׁנֵם לֹא מִתְּנֶה. [וְיָמִי הָאִישׁ אֲשֶׁר אֲרַשׁ אִשָּׁה וְגוֹי
(שֵׁם ש. ט. ז) - אֶחָד הַמֵּאָרֵס אֶת הַבְּתוּלָה, וְאֶחָד הַמֵּאָרֵס
אֶת הָאֵלְמָנָה, אֶפְסוּ שׁוֹמְרֵת יָכֶם, וְאֶפְסוּ שְׂמֵעַ שְׂמֵת
אֲחִיו בַּמִּלְחָמָה - חוֹרֵר וְכָא לֹא. כָּל אֵלֹהֵי שׁוֹמְעִין דְּבָרֵי
לֵהֵן מִצְרָכִי מִלְחָמָה וְחוֹרֵרִין, וְמִסְפָּקִין מִיָּם וּמִזֶּן,
וְמִסְתַּגִּיִּין אֶת הַדְּרָכִים.]

(68)

מסנה ב'

[ואלו שאינן חורין: הבונה בית שער, אקסדרה, מרפסת, הנוטע ארבעה אילני מאכל, וממשה אילני סרקס] הפחזיר את גרושתו, אלמנה לכהן גדול, גרושה נחלוצה לכהן הדיוט, ממזרת ונתינה לישראל, בת ישראל למקור ולגמין - לא היתה חורה. רבי יהודה אומר: אף הבונה בית על מבואו - לא היתה חורה. רבי אלעזר אומר: אף הבונה בית לבנים בשרון - לא היתה חורה.

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מסנה ד'

[ואלו שאין זיון מקומן: בנה בית ונחכו, נטע כרם וחלדו, הנושא את ארוסתו, הכונס את יבמתו, שנאסר (דברים כד. ה): נקי יהיה לביתו שנה אחת - לביתו זה ביתו, יהיה זה כרמו, וישפח את אשתו זו אשתו, אשר קח" להביא את יבמתו, אינו מספקין מים וסווא, ואינו מסקנין את הדרכים.]

(80)

מסנה ה'

[מיספוי השקרים לזכר אל העם ואמרו מי האיש הירא וברך העלוב ילד וישב לביתו (דברים כ. ח) - רבי עקיבא אומר: הירא וברך העלוב קמשמעו, שאינו יכול לעמוד בקשרי המלחמה ולראות חרב שנופה. רבי יוסי הגלילי אומר: הירא וברך העלוב זהו המתירא מן העברות שקידו, לסיקף מלחמה לו התורה את כל אלו שיחור בגלגלן. רבי יוסי אומר: אלמנה לכהן גדול, גרושה נחלוצה לכהן הדיוט,

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ממזרת ונתינה לישראל, בת ישראל למקור ולגמין - פרי הוא הירא וברך העלוב.

מסנה ר

[וְהָיָה כְּכֹחַ הַשְּׁטָרִים לְדַבֵּר אֶל הָעָם וּפָקִדוֹ שָׂרִי
צָבָאוֹת בְּרֹאשׁ הָעָם (שם שם. ט) - וּבְעֵקֶבוֹ שֶׁל עָם:
מִצְמִידִין וְקִפּוֹן לִפְנֵיהֶם, וְאַחֲרֵים מֵאַחֲרֵיהֶם, וְכַשִּׁילִין
שֶׁ בְּרֹלֶךְ בִּידִיקוֹ, וְכֵל הַמִּבְקֵשׁ לַחֲזוֹר - הָרְשׁוֹת
בִּידוֹ לְקַפֵּס אֶת שׁוֹקֵיו, שֶׁתַּחֲלֵת נִיסָה נִסְיָה, שֶׁנֶּאֱמַר
(שְׁמוּאֵל א ד. יו): **נָס יִשְׂרָאֵל לִפְנֵי פִלְשְׁתִּים** וְגַם מִגִּפְתָּה
גְּדוּלָּה הִיטָה בָּעָם, וְלִטְקָן הוּא אוֹמֵר (שם יא. א):

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וְנִגְסוּ אֶנְשֵׁי יִשְׂרָאֵל מִפְּנֵי פִלְשְׁתִּים וַיִּפְּדוּ חֲלָלִים וְגוֹי.

מסנה ד

[בְּמָה דְּכָרִים אֲמֹרִים ז' בְּמִלְחָמַת הָרְשׁוֹת, אֶבֶד בְּמִלְחָמַת
מִצְנָה הַכֵּל יוֹצֵאִין. אֶפְסֵי חֲתָן מִסְדְּרוֹ וּבִלְהַ סְחָפְתָה.
אֶמֶר רַבִּי יְהוּדָה: בְּמָה דְּכָרִים אֲמֹרִים ז' בְּמִלְחָמַת
מִצְנָה, אֶבֶד בְּמִלְחָמַת חֹזֶק הַכֵּל יוֹצֵאִין, אֶפְסֵי חֲתָן
מִסְדְּרוֹ וּבִלְהַ סְחָפְתָה.]

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מסנה ה'

אין דגין לא את השבט ולא את גביא השקר ולא
את כהן גדול, אלא על פי בית דין של שבטים

ואחד. [ואין מוציאין למלחמת הרשות, אלא על פי
בית דין של שבטים ואחד] אין מוסיפין על העיר
ועל העזרות, אלא על פי בית דין של שבטים
ואחד. אין עושין סנהדריות לשבטים. אלא על פי
בית דין של שבטים ואחד. אין עושין עיר הנצחת,
אלא על פי בית דין של שבטים ואחד. ואין עושין

עיר הנצחת בקשר, ולא שש, אכל עושין אחת
או שמים.

(47)

מסנה ד'

ומוציא למלחמת הרשות על פי בית דין של שבטים
ואחד. ופורץ לעשות לו דרך, ואין קסחין בידו,
דרך הקלף אין לו שעור. וכל העם בווין וגותנין
לפניו, והוא נוטל טלק בראש, לא ירבה לו נשים.

אלא שמונה עשרה. רבי יהודה אומר: סרבה הוא
לו, ובקבד שלא יהו קסירות את לבו. רבי שמעון
אומר: אפילו אחת ומסירה את לבו הרי זה לא
ישאנה. אם כן, למה נאמר ויברים יו. יו: . ולא ירבה
לו נשים? — אפילו באבגיל. לא ירבה לו סוסים
(שם שם, סו). אלא כדי מרביתו. וכסף וזהב לא ירבה
לו קאדי (שם שם, יו), אלא כדי לתן אקפגא. וכותב

לו ספר תורה לשמו, יוצא למלחמה — מוציאה עמו,
נקנס — מקניסה עמו, יושב בדין — היא עמו,
מסב — היא כנגדו, שנאמר (שם שם, יט): . והיתה עמו
לקרא בו כל ימי חייו. [

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מסנה ר

[לא היה סיקריקון ביהודה בפרוגי המלחמה בפרוגי
המלחמה ואילך יש בה סיקריקון. כיצד? לקח
מסיקריקון וחזר ולקח מבצל הבית - מקחו בטל,
מבצל הבית וחזר ולקח מסיקריקון - מקחו קנים. לקח
מן האיש וחזר ולקח מן האשה - מקחו בטל, מן
האשה וחזר ולקח מן האיש - מקחו קנים זו משנה

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ראשונה. בית דין של אמריהם אמרו: היוקם
מסיקריקון גומן לבגדים רביע. אימתי? בזמן שאין
בגדו לקח. אבל יש בגדו לקח. הן קודמין לבג
אדם. רבי הושיב בית דין ונמנו, שאם שהמה בפני
סיקריקון שנים עשר חדש - כך הקודם לקח וזכה,
אבל גומן לבגדים רביע.

[לא יצא האיש לא בסוף, ולא בקשת, ולא בתרים, ולא באלה,
ולא ברמח. ואם יצא, חייב חטאת. רבי אליעזר אומר:
תכשיטין הן לו. וחכמים אומרים: אינן אלא לעני, שנאמר:
'וכתתו חרבותם לאתים וחניתותיהם למזמרות, לא ישא עי'
אל-ע'י חרב ולא ילמדו עוד מלחמה'. בירית טהורה,

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בדינר והב: ¹⁶ בו כיום ראה ר' טרפון חיגר עומד ומריע בחצוצרות משם ראה
 ר' טרפון וא' חיגר תוקע במקדש משום ר' נתן אמרו נתחייבו ישראל כלייה שחניפו
 לו לאגריפס: ¹⁷ קורא טחחילת אלה הדברים ששע והיה אם ששע עשר ¹⁸
 תעשר כי תכלה לעשר ר' יהודה א' לא היה צריך להתחיל מראש הספר אלא מן
 ששע ופרשת המלך ופרשה הנדרשות בה נטר עד סוף כי י"י אלהיכם ההלך
 עמכם וה השם הנחון בארון שנ' וישלח אותם משה אלף למטה מלמד
 שהיה פנחם משוח מלחמה וכלי הקודש וה ארון ויש אומ' אילו כגרי כהונה שנ'
 ובגדי הקודש אשר לאהרן: ¹⁹ ר' יהודה בן לקיש אומ' שני ארונות היו עמיהן ¹⁵
 וה שיוצא עמיהן למלחמה היו בו שברי לוחות שנ' ויסעו סהר י"י דרך שלשח
 ימים וזה שהיה עמיהן היה בו ספר תורה שנ' ויעפילו לעלות וגו' פעמים היה
 מדבר עמיהן אחת בספר ואחת במלחמה סהר אומ' בספר מי ששומע ילך לשמוע
 מערכי כהן מלחמה ויחזור במערכי מלחמה סהר אומ' ששע ישראל אחם קרבים
 היום למלחמה על איביכם וגו' ומי האיש אשר בנה בית חדש וגו' נפל ²⁰
 ביתו ובנאו הרי זה חוזר ר' יהודה אומ' אם חידש בו דבר תזרז ואם לאו אינו חוזר
 ר' אלעזר אומ' אנשי שרון לא היו הולכין לביתיהן מפני שהן מחדשין אותן פעמים בשבוע
 ומי האיש אשר נטע כרם וגו' נטע חמשה אילני מאכל מחמשה המינין ואפילו
 חמש שורות הרי זה חוזר ר' אליעזר אומ' אין לו כששע אלא כרם: ²¹ ומי האיש
 אשר אירש אשה אחד מארס ואחר מיכס ואפילו שומרת יכס לחמשה אחין ואפילו ²⁵

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1 חמשה אחין ששמעו שמת אחיהם במלחמה כולן חוזרין: ²⁰ אין לי אלא בנה בית
 ולא חנכו נטע כרם ולא חללו ארס אשה ולא לקחה שחין יוצאין וחוזרין מנין בנה
 בית חדש וחנכו ולא שהה שנים עשר חודש נטע כרם וחללו ולא שהה שנים עשר
 חודש אירס אשה ולקחה ולא שהה שנים עשר חודש מנין שאין וזין מסקוין חל' לומ'
 5 כי יקח איש אשה חדשה אף זה היה בכלל ולמה יצא להקיש אליו מה זה מיוחד
 שארם אשה ולקחה ולא שהה עטה שנים עשר חודש אינו וזין מסקוין אף בנה בית
 חדש וחנכו נטע כרם וחללו ולא שהה שנים עשר חודש אין וזין מסקוין ליסדה
 חורה דרך ארץ נחמנה לארס פרנסה יקח בית ואחר כך שדה ואחר כך אשה שנ'
 אשר בנה אשר נטע אשר אירש אשה וכן שלטה אומ' הכן בחוץ מלאכתך
 11 וה בית ועתדה בשדה לך כששמעו אחר ובניית ביתך וז' אשה ר' אומ' הכן
 בחוץ מלאכתך וז' מקרא ועתדה בשדה לך וז' משנה ואחר ובניית ביתך זה מדרש:
 21 דבר אחר הכן בחוץ מלאכתך אילו הלכות ועתדה בשדה לך זה מעשה הטוב
 אחר ובניית ביתך דרוש וקבל שנה: ²² ויססו השוטרים לדבר מי האיש
 הירא זה המצורא מן העכירה שכידו שנ' למה אירא כימי דע עון עקבי
 11 יסובני דברי ר' יוסי הגלילי ר' עקיבא א' הירא דאי ומה חל' לומר ורך הלכב
 אפילו ניכור שבניבורים והוא רחמן היה חוזר שנ' ולא ימס את לבב אחיו כלבב
 7 ששעון אומ' כל השומע דברי כהן ואינו חוזר סוף שנופל בחרב ומפיל ישראל עמו
 ומנלה אותן מארצם בעמים שנ' ואיש אחד יקחנה יכול דודו וכן דודו נאמר כאן
 אחר ונאמר להלן אחר מה להלן נכרי אף כאן נכרי: ²³ ששע במלחמה שמת אחיו עד
 21 שלא ינתן בשמא חוזר משניתן בשמא אינו חוזר: ²⁴ יש מהן יוצאין וחוזרין יוצאין
 ואין חוזרין ויש שאין יוצאין כל עיקר כל אילו שאמרו יוצאין וחוזרין נוחין פסי
 העיר ומספקין מים ומזון במלחמה ומתקנין את הדרכים והשאר יוצאין ואין חוזרין:
 24 כל אילו שאמרו אין יוצאין כל עיקר בנה בית וחנכו נטע כרם וחללו אירס אשה
 לקחה ולא שהה שנים עשר חודש אילו אין יוצאין כל עיקר ואין נוחין פסי העיר
 21 ואין מספקין מים ומזון למלחמה ואין מתקנין הדרכים: ²⁵ ר' יהודה היה קורא למלחמת
 הרשות מלחמת מצוה אבל מלחמת חובה הכל יוצא ואפילו חתן מחרדו וכלה מחרפתה:
 ח ח' ברכות וקללות אילו שאמרו ישראל כשעברו את הירדן שנ' והיה ביום

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ג.א. ודא תחום עיניך נפיש בנפיש עין בעין ורי ז' אודרה שלא לחם על ורג
 הבירו או תכל בו אין לי אלא ריני קיסוס ריני ענישין מני חיל ולא תחום עיניך (ו):
 וכן חסדיש סולם סמן נאמר כאן ולא תחום עין ונאמר להלן (כז יב) לא תחום עין סח להלן
 סמן אף כאן סמן: [ולא תחום עין נפיש בנפיש עין בעין כי תצא למלחמה
 כינן היה ר' עקיבה אוסר אין בעלי סוסין יוצאין למלחמה (ו):]

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כ.א. כי תצא למלחמה במלחמה הרשעה חכ' סדר: כי תצא למלחמה
 לבת נאמר לסי שהוא אוסר (ו א) ונשל גוים רבים סמ' לא ששעט שהקב"ה
 עשה נסים לישראל אלא בשבעת עממים בלבד אכל כשאר כל האומות לא ששענו
 חיל כי תצא למלחמה על איבי כנסים שעשה לך בסצרים כך הוא עשה לך בכל וסן (ח):
 [על אויביך ר' יאשיה אוסר איביך (ט) זה רגיו: שכן סציע שהגוים קריון איבים בכל
 בקים שני כי תצא למלחמה על איביך: ר' (נחן) [ינחן] אוסר בישראל משומר הכתי
 סדר: אמר הנין כשם ר' אליעזר בגי שחור לשאור הכתי סדר: ר' יוחנן אוסר כנן
 ישראל הכתי סדר ומה חיל איביך שאם הכה בו או שעשה עמו מריבת נמצא איבו
 לסי שעשה (י): דא על איביך כנגד איביך אתה נלחם: [וראית סום ורי עס רב סמך
 סח הן יוצאין חליך בסס ורכב את אתה צא עליהן כסס ורכב: סח הן יוצאין חליך כסס רב
 אף אתה צא עליהן כסס רב (י): סום ורכב וכי סום אתה רואי רב אתה רואי ומה
 כבר נאמר (יודיש יא ו) את מוסיחם תעקר ואת מרכבותיהם תשוקף באש ומה חיל סום
 ורכב אלא כוסן שישראל עושין רשות של הקב"ה אינן לפניהם אלא כסס אתה ורכב אתה:
 כדכא בו אתה אוסר (שמות סז א) סום ורכבו רסה בים וכי סום אתה ורכב אתה רואי
 והלא כבר נאמר (שם יד ו) רקח שש מאות רכב בתור אלא כוסן שישראל עושין רצון
 הקום אינן לפניהם אלא כסס ורכבו (ל) אמר ר' שמעון ולא בסמים בלבד אלא בבני
 אדם והיא (שם ו טז) והבית את סרין כאיש אתה וכי כאיש אתה עלו והלא הוא אדם
 (עיי' ו ה) כי הם וספניהם יעלו ואהליהם ומה כרי איבה לרב ומה חיל כאיש אתה
 אלא כשישראל עוסקין בתורה אין האומות וחילתם חשוכין לפניהם כלום וכן ישיעיה

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אמר (ישע' ס נב) הקטן יהיה לאלף: עס רב סמך במנין אבל לא בפעשים וכאבות
 והיא (ו ו) לא מרכבם סכל העם כי מאהבת ה' את' ומשם' את השבעה: לא תירא
 מהם ר' ז' אודרה (ס): לא תירא מהם כשם שני במשה (כסרי כא לר) ויאמר ה' אל
 משה אל תירא אתו וכשם שני ביהושע (יהוש' ח א) ויאמר ה' אל יהושע אל תירא
 ואל תחת: כי ה' אלהי עמך הם סמ' סצ' סי סעלך סארן סצ' הוא עס כקט צרה
 וכנסים שעשה לך בסצרים הוא עושה לך בכל וסן: דא הסוציאך סמ' סצ' לא נאמר
 אלא הסעלך סמ' סצרים אמר להן הקב"ה הרבה סעלות עליתי אתכם ולא בסצרים
 בלבד אלא בכל הסקמות והיא (שמות סז יד) ששעו עמים ירגוון וכסדרה הוא אוסר
 (שהיש' ג ו) מי זאת עלה סן הסדרה ועכשו אפלו אין בירכס אלא קרית שסע בלבד (ג)
 שאתם סוכרין בה יציאת סצרים כראי היא שחעמוד לכם בסני איביכם לכך נאמר
 הסעלך סמ' סצ':

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ב. [והיה כקרבכם אל המלחמה יטל יום סקרינן בו למלחמה כשהוא אוסר
 לחם שסע ישראל אתם קרבים חיוס תרי חיוס סקרינן בו למלחמה ומה חיל ומה כקרבכם
 אל המלחמה כיון שסניקין לספר כהן סתנת עליהן כל תתנאים סאלי] [נגיש הבהן זה כהן
 משוח מלחמה יטל כל שירצה חיל ודברו השמרים סח שיוסר בסמנת אף כהן
 בסמנת (ס): ודבר אל העם כלשון הקדש (ע):]

ג. אתם קרבים היום לסלחמה על איביכם לא על אחיכם לא יועדת על שסען ולא שסען על בניסין שאם תשלו בידם ירחשו עליכם כקנין שני (שופ' כא ג) ואסורו לכת ת' אלהי ישראל היות זאת בישראל והודו וישיבו את השכם במקומו ולא כקנין שני (דחייב כח ח—ט) וישבו בני ישראל מאחיהם סאתים אלף נשים בנים ובנות ושם נביא לח' עדר שבו ויצא לפני חצנא חבא לשמרון ואמר להם חגת בחסת ד' אלהי אבותיכם על יהודה נתגם בידכם ותחזרו כם ברגע עד לשמים חגית: ועתה שסעטו ותשיבו חשבית אשר שכינתם מאחיהם: ויקמו האנשים אשר נקבו בשמות ויחזקו בשבית וכל סקדסותם הלבישו סן השלל חלובים ונעילתם ונכילתם חסוקים וסונגים וינהלום בחסרים לכל טשל ויביאום ויחזקו קיר תחמרים אצל אחיהם וישבו שסמון: על איביכם אתם והלכיתם שאם תשלו בידם אין סרחסין עליכם: אל ירך לב ספני צחלת סוסים וצחצוח חרבות: אל תיראן ספני הנפת חרסין וספנת קלסין: אל תחשו ספני קל חקרטת: ואל תערצו ספני קל הצחח:

ד. כי ה' אלהי הד' עמי הן באין בנצחטו של כשר דם ואחם באים בנצחטו של סקס: מלשחים באו בנצחטו של גלית סה היה בסמו שנסל בחרב והם נסלו עמו: בני עמון באו בנצחטו של שוכך סה היה בסמו סמו שנסל בחרב והן נסלו עמו אבל אחם אין אתם כן אלא כי ה' אלהי ההלך עסכם להלי' לכם זה סתנת הארון (ס) וכל כך לסה למי שהשם וכעיו מונחין בארון (ז): דיא אל ירך לבבי אל תי ואל תהי ואל תעי' כנגד ארבעה דברים שהמלכות עושה סגיש סריקים צווחים וסוסים (ק) ספני סה סעטו של דבר כי ה' אלהי תהי עמי: להלי' לכם עם אי' להושי אתכם כסאס (ר) תקריבים וסחצוח הרעת אתה אומר להרשיע אחכם ססרסים וסעקריבים וסחצוח הרעת או אינו סרבר אלא סאיביכם וכשודא אמי' להלי' לכם עם איבי' תרי איביכם אסורים תא סה תיל לדשי' אתי' מנחשים וסעקריבים וסחצוח וסחצוח:

ה. מי האיש אשר בנה אין לי אלא טנת יריש לקח טחן לו בסתנת סני תיל מי חשי: בית אין לי אלא בית סני לרבות בונת בית החגן בית הבקר וכו' חקדים וכו' האצרות תיל אשר בנת: יכול אף חבונת בית סער אכסרת וסרצפת תיל בית סה בית סקחד סתוא בית ריה יצא אלו סאיין בית ריה: ולא חנכו פרס לגולן: ולך וישב לביתו ילד וישס דברי כהן ויחזור: סן ימות בסלי' אם אינו שוסע דברי כהן לסוף תוא סה בסלחמ: ואיש אחר יחנכנו יטל דודו וכן דודו נאסר כאן אחר ונאסר להלן (כח ל) אחר סה אחר האסור להלן נכרי אף אחר האסור כאן נכרי:

ו. ומי האיש נטע כרם אין לי אלא נטע יריש לקח טחן לו בסתנת סני תיל וסו חמיש: אין לי אלא נטע סכריך וסרכיב סני תיל אשר נטע (ש): כרם אין לי אלא כרם סני לנטע חססה אילני סאכל אשלו סחסשת סמינים תיל אשר נטע: יכול אף חטפס ארבעת אילני סאכל וסחסת אילני סרק חל כרם: ולא חללו פרס לגולן ולשוחסין (ח): ילד וישב לביתו ילד וישס דברי כהן ויחזור: סן ימות בס' אם לא שסע דברי כהן לסוף תוא סה בסלחמ: ואיש אחר יחללנו יטל דודו או כן דודו נאסר כהן אחר ונאסר להלן (כח ל) אחר סה להלן נכרי אף כאן נכרי:

ז. ומי האיש אשר ארש אשה אחר הסרים את חבולתו ואחר הסרים את חלסנתו ואשלו סוסרת יבם ואשלו שסע שסע אחר בסלחמ תחור וכו' לו: ולא לקחה באשת חראית לו פרס לסחור טושות ואסנת לכהן גדול נדשת וסלחה לכהן חריים ססורת נגיית לישראל כח ישראל לסכור ולטחין: ורך וישב לב' כראשן: כל אלו שוסעין דברי כהן סערי הסלחמה וסחצוח וסססין מים וסחן וסחקנים את הדרכים (א):

ח. ויספו השמר לר' אל העם ואמי' מי האיש דרי ורך דלי' כסססע: שאיט יטל לעסוד בקשרי הסלחמה לראת דרב שלוסה דברי ר' עקיבה: ר' יוסי הגלילי אמי' הירא ורך הלכב זה שרוא סחורא סן העניוח שכיוד למי כך חלת לו תודה את כל אלו שיחזור בגללן (כ): ספני סה נאסרו כל הרבים חאלו שלא יחזו קרי ישראל נסמות דברי רבי: רבן יוחנן כן וכאי אסר טא ורוא כסת חס סססע על כבוד חביות ספני חורא ורך הלכב כשיחא תחור יאסרו שסס בית כנת שסס כרם נסע שסס אשת ארש וכו' חזי צדיקין להביא קדים חס סן הירא ורך הלכב סקידו קסו: ולא יסם את לבב אחיו סגיד שאם לא עשה סלחמה ככל לבו הרי זה כמי ששסך דמי' הכל ועלי' תוא אסר (יר' סח י) ארור עושה סלחמה ת' רסית וארור סונע דרבו סרס (ג):

(65)

(73)

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מ. והיה ככלות השמרים לדבר אל העם ופק שרי צב בר העם בעקבו
 של קם אתה אומר בראש העם בעקב או בראש העם בשמיעו וכשהוא אמי כי
 ה' אלהיך ה' עמך הרי ארון אומר בראש הא מה אני מקיים בראש העם בעקב מיכן
 אמי נמר לושר לשניהם כל עסק הפרשה היה סמנה עליהם שרי צבאות אחד פשרה
 גבורים לשניהם ואוריהם בנשיאם (י) וכשלים של כחל בידותם וכל הסבש לחזור תשובה
 ביום לקח את סוקו שתחלה נשלה נוסח שני (שיא ד יו) גם ישראל לפני פלשתים וגם כנען
 גדולה היתה בקם ולהלן הוא אומר (שם לא א) ויטבו איש ישראל לפני פלשתים וישלח חללים
 בחר חללטי: ברא בשלחם הרשע אבל בשלחם סנה הכל ידעון אפלו חתן סחרח
 וכלה סופחת:

(92)

י. כי תקרב אל עיר לסת נאמר לסי שהוא אומר כי תצא למלחמה על איבך
 שומע אני יתחילו וילחם בה תל כי תקרב אל עיר להלחם עלי וקראת אלי
 לשלום מגיד שהוא מותח בה בשלום: כי תקרב אל עיר בשלחם תרשית חבתי
 סוכר: אל עיר ולא לחד ולא לכפר: להלחם עליה ולא לתרעבה ולא להצטיא ולא
 להסית סותח תחלואים: וקראת אליה לשי גדול הוא חללים שאף בשלחם מדיכין שלום
 שני וקראת אליה לשלום ושיא (כ טו) ואשיל מלאכים סמי קי רכז שלום לאמר ואמי
 (שומי יא יב) וישלח יסחה מלאכים אל סלך בני עמון לאמר:

(93)

יא. והיה אם שלום תענך שומע אני ברברים תל ופתחה לך במעשים ולא
 ברברים: ריא והיה אם שלום תענך יטל סקתה תל וזמנה לך כולל לא
 סקתה: והיה כל העם הנמי בה לרבות כנענים שבתוכה: יהיו לך לסם ועבד
 אסח סקלך את עלינו ססים ולא סקנד סקנד אף ססים אין שסעין להן ס סו:

(102)

יב. ואם לא תשי עמך שומע אני יתחיל וילחם בה תל ועשתה עמי סלי משתתחיל
 להלחם בך (ה) (וצרת על הקינים מארבע רוחות ר' נחן אמי נחנין להן דרך
 אחר שיבדע) (ו) ריא ואם לא תשי עמך חבתי מכשור שהוא ששה עשר סלחם: וצרת
 עליה אף לתרעבה אף להצטיא אף להסית בסיתת תחלואים:

(94)
(103)

יג. ונתנה ה' אלהי בידך אם חכמה שלום ועשה כל האסר בענין ולא קיבלה עליה סף
 שחסיקם ססורה ביד: והבית את כל זכר שומע אני אף חקטנים שבתוכה תל
 רק הנשים והמף והבהמה (נו):

יד. ויון סף האסר כאן אלא סף של זכרים: או אינו אלא סף של נקבות אסרת וסח סדיון
 שחסיקם את הנחלות תחית את חקטנת כאן שחחית את הנחלות אינו דין שחחית את
 חקטנת הא אינו אסר סף אלא סף של זכרים: (כל שללה תבן לך שומע אני יתחיל
 ויבן תל ואכלה את שלל איבך אשר ה' אלהיך נתן לך משידושך (ו)) ר' שסעין בן
 יחאי אומר בוא וראא כמה התסירה תורה על הגול שדקדקה עמו על גיזל של גוי
 שני (ויק כה ג) וחשב עם קטנו ברקדוק (ח): אחח אוס' ברקדוק א' אינו אלא בענד
 עברי (ס) וכשהוא אומר (שם כה ג) (לא תרדה בו במדך) (לא ירדנו במדך) הרי עמד
 עברי אומר הא מה אני מקיים וחשב עם קטנו ברקדוק:

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טו. [כן תעשה לכל הע' ותרד מ' אין לי אלא ירדקת ירדקת מרדקת (י) מנין תל
 אשר לא סערי הגי האלה הנח או אסלו הן סערי והים האלה תל רק
 סערי העם האלה איש ה' אלה נתן לך]

(109)

טז. לא תחיה כל נשי כסיף (כ) או יטל אסלו השלים תל רק (ל):

(113)

י. כי החרם תדו סעוד עשה: החתי והאמי הכנעי והער הדו והדביו
הגרנשי מני חיל כאשר צוך ה' אלהיך דרי אתה דן נאמר כאן צווי ונאמר
להלן (לא ה) צווי סה צווי שני להלן בשבעה עסמים הכתי מדבר (ס) אף צווי שני כאן
בשבעה עסמים הכתי מדבר (ז):

ה. [בני סה סעמי של דבר לסען אשי לא ילמי אתי לעשי] או אסלו השלימו וקבלו
עליהן שלא לעבד עיו חיל והשאטם להי אלהי הא אם קבלו עליהן שלא לעבד
עיו אין את רשאי להערים עליהן ולשבותן (ס):

י. [כי תצויר אל עיר ימים רבים לסה נאמר לפי שהוא אמי כי חקרב אל
עיר להלי עלי שומע אני כיון שספת לה יום אחד בשלום יתחיל וילתם כה חיל

בי תצי אל עיר ימי רבי] בנר שהוא טובע שלום שנים שלשה ימים עד שלא ילתם כה וחיא
(יזכ א א) רבב דוד בעקלג ימים (רבים) [שנים] (ע): [להלי עלי לתם] עיר שאחיה יודע
שאת יטל להלחם עליה לחששה אח רשאי להלחם בה ואם לאו אין את רשאי להלחם

בה (ע): [ריא (ז) כי תצי אל עיר בסלחם הרעות הכתי מדבר:] אל עיר ולא לטד
ולא לנער: ימים שנים רבים שלשה סיבן אסרו אין צרין קל עיר של נים פוחה משלש
ימים קדם לבנת: להלי עלי לתם ולא לסתח (ק): [לא תשחית את עצה וז

הסכסית (ר): לנר עלי גר זה הקצין: כי סס תא וא' לא תב' זה העקיר (ש) סיבן
אמי העקיר את האילן עובר על שלשה לאין (ח): לנר עלי גר מני אף למשך סמנת
אמח המים חיל לא תשי את עצה לכל דבר: ממני סה סעמי של דבר כי האדם עין

השדה (א) שדרי האדם רואה את הורט ובורח (ב): ריא כי ממני תאכל סעוד עשה:
ואתו לא תבי סעוד לא תעשה: כי האד עין השדה סלסד שחיוו של אדם אין
אלא סן האילן: לבוא סמי במ' חא אם סעכבד לטא סנדי בסצור קצחיו:

כ. רק עין איהר תדע זה אילן סאכל: כי לא עין סאכל הוא זה אילן סרק וסארי
ססוטי לרבות כל דבר סה חיל כי לא עין סאכל הוא לחקדים אילן סרק לאילן סאכל

יטל אסלו סעלה כרמים חיל רק: אתו תשי וברת עשה את היסט ותיקן (ג) ונביאות (ר):
ובנית סצי קל העיר עשה את לח מינו ספרניאות (ח) וסביא את לח מינו בלעסיאות:

ובנית מי בין כוחל בין בשבת סה אני מקיים (שמות לא יד) סחלי סוח יוסט בשאי
כל דבר חרין סלחסת רשות או אף בסלחסת רשות וסה אני מקיים ובנית סצוד בשאי

כל הימים חרין סן השבת או אף בשבת חיל עד דרתה אסלו בשבת (ז) דברי רי יאשיה:
רבי אומר זה אחר סן הרבים שדרש שסאי חוקן אין ספליגין את הספינה בים הגדול
אלא קדם לשבת שלשה ימים כריא בדרך רועק אכל אם היתח דרך קרבת אסלו

בערב שבת ספליגין אותה: אין צרין על עיר תחלה בשבת אלא קדם לשבת שלשה
ימים ואם היקפוח ואירעה השבת להיות אין השבת סססכת סלחסתה (ז) ריא לא

תשחית את עצה לענין צריקים הוא אומר והרי דברים קל דעמר וסה האילט
שאין לא רואין ולא שומעין ולא מדבין על ידי שהן עשין סירות חס עליהן הסקם
סלהעכירן סן העולם אדם שהוא עשה את התורה ועשה רצון אבד שבשמים על אות

כסה וכסה שיועס עליו הסקום סלהעכירן סן העולם: ולענין רשעים שהוא אמי רק עין
אשר חדע והרי הדברים קל דעמר סה אם האילט שאין לא רואין ולא שומעין ולא
מדבין על ידי שאין עשין סירות לא חס עליהן הסקם להעכירן סן העולם אדם

שאין עשה את התורה ולא רצון אבד שבשמים על אות כסה וכסה שלא יועס עליו
הסקם להעכירן סן העולם (ח):

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כא י' כי תצא למלחמה במלחמת הרשות הכת' סדר: ולפת נאמר לפי שהוא
אומר (כ יד) רק הגי' והספ' והבי' חבו לך אבל לא שמענו שאת ראשי לקיים
סון אישות תל כי תצא לסלי וראית בשכיבה בא הכת' ללסרך כיצד אתה עושה זאת
ראשי לקיים סון אישות (א) על איביך כנגד איביך: ונתנו ה' אלהיך ב' אם
עשית כל האסור כענין סוף שהקבית טהגן כיוצא: ושכית ישיבין לרבות כנענים שנתנה:
דא (ונתנו ה' אלהיך ב' ושי' שב' ששטסו בידך את ראשי לשכוחו ואם לא אין את
ראשי לשכוחו (כ):

יא. וראית בשכיבה בשעת שכיבה: אשת יפת תואר אשת איש: יפת תואר
אין לי אלא בוסן שהיא נאה מני' אשלו כערת חיל וחשקת בה אע"פ שאינה נאה לא
דבר הכת' אלא כנגד הרצו' יצר רע: מוסב שיאכלו ישראל בשר הסתות שחוט ואם
יאכלו בשר הסתות נבלה (ג): מושל מלהיד לכן סלכס שנתאזר דבר שאי אפשר
לו (ג) והיה אכז' מסחירו ואמר לו בני אם אכלו את סודך הוא וכו'ן שראה שלא
הקפיד אסר לו כך וכך תהא עושה ואין את ניוק לכך נאמר והסירה את שכלת
שביה מעליה: (וחשקת בה בה ולא בתורה: ולקחת ליקוחן יש לך בה לך
לאשה שלא יביא שמים אתה לו ואתה לאכז' או לכט (ה):

יב. והבאתה אל תוך ב' ולא לבית ארץ שלא ילחצנה במלחמה (ה) וגללה את
ראשה שאם ראה כשערת עוז חסדה לכך נאמר וגללה את ראשה: (ועשתה)
את צפרניה ר' אליקור אומר תקי' ור' עקיבה אומר תגל אסר ר' אליקור נאמר עשית בראש
תאמר עשית בצפרנים סת להלן לחצניר אף כאן לחצניר: אסר ר' עקיבה נאמר עשית בראש
ונאמר עשית בצפרנים סת להלן טול אף כאן טול: וראית לדבר ר' אליקור (שיב יד בה)
וסוככת יד לקראת הסך ולא עשה תליו ולא עשה שפטו הא עשית חקבנה היא ולר' עקיבה
אע"פ שאין ראיו' לדבר ונר' לדבר (ו) כסח שני (ע' דני ד ל) עד כי עשית כשירון רבא
והפירו' כשירון:

יג. והסירה את שכלת שביה מ' שאם ראה כנגדיה עוז חסדה לכך נאמר והסירה
את שכלת שביה מעליה (ו): והסירה את שכלת שביה מעליה כלסר שמעביר סמנת בגדים
נשים ומלכיה בגדי' וסמנתו שהנשים אחריו הן ובגדיוהן סתקששות במלחמה בשביל לחטות אחרים

אחריו: וישבה בכ"י בניה שחשש בו נתקל בה ונכנס נתקל בה ויצא דומס לקריות ורואה
אותה בטוולת: ובכרתה את אביה ואת אמה ר' אליקור אומר אביה אמה ססס אמה ססס
ר' עקיבה אומר אין אקור יאסח אלא ע"ז והיא (ירי ב כו) אומרים לעץ אבי ולאנן את ולרתנו:
ידת ימים שלשים יום (ג) כל כך לכת שתהא בת ישראל ססתה וזו בוכה שתהא סתקששת וזו
סטולה כז' שיקץ בה: (ואחר כן תבי' אליה ובעלתה הא אם בעלה עד שלא עשה בה
כל הסקסס הללו הרי זו בעילה ונת' בריא שלא קיבלה עליה להתגייר אבל אם משקיבלה
עליה סטבילה ובתרי בה סיד (ע) ובעלתה אין לך בה אלא סעות בעילה: והיתה לך
לאשה כענין שני' (סמות כא י) שארה כסר וס' לא יגי':

יד. והיה אם לא הפצת בה הכת' בסודך שאתה עתיד לשטות: ושלחתה לנפשה
ולא לבית אליה: ר'א ושלחתה לנפשה שאם היתה חלה יסתן לה עד שתבריא אם
כך חס הסקסס על סעות טים הסמאות קל וחומר על סעות ישראל הקדושות: (וסכור לא תבי'
כ"י אין לי אלא שלא יסכרנה בבקס' מני' שלא יחננה בסתנה שלא יקשה בה סוכת חיל וסכור
לא הסכרנה: לא תתעמר בה שלא תסתסס בה: תחת אשר עקרי' אשלו לאחר סקסס
יחיד: [לא תתעמר בה תחת אשר ענייתה לא תתעמר בה אחר כל הסקסס הכת'
סדרך אתה אומר אחר כל הסקסס הכת' סדרך או אינו סדרך אלא לאורי בעילה אלא
אם אסרת כן דרי' היא אשתי לכל דבר הא [סח] חיל לא תתעמר בה תחת אשר ענייתה
אחר כל הסקסס הכת' סדרך דברי ר' יאשיה (י): ר' יונתן אומר אחר הבעילה הכת'
סדרך או אינו סדרך אלא לאורי כל הסקסס חיל (ברי לר ב) ויקח אתה וישכב אתה
ויזנה הרי אתה דן נאמר כאן עני' ונאמר להלן עני' סח עני' שני' להלן אתה הבעילה
הכת' סדרך אף עני' שני' כאן אחר בעילה הכת' סדרך (כ): ר'א לא תתעמר בה הרי
ו אחרת לבית דין:

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ה. כי יקח איש אישה חדשה אין לי אלא בתולה מנ' לרבות אלמנה ושומרת וכס חיל
 וסמך את אשתו סכל מקום: אם בן לסת נאמר חדשה מי שהייתה לו שרם לסחור
 גרושתו ואלמנה לכתן גרול גרשה וחלוצה לכתן חריום מסורת ותחינה לישראל בת ישראל לסמור
 ולנחין: לא יצא בעבא יכול בעבא הוא בלא יצא אבל יתקן כלי ויין חספס סים וסוון חיל
 ולא יעבור עליו לכל דבר: עליון עליו הוא דאין אתה סעביר אבל אתה סעביר על אחרים:
 [נקי יד לבן שנה אחת לביתו זה ביתו ונאמר (ויקי ים כד) יהיה כל פריז סה להלן
 כרם אף באן כרם (ח): יהיה זה כרם: ושטח את אשתו וז אשתו: אשר לקח
 להביא את יבסתי: מיכן אפי' אלו שאינן וזין ססקוסן בנה בית וזגבו נסע כרם וחללו
 והגרשא את ארופתו כל השנה כולה אין ססקין סים וסוון ולא סתקנין דרך ולא שומרין
 בדמיה ולא נותנין לססי העיר שנאמר שנה אחת (ס):

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[illegible]

SAATCHI & SAATCHI

אל ירך לבבכם אל תיראו ואל תחפזו ועל תערצו מפניהם, אל ירך לבבכם מפני צהלת סוסים, אל תיראו מפני הגפת הריסים ושפעת עקלנסים ואל תחפזו מקל הקרנות ואל תערצו מקול הצווחה כנגד ארבעה דברים שאומות העולם נושים מניפים ומריעים וצווחים ורומסים. כי ה' אלהיכם ההולך עמכם, הם באים בנצחונם של כשר ודם ואתם באים בנצחונם של מקום סליק מיסקא

(וד) כי ה' אלהיכם ההולך עמכם, מי שהיה עמכם במדבר הוא יהיה עמכם בעת צרה וכן הוא אומר ה' ילחם לכם ואתם תחרישון.

להלחם לכם עם אויביכם להוסיף אתכם. משרפים ועקרבים ורוחות הרעים. (ודברו השוטרים) עד כאן משוח מלחמה מדבר מיכן אילך ודברו השוטרים. (אשר נשא אשה) אפילו אלמנה אפילו שומרת יבם אפילו שמע שמת לו אחיו במלחמה חוזר. (ילך וישב לביתו) הכל שומעים דברי כהן מערכי המלחמה והם חוזרים ומספקים מים ומזון לאחיהם ומתקנים את הדרכים.

ודברו השוטרים, יכול דברים אחרים כשהוא אומר וייספו השוטרים לדבר אל העם מלמד שהם הדברים ומה תלמוד לומר ודברו השוטרים בין שהתחיל שוטר לדבר כהן משמיע להם כתנאים הללו.

קצד.

(ה) [מי האיש אשר בנה אין לי אלא בנה ירש לקח ניתן לו במתנה מנין תלמוד לומר מי האיש אשר בנה.]

בית אין לי אלא בית, מנין לרבות בונה בית דתכן ובית הבקר ובית העצים ובית האוצרות תלמוד לומר אשר בנה, יכול אף הבונה בית שער אכסדרה ומרפסת תלמוד לומר בית מה בית מיוחד שהוא בית דירה יצאי אלו שאינם בית דירה. ולא חנכה פרט לגולן.

[ילך וישב לביתו, ילך וישמע דברי כהן מערכי מלחמה ויחזור, פן ימות במלחמה, אם אינו שומע לדברי כהן לסוף הוא מת במלחמה.]

ו. איש אחר יחנכו, יכול דודו וכן דודו נאמר כאן אחר ונאמר להלן אחר מה אחר האמור להלן נכרי אף אחר האמור כאן נכרי סליק מיסקא

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קצו.

(ו) וְנָסִי הָאִישׁ אֲשֶׁר נָסַפּ, אֵין לִי אֵלָא נָסַפּ יִרְשׁ לִקָּח נִיחָן לִי בִּתְּנָה מִנִּי
חֲמִידָא לִמְרָא וְנָסִי הָאִישׁ אֲשֶׁר נָסַפּ.

כְּרָם. אֵין לִי אֵלָא כְּרָם מִנִּי לִנְטֵשׁ חֲשֵׁשׁה אֵילִי מֵאֵכֶל וְאִפִּילוּ מִחֲמִשֶׁת הַטִּינִים
חֲמִידָא לִמְרָא אֲשֶׁר נָסַפּ יִכּוֹל אֶף הִנְטֵשׁ אֲרֵבֶּשׁה אֵילִי מֵאֵכֶל וְחֲמִשֶׁשׁה אֵילִי סָרַק חֲלָמִיד
לִמְרָא כְּרָם רַבִּי אֲלִיעִזָּר בֶּן יִצְחָק אָמַר אֵין לִי בִּמְשַׁשׁ אֵלָא כְּרָם.

וְלֹא חֲלָלִי פִּרְשׁ לַמְּבִירָא, וְלֹא חֲלָלִי פִּרְשׁ לַמִּדְבָּרָא.
[יֵלֵךְ וַיָּשׁוּב לְבֵיתוֹ, יֵלֵךְ וְשֹׁמֵעַ דְּבָרֵי כֵהֵן מִפְּרֻכֵּי הַפְּלָחָה וַיַּחֲזֹר. פֶּן יָמוּת
בְּמַחֲלָמָה, אִם לֹא יִשְׁמַע לְדְּבָרֵי כֵהֵן לְסוֹף הוּא מֵת בְּמַחֲלָמָה.] וְאִישׁ אֲחֵר יִחְלָלְנוּ,
יִכּוֹל דִּידֻוּ וְכֵן דִּידֻוּ נִאֲמַר כֹּאן אֲחֵר וְנִאֲמַר לְהֵלֵךְ יֵאֲחֵר מִה אֲחֵר הָאִמּוֹר לְהֵלֵךְ נִכְרִי
אֶף אֲחֵר הָאִמּוֹר כֹּאן נִכְרִי.

קצו.

(ז) וְנָסִי הָאִישׁ אֲשֶׁר אֲרַשׁ אִשָּׁה, אֲחֵר הַמָּאָרֶם אֵת הַבְּתוּלָה וְאֲחֵר הַמָּאָרֶם
אֵת הָאֲלֻמָּה וְאִפִּילוּ שׁוֹמֵרֵת יָכֵם וְאִפִּילוּ שִׁמֵּשׁ שִׁמֵּת אֲחֵר בְּמַחֲלָמָה חֲזוֹר וְכֹא לִי. וְלֹא
לְקָחָהּ, כֹּאשָׁה הָרְאִייה לִי פִּרְשׁ לַמְּבִירָא נְרוּשָׁתָא וְאֲלֻמָּה לְכֵהֵן גִּדּוּל גִּרְשָׁה וְחֲלָצָה
לְכֵהֵן הָדִיטָא מִמּוֹרֶת וְנִתְּנָה לְיִשְׂרָאֵל וְכֵת יִשְׂרָאֵל לִנְטִין וְלַמְּסוֹרָה. יֵלֵךְ וַיָּשׁוּב לְבֵיתוֹ,
יֵלֵךְ וְשֹׁמֵעַ דְּבָרֵי כֵהֵן מִפְּרֻכֵּי מַלְחָמָה וַיַּחֲזֹר.] מִלִּיק מִיִּסְקָא

קצו.

(ח) וַיִּסְפּוּ הַשּׁוֹטְרִים לְדַבֵּר אֶל הַנָּסִי וְאָמְרוּ, לְמַדְנִי שְׂדֵם הַדְּבָרִים.] מִי
הָאִישׁ הִירָא וְרַךְ הַלֵּב, שִׁישׁ עֲבִירָה בִידֻוּ בִּסְחָר, יֵלֵךְ וַיָּשׁוּב לְבֵיתוֹ, רַבִּי
עֲקִיבָה אָמַר הִירָא וְרַךְ הַלֵּב כְּמִשְׁמַעֲנוּ רַבִּי יוֹסִי הַגָּלִילִי אָמַר הִירָא וְרַךְ
הַלֵּב כְּשֶׁהוּא כְּעַל מוֹסִי.
וְלֹא יִסַּס אֵת לְבַב אַחֲרֵי כֵלְכֵבוּ, מִלְּמַד שֶׁאִם הִיא אֲחֵר מִדָּרָא מִן
הַעֲבִירֹת שִׁבְדִּיו כּוֹלֵם הוֹרִים וְכֹאֵם מִלִּיק מִיִּסְקָא

קצו.

(ט) [וְהִיא כְּכֹלֹת הַשּׁוֹטְרִים, כְּעֲקִיבָה שֶׁל עִם מַעֲמִידִים וְקָפִים מִלְּפָנֶיהֶם
וְאֲחֵרֵיהֶם וְכַשְׁלִים שֶׁל בְּרוּךְ בִּידֵיהֶם וְכֹל הַמִּבְכֶּשׁ לַחֲזוֹר הַרְשׁוֹת בִּידֵם לְקַפָּה אֵת שׁוֹקֵי
שַׁחֲחִילָת נִפְיָלָה נִסְמָה שְׁנֵאֲמַר "נִסְמָה שְׁרָא לְמַפְנֵי פְלִשְׁתִּים וְגַם מִנְּפֹה נִדְּוִלָה
הִי תִּתְּ כַּעֲפָם] כְּמִהָ דְּכָרִים אֲמִירִים כְּמַלְחָמָה הַרְשׁוֹת אֲבָל כְּמַלְחָמָה מַצּוֹת הֵכֵל יִצְאֻם
אִפִּילוּ חֲתָן מִחֲדָרֵי וְכֹלָה מִחֻפְּסָתָה] מִלִּיק מִיִּסְקָא

קצט.

(י) כי תקרב אל עיר, במלחמת הרשות הכתוב מדבר. אל עיר, ולא לכרך. אל עיר, ולא לכפר. [להלחם עליה, ולא להרעבה ולא להצמיאה ולא להמיתה מיתת תחלואים.] וקראת אליה לשלום, גדול שלום שאפילו מתים צריכים שלום גדול שלום שאפילו במלחמתם של ישראל צריכים שלום גדול שלום שררי רום צריכים שלום שנאמר עושה שלום במרומיו גדול שלום שחותמים בו ברכת כהנים ואף משה היה אוהב שלום שנאמר וישלח מלאכים ממדבר קדמות אל סיחון מלך חשבון דברי שלום.

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ר.

(יא) והיה אם שלום תענך, יכול אף מקצתה תלמוד לומר ופתחה לך כולה ולא מקצתה. והיה כל העם הנמצא בה, לרבות כנענים שבתוכה. יהיו לך למס ועבדוך, אמרו מקבלים אנו עלינו מסים ולא שיעבוד שיעבוד ולא מסים אין שומעים להם עד שיקבלו עליהם זו זו. [ויבאם לא תשלים עמך ועשתה עמך מלחמה, הכתוב מבשרך שאם אינה משלמת עמך לטף שהיא עושה עמך מלחמה.] וצרת עליה, אף להרעיבה אף להצמיאה אף להמיתה במיתת תחלואים. ונתנה ה' אלהיך בידך, אם עשית את כל האמר בענין לטף שה' אלהיך

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נותנה בידך. והכית את כל וכורה לפי חרב, שומע אני אף הקטנים שבתוכה תלמוד לומר רק הנשים והטף והבהמה או אינו אלא טף של נקיבות אמרת ומה מרין שהמית את הגדולות החיה את הקטנות כאן שהחיה את הגדולות אינו דין שיחיה את הקטנות הא אינו אומר כאן טף אלא טף של זכרים מנין שעושה עמך מלחמה תלמוד לומר רק הנשים והטף והבהמה. [וכל אשר יהיה בעיר כל שללה תבזו לך, יכול תדא ביותם אסורה לך תלמוד לומר תבזו לך ואכלת את שלל אויביך] מליק פסקא

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רא.

(טו) כן תעשה לכל הערים הרחוקות, הרחוקות בתורה הוואת ואין הקרובות בתורה הוואת. אשר לא מערי העמים הטה אף ע"י העים האלה בתורה הוואת. [טז] רק מערי העמים האלה לא תחיה כל נשמה, בסוף. [יז] כי תחרם תחרים, יכול תדא ביותם אסורה לך תלמוד לומר כי תחרם מלאים כל טוב. [יח] תחתי והאמורי הכנעני והפרזי והחוי והיבוסי, כשהוא אומר כאשר צוך ה' אלהיך לרבות את הגנשי.

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ר.ב.

(יח) [למען אשר לא ילמדו אתכם לעשות, מלמד שאם עושים תשובה
אין נהרגים. וחטאתם לה' אלהיכם, אם לא עשיתם כל האמור בענין נקראים
אתם חטאים לה' אלהיכם] סליק פיסקא

ר.ג.

(יט) [כי תצור אל עיר, במלחמת הרשות הכתוב מדבר. אל עיר, ולא
לכרך אל עיר ולא לכפר.]
ימים רבים, ימים שנים רבים שלשה, מיכן אמרו אין צרים על עיר של
נשים פוזת משלשה ימים קודם לשבת.

[להלחם עליה לתפשה, ולא לשבותה. לא תשחית את עצה לנדרוח
עליו נרון, אין לי אלא נרון מנין אף למשוך הימנה אמת המים תלמוד לומר לא
תשחית את עצה ככל דבר.] דבר אחר כי תצור אל עיר מגיד שתובע שלום שנים
שלשה ימים עד שלא נלחם בה וכן הוא אומר וישוב דוד בצק [ימים שנים] ואין צרים
על עיר בתחילה בשבת אלא קודם לשבת שלשה ימים ואם הקיפה ואירעה שבת להיות אין
השבת מפסקת מלחמתה זה אחד משלשה דברים שדרש שמי הזקן אין מפליגים את הספינה
לים הגדול אלא קודם לשבת שלשה ימים כמה דברים אמורים בדרך רחוקה אבל בדרך קרובה
מפליגים אותה. [כי ממנו תאכל, מצות עשה ואותו לא תכרת, מצות לא תעשה.]
כי האדם עץ השדה, מלמד שחייו של אדם אינם אלא מן האילן, רבי ישמעאל
אומר מיכן חם המקום על פירות האילן קל וחומר מאילן ומה אילן שעושה פירות
הזהירך הכתיב עליו פירות עצמם על אחת כמה וכמה.

[לכא מפניך במצור, הא אם מעכבך לכא מפניך במצור קצצו] סליק פיסקא

ר.ד.

(כ) [רק עץ אשר תדע, זה אילן מאכל. כי לא עץ מאכל הוא, זה אילן
סרק אם ספנו לרבות את אילן מאכל מה תלמוד לומר עץ מאכל מלמד שאילן סרק
קודם לאילן מאכל יכול אפילו מצולה בדמים] וכדברי רבי אלעזר ברבי שמעון תלמוד

לומר אותו תשחית וכרתה, עושה אתה ממנו תיקים ונדיבאות. ובניית מצור
על העיר, עושה אתה לה מיני מטרניאות, מביא אתה לה מיני בלסטריאות. [עד
רדתה, ואפילו בשבת] סליק פיסקא

ווא.

(בא י) הוא למלחמה. במלחמת הרשות והעוב מדרבנן. על איבין.
 בנדר איבין. ונחנו ה' אלהיך בידך. אם נשית כל האומר בענין סוף שר' אלהיך
 טהור בידך. [שבית שביי, לרבות בנענים שבתוכה].
 (יא) יראתי בשביה. בשבת שביה. אשה ואף על פי שהיא אשת אישי. פה
 תואר. אין לי אלא שכן שדור נאח מען אפילו היא כהנה חלמוד למד וחסקת
 בה אף על פי שאינה יפת תואר. ולקחת לך לאשה שלא האמינהו ה' וז' לאבה
 דבריו ו' לאחי סליק פוסקא

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ריב.

(וכ) הנאחא אל תוך ביתך. ולא לבית אחר. [נלחה את ראשה
 וכשהיא את צפרניה רבי אליעזר אומר תקע רבי עקיבה אומר תנול אחר רבי
 אליעזר נאחיה נשיה בראש והאחר נשיה בצדדים מה נשיה האמרה בראש הנאחיה

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אף נשיה האמרה בצדדים הנאחיה רבי עקיבה אומר נאחיה נשיה בראש הנאחיה
 נשיה בצדדים מה נשיה האמרה בראש נאחיה אף נשיה האמרה בצדדים נאחיה
 לרבין רבי אליעזר יוספ' ביוסף בן שאול ירד לקרא את המלך לא נשיה
 הנליו ולא נשיה שפפון.

ריב.

(וכ) הסירה את שפלת שביה מליליה. מלילי פספסר מנחה בדיקס נאח
 ומלכיה בדי אלמית שנתים ארוכים הם בנחתם מתקטנת במלחמה בשביל
 לזנות אחיהם אריות. וישבה בבית. בבית שפלתם פ' נהגל בה הנכס נהגל
 בה ויוצא דומה לקריה ורואה ביוולד. [וככתה את אביה ואת אמה ירד
 ימים. אבה ואמה נפשו דברי רבי אליעזר רבי עקיבה אומר אין אבה ואמה אלא
 כבוד וזה שנאמר. אוסרים לפע אבי אחיה. ירד ימים. שלשים יום. דבר
 אחר ירד אחד ימים שנים הרי שלשה חדשים כדי בנדי ניה שהיו עליה וחמדה הוליד
 כדברי רבי עקיבה בין דרע ראשון לורע שני רבי אליעזר אומר ירד ימים כמספסו וכל כך לפה

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שחא בת ישראל סתה וזו בוכה בת ישראל מתקטנת וזו מתגוללת. [ואחר כן תבא אליה
 ובעלתה. האם לא עשה בה את כל המעשים האלו ונא עליה הרי זו בעלת ונתי.
 ואחר כך תבוא אליה ובעלתה. אין לך בה אלא שנות בעלתה. והיתה
 לך לאשה כענין שנאמר ישארה בטהרה וזו נהנה לא ירד סליק פוסקא

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ריב.

(יד) והיה אם לא הפצת בה. הכתוב מבייך שאתה נהני לשואות. [נלחה
 לנפשה ולא לבית אלהיה. ושלחה בגס כדברי רבי יונתן ואם היחה חולה יפתן לה עד
 שתבריא קל וחומר לנכות ישראל שכן קדושות וטהורות. ומכור לא תמכרה בה בכסף.
 אין לי אלא שלא ימכרה בכסף. כיון שלא יזנה בטהרה ולא ינשא בה שובה חלמוד
 לוטר ומכור לא תמכרה בכסף. לא תתעמר בה. שלא תשתמש בה. דבר
 אחר לא תתעמר בה כדברי רבי יונתן. דבר אחר הרי זו אונסה לבית דין.
 תחת אשר פנייה. אפילו לאחר משה יחיד.

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רעא.

(ה) כי יקח איש אשה חדשה, אין לי אלא בתולה מנין לרבות אלמנה ושומרת

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יבם תלמוד לומר ושמח את אשתו מכל מקום אם כן למה נאמר חדשה מי שחדשה
לו פרט למחזיר נרושתו ואלמנה לכהן גדול נרושה וחלוצה לכהן הדיוט ממורת ונתינה
לישראל בת ישראל לממזר ולנתי.

לא יצא בצבא, יכול לא יצא בצבא אבל יספק כלי ויין ומים ומוון תלמוד
לומר ולא יעבר עליו לכל דבר אי לא יעבור עליו לכל דבר יכול אפילו בנה
בית ולא תגבו נטע כרם ולא חללו ארם אשה ולא לקחה תלמוד לומר עליו עליו אינו
עובר עובר הוא על כל אלו.

נקי יהיה לביתו, זה ביתו. יהיה, זה כרמו. ושמח את אשתו, זו אשתו.
אשר לקח, להביא את יבמתו [סליק פיסקא]

משוח מלחמה *כשעה שמדבר אל העם

בלשון הקודש היה מדבר שנאמר
 "והיה כדברכם אל המלחמה ונגש הכהן זה
 : כהן משוח מלחמה *ודבר אל העם בלשון
 : הקודש *ואמר אליהם שמע ישראל וגו' על
 אויביכם ולא על אחיכם לא יהודה על שמעון
 ולא שמעון על בנימין שאם תפלו בידם ידמו
 עליכם כמה שנאמר *ויקמו האנשים אשר
 נקבו בשמות ויחזיקו בשביה וכל מערומיהם
 והבישו מן השלל וילבישום וינעילום
 ויאבילום וישקם ויסכום וינהלום ברמזים

לכל כישל ויביאום יריחו עיר התמרים אצל אחיהם וישבו שומרון וגו' על
 אויביכם אחם תולכים שאם תפלו בידם אין מרחצין עליכם *אל ירך
 לבבכם אל תיראו ואל תרפו וגו' אל ירך לבבכם מפני צהלת סוסים
 וצחצוח חרבות אל תיראו מפני הגפת תריסין ושפעת הקלנסין אל תרפו מקל קרנות אל תערצו מפני
 קל צווחות *כי ה' אלהיכם הדולף עמכם הם באין בנצחונם של בשר ודם ואחם באים בנצחונם של
 מקום פלשתים בא בנצחונם של גלית מה היה סופו לסוף נפל כדרכו ונפלו עמי בני עמון בא בנצחונם
 של שבך מה היה סופו לסוף נפל כדרכו ונפלו עמי ואחם אי אחם בן כי ה' אלהיכם הדולף עמכם להלחם
 לכם וגו' זה מנהג הארץ : נכח *מאי קאמר רבי קאמר שנאמר ודבר ולהלן אומר *משה ידבר והאלהים יענו
 בקול מה להלן בלשון הקודש אף כאן בלשון הקודש *תנו רבנן ונגש הכהן ודבר אל העם יכול כל כהן
 שרצה תל *ודברו השומרים מה שומרים בממנה אף כהן בממנה ואיכא כהן גדול *ומאי דשומר
 מה שומר שיש ממנה על גבו אף כהן שיש ממנה על גבו כהן גדול נמי האיכא מלך על גבו
 בעבודתו קאמר ואיכא סגן סגן לא ממנה הוא דהניא *אמר רבי תעניא סגן הכהנים למה סגן
 ממנה שאם אירע בו פסול בכהן גדול נכנס ומשמש *תתרוי *ואמר אליהם שמע ישראל : מאי שנא
 שמע ישראל אמר רבי יוחנן משום רבי שמעון בן יוחי אמר להן הקדוש ברוך הוא לישראל אפילו
 לא קיימחם אלא קריאת שמע שדית וערביה אי אחם נמסרין בידם : *אל ירך לבבכם אל תיראו
 כי : תנו רבנן *פעמים מדבר עמם אחת בספר ואחת במלחמה בספר מה הוא אמר

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שמעו דברי מערכי המלחמה וחזרו במלחמה
 מה הוא אמר אל ירך לבבכם אל תיראו
 ואל תרפו ואל תערצו כנגד ארבעה דברים
 שעובדי טובים עושין מגיפין ומרעין צווחין
 וחמסין : פלשתים בא בנצחונם של גלית
 כי : גלית אמר רבי יוחנן שעמד בגליל
 פנים לפני הקב"ה שנאמר *ברו לכם איש
 וידד אלי *ואין איש אלא הקב"ה שגא' *ה' *
 איש מלחמה אמר הקב"ה הריני מפיל
 על יד בן איש שגא' *וחד בן איש אפרתי *
 הוה א"ר יוחנן משום רבי מאיר בשלשה
 מקומות לכדו פזי לאחדו רשע אחד ברו לכם
 איש וירד אלי ואידך אם יוכל להלחם אתי
 והבני וגו' ואידך קאמר ליה לחד *הבלב *
 אגבי כי אתה בא אלי במקלות חד נמי אמר

ליה^ו אתה בא אלי בחדב בתנית ובכידן =
 (ה) הדר אמר ליה ואנכי בא אליך בשם ה'
 צבאות אלה (ישראל) מעדנות ישראל אשר
 הדפת ויגש הפלשתי השכם והערב אמר^ז
 ר יוחנן כדי לבטלן מק"ש שדית ועדבית
 ויחיצב ארבעים יום א"ר יוחנן כנגד ארבעים =
 יום שנתנה בהן תורה ויצא איש הבינים =
 ממדנות פלשתיים ונ' מאי כינים אמר רב
 שמבנה מכל סם ושמואל אמר בינוני
 שבאחו רבי רבי שלא אמר שהוא עשי
 כבנן רבי יוחנן אמר בר מאה פפי והוא
 נאנאי וגלית שם מנה תני רב יוסף שהכל
 דשן את אמר כנה כתיב מערה וקנין
 מעדנות תני רב יוסף שהכל העור באמ'
 כתיב ודפה וכתיב ערפה רב ושמואל דהיינו
 אמר הדפה שמה ולמה נקרא שמה ערפה
 שהכל עורפין אותה מאדירה ודא אמר
 ערפה שמה ולמה נקרא שמה הדפה שהכל
 דשן אותה כדריפות וכן הוא אמר וחקק =
 האשה ותפרש המסך על פני הבאר ותשמש עליה הדיפות ואי בעית
 אימא מהבא ואם תבתש את האיל במכתש בתוך הדיפות בעל^י ואתה
 ארבעת אלה יולדו להדפה בנה ופלו ביד חד וביד עבריו מאי נינהו
 אמר רב חסדא סף וסרן גלית ורשבי בעוב ופלו ביד חד וביד עבריו
 דכתיב וחסק ערפה לחמתה וחת דבקה בה אמר רבי יצחק אבן הקדוש =
 בתוך הוא יבוא בני הנשקה ופלו ביד בני הדבקה ויש רבא בשבז
 ארבע דמעות שהחידה ערפה על חמתה וכתה וצא ממנה ארבעה גבורים
 שנאמר וחסאנה קלן ותבכנה עוד כתיב חן תציתו וקנין עץ תציתו אמר^ז
 רבי אלעזר עדיין לא הגיעו לחצי שבז של אותו רשע מכאן שאסור לספר
 בשבזן של רשעים ולא לפתח ביה כלל לאדועי שבזיה דוד : בני
 עמן בא בגזעו של שבך כו : כתיב שבך וכתיב שפך רב ושמואל
 דא אמר שפך שם ולמה נקרא שם שבך שעשי כשבך ודא אמר
 שבך שם ולמה נקרא שם שפך שכל החאה אותו נשפך לפני כקתן
 אישפתי כקבר פתח כולם גבורים רב ושמואל ואמר לה רבי אמר ורבי^ז
 אבי דא אמר בשעה שזרקן חן עושן אשפות אשפות של חללים
 ושמו תאמר שאומנין בקרב ח"ל כולם גבורים ודא אמר בשעה שעושן
 צדכיהן עושן אשפות אשפות של זבל ושמו תאמר מפני שחל
 מעיים הם תלמד לומר כולם גבורים אמר רב מר שמע מנה האי מאן
 דנפיש זיבליה חלי מעיים הוא למאי נפקא מנה לימח בגופשה דאנה =
 בלב איש ישנה ר' אמר ורבי אבי דא אמר ישנה מדעתו ודא אמר^ז
 ישנה לאודים : ואם אי אדם כן כו : וכל כך למה מפני שהשם וכל כינוי

מִטְעֵן בָּאֵרֶן וְכֵן הָיָה אִמֶּר יְיָ שְׁלַח אֹתָם
 מֹשֶׁה אֶלֶף לִמְטָה לִצְבָּא אִתָּם וְאֵם פִּינֹחַס
 אֹתָם אֵלֹּ מִנְהַדִּין פִּינֹחַס זֶה מִשּׁוּחַ מִלְחָמָה
 וְכָלִי הַקֹּדֶשׁ זֶה אֶרֶן וְלֹחֶת שְׂבוּ וְחֻצֵּצוֹת
 הַתְרוּעָה אֵלֶּה הַשּׁוֹפְרוֹת חֲנָא לֹא לִתְנֵם הַלֵּךְ
 פִּינֹחַס לִמְלָחָה אֲלֵא לִפְרַע דִּין אֲבִי אֲבִי
 יְיָ שְׁנֵאֲמַר וְהַמְדִּינִים מִכְּרוּ אוֹתוֹ אֶל מִצְרַיִם וְגו'
 לְמִסְרָא דְפִינֹחַס מִזֹּסֶף אֲחִי וְהָא כְּתִיב
 יְיָ וְאַלְעֹזֶר בֶּן אֶהֱרָן לָקַח לוֹ מִבְּנוֹת פִּשְׁיָאֵל לוֹ
 לְאִשָּׁה *מֵאִי לֹא דָאֲתִי מִיתְּרוּ שְׁפִיטָם עֲנָלִים
 לְעִבּוּדָת טוֹכְבִּים לֹא מִזֹּסֶף שְׁפִיטָם בִּיצְרוּ
 וְהָלֹא שְׂבָמִים מִבּוֹן אוֹתוֹ רֵאִיתִם בֶּן פּוֹסִי זֶה
 בֶּן שְׁפִיטָם אֲבִי אֲבִי עֲנָלִים לְעִבּוּדָת טוֹכְבִּים
 יִהְיֶה נְשִׂיא מִיִּשְׂרָאֵל אֲלֵא אִי אֲבִיהָ דְאִמְהָ
 מִזֹּסֶף אִמְהָ דְאִמְהָ מִיתְּרוּ וְאִי אִמְהָ
 דְאִמְהָ מִזֹּסֶף אֲבִיהָ דְאִמְהָ מִיתְּרוּ דִּיקָא
 נָסִי דְכְּתִיב מִבְּנוֹת פִּשְׁיָאֵל תִּירִי מִשְׁמַע שְׁמַע
 מִנָּה : בְּתַנְיָ וְדִבְרֵי הַשּׁוֹמְרִים אֶל הָעַם
 לֹאֲמַר מִי הָאִישׁ אֲשֶׁר בָּנָה בֵּית חֵדֶשׁ וְלֹא
 תִּגְבּוּ יֵלֶךְ וְיִשְׁכַּב לְבֵיתוֹ וְגו' אֲדִיד הַבּוֹנֶה בֵּית
 הַתְּבֵן בֵּית הַבֶּקֶר בֵּית הָעֵצִים בֵּית הָאֵצִוֹת
 אֶחָד הַבּוֹנֶה וְאֶחָד הַלּוֹקֵךְ וְאֶחָד הַיּוֹרֵשׁ וְאֶחָד
 שְׁנָתָן לֹא מִתְּנָה *וְכִי הָאִישׁ אֲשֶׁר נָטַע כֶּרֶם
 וְלֹא הִלָּלוּ וְגו' אֲדִיד הַנּוֹטֵעַ כֶּרֶם וְאֶחָד הַנּוֹטֵעַ
 הַמִּשָּׂה אֵילָנִי מֵאֲבָל וְאֶפְיָלוֹ מִתְּמִשָּׁה דְּמִינִין
 אֶחָד הַנּוֹטֵעַ וְאֶחָד הַמְּבָרֵךְ וְאֶחָד הַמְּכַיֵּב
 וְאֶחָד הַלּוֹקֵךְ וְאֶחָד הַיּוֹרֵשׁ וְאֶחָד שְׁנָתָן לֹא
 מִתְּנָה *וְכִי הָאִישׁ אֲשֶׁר אֶרֶשׁ אִשָּׁה וְגו' אֲדִיד
 הַמְּאִרֵם אֶת הַבְּתוּלָה וְאֶחָד הַמְּאִרֵם אֶת
 הָאֵלְמָנָה אֶפְיָ שְׂמִירָת יְכָם וְאֶפְיָ שְׁמַע שְׁמַע
 אֲדִיד בְּמִלְחָמָה וְחֹזֵר וְכֹא לֹא כָל אֵלֹ (6) וְאֵלֹ

שְׁמַעֲנִין דְּבָרֵי כֹהֵן מַעֲרִכִי מִלְחָמָה וְחֻצֵּינִין מִסְּפִקִין מִסֵּם וּמִזִּמּוֹן וּמִתְקַנִּין אֶת
 הַדּוֹכִים וְאֵלֹ שְׁאִינִין חֻצֵּינִין יְהוֹנָה בֵּית שְׁעָרֵי אֲכַסְדֵּרָה וּמִתְפַּסֵּת דְּעוֹמֵט
 אֶרְבַּע אֵילָנִי מֵאֲבָל וְהַמִּשָּׂה אֵילָנִי מִסֵּם הַמְּחֻזָּר אֶת גְּרוּשָׁתוֹ אֵלְמָנָה לְכֹהֵן

גְּדוּל גְּרוּשָׁה וְחֻצֵּינִין לְכֹהֵן הַדִּיּוֹם מִמּוֹרֹת וְתַחֲנִינָה לְיִשְׂרָאֵל בֵּת יִשְׂרָאֵל לְמַמּוֹר וּלְנִתָּן לֹא הָיָה חֻצֵּינִין רַבִּי יְהוֹדָה
 אִמֶּר אֶף הַבּוֹנֶה בֵּית עַל מִבְּנוֹ לֹא הָיָה חֻצֵּינִין רַבִּי אֱלִיעֶזֶר אִמֶּר אֶף הַבּוֹנֶה בֵּית לְבִינִים בְּשִׁירָן לֹא הָיָה חֻצֵּינִין
 אֵלֹ שְׁאִינִין חֻצֵּינִין מִמְּקוֹמָן בָּנָה בֵּית וְנָטַע כֶּרֶם וְהִלָּלוּ הַנּוֹטֵעַ אֶת אֲרוֹסָתוֹ הַבּוֹנֵם אֶת יְכָמָתוֹ שְׁנֵא
 נָטַע יְהוֹדָה לְבֵיתוֹ שְׁנֵא אֶתֵּן לְבֵיתוֹ זֶה בֵּיתוֹ יְהוֹדָה זֶה כֶּרֶם וְשְׁמַע אֶת אֲשֶׁר וְזֶה אֲשֶׁר לָקַח לְהַבִּיא אֶת
 יְכָמָתוֹ *אֵין מִסְּפִיקִין * (לְרֵם) מִסֵּם וּמִזִּמּוֹן וְאֵין מִתְקַנִּין אֶת הַדּוֹכִים : (7) תַּנְיָ רַבֵּנִין וְדִבְרֵי הַשּׁוֹמְרִים יִכּוֹל
 דְּבָרִים שֶׁל עֲצָמָן כְּשֶׁהָיָה אִמֶּר *וְיִסְפּוּ הַשּׁוֹמְרִים הָרִי דְּבָרִים שֶׁל עֲצָמָן אִמֶּר הָאֵם אֵין מִקִּיָּם דְּבָרֵי הַשּׁוֹמְרִים
 בְּדִבְרֵי מִשְׁחַ מִלְחָמָה הַכְּתוּב מְדַבֵּר הָאֵם כִּיֶּצֶד *כֹּהֵן מְדַבֵּר וְשׁוֹמֵר מִשְׁמִיעַ תַּנִּי דָּא כֹהֵן מְדַבֵּר וְשׁוֹמֵר מִשְׁמִיעַ
 וְהִנְיָ אֵיךְ כֹּהֵן מְדַבֵּר וְכֹהֵן מִשְׁמִיעַ וְהִנְיָ אֵיךְ שׁוֹמֵר מְדַבֵּר וְשׁוֹמֵר מִשְׁמִיעַ אִמֶּר אֲבִי הָאֵם כִּיֶּצֶד *מִנְּגִישׁ תַּעֲד
 דְּבָרֵי כֹהֵן מְדַבֵּר וְכֹהֵן מִשְׁמִיעַ מְדַבְּרוּ עַד וְיִסְפּוּ כֹהֵן מְדַבֵּר וְשׁוֹמֵר מִשְׁמִיעַ מִיִּסְפּוּ וְאֵיךְ שׁוֹמֵר מְדַבֵּר וְשׁוֹמֵר
 מִשְׁמִיעַ : *מִי הָאִישׁ אֲשֶׁר בָּנָה בֵּית חֵדֶשׁ כִּי : תַּנְיָ רַבֵּנִין אֲשֶׁר בָּנָה אֵין לִי אֲלֵא אֲשֶׁר בָּנָה לָקַח וְיִרְשׁוּנִיהָ לֹא
 בְּמִתְּנָה מִן חֵל מִי הָאִישׁ אֲשֶׁר בָּנָה בֵּית אֵין לִי אֲלֵא בֵּית מִן לְרִבּוֹת בֵּית הַתְּבֵן וּבֵית הַבֶּקֶר וּבֵית הָעֵצִים
 וּבֵית הָאֵצִוֹת חֵל אֲשֶׁר בָּנָה מְכַל מִקֵּם יִכּוֹל שְׁאִי מְרַבֵּה אֶף הַבּוֹנֶה בֵּית שְׁעָרֵי אֲכַסְדֵּרָה וּמִתְפַּסֵּת חֵלְמִיד
 לֹאֲמַר בֵּית מִה בֵּית הָרֵאִי לְדִירָה אֶף כִּי הָרֵאִי לְדִירָה רַבִּי אֱלִיעֶזֶר בֶּן יַעֲקֹב אִמֶּר בֵּית כְּמִשְׁמַע וְלֹא הָיָה וְלֹא
 וְנָטַע כֶּרֶם לְנֹלֵן לִימָא דְלֹא כְּרִבִּי יוֹסֵי הַגְּלִילִי דְאִי *רַבִּי יוֹסֵי הַגְּלִילִי הָאֵם אִמֶּר וְחָךְ הַלֵּבֵב זֶה הַמִּתְיָרָא

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מעבירות שכידו אפילו חימא רבי יוסי
 הגלילי כיון דעבד תשובה והב דמי א
 הכי הוה ליה לוקח וליהוד כיון דמעיקרא
 בתורה נזילה אתא לידיה לא [וכי האישי
 אשר נמט כרם כ' : תנו רבנן אשר נמט אין
 לי אלא נמט לקח וירש וניתן לו במתנה מגין
 תלמד לומר וסי האישי אשר נמט כרם
 אין לי אלא כרם מגין לרבות חמשה אילני
 מאכל ואפילו משאר מינן תלמוד לומר אשר
 נמט יכול שאני מרבה הנמט ארבעה אילני
 מאכל וחמשה אילני סרק תלמוד לומר כרם
 רבי אליעזר בן יעקב אומר כרם כמשמעו
 [לא חילל ולא חיללו פרט למכרין ולמכריב
 והא אגן תגן אחד הנמט ואחד המכרין ואחד
 המכריב אמר רבי יורא אמר רב חסדא לא
 קשיא כהן * בהרכבת איסור כאן בהרכבת
 היתר האי הרכבת היתר היכי דמי אלימא
 ילדה בילדה תיפוק לי רבעי מיהוד משום
 ילדה ראשונה אלא ילדה בוקנה * והאמר
 רבי אבהו ילדה שסיבכה בוקנה * במלה
 ילדה בוקנה ואין בה דין עולה אמר רבי
 ירמיה לעולם ילדה בילדה וכגון דנמט לך
 קשייתא לסינ ולקוחות * דתגן יגמט לסינ
 ולקוחות פסד מן העולה ומאי שנא ילדה
 בוקנה דבמלה ומאי שנא ילדה בילדה ולא
 במלה דתם אי מימליך עלה לא בת מיהוד
 היא הבא אי מימליך עלה בת מיהוד היא
 * [והא מעיקרא לפיר קיימא] מדי דהוה
 אעלו מאליהן * דתגן עליו מאליהן דייבין
 בערלה ולוקמה בכרם של שני שותפין דהא
 הדר אדירה והא הדר אדירה אמר רב
 פפא ואת אומרת כרם של שני שותפין
 אין חזרין עליו מערבי המלחמה ומאי שנא
 * במלחמה אחין ומת אחד מהן במלחמה
 דכולן חזרין התם כל חד וחד קרינא ביה
 אשתו הבא כל חד וחד לא קרינא ביה כרם
 רב נחמן בר יצחק אמר במכרין אילן בירק
 והאי תגא הוא * דתגיא המכרין אילן בירק
 רבן שמעון בן גמליאל מחזי משום רבי
 יהודה בן גמדיא איש כפר עכו דחכמים
 איסרין כי אתא רב דימי אמר רבי יוחנן דא
 מצי רבי אליעזר בן יעקב היא לא אמר רבי
 אליעזר בן יעקב דהם כרם כמשמעו הבא
 נמי נמט כמשמעו נמט אין מכרין ומכריב

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משנה ארד ובנית ביתך זה נמי ד"א הכן בחיץ
מלאכתך זה מקרא ומשנה ועתה בשרה
לך זה נמרא ארד ובנית ביתך אלו מעשים
סבים ר' אליעזר בנו של ר"י הגלילי אומר
הכן בחיץ מלאכתך זה מקרא ומשנה תמרא
ועתה בשרה לך אלו מעשים סבים ארד
ובנית ביתך *דרוש וקבל שטר : [ואלו
שאינן חזרין הבונה בית שער טי : תנא אם
הוסיף בו דימס ארד חזר : ר' אליעזר אומר
אף הבונה בית לבנים בשחן לא היה חזר :

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תנא מפני שמדרשין אותו פעמים בשבוע : [ואלו שאין זזין ממקומן בנה בית חדש ורגבו וכו' : תנו רבנן *אשה
חדשה אין לי אלא אשה חדשה אלמנה ותרשה מגין תלמוד לומר אשה מכל מקום אם כן מה ת"ל אשה
חדשה כי שדרשה לו יצא מחוץ גרושתו שאין חדשה לו ח"ד *לא יצא בצבא יכול בצבא הוא ולא
יצא אבל יספיק מים ומזון ויתקן הדרכים תלמוד לומר *ולא יעבור עליו לכל דבר יכול שאני מרבה
אף הבונה בית ולא רגבו נמנע כרס ולא חללו ארס אשה ולא לקחה ת"ל עליו עליו אי אתה מעביר
אבל אתה מעביר על אחרים ומאד דכתב לא יעבור לא יצא בצבא למה לי *לעבור עליו בשני לאין :
מתני *ויספו השוטרים לדבר אל העם וכו' ר' עקיבא אומר הורא ודך הלבב *כמשמעו שאינו יכול
לעמוד בקשרי המלחמה ולראות דרב שלופה *רבי יוסי הגלילי אומר הורא ודך הלבב והי המתיירא מן
העבירות שבידו לפיכך תלתה לו התורה את כל אלו שחוזר בגלגל רבי יוסי אומר אלמנה לכתן גדול
נדשה וחלוצה לכתן הדין ממזרת ונתניתה לישראל בת ישראל לממזר ולנתן הרי הוא הורא ודך הלבב
*והיה ככלות השוטרים לדבר אל העם ופקדו שרי צבאות בראש העם ובעקבו של עם *מעמידן וקפץ
לפניהם ואחרים מאחוריהם וכשילין של ברזל בידהן וכל המבקש לחזור הדין בידו לקפה את שקו

(84)

[illegible]

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(48) של גדול קא משמע לן אין מציאין בר : מנהגי מלי אמר ר' אבהו דאמר
הייקרא ולפני אלעזר הכהן יעמוד והוא זה מלך וכל בני ישראל אתו זה
משוח מלחמה וכל העדה זה מנהרין חילמא לסנהרדי הוא דקאמר להו

(50) גמ' תר' מנהג היוצאת למלחמת הרשות
מותרין בגול עצים יבשים ר' יהודה בן
חיימא אמר אף חנוך בכל מקום ובמקום
שנהרגו שם נקברין : [מותרין בגול עצים
יבשים : האי תקנתא דיהושע הוה *דאמר
מר יעשה חנאים חתנה יהושע שיהו
מרעין בחורשין ומלקטין עצים משדותיהן
התם בדומי והיני הבא בשאר עצים אי
נמי התם במחברין הכא בתלושין אי נמי
התם בלחין הכא ביבשים :] ר' יהודה

בשביה תרד וראית בשביה *בשעת שביה אשת ואפילו אשת איש
יפת תואר לא דברה תורה אלא כנגד יצר דדע *מוטב שיאכלו ישראל בשר

תמותות שחיות ואל יאכלו בשר תמותות
גבילות *וחשקת אע"פ שאינה נאה בה ולא
בה ובחברתה ולקחת ליקוחן יש לך בה
לך לאשה שלא יקח שתי נשים אחת לו
ואחת לאביו אחת לו ואחת לבנו *והכאתה
מלמד שלא ילחצנה במלחמה :] ת"ר *אם

(59) מכשרין [מאן חנא להא דתנן רבנן בית
שאין בו ארבע אמות על ארבע אמות
פסור מן המוזה *ומן הכעקה ואינו מטמא
בנגעים ואינו נחלט בבזי ערי חמה ואין
חורין עליו מעורכי המלחמה ואין מערבין
בו ואין משתחפין בו ואין מציחין בו עיזוב

ואין עושין אותו עיבור בין שתי עיירות ואין
האחין והשוחפין חילקין בו לימא רבי היא
ולא רבנן אפילו חיימא רבנן עד כאן לא
קאמרי רבנן *התם אלא לענין סוכה דדירה
עראי היא אבל לגבי בית דדירה קבע דהא
אפי' רבנן מודו דאי אית ביה ד' אמות על ד'
אמות דיירי ביה אינש ואי לא לא דיירי ביה
אינש :] אמר מר פסור מן המוזה ומן

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אבל נתן לבעלים רביע: גמ[ה] השתא
 בהדוני המלחמה לא היה בה סקריקן
 מהדוני מלחמה ואילך יש בה סקריקן
 אמר רב יהודה לא דע בה דין סקריקן
 קאמר דאמר רבי אסי נ' גזחת גזוז
 גזרתא קמיתא כל דלא קסיל
 ליקמלוהו מציעתא כל דקסיל לייתי ארבע
 זוזי בתריתא כל דקסיל ליקמלוהו הלכך קמיתא ומציעתא כיון דקסיל
 אנב אינסיה נמר ומגי בתריתא אמר האידנא לישקל למדד תבענא
 ליה בדנא [אמר רבי יוחנן מאי דכתיב אשר אדם מפרד תמד

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ואשה שמלת איש ותשב בין האנשים רבי
 אליעזר בן יעקב אומר מנין שלא תצא אשה
 בכלי ויין למלחמה ח"ל לא יהיה כלי גבר על
 אשה ולא ילבש גבר שמלת אשה שלא

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דכבר מצוה מדו ליה: [כל היוצאין להציל
 חורין למקמן: ואפי' טובא והא אמרת רישא
 אלפים אמה ותו לא אמר רב יהודה אמר רב
 שחורין בכלי ויין למקמן ומאי קשיא דילמא
 להציל שאני אלא אי קשיא הא קשיא דתנן
 *בראשונה לא היו ויין משם כל היום כולו
 התקין ר"ג הוקן שיש להן אלפים אמה לכל

רוח ולא אלו בלבד אמרו אלא אפי' חכמה הבאה לילד יתבא להציל מן
 הנגיים ומן הנוד וכן המפלת ומן הדליקה דרי הן כאנשי העיר ויש להן אלפים
 אמה לכל רוח ותו לא והא אמרת כל היוצאין להציל חורין למקמן אפילו
 טובא אמר רב [יהודה אמר רב] שחורין בכלי ויין למקמן כדתניא
 *בראשונה היו מניחין כלי ויין בבית הסמוך לחומה פעם אחת הבירו
 בהן איבים ודרפו אחריהם ונכנסו ליטול כלי ויין ונכנסו איבים
 אחריהן דחקו זה את זה ודרגו זה את זה יותר ממה שדרגו איבים
 באותה שעה התקנו שיהו חורין למקמן בכלי ויין רב נרמן בר יצחק
 אמר ל"ק כאן שגצו ישראל את אומות העולם כאן שגצו אומות
 העולם את עצמן אמר רב יהודה אמר רב ינכרים שצרו על עיריות
 ישראל אין יוצאין עליהם בכלי ויין ואין מרחלין עליהן את השבת תניא
 נמי הכי נכרים שצרו וכו' *במה דברים אמורים כשבאו על עסקי
 ממון אבל באו על עסקי נפשות יוצאין עליהן בכלי ויין ומחללין עליהן
 את השבת ובעיר הסמוכה לספר אפילו לא באו על עסקי נפשות אלא על
 עסקי חבן וקש יוצאין עליהן בכלי ויין ומחללין עליהן את השבת אמר
 רב יוסף בר מנימי אמר רב נרמן ובבל בעיר הסמוכה לספר דמיא ותרומא
 נהרדעא דרש רבי הוסיא דמן בירי מאי דכתיב ויניחו ליה לאמר רגה

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דמדם [תניא ר' יהודה בן בתירא אומר
אף המוכר סוס וסייף ודשיטום במלחמה
אין לדם אונאה מפני שיש בהן חיי נפש:]

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דקיימי כוונתיה * מאן חבמים נחם המדי הוא תניא אידך נחם [המדי אומר
מכרין להן סוס וזכר (6) חקן במלחמה אמרו לו נשתקע הדבר ולא נאמר
והאיכא בן בתירא דקאי כוונתיה * דתנן בן בתירא מתיר בסוס בן בתירא
לא מפליג בין זכרים לנקבות אדרו מדקא מפליג בין זכרים לנקבות טרבגן
סבירא ליה ולרבנן נשתקע הדבר ולא נאמר [תניא נחם המדי אומר השבת