

Lesson 36 – Perek 20 – Ethics of War

Background:

Perek 20 contains a collection of laws relating to war. These would be particularly relevant to Moshe’s audience. Some of these laws seem to be unethical to a modern ear. However, by looking at all the laws in the collection, and considering the ancient near eastern context, we will try to understand the rational and meaning of these laws as best we can.

Activity:

1. Introduction

It is useful to have in mind the spectrum of possible opinions in the area of war ethics before studying this Perek. Start off with a discussion on some of the most important and controversial topics that have come up in recent history of warfare:

- a. *Should there be a draft? If so, who should be exempt?*
- b. *How much negotiation must a nation do before one declares war?*
- c. *Is a surprise attack ethical or must you always give warning and a chance for surrender?*
- d. *Should nuclear weapons ever be used?*
- e. *When is torture allowed, if ever?*
- f. *How careful does an army have to be to avoid civilian casualties?*
- g. *How should prisoners of war be treated?*

Bring examples from recent wars involving Israel or the U.S.

As the discussion gets going, write “Realism” and “Pacifism” on the top right and left of the board. Explain that there are two schools of thought in ethics of war. One is called pacifism which believes war is always, or almost always, unjustifiable and must be minimized. The other group is called realism and believes that once one decides that a cause is worth fighting for, then “all’s fair in love and war.” Pacifists will always try to minimize damage done on all sides while realists encourage whatever is necessary to win the war. Then, for each topic discussed, make a note on the board of what each extreme viewpoint would say about that topic. You can even split the class into two groups and have each group defend one position as best they can.

<u>Pacifism</u>	<u>Realism</u>
Volunteer army	Draft as many people as possible
Negotiate as much as possible	Give them one chance
Always warn before attack	Surprise is an important strategy which can be used anytime
Never use nuclear weapons	Use them if necessary
You must put your soldiers in danger in order to avoid civilian casualties	Kill anyone you need to if it will help achieve the goal
Torture is never allowed	Torture is allowed if prisoner may have helpful information
Prisoners of war must be granted human rights	Prisoners of war have no rights

2. Prepare outline of various topics in Perek 20:

- | | |
|-------|----------------------------------|
| 1-9 | Preparing for War – Exemptions |
| 10-18 | Calling for Peace/Conduct in War |
| 19-20 | Fruit Trees |

We will now discuss each of these three sections in turn.

3. List the people who are exempt from the draft.

1. Anyone who built a house but has not begun to live in it.
2. Anyone who planted a vineyard but has never eaten from it.
3. Anyone who betrothed a wife but has not yet married her.
4. Whoever is afraid or soft-hearted.

Note that there is no dispensation for the rich, as was customary in many societies.

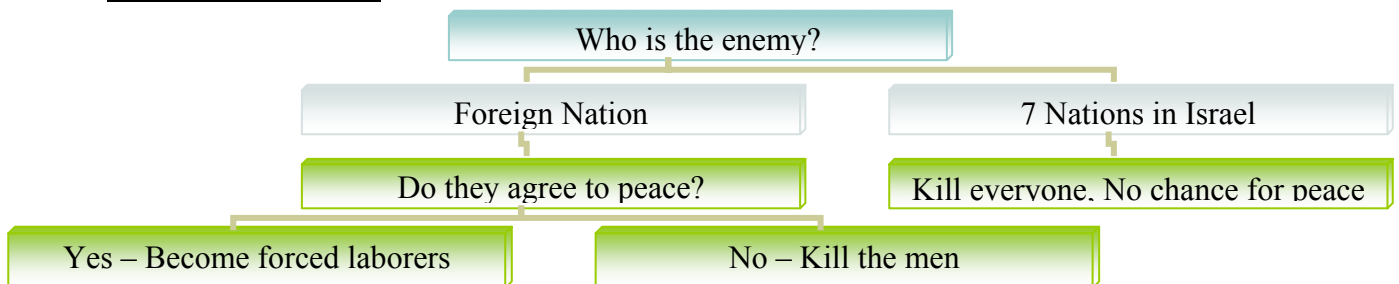
Does this law fit into the pacifist or realist camp?

The Torah offers a compromise position. On the one hand there is a draft in order to recruit a large army. On the other hand, people who are afraid or who are about to celebrate a lifetime milestone are exempt. These exemptions serve to affirm life and deglamorize war.

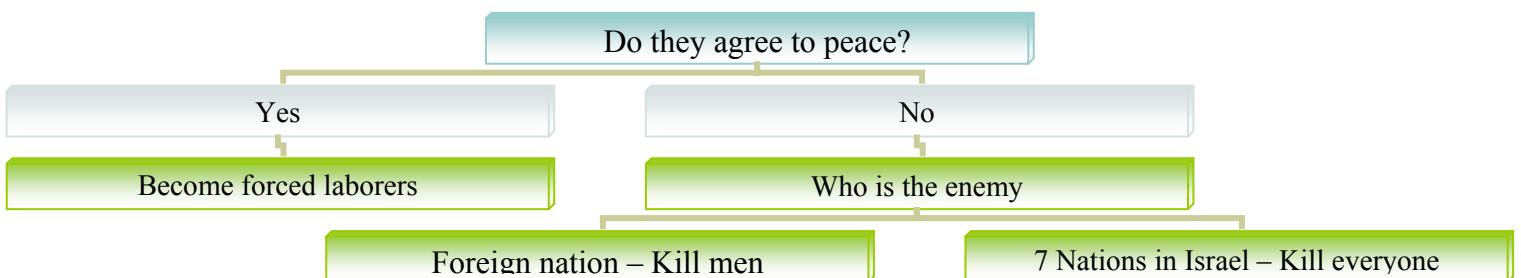
4. Ask students to pair up and make a flow chart representing how Yehoshua will decide how to treat each nation he encounters. Walk around the room and see which students understood the chapter like Rashi and which like Rambam. Let one of each explain his reasoning. Then make available the review sheet with these charts:

Ethics of War – Perek 20:10-18

According to Rashi:



According to Rambam:



[L36 Perek 20 - Ethics of War - Summary Chart.doc](#)

Discuss whether this fits into realism or pacifism. Although there is a possibility for peace with foreign nations, and according to the Rambam, even with local nations, even that peace means complete subjugation. Is this ethical? How does it compare to modern standards? What is the reason for these harsh laws (see pasuk 20)?

The Sifri says that in this case, if the reason doesn't apply then neither does the law. That is, if any of these nations repents then they are not killed because they then no longer pose a spiritual threat:

ספרי דברים פסקא רב

למען אשר לא ילמדו אתכם לעשות, מלמד שאם עושים תשובה אין נהרגים.

Other sources indicate that these harsh measures were in fact never carried out literally. Shemot 23:28-31 promises that God will chase out the nations of Israel and he will do it over many years so that the land does not remain empty and get taken over by animals. This sounds very different from a blitz war that wipes out all its inhabitants.

In sum, this law is not as harsh as it seems on first reading. The original law does not apply to nations which repent and agree to make peace. Furthermore, even this tempered law was never actually carried out. Shemot offers expelling instead of killing and a review of the history according to Yehoshua and Shoftim shows that many nations remained in the land and that only a handful of cities were completely destroyed. (See Rabbi Shamah's sheet – www.judaic.org/bible/shoftim2.pdf - for specific examples.) Perhaps the Debarim law's purpose, like much of the persuasive language in this Sefer, was meant to rally Bnei Yisrael to action more than to be carried out literally.

5. Fruit Trees

Why would a besieging army want to cut down the nearby fruit trees?

The city relies on these fruit trees for food every year. The besieging army would cut them down in order to demoralize the enemy and induce them to surrender. It would take many years to grow new trees

Why can't we do this? It sounds like an effective tactic!

Pasuk 19 offers one reason: "Are trees of the field human to withdraw from you into the besieged city?" A literal reading of this pasuk indicates that the reason for this law is because we should have compassion on anything God created which did no wrong to deserve destruction. If this is the case for fruit trees, how much more so must an army be careful not to kill innocent civilians?

Another reason which relates to the enemy people themselves rather than the trees is that we have to think about the long term future of the city. For example, the U.S. bombing of oil fields, electricity plants, and water lines, caused long delays in reconstructing Iraqi cities. This teaches us that there are certain values that are more important than winning a war easily. This law fits into the pacifist view.

Hazal derive from this specific law a general prohibition to destroy anything which benefits people. See Rambam on review sheet:

בל תשחית – Destroying Fruit Trees

רמב"ם הלכות מלכים פרק ו

הלכה ח - אין קוצצין אילני מאכל שחוץ למדינה ואין מונעין מהם אמת המים כדי שייבשו, שנאמר לא תשחית את עצה, וכל הקוצץ לוקה, ולא במצור בלבד אלא בכל מקום כל הקוצץ אילן מאכל דרך השחתה לוקה, אבל קוצצין אותו אם היה מזיק אילנות אחרים, או מפני שמזיק בשדה אחרים, או מפני שדמיו יקרים, לא אסרה תורה אלא דרך השחתה.
הלכה י - ולא האילנות בלבד, אלא כל המשבר כלים, וקורע בגדים, והורס בנין, וסותם מעין, ומאבד מאכלות דרך השחתה, עובר בלא תשחית.

One may not cut down fruit-bearing trees outside the besieged city not divert from them the water pipe so as to make them wither as it is stated: “you shall not destroy its trees.” Whoever cuts them down is liable to lashes. But this does not apply merely to the case of a siege, but in all cases. Whoever cuts down a fruit-bearing tree in a destructive manner is liable to lashes. but it may be cut down if it damages other trees or causes harm to neighboring fields of because it is worth a lot of money. The Torah only forbade willful destruction.

This is the case not only with trees, but whoever breaks utensils, tears garments, demolishes a building, stoops up a well and willfully destroys food violates the prohibition of “you shall not destroy.”

[L36 Perek 20 - Ethics of War - Summary Chart.doc](#)

6. Modern times

Even though some of these laws seem harsh when compared to modern codes of ethics like the Geneva conventions, we must remember two important points. First, the Geneva conventions are barely ever actually followed. Second, the Torah presents the first code of war ethics ever written as far as we know. The Torah, as usual, tried to be very practical – giving laws that people can really keep – while striving to raise them to higher ethical standard.

Further Discussion:

A discussion about wiping Amalek is also relevant to this discussion. See Nehama Leibowitz (Ki Teze 7) who explains that “Amalek against whom the Almighty declared eternal war is not any more an ethnic or racial concept but is the archetype of the wanton aggressor who smites the weak and defenseless in every generation” (p. 253).