YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**War in Halakha**

**Rav Yishai Jeselsohn**

**Shiur #07: The Obligation to Enlist for Army Service**

Now that we have explored the various types of war, this *shiur* will be dedicated to a practical question: Is there a mitzva today to enlist for military service, and if so, what are the parameters of this mitzva?

**The Source of the Law**

There is no obvious explicit Torah source for a personal obligation to enlist for military service. Nevertheless, it seems that there are several possible foundations for such an obligation, some of which we have already touched upon in previous *shiurim.* The various sources will be presented below, each one giving a slightly different character to the obligation.

**An Independent Obligation**

In *Responsa Aseh Lekha Rav*, Rabbi Chaim David Ha-levi finds a Torah source for the obligation to enlist:

"And the Lord said to Moshe… on the first day of the second month… Take the sum of all the congregation of the children of Israel… from twenty years old and upward, all that are able to go forth to war in Israel, you shall number them by their hosts" (*Bamidbar* 1:1-3). And the Rashbam explained: "Because from this point on, they were headed for the Land of Israel, and twenty-year olds are fit to go out to war… therefore the Holy One, blessed be He, commanded at the beginning of this month to count them." Almost all of the commentators to the Torah offered this explanation… This is the only place in the Torah where the obligation to enlist is stated in a narrative form, and not as an explicit commandment for all generations. But it is clear that there was an obligation to enlist. And from the fact that the Torah exempted one who married a woman or built a house, as we will explain below, from a *milchemet reshut*, the implication is that all the rest are obligated, and in a *milchemet mitzva* there was no exemption at all. (*Responsa Aseh Lekha Rav* III, no. 58)

Rabbi Chaim David Halevi cites two sources that indicate there is an obligation to enlist for military service – the census that was taken for this purpose, and the exemptions from conscription granted to certain groups of people in *Devarim* 20. In both places, there is no explicit statement regarding an obligation to enlist, but the implication is that such was the case – both in the *milchemet mitzva* of conquering the land, and in a *milchemet reshut*, as *Chazal* have explained (*Sota* 43a) that the section of "And the officers shall speak" (*Devarim* 20:5) relates to a *milchemet reshut.* Thus, we have here an independent source – not based on other laws – for the obligation to enlist for military service. In order to use this as a basis for an obligation to enlist in our day, however, it must be identical to the obligation described in the Torah. For this reason, Rabbi Meshulam Rata writes to Rabbi Herzog that the State of Israel does not have the authority to force conscription from the age of 18, since the Torah’s obligation to enlist is only from the age of 20:

Indeed, it is very difficult, that a court should address such a question to rule on matters of life and death and assume responsibility for forced conscription. After all, they are acting not in accordance with the law, as they take [soldiers] from the age of seventeen and up. But surely Rashi and the Ramban in *Bamidbar* 1:3 write that no one under the age of twenty is conscripted into the army, and so writes Rashi in *Parashat Ki Tisa.* (*Responsa Kol Mevaser* I, no. 47)

Indeed, if we find the source for the obligation to enlist in the count of the people of Israel, then it would seem that only one who would be included in that count is subject to this obligation.

***Pikuach Nefesh***

Even if we do not accept the above as an explicit Torah source for an "independent" obligation to enlist, examining other commandments may lead us to such an obligation. First and foremost, many have seen the *mitzvot* of *pikuach nefesh* and "you shall not stand idly by the blood of your neighbor" (*Vayikra* 19:16) as potential sources for the obligation to enlist for military service in our time. To a large extent, the obligation to wage war to assist Israel from enemy attack[[1]](#footnote-1) is based on these commandments, and thus it is very reasonable that there should be a personal obligation to enlist and participate in such a war, since it is defined as a *milchemet mitzva*.

The Rambam, in *Hilkhot Shabbat*, sees these commandments as creating an obligation to go out to help Israel fight against those who have attacked them, and he explicitly writes that this is an independent obligation falling on each and every individual:

It is a mitzva for every member of the Jewish people who can come [to their assistance] to go out and aid their brothers who are under siege and save them from the gentiles [although it is] Shabbat. (Rambam, *Hilkhot Shabbat* 2:23)

Such a great mitzvacan certainly serve as a solid and important foundation for the obligation to go out to war. However, this source greatly limits the obligation to enlist; it would be considered a mitzvaonly when the war is being waged to rescue Israel from an immediate danger and there is an imminent situation of *pikuach nefesh*. All other conscription processes, trainings, and exercises fall into the category of *hekhsher mitzva*, acts which are preparatory to the performance of a *mitzva*, regarding which there is no obligation – just as there is no obligation for every person to study medicine so he will be able to save the life of every sick person he encounters. The prohibition of "standing idly by the blood of your neighbor" obligates a person to use his abilities and property to save another person, but it does not obligate a person to study medicine and military matters in order to be able to help others. Therefore, it is difficult to see this principle as obligating a person to enlist in the army in its present format.

**Conquest of the Land**

We have also seen, in previous *shiurim*, that both the Ramban and the Rambam maintain that there is an obligation to conquer the Land of Israel, whether we define it as a mitzva or as "the desire of the Torah." It is possible, then, to base an obligation of enlistment on this as well. Of course, this is more clear according to the Ramban, who sees the conquest of the land as an explicit positive commandment, but even according to the Rambam, the principle of settling the Land of Israel is significant and important. It should also be noted that the mitzva of conquering the land, according to the Ramban, is not only an obligation to conquer new areas of the Land of Israel. Even the preservation and defense of the land that is already in our hands is a significant part of the mitzva, as the Ramban writes:

That they should not leave a piece of the land [unconquered]… And similarly, after we have destroyed the aforementioned nations, if our tribes wanted afterwards to leave the Land and conquer for themselves the land of Shin'ar or the land of Ashur or other lands, they are not permitted to do so, for we are commanded to conquer [the Land] and to settle it. (Ramban, *Hasagot al Sefer Ha-Mitzvot*, positive commandments that were omitted by the Rambam, no.4)

Thus, even today, when our wars do not generally involve conquering new territories, but rather preserving existing ones, there is a mitzvato settle the Land of Israel, according to the Ramban, and it is reasonable to argue that there is an obligation to enlist for military service for the sake of furthering this goal.

**The Laws of a King**

Another possible basis for an obligation to enlist for military service is the rule of *dina de-malkhuta dina*, "the law of the civil authorities is the law." I will not expand here on the scope of the authority derived from this principle, but regarding the conscription of soldiers, the Rambam writes:

The king is granted license to levy taxes upon the nation for his needs or for the purpose of war… He may also send throughout the territory of the Land of Israel and take from the nation valiant men and men of war and create from them a force for his chariot and cavalry, and appoint from them footmen to run before him. (*Hilkhot Melakhim* 4:1-2)

The source for this is Shmuel's announcement to the people when they asked for a king:

And he said: This will be the law of the king that shall reign over you: he will take your sons, and appoint them to him, for his chariots, and to be his horsemen, and they shall run before his chariots. And he will appoint them to him for captains of thousands, and captains of fifties, and to plow his ground, and to reap his harvest, and to make his instruments of war, and the instruments of his chariots. (I *Shmuel* 8:11-12)

We see then that the right to conscript soldiers is one of the basic rights of a king of Israel, and therefore the people are obligated to enlist by virtue of the principle of *dina de-malkhuta dina.* However, if the obligation to enlist for military service is based on this principle alone, we must delve into the matter and examine whether or not it applies to every nation, and in particular, whether the State of Israel is considered a kingdom for this purpose.[[2]](#footnote-2) This, however, is not the forum in which to discuss these matters.

**The Laws of Neighbors and Mutual Responsibility**

A halakhic source for an obligation to enlist for military service can also be found in another realm – the laws of neighbors. The Mishna spells out the obligations of partners and neighbors to participate in the guarding of their jointly owned house:

He [a resident of a courtyard] may be compelled [by the rest] to [contribute] to the building of a porter's lodge and a door for the courtyard. Rabban Shimon ben Gamliel said: Not all courtyards require a porter's lodge. [A resident of a city] may be compelled to contribute to the building of a wall, folding doors and a cross bar. Rabban Shimon ben Gamliel says: Not all towns require a wall. (Mishna *Bava Batra* 1:5)

The Mishna teaches that there is an obligation on all partners to participate in guarding jointly owned property. The basis for their obligation is simple – they benefit from this guarding, and therefore they must participate in it. This principle emerges from the discussion in the Gemara, which also discusses which factors affect each person’s required contribution:

Rabbi Elazar asked Rabbi Yochanan: When they collect money [to build a wall], do they collect based on the number of people [living in each house], or perhaps they collect based on the [net] worth [of each person]? He said to him: They collect based on the worth [of each person]…. Some say that Rabbi Elazar asked Rabbi Yochanan: When they collect money [to build a wall], do they collect based on the proximity of the houses [to the wall], or perhaps they collect based on the worth [of each person]? He said to him: They collect based on the proximity of the houses [to the wall]. (*Bava Batra* 7b)

In both versions of the question, it is clear that the level of the need for protection (as depending on the amount of property in danger, or on the proximity to the place of danger) affects the level of obligation to participate in paying for it. The *Tosafot* (ad loc., s.v. *lefi shevach mammon*) explain that this applies when the concern is financial, and therefore the benefit from the guarding and the need for it depends on the level of the person's wealth. But when there is danger to life, and one must guard against it, the obligation is once again cast on each person, and therefore participation in the payment is calculated according to the number of people living in the house. Here a principle emerges that each person is obligated to take care of his personal safety, or to be more precise, it seems that the halakhic obligation here is not to guard, but rather to cooperate with the community. This also follows from a precise reading of the words of Rashi (and many other *Rishonim*) in his commentary on the Mishna:

“They compel him” – the person living in the courtyard who does not want to help the [other] people in the courtyard to build a porter's lodge. (Rashi ad loc., s.v. *kofin oto*)

That is to say, the people living in the courtyard are not obligated to guard their courtyard, but if the majority wants to guard it, they can force the minority to share the expense, since they will also benefit from it.

The issue arises again in Rashi at the end of the Mishna, when it discusses at what point a person is considered part of the city's population for the purpose of participating in the payment:

“To be counted as one of the townsmen” – to share the burden with them. (ibid., s.v. *vi-yehei ke-anshei ha-ir*)

The principle that arises here as obligating military service is the principle of sharing the burden. This principle as well will give rise to certain parameters in the obligation to enlist – for example: how to calculate the obligation, based on the number of people living in a household or based on the worth of each person; determining the relationship between a border town and a town deep within the country's borders;[[3]](#footnote-3) and more.

On the face of it, this principle as well can be found in earlier sources – in Moshe’s response to the two tribes who wished to remain on the east bank of the Jordan:

And Moshe said to the children of Gad and to the children of Reuven: Shall your brothers go to war, while you sit here? And why will you turn away the heart of the children of Israel from going over into the land which the Lord has given them? (*Bamidbar* 32:6-7)

Moshe sees a moral problem in the fact that the people of Gad and the people of Reuven do not wish to participate in a war that will be waged by the whole of Israel. On the face of it, this moral problem seems very similar to the one that obligates participation in the laws of neighbors, but when we examine the matter more closely, it seems that there is a small but significant difference between the rationales in these situations. In the laws of neighbors, even the neighbor who initially refuses to share in the expense ultimately benefits from the guarding, and it is possible that this benefit is what obliges him to participate in the payment; in contrast, the people of Gad and Reuven were suggesting a situation in which they would not benefit from the Land of Israel or use it at all – their request was to receive a separate inheritance.

It seems, therefore, that Moshe’s words teach us something even beyond what we learn from the laws of neighbors. In addition to the obligation to participate in a communal project when the person will derive benefit from it, there is a broader moral problem if the community is risking their lives to further some end, while an individual sits on the sidelines and separates himself from his community, even when he derives no benefit from the matter. Here it seems that we are dealing with the principle of the mutual responsibility (*areivut*) of the people of Israel, rather than with the financial question of deriving benefit without paying for it.

**The Parameters of the Obligation to Enlist for Military Service**

We have explored several sources that can serve as the foundation of an obligation to enlist for military service in our day. As is well known, the source of a law often affects the nature of the law and its parameters. This is the case with the issue under discussion; as we have already seen in part, the source of the obligation to enlist greatly affects the nature and parameters of that obligation. We will focus now on one significant point related to this matter.

The above sources can be divided into two groups. One group sees a mitzvathat is imposed on the individual as a halakhic-spiritual obligation – such as *pikuach nefesh* or conquest of the Land of Israel. The second group sees an obligation that is rooted in the fact that the individual is part of a larger collective – such as the laws of a king, the laws of neighbors, or the words of Moshe to the tribes of Reuven and Gad. There is a major and fundamental difference between the two groups regarding the question of whether the obligation to enlist is imposed on each and every individual or is subject to the needs of the community, which can and must define who must enlist and when. I will give two examples of issues that depend on this question:

1. The obligation to enlist when there are already enough soldiers:

The *Chazon Ish* (*Eiruvin* 114 (6), 3) maintains that the law regarding those who are exempt from conscription applies only when it is possible to win the war without them. That is to say, the general obligation to enlist for military service in a *milchemet reshut* applies to everyone, even to those who are not directly needed to win the war. This indicates that the state or the army has authority to conscript whomever they wish, even without a direct connection to the needs of war. If it were a question of conscription for the purpose of fulfilling a commandment, such as assisting Israel against an enemy which attacked them or the conquest of the Land of Israel, once there are enough soldiers to accomplish the mission, the obligation to enlist would no longer apply to the rest.

2. The obligation to enlist when the army exempts a person from conscription:

The *Chazon Ish* dealt with a case where the army conscripts soldiers despite the fact that there is no military need for them. What would be the law in the opposite case – when there is a war that is defined as a *milchemet mitzva* or as a war for the conquest of the Land of Israel, but the army exempts a certain soldier from military service? Is that person commanded to enlist despite the exemption granted to him? For example, is a soldier who completed his reserve duty obligated to volunteer for further military service?

It seems that the answer to this question depends on the two foundations on which the obligation to enlist might be based: If we are dealing with a mitzva*-*like obligation, then like any other mitzva, every person must strive to fulfill it. However, if the basis of the obligation is the laws of a community, it stands to reason that the community is authorized to decide who is included and who is not.

**A Communal Obligation, and Not an Individual Obligation**

If we return to the question with which we opened the discussion and reconsider the Biblical verses, it seems to me that it is possible to shed new light on the words of Rabbi Chaim David Ha-levi. The sources that Rabbi Ha-levi finds in the Torah do not explicitly command enlistment in the army, but it is clear from them that the people of Israel live in a reality of war and that the governing regime has the power to conscript soldiers and defend itself.

Accordingly, I would like to propose a new perspective on the nature of the obligation to enlist for military service. Participation in a war that is a *milchemet mitzva*, and perhaps even when it is a *milchemet reshut*, is certainly defined as a mitzva (see *Sota* 43a and on, and the previous *shiurim* that dealt with the issue). But the question regarding who is obligated to fulfill this mitzvadepends on and remains in the hands of the people of Israel. The state and the army can define who is obligated to fulfill this mitzva, since it is not imposed on each and every individual, as are other *mitzvot*, but on the people of Israel as a whole.

This suggestion arises in the words of the *Sefer Ha-Chinukh* in his discussion of the mitzvato wipe out Amalek, where hewrites both that it is a general commandment and that it is an obligation on each and every individual:

And this is [one] of the commandments that are incumbent upon the entire community; and like the matter that they, may their memory be blessed, said: "Three commandments were given to Israel when they entered the Land: to appoint themselves a king; to build themselves the Temple; and to cut off the seed of Amalek" (*Sanhedrin* 20b). And in truth, the obligation to kill [the descendants of Amalek] and make them perish from the world is also imposed on every individual male member of Israel, if the power to do so is in their hands, in all places and at all times, if perhaps one of their descendants is found. And if one transgresses this, and one from the seed of Amalek comes into his hands and he has the wherewithal to kill him but does not kill him, he has violated this positive commandment. (*Sefer Ha-Chinukh*,no. 604)

There seems to be an explicit contradiction here! In order to reconcile the matter, it may be suggested that we are dealing here with a national obligation, a "commandment that is incumbent upon the entire community," and the community defines who the individuals are who will fulfill it. These individuals certainly fulfill the commandment, and are obligated to fulfill it properly. But they need not exert themselves and seek out the mitzva, as is the case with other *mitzvot*; this obligation falls upon the community, and it determines who is to fulfill it.

We can try to deepen this suggestion with further explanation: The obligation of the people of Israel to defend themselves and establish an army is not specifically related to a *milchemet mitzva*, since even for a *milchemet reshut*,there is an allowance to establish an army, and this is part of the mitzvato appoint a king. It can be suggested that the ability, and sometimes even the obligation, to go to war is based on Israel being a people. Just as every other nation takes care of their political needs, including maintaining an army, so too the people of Israel are obligated to take care of an army that will protect them in times of need and will even be able to go out to a *milchemet reshut* when the king and the court desire to do so.

We find a model similar to this in several other *mitzvot*. It is clear that the priests are subject to an obligation to serve in the Temple. This obligation is not explicitly written in the Torah as an obligation imposed on each individual priest, but rather is presented as the role of the "sons of Aharon the priests." The enumerators of the commandments do not list service in the Temple as a separate commandment (just as they do not list the commandment of war), but they do list the details of the laws of the sacrifices and the practical service in the Temple. Here too, it seems clear that there is no obligation upon every priest to serve in the Temple at all times; rather, there is a national-spiritual need for the people of Israel to establish the Temple service, and the community within the people of Israel that is in charge of this are the sons of Aharon – who can administer the service as they wish and as they see fit. A priest who serves in the Temple clearly fulfills a mitzva, but his "obligation” to serve in the Temple is defined by the community of priests or the people of Israel.

The *Sefer Ha-Chinukh* lists yet another similar mitzva:

To appoint judges and officers who will coerce [others] to do the commandments of the Torah, and will bring those who are veering from the path of the truth back to it against their will… And this is one of the commandments that is incumbent on the community, all of them, that are in each and every place. And a community that is fit to establish a court among them – as is elucidated in tractate *Sanhedrin* 2b – and does not establish it for themselves has violated this positive commandment, and their punishment is very great, as this commandment is a strong pillar in the preservation of the religion. (Ibid.,no.491)

Here too, every judge who sits on the judicial bench fulfills a great mitzva, but not every member of the people of Israel is obligated to serve as a judge; rather, the community as a whole is obligated to appoint judges.

Like the *mitzvot* connected to judges and priests, both of which are among the communal obligations of the entire people of Israel, so too going out to war is an obligation cast on the community as a whole, and the community defines who is obligated in it. From the moment that the community has established who is obligated to enlist, the mitzva obligates the person to obey, just as a judge is obligated to judge and a priest is obligated to serve in the Temple. The appearance of a similar model regarding the appointment of priests and judges is connected to the reason suggested above for the mitzvato enlist for military service, which is part of the definition of the Jewish people as a people – a people needs spiritual leadership that includes priests and judges, and it also needs an army that can take care of its needs. Just as the need for priests and judges is a spiritual need that involves the fulfillment of a mitzva but is not imposed as an obligation on the entire nation, so too going out to fight a *milchemet mitzva* is a spiritual need but not an obligation that is cast on every individual; it is the responsibility of the nation as a people, and as part of its definition as a people.

According to this understanding, the obligation to enlist for military service is not limited to a specific age, as Rabbi Rata wished to argue above; rather, the governing body of the people of Israel in every generation has the authority to define who is obligated to fulfill this mitzva.

Returning once again to the words of Rabbi Chaim David Ha-levi, it seems that the definition proposed here, which sees war as a general law that applies as an obligation to everyone upon whom the community imposes it, can explain why the obligation to enlist for military service, despite being self-evident, is not explicitly written anywhere in the Torah. This obligation is not based on any particular mitzva, but on the definition of the people of Israel as a people, with all that this implies; therefore, the Torah does not issue an obligation, but merely details its laws.

**Summary**

This *shiur* examined several principles on which the obligation to enlist for military service can be based today, and discussed the implications of the various sources on the nature and parameters of the obligation.

We divided the various sources into two spiritual principles: one is the element of mitzvafound in the commandment to conquer the Land of Israel or in the commandment of *pikuach nefesh*, and the second is the national element found in the commandment regarding the king, in the words of Moshe, and perhaps also in the laws of neighbors. I have proposed a connection between the two, in that enlistment and waging war are certainly defined as instances of the commandments of *pikuach nefesh* and conquest of the Land, but the decision regarding who is obligated to participate in these *mitzvot* is cast on the community, for it is the community that must tend to these needs, and therefore we need not learn who specifically is obligated from the various sources, but from the needs and decisions of the State on the ground.

(Translated by David Strauss; edited by Sarah Rudolph)

1. See the previous *shiur* on the subject in this series, especially regarding the relationship between the prohibition to stand idly by the blood of one's neighbor and the obligation to wage war to assist Israel from an enemy that attacked them. [↑](#footnote-ref-1)
2. I touched upon this issue in the *shiur* dealing with *milchemet reshut*. [↑](#footnote-ref-2)
3. See the continuation of the Talmudic passage in *Bava Batra*, ibid. [↑](#footnote-ref-3)