What Ki Teitzei Teaches Us About the Morality of War

Your 18Forty Parsha Guide is a weekly newsletter exploring five major takeaways from the weekly parsha. Receive this newsletter every week in your inbox by subscribing here. Questions or feedback? Email Rivka Bennun Kay at Shabbosreads@18forty.org.

The man sitting toward the back of shul in Israel this Shabbat morning has done four rounds of reserve duty since October 2023 and came home from the most recent round 10 days ago. When the *ba'al kriyah* (Torah reader) reads Parshat Ki Teitzei this Shabbat, the reservist hears the law of the beautiful captive as he never heard it before wearing a uniform. Moshe, delivering this law to Israel on the plains of Moab, requires of a soldier who has captured a woman in war a 30-day waiting period, a shaved head and trimmed nails, a mourning month for the parents she has lost, and only then a choice between marriage or release without enslavement. The reservist, who has read Ki Teitzei every year of his adult life, used to read about an ancient figure he had no way to inhabit, and this year reads about the soldier he has been.

When the reservist hears Ki Teitzei this Shabbat, he meets a question Moshe puts to any Modern Orthodox reader serious about what the Torah demands of an army. Two easy responses to the captive law are unavailable to a reader who reads the verses honestly. The reader cannot defend the law as morally clean, because the Torah plainly permits conduct a modern reader cannot endorse. The reader who dismisses Devarim 21 as indefensible before modern moral judgment runs into a different problem, because the moral claim Moshe makes is the regulation itself, imposed on the soldier. The reader hearing this can place two armies side by side, one that imposes restraint on its conduct toward conquered civilians and one that imposes none, and the line between them is the line between war as constrained conduct and war as atrocity.

RELATED: Faith, Evil, and the Act of Remembering

1. The Captive Law

In the beginning of the parsha, Moshe takes up a scenario every premodern army produced as a matter of course. A soldier returning from war sees a captive woman among the spoils and intends to claim her by right of conquest. Across premodern military history, the soldier did what he wanted, with rape, murder, and the enslavement of conquered women the default behaviors of victorious forces. The Torah takes the impulse as given and prescribes a procedure that constrains the soldier before he acts on it, forbidding most of what he wants.

Moshe lays out the procedure in four steps. The soldier brings the captive into his home, shaves her head, and trims her nails to mark her transition out of her former life. The captive mourns her parents for 30 days, the period later called *shloshim* (the Jewish mourning observance for a deceased parent). Only after that month may the soldier marry her, and if he chooses not to, he must release her with no option to sell her or treat her as a slave. Through that 30-day pause, the soldier moves past the post-battle period, sees the captive as a person grieving her parents, and finds most of his impulse's options gone.

Rashi anchors the law's logic in the talmudic principle that scripture spoke only against the *yetzer hara* (the evil inclination), reading the verse as a concession to the reality that a soldier in the post-conquest moment is not a person to whom abstract prohibition will reach. Michael Walzer, in *Just and Unjust Wars*, builds a parallel moral architecture from secular premises. Walzer argues that war is not an ethical free zone and that an army with moral seriousness must impose rules on its conduct toward combatants and civilians. Walzer argues for having rules, not for any specific set of rules. The content of just war doctrine is contested across traditions, international law applies unevenly across conflicts, and different armies answer the question of restraint differently, so Ki Teitzei stands as one specific historical answer given through Moshe roughly 3,000 years before Walzer.

Rabbi Yosef Zvi Rimon has worked through the contemporary halachic questions facing the Jewish soldier, treating the captive law as living halacha rather than ancient text. When the Modern Orthodox reader hears Ki Teitzei this Shabbat, he is hearing the legal source Rabbi Rimon's contemporary halacha and Walzer's just war theory both build from in different ways. The law requires the soldier to regulate his conduct toward a conquered civilian, and the soldier who completes the procedure walks out without taking the captive.

2. Rambam's Concession

The Sages give the rule that has governed the captive law since the talmudic period. Their Hebrew phrase is *lo dibra Torah ela keneged yetzer hara*—the Torah speaks only in response to the *yetzer hara* (the evil inclination). The rabbis use the phrase with technical precision, and they do not mean it as a divine endorsement of the soldier's impulse to claim the captive. They read the verse as a concession that the impulse exists, that a soldier who has just survived combat will not hear abstract moral instruction, and that the only way to constrain him is to channel his action through a procedure that forces him to wait.

Rambam develops this position at length in *Hilchot Melachim*. The captive law, in his reading, is a concession to the *yetzer hara*, restraint placed around an act Moshe would prefer no soldier to commit, granted because prohibition alone will fail with a soldier in the post-conquest moment. The structure Rambam describes is constraining enough that a soldier will accept the procedure, and punishing enough that he is more likely to release the captive than to complete the marriage. For Rambam, the *yetzer hara* concession is part of the law's architecture, divinely given to Israel through Moshe.

Dovid Bashevkin, in his book *Sin-a-gogue*, applies the *yetzer hara* framing across many Jewish texts. He argues that the rabbis have refused to treat the *yetzer hara* as something to suppress, and have instead built halachic structures that channel the inclination into permissible outcomes. The captive law sits in that pattern: an impulse Moshe does not endorse, channeled into a structure biased toward release rather than suppressed outright.

Rabbi Aharon Lichtenstein, in *Leaves of Faith*, argues for measuring Jewish war ethics through what the halacha requires of the soldier in the actual conditions of war. Rav Lichtenstein's frame leads to the harder question the captive law raises, because the procedure itself is morally difficult by modern standards, in the shaved head, the trimmed nails, the forced mourning, and the binary of marriage or release. The Torah imposed the procedure as an honest attempt to constrain conduct in that world, not as a moral standard the modern reader should apply unchanged today. The modern reader has to read the captive law as the earliest articulation of a principle of restraint, a principle extrapolated beyond the literal fact pattern into how a moral army conducts itself in war.

3. The Soldier Without a Doctrine

Ramban reads the law differently from Rashi, treating the 30-day mourning ritual as the captive's required transformation and the soldier's required confrontation with her humanity before any marriage. Jonathan Shay, in *Achilles in Vietnam*, supplies the contemporary clinical evidence for what happens to soldiers whose army provides no such confrontation. Shay coins the term "moral injury" for the wound at the center of his clinical work, the damage a soldier suffers when he has done or seen things in war that violated his own ethical commitments and when no doctrine, no command structure, and no ritual was there to constrain what he or those around him did.

The veterans Shay was working with were not war criminals, and most had no specific atrocity on their record. The injury Shay was documenting was more diffuse, found in the soldier who watched his unit do something he could not stop, the soldier whose command treated civilian casualties as background noise, and the soldier whose army gave him no framework for what was permitted and what was forbidden. The result was a generation of returning soldiers who came home unable to integrate the war into the person they had been before serving.

The *18Forty Podcast* episode on the trauma of war, including interviews with Israeli mental health professionals, documents the same pattern in the Israeli context, working with soldiers who carry the conduct of war home regardless of how careful their command was about the rules of engagement. They observe clinically that a soldier inside an army with doctrine still carries moral injury, but that a soldier inside an army without any doctrine carries multiplied injury into his life and the lives of those who share his life. Reading Ki Teitzei alongside Shay and the Israeli clinicians shows the reader that the 30-day pause is the intervention that forces a soldier to stop and reflect before acting on impulse, the same discipline that prevents the wound those clinicians treat in returning soldiers.

RELATED: 'Are Your Brothers To Go to War While You Stay Here?' On Haredim Drafting to the IDF

In Ki Tetzei, Moshe intervenes at exactly the point where moral injury later forms in a soldier whose army has supplied no doctrine. The soldier who has just won a battle is most at risk of doing what he will not be able to live with afterward, and most likely to do that thing if his army provides no doctrine. Moshe provides the doctrine through the 30-day pause, shaved head, and mourning ritual, which together strip the soldier of his post-battle impulse and force the captive's humanity into his sight. The Modern Orthodox reader who reads this parsha in a year of war reads the same intervention the IDF Code later codified in legal form, and how that intervention plays out in modern military practice is the question Asa Kasher set out to answer.

4. The Contemporary Case: *Tohar HaNeshek*

Rambam distinguishes a *milchemet mitzvah* (a war the halacha requires) from a *milchemet reshut* (a war the halacha permits), grounding Jewish war conduct in the distinction between obligation and authorization. Asa Kasher is the Israeli philosopher who, in the mid-1990s, co-authored the IDF's first formal Code of Ethics, developing the doctrine of *Tohar HaNeshek* (purity of arms) as the contemporary descendant of that classical distinction. Kasher's principle, defended in his own words in the *Forward*, is that a soldier may use force only to the degree necessary for the mission and only against legitimate targets, drawing on the just war tradition Walzer was working inside, on traditional Jewish sources, and on the operational realities Israeli soldiers face.

Rabbi Dr. Yosef Bronstein has spoken about the rabbinic interpretive project—beginning with the talmudic exposition of the captive law and running through Rav Kook—that the IDF Code now continues in contemporary form. The Code is not a Torah document, but the discipline it enforces is the only thing standing between the soldier and the conduct of an unregulated army.

RELATED: Who Gets to Say What Torah Means?

The captive law sits inside a larger Torah framework on the conduct of war that the contemporary IDF Code descends from on more than one axis. Devarim 20:10-20 requires a besieging army to offer terms of peace before attack, prohibits the destruction of fruit trees during a siege, and restricts which trees may be cut for siegeworks. Rambam codifies these and adds the requirement, drawn from the Talmud, to leave one side of any besieged city open as an escape route. Read together with the captive law, these sources mean Jewish war ethics has always covered both the conduct of battle, including proportionality, civilian protection, and limits on collateral damage, and the conduct of soldiers after victory. Kasher's *Tohar HaNeshek* carries forward both halves of the classical framework, not just the post-victory half the captive law represents.

Every army with a code has fallen short of the code's standards, and the IDF is no exception. Kasher's claim, defended across his lectures and his commentary on IDF operations, is that an army with a code shapes a soldier's choices when no one watches, and an army without a code lets the soldier make those choices without constraint. The reader holding the captive law alongside the IDF Code can see the same legal commitment running from Ki Teitzei through Maimonides to Kasher's modern army.

5. What the Reader Holds

Daniel Statman, the Israeli moral philosopher who helped Kasher revise the IDF Code, gives the contemporary Jewish reader the language for what the captive law is doing. Statman argues that the moral evaluation of war cannot be done from outside the experience of the people fighting it, and that a tradition demonstrates its seriousness through the discipline it builds into the soldier's conduct rather than through abstract repudiation of violence. On Statman's reading, the captive law in Ki Teitzei requires of the ancient soldier exactly what contemporary just war theory requires of the modern one.

Sefer HaChinuch lists the captive law among the 613 mitzvot, a commandment binding on every generation of Jewish soldiers, so the captive law is not an artifact the contemporary reader can leave in the past. When the Modern Orthodox reader hears Ki Teitzei in 5786, he is meeting the captive law in a year other voices argue about war from positions across the political map. The Torah does not give the reader a formula for taking any of those political positions.

What the Torah does give the reader, through the captive law and the rules of battle conduct in Devarim 20, is the older claim that an army is morally answerable for its conduct both in the heat of battle and in the hours after victory—that the soldier's impulse is not his permission in either case, that the moral seriousness of a tradition is measured by what it asks of the soldier during and after the attack, and that the restraint Moshe imposed on the ancient soldier remains the standard for any soldier in any war.

Questions for Reflection

1. **Have you encountered other halachic frameworks that regulate without endorsing? How do those frameworks read to you when you are the person they regulate rather than the person reading about the regulation?**
2. **What discipline do you impose on yourself in moments when no one is watching?**
3. **What in Ki Teitzei changes when you read the parsha as a person who has been the soldier, the family of the soldier, or a reader watching the war from across the world?**

This project is made possible with support from the Simchat Torah Challenge and UJA-Federation of New York. Learn more about the Simchat Torah Challenge and get involved at their website.