Dis/Obedience to Military Orders: A Biblical, Talmudic, Midrashic, and Exegetical Analysis of an All-Too Contemporary Question

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Moshe Sokolow is the Associate Dean and holds the Fanya Gottesfeld-Heller Chair at the Azrieli Graduate School of Jewish Education and Administration of Yeshiva University. He is the author of Studies in the Weekly Parashah, Based on the Lessons of Nehama Leibowitz (Jerusalem: URIM, 2008), and publishes widely in biblical scholarship and pedagogy, and in the history of Jewish education. His current research interest is focused on the use of habit in religious education by both Jews and Muslims. This article appears in issue 15 of Conversations, the journal of the Institute for Jewish Ideas and Ideals.

Prologue

From time immemorial, soldiers on the front lines have borne the burden of carrying out orders that are issued by senior officers from the relative safety of the rear echelon. When those orders are illegal, or of an ambiguous moral nature (think Nuremberg and My Lai), who bears the responsibility for their consequences?
This article is adapted, unabashedly, from a thoughtful article by the late Professor Moshe Greenberg of the Hebrew University, a renowned scholar of Tanakh, *Parshanut*, and the ancient Near East, entitled: “Rabbinic Reflections on Defying Illegal Orders,” in Menachem M. Kellner (ed.) *Contemporary Jewish Ethics* (NY, 1978), 211–220. I have added sources here and there and, of course, the pedagogical adaptation is entirely original. I alone bear the responsibility for the presentation of the sources and for the conclusions drawn from them.

A Word about Methodology

Our Sages describe the highly selective nature of biblical history as *nevu’ah she-hutzrekha le-dorot*: prophecy that is required for eternity (BT *Megillah* 14a). According to this principle, only those events that were to have everlasting meaning and application were recorded in Tanakh, whereas other, ostensibly more idiosyncratic, events were omitted. In other words, prophetic foresight enables us to draw not just inspiration, but practical advice from the deeds—and, yes, misdeeds!—of our ancestors.

Just as the talmudic sages and medieval exegetes judged the evidence of the biblical text and applied it to their own circumstances, so too must we evaluate the evidence of their interpretations and attempt to extract from them the guidance we seek. Sometimes our situations are sufficiently similar that we can adopt their suggestions wholesale. At other times, however, and despite the overall sameness in our underlying human conditions, we can take their suggestions only as foundations upon which we must then construct our own edifices. I trust that I have built prudently.

Synopsis[1]

As King David lies dying (1 Kings 2), he instructs his son, Solomon, to settle old scores with Joab ben Zeruiah (vs. 5) and Shimei ben Gera (vs. 8). When Joab hears that Adonijah, whose candidacy for king he supported (1 Kings 1:7), has failed to secure the throne, he realizes that his life is forfeit and he seeks sanctuary in the "Tent."[2] He is brought before King Solomon and charged with the murders of Abner ben Ner (2 Samuel 3:27) and Amasa ben Yeter (*op. cit.*, 20:10). According to the "*peshat*" of the Book of Kings, Joab is immediately and unceremoniously executed by Benayahu ben Yehoyada (vs. 34). Talmudic Aggadah, however, has Solomon bring Joab to trial where he successfully defends himself against both murder charges. Instead, he is eventually executed on a third charge—namely, his collaboration in the unsuccessful coup staged by Adonijah.
The core of this essay is an examination of Joab's defense in which the element of obedience to the orders of a superior officer plays a pivotal role.

Exhibit One: Joab's Trial

Sanhedrin 49a:
[Solomon] brought Joab to trial and said to him: Why did you kill Abner? He replied: I was avenging [my brother] Asael.[3] Wasn't Asael in pursuit of Abner?[4] Abner could have saved himself by wounding Asael in one of his limbs [he needn't have killed him]. Perhaps he was not able to do so? Since Abner was able to strike him at the fifth rib[5] ...he could have just wounded him.

[Solomon] said: Let us leave [the subject of] Abner. Why did you kill Amasa? [Joab] replied: Because Amasa committed treason against the king. "The king [David] ordered Amasa to summon all the men of Judah in three days' time... Amasa went to summon them and tarried" (2 Samuel 20: 4 ff.).
[Solomon] said: Amasa construed the "but's and only's."[6] He found them engaged in [religious] study and reasoned: [The Israelites promised Joshua] "Whoever contradicts you or disobeys you, whatever you command, shall die" (Joshua 1: 18). Does that include [disagreement on account of] Torah study? The verse states: "*Only* [rak] be firm and resolute" (op. cit., vs. 7).

[So why was Joab executed?] He was a traitor, as it states: "The news reached Joab who had sided with Adonijah, although not with Absalom" (1 Kings 2:28).

Elaboration:

The right of a leader to expect obedience to his instructions is not granted expressly in the Torah;[7] it derives from a specific historical precedent. After the death of Moses, the Israelites swore their allegiance to Joshua and promised to punish any disobedience to his command. This pledge, however, was not a blank check. Through their reference to "Only be firm and resolute" (*rak hazak ve-ematz*; the "but's and only's" cited above), they reveal to us our first important insight into the halakhot of obedience: A leader is expressly prohibited from requiring obedience in violation of Torah law.
NOTE: The Talmud accepts Joab's claim vis-à-vis Abner, but rejects his claim against Amasa by justifying Amasa's delay. Nevertheless, it prosecutes Joab on the separate charge of treason. The

conclusion appears to be that while he was morally guilty vis-à-vis Abner and Amasa, he was not legally culpable.

Exhibit Two: Abner, Amasa, and Disobedience

Abner and Amasa, ironically, play a critical role in the talmudic derivation of the halakhic principles of obedience to orders.
In 1 Samuel 22:17, Saul commands his servants to kill the *kohanim* of Nob because they had aided and abetted David in his escape. The soldiers refuse to shed the blood of "servants of the LORD," so Saul turns the task over to Doeg the Edomite who has no such compunctions and kills them.
The *Talmud Yerushalmi* (*Sanhedrin* 29a) asks:

Who were those servants [who refused the order]? Rabbi Samuel ben Isaac said: They were Abner and Amasa. They said to Saul: If we owe you anything besides these belts and coats [their uniforms and insignia?], take them back!

The *Talmud Bavli* (*Sanhedrin* 20a), however, has certain reservations about their conduct:

Rabbi Judah said in Rav's name: Why did Abner meet an untimely death? Because he failed to take a stand against Saul. Rabbi Isaac said: He took a stand, but he was overruled.

Elaboration:

Abner's death at the hands of Joab is his just desserts for his failure to assume a more vigorous opposition to the murder of the *kohanim* of Nov. This provides us with our second important insight into the halakhot of obedience: It may not be sufficient to abstain from obeying an illegal order; you might have to offer more than your resignation.
Indeed, the Talmud (*Shabbat* 55a), in elaborating on Ezekiel 9:4 ("Go through the streets of Jerusalem and place a mark on the foreheads of all who sigh and groan over the abominations committed in her"), makes the point that it is not enough to refrain from committing evil when one can also take a determined stand against it.

Exhibit Three: Joab and Disobedience—A Contrast

Given the aggadic penchant for validating the aphorism, "According to the measure that one metes out so is it meted out to him," we should not be surprised to discover that the disobedience that goes around comes around. The same talmudic passage with which we began (*Sanhedrin* 49a), continues:

God brought [Joab's] guilt down upon his own head for having struck down two more righteous and better men than he [i.e., Abner and Amasa]. Better, in that they construed the "but's and only's," while he did not. More righteous, in that they refused a command that came orally, while he obeyed a command that came in writing.

Elaboration:

Whereas Abner and Amasa defied a questionable command that, by virtue of its verbal nature, carried an inherent note of ambiguity (and, thereby, could have provided them with "cover" should they have chosen to obey it), Joab failed to defy a written order (which contains no such uncertainty and therefore offers no acceptable alternative to disobedience) —to place Uriah the Hittite in the line of fire.

Exhibit Four: Crime and Agency

The Talmud in *Kiddushin* (43a) stipulates:

If one commissions an agent to commit murder and he complies, the agent is guilty and the principal is exempt. Shammai the Elder said in the name of the prophet Haggai, the principal is guilty, as it states [of David, regarding Uriah]: "You slew Uriah… by the sword… and killed him by the sword of the Ammonites" (2 Samuel 12:9).

Elaboration:

Given their negative assessment of Joab's morality (see Exhibit Three), why do the Sages not rebuke him openly for his complicity in Uriah's death by applying Shammai's principle[8] that every individual bears responsibility for his own deeds and cannot abrogate that responsibility by arguing that he was only "following orders"? The contemplation of this question leads us to our third and final observation on the halakhot of obedience: The rule of delegated responsibility stops short of the throne. Just above, we cited the verse: "You slew Uriah… by the sword… and killed him by the sword of the Ammonites" (2 Samuel 12:9). R. David Kimhi (Radak; Provence, 1160–1235), commenting on the ostensible redundancy ("slew...killed"), notes that soldiers—even commanders—in the heat of battle, are entitled to take for granted that their commander-in-chief, the king, has done the necessary values clarification and they may therefore assume, implicitly, that any order he gives is legal:

You slew him: As though you had slain him [personally] by instructing Joab to place him in harm's way. *You killed him*: [Why the repetition?] You have compounded the felony by having him slain by the Ammonites, the enemies of Israel.

Our Sages have said: Although the universal rule is, "there is no agency for the commission of a crime" and in every case the agent—and not the principal—is culpable, here the situation differs since the verse calls [David] a killer. Why is this? Since he was the king and his word was law, it is as though he did the killing himself. Similarly, when Saul ordered the killing of the *kohanim* of Nov, it was as though he killed them himself.

Generally, a person should refrain from following the king's orders in such a case. We have explained, apropos of "Anyone who defies your word shall die" (Joshua 1:18), that this does not include the commission of a crime, as the verse states: "Only" [be firm and resolute; i.e., excluding instructions that violate Torah law].

Not everyone, however, is capable of construing "but's" and "only's." The onus [punishment], therefore, is on the king.

Exhibit Five: What Goes Around…

The principle of royal responsibility articulated by Radak takes on additional significance when viewed in the context of David and Joab's later interaction in a comparable situation. According to 2 Samuel 24:1 ff. (and 1 Chronicles 21:1 ff.), David is induced to commission a census of Israel and instructs Joab to carry it out. The text of 2 Samuel 24: 1–4 reports:

And again the anger of God was kindled against Israel, and He moved David against them, saying: 'Go, number Israel and Judah'. And the king said to Joab the captain of the host that was with him: 'Go now to and fro through all the tribes of Israel, from Dan even to Beersheba, and number the people, that I may know the sum of the people.'

And Joab said unto the king: 'Now the Lord thy God add unto the people, how many they may be, a hundredfold, and may the eyes of my lord the king see it; but why doth my lord the king delight in this thing?' Notwithstanding, the king's word prevailed against Joab, and against the captains of the host. And Joab and the captains of the host went out from the presence of the king, to number the people of Israel.

Joab initially opposes the mission, saying, according to 2 Samuel: “What do you need it for?” (*lamah hafetz ba-davar ha-zeh*) and adding, according to 1 Chronicles: “Why cause Israel guilt? (*lamah yihyeh le-ashmah le-Yisrael*). This clearly implies that while Joab ultimately submitted to the order on account of the rule of royal responsibility (*va-yehezak devar ha-melekh el Yoav*), he, again, recognizes its essential illegality or, at least, impropriety.[9] While Abner and Amasa, in a similar situation (see Exhibit Two), tendered their resignations to Saul; Joab, as was his wont, abdicated his moral responsibility albeit remaining strictly within the limits of the letter of the law.

Epilogue

The sources we have presented indicate that the responsibility for ensuring that orders issued to frontline soldiers are legal and moral belongs, foremost, to the king in his capacity as Commander-in-Chief. Officers of lower grades—including the Chief of Staff!—may assume his orders to be proper, particularly if they are in the heat of battle and lack the necessary leisure to evaluate them on their own. However, if they definitively know a particular order to be illegal or immoral, they must refuse to carry it out and, if necessary, suffer the consequences of their disobedience to the point of surrendering their commissions. In some cases, given the patently egregious nature of the illegal order, they must also protest it publicly.

Operative/Normative Conclusions

In conclusion, we cite several "codifications" of the laws of military obedience.

1. Rambam *Hilkhot Melakhim* (3:9):

Whoever defies a royal order on account of preoccupation with *mitzvot*, even of a minor variety, is not culpable. When the master and the servant both speak, the master's words take precedence. It goes without saying [however] that if the king commanded that a mitzvah be annulled, he is not to be obeyed.

2. HaRav Shelomo Min-HaHar: *Dinei Tzava U-Milhamah* (Laws pertaining to the army and warfare, #28):

The regulations of the General Staff and the Military Rabbinate are available to assist soldiers in all cases. According to regulations, *orders that contravene halakha are invalid.*

3. U.S. Dept. Of the Army, Field Manual: The Law of Land Warfare 182:

[Military courts are admonished] to take into consideration the fact that obedience to lawful orders is the duty of every member of the armed forces; that the latter cannot be expected, in conditions of war discipline, to weigh scrupulously the legal merits of the orders received.

4. The American Law Institute: Model Penal Code, Military Orders (2.10):

It is an affirmative defense that the actor, in engaging in the conduct charged to constitute an offense, does no more than execute an order of his superior in the armed forces which he does not know to be unlawful.

Practical Pedagogy
Have students consider the following questions while preparing the sources:

Re: 1 Kings 2:28 ff.:
On what charge is Joab is condemned to death?
How did Joab think to evade his fate?
Why was he unsuccessful?

Re: *Sanhedrin* 49a:
How does Joab justify his killing of Abner?
Of Amasa?
What is Solomon's challenge to that justification?
What is the final disposition of Joab's case?

Re: 1 Samuel 22:17 + *Yerushalmi Sanhedrin* + *Sanhedrin* 20a + 49a:
What do Abner and Amasa have in common?
How does this reflect on Joab?
What do these sources teach us about protesting illegal orders?

Re: *Shabbat* 55a:
What does Ezekiel chapter 9 teach us about protest?
How does it apply to the case of Joab?

Re: *Kiddushin* 43a + Radak 1 Samuel 12:9:
What is the limitation placed here on the law of "agency" (*shelihut*)?
What bearing does it have on the case of David and Uriah? On Joab?
Whose is the ultimate responsibility for morality in warfare?

Re: Rambam *Hilkhot Melakhim* 3:9:
Which of our sources is Rambam's, too?
Does he agree or disagree with Radak?
Would he have convicted Joab as charged?

Re: 2 Samuel 24:1 ff., and 1 Chronicles 21:1 ff.:
What does 1 Chronicles 21:3 add to 2 Samuel 24:3?
Why did David's census invite "guilt"? (Cf. Exodus 30:12 and commentaries)

What conclusion(s) may we come to regarding obedience to doubtful orders?

Notes

[1] We have excluded from consideration here the otherwise enlightening precedent of the midwives who disobeyed Pharaoh's orders to commit genocide. First of all, it does not necessarily involve Jews who would be bound by halakha and, in any event, because it falls outside of the scope of military discipline. I do treat the subject in, "The Obligation to Intervene in Halakhah and Tradition," *PRISM: An Interdisciplinary Journal for Holocaust Educators*, vol. 1 issue 2 (Spring, 2010), p. 59.
[2] While we will not pursue the element of sanctuary, per se, any further, it bears investigation. See Exodus 21:14, with commentaries, and BT *Makkot* 12a.
[3] Blood vengeance is an acceptable form of retribution according to Torah law. Cf. Numbers 35:19.
[4] Asael thereby becomes a *rodef*, pursuer, and may be stymied even at the cost of his life—providing there is no alternative. Cf. BT *Sanhedrin* 49a.
[5] *El ha-homesh* (2 Samuel 2:23). Significantly, Joab's killing of Amasa is described in the identical terms (*op. cit.*, 20:10).
[6] *Akhim ve-rakim*.
[7] See the prerogatives of royalty in Deuteronomy 17:14–20.
[8] Expressed as both: *ein shali'ah li-devar aveirah*; there is no agency for a crime, and: *divrei ha-rav, ve-divrei ha-talmid; divrei mi shom`im*?; if instructed by a master (God) and a disciple (David), to whom does one listen? [Obviously, to the master.]
[9] See Exodus 30:12 and the commentaries there and in 2 Samuel.