

THE BATTLE IS JOINED

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Shoftim

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Today's Learning:

Bava Kamma 1:1-2

Orach Chaim 499:5-500:2

Daf Yomi (Bavli): Bava Kamma 29

Daf Yomi (Yerushalmi): Berachot 63

This week's and next week's parashot contain many of the halachot of waging war. However, in the spirit of the month of Elul, many commentaries interpret the relevant verses as references to the battle against the yetzer hara / the evil inclination. For example, regarding the verse (20:3), "You are coming near to battle against your enemies; let your heart not be faint; do not be afraid, do not act impulsively, and do not be broken before them," R' Yitzchak Shmelkes z"l (1828-1906; rabbi of Lvov, Galicia) writes:

Parents are obligated to raise their children in the spirit of the Torah, while the yetzer hara encourages parents to adopt the spirit of the times, claiming that otherwise their lives and their livelihoods will be too difficult. Our Sages have taught, however, that one who wants to raise proper children must show a certain element of cruelty. This is analogous to the apparent "cruelty" of a mother raven that forces her offspring to fend for themselves. (In reality, this is not cruel because it is

best for them.) The Torah thus commands, "Let your heart not be faint." Don't be too faint-hearted to do what is best for your children.

"Do not be afraid" - do not worry that you yourself will lack support if you live according to the Torah's demands. "Do not act impulsively" - do not trade eternal reward for a few short years of ease in this world. Why? The next verse assures us: "For Hashem, your G-d, is the One who goes with you, to fight for you with your enemies, to save you." (Bet Yitzchak Al Ha'Torah)

"Judges and officers you shall appoint in all your cities which Hashem, your G-d, has given you for your tribes, and they shall judge the people with righteous judgment." (16:18)

It is related that when R' Moshe Gruenwald z"l (died 1911) was appointed to a new rabbinical position, he insisted on appointing a certain chassid as the town's shochet. He explained: "How do visitors judge a town's quality? By the quality of its rabbi and its shochet. If judges (i.e., rabbis) and officers (e.g., shochem) you appoint in all your cities, then they, the visitors, shall judge the people with righteous judgment." (Quoted in Otzrot Tzaddikei U'geonei Ha'dorot)

"When you will come to the Land that Hashem, your G-d, gives you . . . and you will say, 'I will set a king over myself, like all the nations that are around me'." (17:14)

R' Joseph B. Soloveitchik z"l (1903-1993) observes that the Torah's concept of a king is different from that prevailing in the world at large. For one thing, the Torah makes it a precondition to appointing a king that the people ask for a king. This is because the very idea of a king is inimical to Judaism. Why should one person rule over others?

Is it because he is more talented in some way?! Hashem does not necessarily favor those who stand out because of their talents; rather, He favors those who seek to perfect themselves, yet who remain humble and low-key. Indeed, when a person does achieve fame and fortune, it is not his own doing but only because he was in the right place at the right time. Jewish kings were never like their gentile counterparts. Regarding the Persian king Achashveirosh, we read (Esther 4:11), "All the king's servants and the people of the king's provinces are well aware that if anyone, man or woman, approaches the king in the inner court without being summoned, there is but one law for him: that he be put to death . . ." In contrast, we read about King Shlomo (Melachim I 3:16), "Then two women, harlots, came to the king and stood before him." Anybody could appear before a king of Israel at any time, even for something as mundane as determining the maternity of a possibly illegitimate child.

R' Soloveitchik continues: There is one context in which the Torah does recognize one person's superiority over another. This is the rebbe-talmid relationship, the relationship of a teacher of Torah to his students. Even here, however, the relationship is not built on the teacher's imposing his authority on the student; rather, it is based on the students' recognition of their teacher's spiritual

authority. This recognition pushes the students to accept the words of their teachers as the words of the most authoritative spokesmen of the generation. In contrast, a king's authority derives not from his subjects' recognition of his wisdom, but rather from the fear that his subjects have of him. Another difference between a typical king and a rebbe is that most kings view themselves as the master of their subjects - - a concept that Judaism rejects -- while a rebbe truly is a master over his students. This is because a teacher of Torah is considered to be G-d's partner in creation. The gemara (Kiddushin 30b) states that one's father and mother are G-d's partners. This, however, is not because they gave the child his physical form, but rather because they educate him and shape his character, just as a teacher of Torah does. (Ha'adam Ve'olamo pp.177-191)

"When you besiege a city for many days to wage war against it to seize it, do not destroy its trees by swinging an ax against them, for from it you will eat . . . Only a tree that you know is not a food tree, it you may destroy and cut down." (20:19-20)

In halachah, there is a general rule that when one is in doubt regarding the applicability of a Torah-ordained mitzvah, he must act stringently ("sefaika d'oraita le'chumra"). For example, if a man does not remember whether he has recited Kriat Shema, he must recite it (again). In contrast, when one is in doubt regarding the applicability of a rabbinically-ordained mitzvah, he may act leniently ("sefaika de'rabbanan le'kula"). For example, if one does not remember whether he lit Chanukah candles, he need not light them (again). In some cases, one must act leniently. For example, if he nevertheless elects to light Chanukah candles (again) in order to resolve his doubt, he may not recite the blessings over the lighting because of the possibility that he already performed the mitzvah and his blessings would be in vain.

Rambam maintains that the rules stated above are of rabbinic origin. According to Torah-law, says Rambam, one may act leniently even when his doubt relates to a Torah-mitzvah.

Commentaries ask: Don't the above verses appear to contradict Rambam's position? Verse 20 states, "Only a tree that you know is not a food tree, it you may destroy and cut down." Isn't the Torah saying that if you don't know what type of tree it is - if you are in doubt - you must act stringently and not cut down the tree?!

R' Meir Leibush Malbim z"l (19th century rabbi of Bucharest and other communities) answers this question based on several noteworthy points about our verses. Firstly, why does the Torah refer to the trees as "food trees" rather than by the more common term "fruit trees"? Secondly, the verses appear to contain a redundancy: "[D]o not destroy its trees . . . for from it you will eat . . . Only a tree that you know is not a food tree, it you may destroy." The phrase, "[D]o not destroy its trees . . . for from it you will eat" appears to be unnecessary.

The Torah is teaching us, writes R' Malbim, that there are three categories of trees relevant to this law: Trees that currently bear fruit may never be cut down, trees that never bear fruit may be cut

down, and trees that used to bear fruit but have stopped may be cut down if there is no other wood available. The only trees you may never destroy are the ones from which "you will eat." If one does wish to cut down a fruit tree, how sure must he be that it has passed its fruit-bearing years? He must know that it is not a food tree, the verse says; speculation will not suffice. Why is this so, if Rambam is correct that according to Torah-law, one may act leniently any time that he is in doubt? Because there is another rule which trumps the principle that doubts may be resolved leniently: Once an object has attained a forbidden status ("haicha de'itchazaik issura"), i.e., once we know that this tree once gave fruit, only certainty can change its status. The rules for resolving doubt apply only where no specific status has yet been attained. [For example, if a person is unsure whether he is tamei / ritually impure, he may be declared tahor / pure. However, if a person knows he is tamei, but is unsure whether he has undergone the purification process, halachah declares that he remains tamei.] (Ha'Torah Ve'hamitzvah)

How did Rambam know that according to Torah-law, one may act leniently any time that he is in doubt, even regarding a Torah-ordained mitzvah? R' Aryeh Laib Hakohen Heller z"l (author of Ketzot Hachoshen; died 1813) explains that it is based on another verse in this week's parashah (17:11), "You shall not deviate from the word that [the Sages] shall tell you, right or left." [This verse is the source of our obligation to obey rabbinic decrees and to perform rabbinically-ordained mitzvot such as lighting Chanukah candles.]

However, this raises a question: According to Rambam (in Sefer Hamitzvot, Shoresh 1), one who fails to perform any rabbinically-ordained mitzvah violates the command in this verse. How then can the Sages state that when one is in doubt regarding the applicability of a rabbinically-ordained mitzvah, he may act leniently? (In effect, every rabbinically-ordained mitzvah is really a Torah-ordained mitzvah, based on this verse.) We must necessarily conclude that one is permitted to act leniently even with respect to a Torah-ordained mitzvah. (Shev Shematita 1:4)

Selected Laws of Shemittah

(From Rambam's Mishneh Torah, Hil. Shemittah Ve'yovel, ch. 7)

1. A given species from the produce of shemittah may be eaten only as long as that same species of produce is found in the field, as it is written [Vayikra 25:7], "And for your animal and for the beast that is in your land shall all its crops be to eat." This teaches that so long as animals can find a given species in the field, you may eat from whatever quantity of that same species that is in your house. Once a species has ceased to be available in the field, you must eradicate from your house whatever quantity of that species you have there. This is the mitzvah of biur / eradication of the fruits of the seventh year.
2. How so? If someone has figs of the seventh year in the house, he may eat from them so long as there are figs on the trees in the field. When there are no more figs in the field, one is forbidden

to eat the figs that he has, and he must eradicate them.

3. If someone has many fruits, he distributes them in portions consisting of three meals each. After the time of biur, neither the poor nor the wealthy may eat from the produce. If one does not find people to eat his produce prior to the time of biur, he must burn the fruits or throw them into the Dead Sea or destroy them by any other means of destruction. [Ra'avad notes that Rambam's description of biur is somewhat unclear. Ra'avad himself writes that there are two stages to biur. When a specific species no longer is found in the fields in the vicinity of a given town, the remaining produce of that species must be distributed to the public. Later, when that same species no longer is found in the fields anywhere in that province, any remnants of that species must be destroyed. Ramban (in his commentary to Vayikra 25:7) argues with both Rambam and Ra'avad, and maintains that the mitzvah of biur requires only that one not hoard produce. However, if one declares the produce hefker / ownerless and puts it out on his doorstep, he and everyone else may continue to eat it.]
4. Just as one must destroy the fruits, so one must destroy any money that has the sanctity of shemittah. For example, if one sold pomegranates of shemittah and has been buying other fruits with that money, he must eradicate the remaining money from his house once pomegranates are no longer available in the field. How does he do this? He buys fruits with the money and distributes them in quantities equal to three meals-worth or, if he cannot find people to eat these fruits, he throws the money into the Dead Sea.

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