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בס"ד

Parashat Shofetim Part II On the Warfare Passages of Deuteronomy 20

1. A Pro-Life Regulation

Moses begins the first of the warfare passages (Deut. 20:1-9) with statements designed to motivate the Israelites to be courageous when encountering war. Even when facing horses and chariots – which Israel lacked in the early days – and a soldiery of greater numbers than themselves, they should not fear the enemy but trust in G-d who took them forth from Egypt. This recalls the Israelites' reaction when they saw Pharaoh with his horsemen and chariots pursuing and Moses' words of encouragement (Exod. 14:10-14). (Although a precept of the *misvot* category this appears among the *mishpatim* because of its relevance to the discussion at hand.)

In the future, at the mustering prior to battle, a priest is to address the soldiery to motivate them in this manner. Officers are then to proclaim a number of exemptions from the impending war, manifestations of compassion that engender sympathy for those on the threshold of completing certain life-significant events. The officers are to express the fear that such an individual would die in battle and not complete his imminent milestone. (Rashi: "It is a matter of anguish.") Accordingly, three classes of men are declared exempt from the forthcoming combat and sent home: whoever had built a home but had not yet initiated it, planted a vineyard but had not yet partaken of its fruit or betrothed a woman but had not yet consummated the marriage.

The sages qualified these exemptions as only applicable to a war that did not involve a threat to national survival or to the borders of the land. The exemptions were also apparently deemed not applicable to the upcoming battles to conquer the land (see Sifre on Deut. 20:1). The fact that all men, including those who stand to be exempt, are to attend the mustering and await the declaration of the leaders

supports the notion of distinctions between various types of conflicts. In addition, the passage's opening clause, "When you go out to war against your enemy," reflects a settled state and perhaps an optional war.

The leaders may have had the right to expand upon the stated categories of exemptions to include other cases that they felt the situation warranted and circumstances allowed; there surely would have been pressure to do so given that the dividing line between case and case is always subtle. In the Mishnah (*m. Sotah* 8), the exemptions are codified in an expansive manner, albeit in a different direction than we are here referring to, such as including the purchase or inheritance of a home or having built a storehouse or barn.

It is noteworthy that these exemptions are egalitarian in that most men are assumed to at some point build a home, plant an orchard and get married. There are no exemptions for those who are willing and able to make a monetary payment in lieu of their personal service (or send a capable slave), as was the practice in many societies. This is a resounding statement teaching that material substance cannot be equated to life and that the life of the wealthy and poor are equally precious.

Some have interpreted these exemptions as a tactic intended to preclude from the military those who may be preoccupied in their personal lives or fearful and hence a possible liability to its fighting spirit. However, this same group of three upcoming milestones is attested among the Deuteronomy curses (Deut. 28:30), formulated in words corresponding to our passage. There, it is sadly foreseen that the milestones are not to be attained. This indicates that these exemptions were motivated by the desire to prevent the acute anguish that would result if the much-awaited events were not achieved. In addition,

in a separate declaration the law also exempts the “fearful and weak-hearted” who, the text states in an explicit and straightforward manner, may damage the morale of their fellow-soldiers (20:8).

True, some men may be embarrassed to admit that they are fearful and the milestone exemptions would provide face-saving cover. This would teach a lesson in being concerned for the dignity of each individual. But in *peshat* it is difficult to see the milestone exemptions – proclaimed first and as an independent unit – as merely an expedient cover. In any event, the fact that the reasons for the exemptions were stated in the objective case, “lest he die in battle and another man dedicate it,” etc., presented the milestones as important goals to be concerned with, thus making the humanitarian point loud and clear.

Codifying concern for those whose special circumstances stir compassion serves to encourage the nation and the Torah’s readers to treasure life and its joys. It removes any glamour and glory from war. Every individual has his own special situation. Even if men facing other milestones cannot be exempt, since a line must necessarily be drawn at some point, sympathy is elicited and directed to all particularly important events and we are led to an appreciation of life’s highlights as well as of life in general. This passage nurtures the hope that each soldier should return home to enjoy his life. Thus, the Torah exemptions serve as powerful forces to discourage superficial martyrdom. They foster a cautious, option-of-last-resort attitude toward going to war.

In line with this disposition, there is no hint anywhere in the Torah of an incentive to martyrdom, no promises such as: “if you die your family will be cared for,” “your name will be honored forever,” “your sins will be forgiven” or “you will inherit paradise,” etc. On the contrary, the Torah views death with sadness even when it occurs in the course of serving one’s nation in war.

The concluding verse of this passage states that subsequent to the officers’ address, those in charge appoint commanders over the people (v. 9). This implies that the Torah does not envision a substantial standing, professional army for Israel; the nation is not expected to be militaristic.

2. The Second Warfare Passage

The second warfare passage (vv. 10-18) mandates that when approaching a battle it is necessary to first call to the enemy for peace before engaging in combat. Peace in this context means surrender with the agreement that all the people in that city יִהְיוּ לְךָ לְמַסַּח וְעָבְדוּךָ (“shall be a tributary to you and serve you” [v. 11]). The original meaning of *mas* seems to refer to forced labor.

This innovative standard restricted offensive options by prohibiting initiation of a surprise attack, thus fostering other approaches to whatever the problems may be. Ultimately, it would tend to promote negotiation and compromise, possibly avoiding going to war. It was particularly relevant when the leaders were confident of victory and preferred the military option.

When an enemy rejected the call to peace and was defeated in battle, all *zekhurah* (v. 13) should be killed, probably to protect against future retaliation. Although derived from the word *zakhar* (male), the precise meaning of *zekhurah* is not “all its males,” but “all its soldiery,” a term that excludes the very young males, the elderly and infirm. This translation is borne out by the succeeding verse that explicitly excludes women and *taf* (young children including males) from being subject to death and is consistent with the term’s meaning in cognate languages.*

Putting only its soldiery to death is then qualified; it applies only to those combatants of distant cities. A far more stringent regulation applies to the local inhabitants (v. 15 ff.). We will discuss this topic in the following section.

The third warfare passage (vv. 19-20) speaks about the case in which Israel has besieged a city and is striving to capture it. Contrary to what was then the widespread policy in warfare, the Torah prohibits cutting down the enemy’s fruit trees. Destroying fruit trees was an act that demoralized the enemy; the very threat of it sometimes induced the enemy to surrender. The Torah makes a point of stating that even in a lengthy siege and even when the wood was required for use in the siege works (blockades, ramps, battering rams), cutting down fruit trees was prohibited.

Humanitarian concern for the city's future welfare overrides the present benefit of felling the trees.

The underlying concept that prohibits destruction of the fruit trees has been taken by the sages as indicative of a prohibition against engaging in wanton destruction of anything that has value for human life (*b. B. Qam* 91-92, etc.). The Rambam formulated the law as follows: "Not only trees, but whosoever breaks vessels, tears garments, ruins a building, stops up a fountain or damages foodstuffs in wanton destruction violates *lo tash'hee'*" (*Mishneh Torah, Laws of Kings* 6:10). The latter phrase takes the two words of our passage that comprise the expression of the prohibition, which translate as "do not destroy," as defining the broad expanded category.

3. Regarding the Local Nations

A much harsher standard than that concerning distant peoples applies to the local inhabitants. "However, from the cities of these peoples that Hashem your G-d is giving you inheritance," the law is: *לֹא תִתְּנֶהָ כָּל נַפְשָׁמָה* (Deut. 20:16-17). In simple translation: "You shall not let live a soul, for you must surely proscribe them." The reason is given: "in order that they not teach you to do as all their abominations that they have done in the service of their gods" (v. 18).

Taken literally, it would be saying that due to the fear that the local nations would influence Israel to emulate their idolatry and abhorrent rituals, and thus hinder the moral development of the nation covenanted with G-d, the Torah mandated annihilating every man, woman and child of them. Such behavior with a defeated enemy – not for the reason given in the Torah – was a common practice in the ancient world. In the absence of the ability to educate and reorient an enemy, including young children, it was anticipated that they would aspire to one day avenge their nation's defeat and in any event continue in their nation's culture. Women, upon death of their husbands, might turn to prostitution and present another type of religious danger.

However, though consistent with the norms of the times, and despite the fact that Deuteronomy speaks of the local idolatry as involving the most loathsome acts, including child sacrifice (12:31; 18:9-10), it is doubtful that unqualified and indiscriminate

annihilation of all the local men, women and children was intended.

First, many other biblical statements regarding Israel's taking possession of the land from the local nations speak of "chasing," "sending" or "spewing" the locals out of the land (Exod. 23:28-31; 33:2; 34:11; Lev. 18:24-28; 20:23; Deut. 33:27; Josh. 24:12,18; Judg. 2:3; 6:9). These processes are incompatible with a campaign of annihilation. In Deuteronomy 7:22, Moses told Israel: "Hashem your G-d will cause those nations to fall away from before you little by little; you cannot clear them out quickly lest the beasts of the fields increase upon you." Here also, the process described is incompatible with outright annihilation.

Second, the books of the Former Prophets that address Israel's experiences in the land do not speak of active annihilation of the seven nations. On the contrary, they consistently speak of groups of people of the nations of Canaan as living among the Israelites even after Israel vanquished them. In most cases, the image emerges of the Israelites eventually relegating the members of the Canaanite nations to subsist in a subdued manner, imposing taxes or forced labor requirements upon them (Josh. 16:10b; 17:13; Judg. 1:28, 30b, 33b, 35b; 1 Kings 9:20-21).

When Rahab suggested a pact to Joshua's spies to allow her and her extended family to live, the men did not hesitate to accept her offer and swear their agreement to her full request (Josh. 2:12-18). They acted contrary to what would have been an orientation toward decimation were Moses' words taken as a blanket rule. When G-d's *mal'akh* (representative) reprimanded the Israelites at Bochim for not following their divine mandate regarding the local inhabitants, they were cited for not having refrained from entering into pacts with them and for not destroying the alien altars. Not a word was mentioned about physical annihilation of the population (Judg. 2:1-3).

Furthermore, these same considerations apply to the only other primary attestation in the Torah of what is translated as "annihilation" of the seven nations, the *haḥarem taḥarim otam* ("you must surely proscribe them") of Deuteronomy 7:2 (which appears to be the source cited at Bochim). In this context, several prohibitions are mentioned, namely, making a treaty with the local nations, showing them favor and

intermarrying with them: “not your daughter for their son, nor their son for your daughter.” This implies that the law took for granted that members of the local nations were to be living in close proximity to the Israelites and, to some degree, peacefully interacting with them. The NJPS recognized the problem in forbidding to make a pact with, to show favor to and to refrain from intermarrying with those whom you are commanded to kill. However, the NJPS translation of Deuteronomy 7:2b, “You must doom them to destruction: grant them no terms and give them no quarter,” rendering *לֹא תִכְרַת לָהֶם בְּרִית* figuratively (literally: “do not cut them a covenant”), is strained and unacceptable. It also is contradictory to the NJPS translation of Judges 2:2, which alludes to the same verse and employs similar word usage: “And you, for your part must make no covenant with the inhabitants of this land.”

Clearly, the rest of Scripture is inconsistent with taking the words of *לֹא תִחַיֶּה כָּל נֶשְׁמָה בְּיַד הַחַיִּים תִּחְרִימֵם* (Deut. 20:16-17) as meaning “You shall not let live a soul, for you must surely proscribe them” in an across-the-board, immediate and physical sense. Some have suggested that these clauses may refer to directing the Israelites to manage their relationships with the local inhabitants toward a long-term outcome that could be fostered to evolve – no pacts, no favors, no intermarriage. The locals would have to abandon idolatry and their abominations to receive the benefactions.

In the Talmud, Rabbi Samuel the son of Nahman stated that even the seven nations dwelling in Canaan had the option to make peace with Israel even after Israel crossed the Jordan into the promised land, provided they accepted Israel’s sovereignty and conditions (y. *Sheb.* 6:1; also see *Deut. Rab.* in conjunction with Deut. 1:24-26). In other words, the requirement several verses earlier in our chapter (Deut. 20:10-11) to “call for peace” before initiating war was understood to apply even to the local inhabitants and at all times, provided they accepted the basic surrender conditions. Proscription only applied to those of the local nations who chose war. The qualification articulated in verse 20:15 that limited the rule of killing only the soldiery to distant nations (vv. 13-14), is itself limited. It only applies to the immediately preceding qualification of verse 12, that is, to the nations that do not accept the call and conditions for peace.

In the Rambam’s words:

But to the seven nations and Amalek who did not make peace [the law] is applied not to allow a soul from them to live ... And from whence is the source that Scripture is not speaking except as regards those who did not make peace? It is as stated [in Joshua 11:19-20 regarding the seven nations], “there was no city that made peace with the Israelites except the Hivites, the dwellers in Gibeon; everything was taken in war, for it was from G-d to strengthen their hearts that they should pursue war with Israel so that they should be annihilated.”

Three letters Joshua sent before entering the land. The first, who wants to flee may do so; the second, who wants to make peace may do so; the third, who wants to make war, do so. (*Mishneh Torah Laws of Kings* 6:4-5)

In any event, if the *herem* (proscription) was ever intended in its full, literal sense of total physical annihilation, it was limited to the original inhabitants of Canaan but was not actively applied to them. It apparently did not pertain to their descendants, in accordance with what is stated in 1 Kings 9:20-21: “All the people (*kol ha’am*) that remained of the Amorites, Hittites, Perizzites, Hivites and Jebusites, those who were not descended from the Israelites, their children who remained in the land after them, those whom the Israelites were unable to destroy (*le-haharimam*), of them Solomon raised a levy of bondservants, unto this day.”

4. Rabbi Sassoon’s Approach

(Most of the material in this section is derived from *Natan Hochmah Lishlomo – Writings of Rabbi Solomon D. Sassoon* [Heb. section, pps. 116; 148-152] and from Rabbi Sassoon’s lectures.)

Rabbi S. D. Sassoon understood the requirement of annihilation to be restricted to those who lived in the royal cities, that is, to those who comprised the leadership circles. It was they who were educated and sufficiently knowledgeable in their culture to be a threat to Israel’s religion. The *herem* did not apply to the population at large who lived in common towns or in rural areas, those who had little if any contact with the nobility. The simple, common people of ancient

times, mostly illiterate and always busy with their subsistence, could not much influence the Israelites and were not the concern of the Torah to the extent that they had to be annihilated. The rabbi marshals evidence to show that the *'a're ha'amim* (Deut. 20:16) that must be destroyed should properly be translated "cities of the kings," as one of the meanings of the word *אמ* (*'am*) is "leader."**

This interpretation is supported by – indeed, emerges from – the passage in the book of Joshua that emphasizes that it was the "cities of the kings" that Israel annihilated and that "this was according to Hashem's instructions to Moses His servant; as Moses instructed Joshua, thus did Joshua do" (Josh. 11:10-15). There is no statement in the book of Joshua applying annihilation to the population at large but only as regards royal cities.

Rabbi Sassoon maintained that nouns such as *גוי* (*goy*) and the proper-noun name of a nation, such as *ha'hitti*, *ha'emori*, *hakena'ani*, etc., the terms used in conjunction with the command to annihilate, generally refer to the king or ruling circle. It is they who truly represent the identity of the nation. This clearly is the case in many languages, such as in the locutions, "England decided," "Denmark said." The straightforward translation of the Torah's injunction in our context should be understood accordingly.

Further, the term *yoshebe* (dwellers), used in conjunction with the local inhabitants (as in Num. 33:52, 55), is widely recognized to often mean "rulers"*** and it is in that sense that the Torah uses it in our context for the local nations. This sheds light on most of the other biblical attestations regarding dispossessing the inhabitants of Canaan, signifying that it is only the leadership that was targeted, consistent with what is indicated in the Books of the Prophets. Destroying the leadership was tantamount to destroying the national culture and that was the law's intent. As the sages say in certain contexts, *לשון תורה להוד* ("the language of the Torah is separate," that is, it has its specific meaning).

It is only in recent times that educational programs and powerful means of mass communication are at the disposal of a nation's leadership that it has become possible in premodern countries to reach the common

people and transform them into knowledgeable citizens.

We may thus presume that the Israelites understood the law of annihilation as irrelevant to the illiterate masses who usually do not know the difference between one ruler and another. They are assumed to have accepted Israel's rules of submission and are therefore not subject to the *herem*.

Endnotes

* The festival requirement for "all *zekhurekhah*" ("all your *zekhurah*") to appear at the central sanctuary (Exod. 23:17; Deut. 16:16), also points to translating *zekhurah* as constituting a group smaller than the group being addressed. The "your" suffix refers to the larger, national audience being addressed. The sages exclude a number of male classes from this obligation.

** Several examples:

1. "Hear the word of Hashem you chieftains of Sodom, give ear to our G-d's instruction *'am 'amora* (Isaiah 1:10). *'Am* is here parallel to "chieftains."
2. "As for the prophet or priest or *ha'am* ... I will punish that person and his house" (Jer. 23:34). *'Am* is here an individual of leadership status.
3. "All the king's ministers and *'am* of the king's provinces know ... it is one of his laws to put him to death" (Esther 4:11). The common people throughout the provinces do not usually know the palace regulation Esther was referring to. Furthermore, after mentioning the ministers it would be inappropriate to refer to the common people of the provinces. *'Am* here refers to a certain leadership class.

*** Several examples:

1. The parallels between similar contexts in Joshua 12:2 and 4 with Joshua 13:10 and 12, wherein the former uses *yashab* for "reigned" while the latter uses *malakh*, which indisputably means "reigned."
2. Isaiah 16:5: Regarding the throne that shall be established in *hesed*, "*ve'yashab* upon it *be'emet*," meaning he shall rule with truth.
3. "They did not believe, the kings of the land, *yoshebeh* of the earth ..." (Lam. 4:12). *Yoshebeh* is here parallel to "kings."