

Zera Shimshon

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Chapter XLIX: Ki Teitzei (Deut. 21:10–25:19)

Essay 1. Discretionary and obligatory wars

This essay discusses the distinction between a *milchemet reshut* (a discretionary war that requires permission of the Sanhedrin), and a *milchemet mitzvah* (an obligatory war required by the Torah, for which no permission of the Sanhedrin is required). The essay also discusses the *yefat toar*, the beautiful captive. The rabbis considered these to be women sent out by the enemy to distract the Israelite soldiers. During a discretionary war (but not an obligatory war), a soldier could capture such a woman, and after following a strict procedure,¹ he could marry her.²

"כִּי-תֵצֵא לְמִלְחָמָה" וְכֹו', אָמְרוּ ו' לְבְמִלְחָמָת רְשׁוּת הַכְּתוּב מְדַבֵּר דְּבְמִלְחָמָת אֶרֶץ יִשְׂרָאֵל כְּתוּב בְּהוּ "לֹא תִחְיֶה כָּל-נִשְׁמָה" וְכֹן פֶּרֶשׁ רַש"י ו'ל. יֵשׁ מְקוּשִׁים אִם כָּל עֲצָמָה שֶׁל יְפַת-תְּאֵר לֹא הוּתְרָה אֶלָּא כְּנִגְדַּי יִצָּר הָרַע, לְמָה לֹא הוּתְרָה הַכְּתוּב מִטַּעַם זֶה אִף בְּמִלְחָמָת חֻבָּה, וְתִירְצוּ לְפִי דְרָבָם.

“When you go out to war against your enemies, and see horse[s] and chariot[s]—forces larger than yours—have no fear of them” (Deut. 20:1). The [rabbis] of blessed memory said [that] Scripture is talking about a discretionary war³ in Deut. 20:1–15, for regarding an [obligatory] war for the Land of Israel, which is discussed in Deut. 20:16–20, it is written, “you shall not let a soul remain alive” (Deut. 20:16), and thus explains Rashi, may his memory be a blessing. [Commentators] question: If the entire rite of the “beautiful captive” (Deut. 20:14), which, as noted, is only applicable for a discretionary war, was only permitted because of the evil inclination, why didn’t Scripture permit it for this reason even in an obligatory war, and [the commentators] solved this question in their own ways.

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¹ Discussed in Essay 2 of this chapter.

² In the Jerusalem Talmud, Makkot 7a, Rav believes that the captor could force himself upon the woman once, at the time of her capture, and then not have relations with her again unless he decides to marry her after a cooling-off period. Rav Yochanan disagrees, holding that the cooling-off period and marriage would be required before any relations.

³ Sifrei Devarim 190:18.

ולדידן נראה לומר שכשם שהיהיטר של פת-תאר בשאר מלחמות הוא פנגד יצר הרע, כך האיסור שלה בארץ ישראל הוא פנגד יצר הרע, אמנם האי כדאיתא והאי כדאיתא, שהרי נודע שהושע שלח שלוש פרוזדגמאות וכו' הרוצה להשלים ישלים. ופירושו המפרשים שקודם התחלת המלחמה לא היו בכלל "לא תחיה כל-נשמה". וזהו הטעם שקבלו רחב הזונה ונסבה יהושע, אבל אותם שלא השלימו קודם שיתחיל יהושע המלחמה, כתיב בהו "לא תחיה כל-נשמה".

For us, it seems to say that just as the beautiful captive in other wars is [allowed] to counter the evil inclination, similarly the prohibition against [the beautiful captive] in the Land of Israel is to counter the evil inclination. Indeed, this [stands] as it is, and that [stands] as it is, for it is known that the midrash states in the name of Rabbi Yishmael bar Nachman that Joshua sent three proclamations to the Canaanites: whoever wants to leave should leave; whoever wants to make peace should make peace; and whoever wants to wage war should do so.⁴

The commentators interpret that before the beginning of the war, [the Canaanites] were not in the category of “you shall not let a soul remain alive.” This is why [the Israelites] accepted Rahab the harlot and she converted and married Joshua. But [regarding] those who did not make peace prior to Joshua starting the war, it is written about them, “you shall not let a soul remain alive” (Deut. 20:16).

והטעם על זה צריך לומר, שהקב"ה רצה להורות לישראל שאותה הארץ הטובה אינה יכולה לסבול אנשים רעים וחסאים, ואין להם תקנה אלא לשוב קודם שיגמר הדין עליהם לרעה, שאחר כך לא תועיל להם תשובתם, וכדכתיב "ונאבדתם מהרה מעל הארץ הטובה" וכו', וכן הנה בישראל שלא שמעו לקול הנביאים ובאתה עליהם הרעה.

And the reason for this is to say, that the Holy One, Blessed be He, wanted to command Israel that this good land cannot tolerate bad people and sins, and [the Canaanites] only remedy was to repent before the judgment on them was concluded, to their detriment.⁵ For after [the conclusion of the judgment], their repentance would not benefit them, and as it says, “and you will soon perish from the good land.”⁶ Thus it was in Israel, also, that they did not listen to the voice of the prophets, and evil came upon them.

⁴ Lev. Rabbah 17:6. Compare Yerushalmi Shevi'it 16b: “Rabbi Samuel said, Joshua sent three proclamations to [the Canaanites in] the land of Israel prior to the [Israelites] entry into the land: Whoever wishes to leave should leave; [whoever wishes] to make peace should make peace; [and whoever wishes] to wage war should do so.” Both the Yerushalmi and Lev. Rabbah say that only the Girgashi left, and that they went to Afrika. The Yerushalmi adds that the Gibeonites made peace.

⁵ The Zera Shimshon writes “their only remedy,” and the translator assumes that this refers to the Canaanites, as we were discussing whether the Canaanites would make peace, before it was too late. However, the paragraph then quotes a verse that is directed to Israel, and then explicitly discusses Israel’s failures. So it is possible that even at the beginning of the paragraph, when he wrote “their only remedy,” the Zera Shimshon meant Israel.

⁶ Deut. 11:17, “For the L-rd’s anger will flare up against you, and He will shut up the skies so that there will be no rain and the ground will not yield its produce; and you will soon perish from the good land that the L-rd is assigning to you.”

ולכן אסרה התורה עליהם הנפת-תואר במלחמת ארץ ישראל, להראות להם דבר זה שיהיה להם למופת נגד היצר הרע שלא יעכבם מלעשות תשובה קודם שיחתם גזר דינם. שהרי גם הרשעים חושבים לעשות תשובה אבל אומרים שיש להם זמן, כדאמרינו יודעים רשעים שדרכם למיתה אלא שיש להם חלב על כסליהם, וזו היא עצתו של היצר הרע.

Therefore, the Torah forbade the beautiful captive from them in a war for the Land of Israel, to show them this matter, [and] to be a sign for them against the evil inclination, that it should not prevent them from repenting before their final judgment is sealed. For even the wicked ones think to repent, but they say that they have time, as it says, “The wicked know that their path [leads] to death, but they have fat on their kidneys [that prevents that realization from entering their hearts]” (Shabbat 31b), and this is the purpose of the evil inclination.

ועוד יש לומר דקושיא מעיקרא ליתא, שהרי כתב הרמב"ם (בפרק ח' מהלכות מלכים) אין אשת יפת-תואר מותרת אלא בשעת השביה עכ"ל. ושעת השביה הינו לאחר המלחמה דהינו לאחר הריגת האויבים, וכן הוא אומר "והפית את-קל-זכורה לפי-תורב" ואחר כך "רק הנשים והטף והבהמה . . . תבו לך" וכו'. ובשלמא במלחמת שאר האומות יש שעת השביה אף בנשים לאחר הריגת הזכרים, אמנם במלחמת שבועה אומות אין שעת שביה כלל אלא במקום ולא בנשים שאדרכא מחויבים להורגן. ומשום הכי לא שייד שם יפת תואר. ועוד במלחמת ארץ ישראל היא חובה על כל ישראל להרוג כלן ואינו בנדו להתייחס שהרי האחרים יתרגוהו, מה שאין כן בשאר מלחמות שהרשות ביד כל אחד ליקח שבי ומלקוח ולפטר ביניהם.

It can also be said that there is no difficulty at first, for the Rambam writes (in the eighth chapter of the Laws of Kings and Wars, halacha 3), “the beautiful captive is only permitted at the hour of capture, as it says, “and you see her among the captives” (Deut. 21:11). The hour of capture is after the war, which is after the killing of the enemies. Thus, it says, “you shall put all its males to the sword,” and afterward [it says], “but the women, the children, and the livestock, everything in the city, you can plunder for yourself” (Deut. 20:13–14). At the conclusion of the war with the other nations, there is the hour of capture for women after the killing of the males. However, for a war with the seven idolatrous Canaanite nations there is no hour of capture at all, only permission to seize money, and not women, for to the contrary they are obligated to kill them. For this reason, the beautiful captive is not appropriate here. Also, in a fight for the Land of Israel, it is an obligation upon all Israel to kill everyone, and [the soldier] has no permission to leave one alive, for others will kill her. That is something that is not the case with other wars, for which every [soldier] has the permission at hand to seize captives and plunder and to divide amongst themselves.

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