

February 23, 2020 - Deut. 20:10 – 21:9 - More on War and Justice
Torah Reading: Deuteronomy 20:10 – 21:9 - More on War and justice
Psalm 124 - 128 (repeat)
Haftarah: Isaiah 66:12-22

More on War and Justice

The previous chapter listed conditions in which men could be exempted from battle. This would concern a war of aggression, expansion or conquest against an enemy, like the war against the Canaanites, which was commanded by God.

(A war against an outside invader would be different - all hands on deck, we're fighting for our lives.)

The rabbis incrementally added provisions that reduced the opportunity for what could be called "discretionary wars of aggression." Because these wars were not commanded by God, the Torah requirements - observing the Sabbath and all the other 613 laws - took precedence. This made declaring a discretionary war difficult and impractical.

For instance, a king could not unilaterally declare war. "Discretionary wars can be waged only by the authority of a court of seventy-one (Sanhedrin)." (Sanhedrin 2a; 20b) This was to ensure that Israel did not become a warmongering nation drafted into the service of power hungry kings. But historically even this often failed to curb the monarchy from aggressive wars.

The commands in this chapter moderated how all wars were waged by Israel.

Verses 10-15 concern discretionary or optional wars.

Deuteronomy 20:10 - "When thou comest nigh unto a city to fight against it, then proclaim peace unto it."

Rashi - Scripture is speaking of an optional war, as is explicit in the context of this section (verse 15), "Thus you will do to all the cities which are very far away [from you]" - [Sifrei]

Not as the children of Dan did, who massacred the inhabitants of Laish without warning (**Judges 18:27-28**)

Deuteronomy 20:11 - "And it shall be, if it make thee answer of peace, and open unto thee, then it shall be, that all the people that is found therein shall be tributaries unto thee, and they shall serve thee."

Even in the wars of Joshua, the cities that "stood still in their strength" were generally spared and not burned (**Joshua 11:13**).

Rashi - Even if you find in it people of the seven nations, whom you have been commanded to exterminate, you are permitted to spare their lives. — [Sifrei]

By becoming tributaries it meant probably they would pay a yearly tax imposed upon them. The conquered nations would receive the highest blessings from alliance with the chosen people; they would be brought to the knowledge of Israel's God and of Israel's worship, as well as a participation of Israel's privileges.

Deuteronomy 20:12-14 - "And if it will make no peace with thee, but will make war against thee, then thou shalt besiege it: And when the LORD thy God hath delivered it into thine hands, thou shalt smite every male thereof with the edge of the sword: But the women, and the little ones, and the cattle, and all that is in the city, even all the spoil thereof, shalt thou take unto thyself; and thou shalt eat the spoil of thine enemies, which the LORD thy God hath given thee."

This was a milder form of *herem* than for the Canaanite cities.

Rashi - "and you shall strike all its males"? (verse 13) It refers to adult males. — [Sifrei]

Deuteronomy 20:12 - "Thus you shall do to all the cities that are very far from you, which are not of the cities of these nations."

...But not the Canaanite Cities

Deuteronomy 20:16-17 - "But of the cities of these people, which the LORD thy God doth give thee for an inheritance, thou shalt save alive nothing that breatheth: But thou shalt utterly destroy them; namely, the Hittites, and the Amorites, the Canaanites, and the Perizzites, the Hivites, and the Jebusites; as the LORD thy God hath commanded thee:"

Rashi - [This is] to include the Girgashites [the seventh nation, not mentioned here, but you were commanded to destroy them]. — [Sifrei] But if they repent and wish to convert, you are allowed to accept them. — [Sifrei]

As explained before, the conquest of Canaan was not a surprise attack victimizing a people minding their own business. The Canaanites had heard the claims of the people of Israel about how God gave this land to their forefathers. They had heard of God's miraculous redemption of the people from Egypt (as Rahab explained in **Joshua 2:9-11**), and knew that Israel had defeated neighboring Ammon, Moab, Midian, the Amalekites and the Amorites. God had given due warning for them to flee or relocate. But their "sin was full" now (**Genesis 15:16**), which expressed itself in stubborn pride and reckless defiance. Their abominations are listed in **Leviticus 18:24-28; Leviticus 20:23**.

Deuteronomy 20:18 - "That they teach you not to do after all their abominations, which they have done unto their gods; so should ye sin against the LORD your God."

To protect Israel from their corrupting influence, God commanded all who remained be destroyed utterly.

Spare the Fruit-bearing Trees

Deuteronomy 20:19 - "When thou shalt besiege a city a long time, in making war against it to take it, thou shalt not destroy the trees thereof by forcing an axe against them: for thou mayest eat of them, and thou shalt not cut them down (for the tree of the field is man's life) to employ them in the siege:"

Rashi - "[When you besiege a city for many] days:" this verse teaches us that the offer of peace (verse 10) must be repeated for two or three days.

The Jewish translation: Is the tree of the field a man, to go into the siege before you? or "Is the tree of the field a man, that it should escape thee and enter into the siege?"

Rashi - The word יָדָא here means "perhaps:" Is the tree of the field perhaps a man who is to go into the siege by you, that it should be punished by the suffering of hunger and thirst like the people of the city? Why should you destroy it?

This speaks of olive and fig trees, and date palms - all bear fruit.

"The Jews understand this as forbidding all willful waste upon any account whatsoever. Every creature of God is good; as nothing is to be refused, so nothing is to be abused. We may live to want what we carelessly waste." - *Matthew Henry's Commentary*

Deuteronomy 20:20 - "Only the trees which thou knowest that they be not trees for meat, thou shalt destroy and cut them down; and thou shalt build bulwarks against the city that maketh war with thee, until it be subdued."

No Willful Destruction of Any Kind

According to the Sefer Ha-hinukh, the pious "do not suffer the loss of even a grain of mustard, being distressed at the sight of any loss or destruction. If they can help, they prevent any destruction with all the means at their disposal. But it is otherwise with the wicked, the embodiments of destructive spirits who revel in the corruption of the world, corrupting themselves. "

Man of course is commanded to "subdue" nature and make use of it, but not to abuse it.

This could be where Paul draws his phrasing for believers to "use the word but not abuse it" i.e. *katachromenoi* - "to overuse, to use up" (**1 Corinthians 7:31**)

Maimonides, Mishneh Torah, Melakhim 6, 8, 10:

One may not cut down fruit-bearing trees outside the besieged city (for purposes of war) nor divert from them the water conduit, so as to make them wither as it is stated, "thou

shalt not destroy the trees thereof." Whoever cuts them down is liable for the penalty of lashes. But this does not apply merely to the case of a siege,, but in all cases. Whoever cuts down a fruit-bearing tree, in a destructive manner, is liable to lashes. But it may be cut down if it damages other trees or causes harm to neighboring fields ,or because it fetches a high price. The Torah only forbade willful destruction. This is the case not only with trees. But whoever breaks utensils, tears garments, demolishes a building, stops up a well and willfully destroys food violates the prohibition, "Thou shalt not destroy..."

This applies even to possessions and natural resources that belong to you.

"He who in anger tears garments, breaks his utensils, squanders his money shall be accounted by you as if he worshipped idols. For such are the workings of the evil inclination. Today he says to you, 'Do this' and tomorrow, 'Do the other' until the point is reached when he says to you 'Serve idols' and he will go and do so. " - Talmud, Shabbat 105b

CSI Judea - An Unsolved Murder

As discussed previously, once Israel occupied Canaan, they would be spread out over a wide area, separated in different villages and towns, with greater opportunities for secrecy and anonymity than when they lived together in the wilderness camp. Without Moses, new methods of justice would be needed.

Aben Ezra: "...murders might be committed more secretly, and remain undiscovered, when they came to live in separate cities, towns, and villages, with fields adjacent to them, than now encamped together:"

This passage in **21:1-9** describes how to handle an unsolved murder.

Deuteronomy 21:1 - "If one be found slain in the land which the LORD thy God giveth thee to possess it, lying in the field, and it be not known who hath slain him:"

Recall that the first murder of Abel by Cain took place in a field.

Deuteronomy 21:2-3 - "Then thy elders and thy judges shall come forth, and they shall measure unto the cities which are round about him that is slain: And it shall be, that the city which is next unto the slain man, even the elders of that city shall take an heifer, which hath not been wrought with, and which hath not drawn in the yoke;"

Rashi - "elders": the distinguished ones of your elders, [namely] the Great Sanhedrin.
— [Sotah 44]

Targum of Jonathan, "then shall go out from the great sanhedrim two of thy wise men, and three of thy judges" i.e. to meet with the town elders and oversee the ritual.

Maimonides says, even when it was found on the side of a city, which was certainly

known to be nearest, they measured; the command, he observes, is to measure.

Deuteronomy 21:4 - "And the elders of that city shall bring down the heifer unto a rough valley, which is neither eared nor sown, and shall strike off the heifer's neck there in the valley:"

Targum of Jonathan - Because that city is then suspected of the murder; or the murderer is in it, or however belonged to it.

The heifer must be a year old, but not two; though heifers of three years old were sometimes used in sacrifice.

This is a strange "sacrifice." It is not properly a sacrifice because it's not offered in the Temple as prescribed in **Deuteronomy 12**. Also, it is carried out by Israelites, not Levites or priests.

The heifer is a type of innocence itself - never yoked or worked, and slain in a valley never plowed or sown. Innocence had been cut down and slain, and this is re-enacted in the killing of the heifer.

It also is a stand in for the community, which is responsible if no murderer is found.

All this is also a type of Christ, slain outside the camp (**Hebrews 13:11**).

The Mishnah says this valley would forever after be forbidden to sowing or tilling, but is free to dress flax in, or to dig stones out of. It should never be manured, but lie barren and useless. Thus the city would lose a valuable property and suffer because they allowed a murder to go unpunished.

Deuteronomy 21:5 - "And the priests the sons of Levi shall come near; for them the LORD thy God hath chosen to minister unto him, and to bless in the name of the LORD; and by their word shall every controversy and every stroke be tried:"

These came with the judges sent from the Sanhedrin to oversee this process. Their presence emphasized the grave nature of the incident and the solemnity of the ritual. They would also pray for God's mercy on the whole nation in light of this event.

Deuteronomy 21:6-7 - "And all the elders of that city, that are next unto the slain man, shall wash their hands over the heifer that is beheaded in the valley: And they shall answer and say, Our hands have not shed this blood, neither have our eyes seen it."

- **Psalm 26:5-7** - "I hate the mob of evildoers, and refuse to sit with the wicked. I wash my hands in innocence that I may come near Your altar, O LORD, to raise my voice in thanksgiving and declare all Your wonderful works"

Rashi - "Our hands did not shed [this blood]": But would it enter one's mind that the elders of the court are murderers? Rather, [they declare:] We [ourselves] did not see him and let him depart without food or escort [which would have indirectly caused his

death, leaving this man to the elements and to robbers].

The city authorities are really on trial here - justice has not been done, and they are accountable. Washing of hands signified they disown their own and the community's guilt in the matter. Then they make a sworn statement of innocence, both regarding the murderer and his victim.

Targum of Jonathan - "it is manifest before the Lord that he did not come into our hands, nor did we dismiss him, that has shed this blood" which is more fully explained in the Mishnah - for had they been aware of him, or had any suspicion of him or his design, they would have detained him, or at least would not have suffered him to have departed alone:

Deuteronomy 21:8 - "Be merciful, O LORD, unto thy people Israel, whom thou hast redeemed, and lay not innocent blood unto thy people of Israel's charge. And the blood shall be forgiven them."

This is the prayer of the priests, not the elders, according to both the Targums of Onkelos and Jonathan, Rashi and the Mishnah. They pray that God will not impute this sin to the townspeople, and place it to their account, or lay it to their charge.

The Mishnah adds, "if the murderer is found before the heifer is beheaded, it goes forth and feeds among the herd; but if after it is beheaded, it is buried in the same place."

But if the murderer is found after the heifer is beheaded, the murderer is still executed.

Such is the seriousness with which God considers taking the life of someone created in his image.

Deuteronomy 21:9 - "So shalt thou put away the guilt of innocent blood from among you, when thou shalt do that which is right in the sight of the LORD."

"That which is right" means - besides following all God's laws - this ritual of the beheading of the heifer, which is a type of Christ - the only true righteousness.

What it Means to Have Blood on Your Hands

Blame for the murder is not confined solely to the perpetrator.

The welfare and safety of the people is the responsibility of the governing elders of the town. They could be indirectly responsible for the murder in several ways:

"The elders of the place call upon God as their witness, according to the interpretation of our Sages, that they have always kept the roads in good condition, have protected them, and have directed everyone that asked his way; that the person has not been killed because they were careless in these general provisions."

- Maimonides, Guide for the Perplexed III, Chapter 40

Further, "No one came within our jurisdiction whom we discharged without food and whom we did not see and whom we left without escort." - Gamara (Sotah 46b)

To "not see" someone is a remarkable insight. It is interpreted by the Palestinian Talmud (Sotah 9, 6) to mean "we overlooked and left [him] without a livelihood."

Each society is required to "see" each of its citizens (even strangers and immigrants) and not "overlook" anyone.

Besides responsibility for the *victim*, the elders had to consider their hand in influencing the *murderer*:

The elders swore: "That we are not indirectly instrumental in this murder on account of not providing the murderer with food, for the lack of which he was driven to commit this capital crime, or because we did not provide the victim with an escort that he should not go alone in a place of danger." - The Malbim

All this was intended to emphasize that the loss of a single human being - unique and irreplaceable - should be taken to heart by everyone in the community. Any murder should shock everyone out of complacency and summon them to severe self-scrutiny.

Unfortunately over time this did not happen.

"When the murderers increased, the rite of the beheaded heifer was abolished." - Talmud, Sotah (47a)

But the ideal remains.

Jesus' death on the cross is the culmination of our understanding this ideal - it was portrayed to the people of Jerusalem as a just execution, but it was really a heinous crime:

"This one was murdered. And where was he murdered? In the very center of Jerusalem! Why? Because he had healed their lame, and had cleansed their lepers, and had guided their blind with light, and had raised up their dead. ... Pay attention, all families of the nations, and observe! An extraordinary murder has taken place in the center of Jerusalem, in the city devoted to God's law, in the city of the Hebrews, in the city of the prophets, in the city thought of as just. And who has been murdered? And who is the murderer? I am ashamed to give the answer, but give it I must. For if this murder had taken place at night, or if he had been slain in a desert place, it would be well to keep silent; but it was in the middle of the main street, even in the center of the city, while all were looking on, that the unjust murder of this just person took place. ... O frightful murder! O unheard of injustice!"

- from 'The Passover Homily' of Melito of Sardis, c. 165 A.D.

Jerusalem, as the nearest town, incurred blood on its hands, and was destroyed by the

Romans in 70 A.D.

But the New Testament goes even further by defining and expanding this ideal on a personal level:

- **Matthew 5:21-22** - "You have heard that it was said to those of old, 'You shall not murder, and whoever murders will be in danger of the judgment.' But I say unto you, That whosoever is angry with his brother [without a cause] shall be in danger of the judgment: and whosoever shall say to his brother, Raca, shall be in danger of the council: but whosoever shall say, Thou fool, shall be in danger of hell fire."

- **1 John 3:15** - "Whoever hates his brother is a murderer..."

We need to repent if we see ourselves in any of these situations. If I hate my brother, then I need to hunt down the murderer within me and "revenge the disobedience" as Paul says.

Let us all pray that God keep our "evil inclination" from leading us to hate, to dismiss people we judge to be beneath us, to hurl demeaning names and labels at each other. Let us love our enemies, and be aware of those in need - to really "see" them, to work to provide them a livelihood, to provide direction to those who come to us lost, to protect the vulnerable, and by doing this on a personal level to influence our own society to recognize this biblical ideal.