YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PARASHAT HASHAVUA**

**Rav Yishai Jeselsohn**

**PARASHAT VAYISHLACH**

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Dedicated in memory of Moshe Eliezer   
ben HaRav Avraham Yehoshua Aryeh Engel z"l   
whose yahrzeit is 15 Kislev. Yehi zikhro barukh.   
By his daughter, Toby Schlussel,   
and his great granddaughter, Migdal Oz graduate Marilyn Meyers

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**“Shimon and Levi are Brothers” – The Actions of Yaakov's Children**

**I. The Killing of the People of Shechem**

And it came to pass on the third day, when they were in pain, that two of the sons of Yaakov, Shimon and Levi, Dina's brothers, took each man his sword, and came upon the city unawares, and slew all the males. And they slew Chamor and Shechem his son with the edge of the sword, and took Dina out of Shechem's house, and went forth. The sons of Yaakov came upon the slain, and spoiled the city, because they had defiled their sister. They took their flocks and their herds and their donkeys, and that which was in the city and that which was in the field; and all their wealth, and all their little ones and their wives, they took captive and spoiled, even all that was in the house. (*Bereishit* 34:25-29)

These actions of Shimon and Levi in Shechem, in response to the atrocity that Shechem had committed against their sister Dina, are bewildering. Is this an appropriate punishment for the people of Shechem? After all, only Shechem sinned, not all the people of the city!

The *Rishonim* go in several different directions in their answers to this question.

The Rambam connects the punishment of the people of Shechem to their failure to fulfill one of the seven commandments incumbent on Noachides:

How must the Noachides fulfill the commandment to establish laws and courts? They are obligated to set up judges and magistrates in every major city to render judgement concerning these six *mitzvot* and to admonish the people regarding their observance. A Noachide who transgresses these seven commands shall be executed by decapitation. For this reason, all the inhabitants of Shechem were punishable by death, for Shechem kidnapped, and they observed and were aware of his deeds but did not judge him. (Rambam, *Hilkhot Melakhim* 9:14)

The commandment to establish laws and courts, according to the Rambam, includes an obligation to appoint judges in every major city. Since the people of Shechem not only failed to judge Shechem, but even tried to help him in his taking of Dina by undergoing circumcision, all the inhabitants of Shechem were liable for the death penalty.

The Ramban, in his commentary to the passage, raises several objections against the Rambam:

But these words do not appear to me to be correct, for if so, our father Yaakov should have been the first to obtain the merit of causing their death, and if he was afraid of them [and that is why he held back], why was he angry at his sons and why did he curse their wrath a long time after that and punish them by dividing them and scattering them in Israel? Were they not meritorious, fulfilling a commandment and trusting in God who saved them? (Ramban, *Bereishit* 34:13)

Indeed, the "blessing" that Yaakov gave to Shimon and Levi certain implies that their actions were *not* in accordance with the law! Therefore, the Ramban offers a different understanding of the mitzvato establish laws and courts:

In my opinion, the meaning of "laws" which the Rabbis counted among the seven Noachide commandments is *not* *only* that they are to appoint judges in each and every major city, but He commanded them concerning the laws of theft, overcharge, wronging, and a hired man's wages; the laws of guardians of property, forceful violation of a woman, seduction, principles of damage, and wounding a fellowman; laws of creditors and debtors, and laws of buying and selling, and their like, similar in scope to the laws with which Israel was charged, and involving the death penalty for stealing or wronging, or forcing or seducing the daughter of his fellowman, or igniting his stockpile, or wounding him, and their like. And it is *included* in this commandment that they appoint judges for each and every city, just as Israel was commanded to do, but if they failed to do so, they are free of the death penalty since this is a *positive* precept of theirs [and failing to fulfill a positive precept does not incur the death penalty]. The Rabbis have only said (*Sanhedrin* 57a): "For violation of their admonishments there is the death penalty," and only a prohibition against doing something is called an "admonishment." And such is the purport of the Gemara in tractate *Sanhedrin* (59b). (Ramban, ibid.)

According to the Ramban's understanding, the civil laws of the Noachides are very similar to those of Israel, and therefore there is no penalty for neglecting the positive commandment to establish courts – only for the prohibitions included in civil law.

If so, our question still stands – why did Shimon and Levi conduct themselves in this problematic way?

The Ramban then suggests that the people of Shechem had committed a different sin, included in the seven Noachide commandments:

Moreover, why does the Rabbi [the Rambam] have to seek to establish their guilt? Were not the people of Shechem and all the seven nations idol worshippers, perpetrators of unchaste acts, and practitioners of all things that are abominable to God? Scripture loudly proclaims concerning them in many places: "Upon the high mountains, and upon their hills, and under every leafy tree" (*Devarim* 12:2); "You shall not learn to do after the abominations" (*Devarim* 18:9); and regarding forbidden sexual relationships: "For all these abominations have the men of the land done" (*Vayikra* 18:27). (Ramban, ibid.)

Idol worship and forbidden sexual relations were common among the people of Shechem, as the Ramban proves from the verses; thus there is, apparently, a justified reason for killing them. But according to the Ramban, even these sins did not justify harming the people of Shechem:

However, it was not the responsibility of Yaakov and his sons to bring them to justice. (Ramban, ibid.)

It would seem that even the Rambam agrees with this, for at the end of the *halakha* cited above, he writes:

A Noachide is executed on the basis of the testimony of one witness and the verdict of a single judge. No warning is required. Relatives may serve as witnesses. However, a woman may not serve as a witness or a judge for them. (Rambam, *Hilkhot Melakhim* 9:14)

Apparently, according to the Rambam, we must assume that the sons of Yaakov actually established a court of some kind to judge the inhabitants of Shechem.

The Ramban, in any case, chooses a different way to explain the actions of Shimon and Levi – and in light of Yaakov’s words, he does see their behavior in a negative light:

But the matter of Shechem was that the people of Shechem were wicked [by virtue of their violation of the seven Noachide laws] and had thereby forfeited their lives. Therefore, Yaakov's sons wanted to take vengeance from them with a vengeful sword, and so they killed the king and all the men of his city who were his subjects and obeyed his commands. The covenant represented by the circumcision of the inhabitants of Shechem had no validity in the eyes of Yaakov's sons, for it was done to curry favor with their master [and did not represent a genuine conversion]. But Yaakov told them here that they had placed him in danger, as it is stated: "You have troubled me, to make me detestable [to the inhabitants of the land]" (34:30), and there, [i.e., when he blessed the other children], he cursed the wrath of Shimon and Levi, for they did violence to the men of the city whom they had told in his presence, "And we will dwell with you, and we will become one people" (v. 16). They chose them, and [yet Shimon and Levi] upended their word – and perhaps they would have repented to God, and thus Shimon and Levi killed them without cause, for the people had done them no evil at all. It is this which Yaakov said: "Weapons of violence are their kinship" (*Bereishit* 49:5). (Ramban, ibid.)

At the root of the dispute between the Rambam and the Ramban is the question of whether to judge Shimon and Levi's action favorably or unfavorably. On the face of it, Yaakov provides the answer in *Parashat Vayechi*, when instead of blessing Shimon and Levi like his other sons, Yaakov has harsh words for them:

Shimon and Levi are brothers; weapons of violence are their kinship. Let my soul not come into their council; to their assembly let my glory not be united; for in their anger they slew men, and in their self-will they maimed oxen. Cursed be their anger, for it was fierce, and their wrath, for it was cruel; I will divide them in Yaakov, and scatter them in Israel. (*Bereishit* 49:5-7)

The Rambam's interpretation, which tries to justify Shimon and Levi, is therefore difficult to accept.

**II. Taking the Booty**

The *Or Ha-Chaim* notes another difficulty that arises from both of the above interpretations:

Neither of the luminaries provide a reason for the brothers spoiling the town. (*Or Ha-Chaim* 34:25)

Only one verse describes the killing of the inhabitants of Shechem, while the Torah devotes three whole verses to the plundering of the town. Furthermore, any looting raises a big question – after all, looting is forbidden in many cases in Tanach! We find prohibitions against taking plunder in the war against Midyan (*Bamidbar* 31), in the law of a "city that was led astray" [*ir ha-nidachat*] (*Devarim* 13:16-18), in Yericho (*Yehoshua* 6-7), in Shaul's war against Agag (I *Shmuel* 15), and in the book of *Esther* (9).

In general, it can be said that these wars were fought primarily as an expression of the hand of God; their purpose was not conquest of territory, but fulfillment of God's command, and thus the people of Israel were forbidden to take booty. The prospect of booty creates a self-interest in fulfilling the mitzva, for it mixes in personal benefit. This is how the Netziv explains the prohibition of taking the spoils of an *ir ha-nidachat*:

"And He will show you mercy" – the matter of an *ir ha-nidachat* causes three evils in Israel: 1. That one who kills a person becomes cruel by nature. Now when a single individual is executed by the court, agents of the court are chosen for the task. But in the case of an entire city, we are forced to accustom many people to kill and to be cruel. 2. There is no person from that city who does not have relatives in another city, and so hatred increases in Israel. 3. A bald spot and depopulation are created in Israel.

Therefore, the verse promises that if you occupy yourself in this without receiving any benefit from the booty, the Lord will turn from the fierceness of His anger, and show you mercy – the attribute of mercy. (*Ha'amek Davar*, *Devarim* 13:18)

According to this understanding, taking booty was part of the sin of the sons of Yaakov. We must, then, try to explain the plundering and its extensive description in the Torah, both according to the view that condemns the killing of the inhabitants of Shechem and according to the view that considers it a mitzva.

**III. Rape and Seduction**

Because of his interest in this question, the *Or Ha-Chaim* proposes that we view the entire *parasha* in a different light, one that indeed justifies Shimon and Levi yet fits in with the plain meaning of the verses and the words of the Talmud and the *Rishonim.* The *Or Ha-Chaim* follows in the direction of the Rambam, but based on the understanding of the Ramban. According to the *Or Ha-Chaim,* the people of Shechem indeed sinned with regard to the Noachide commandment of "laws" – but not because they failed to judge Shechem. Rather, they sinned by helping him kidnap Dina:

Another reason that they killed all the inhabitants of Shechem is that they helped Shechem take Dina, and Noachides are liable for death for kidnapping... You find that the verse states: "Because **they** had defiled their sister" (*Bereishit* 34:27), referring to all of [the inhabitants of Shechem]. Thus you learn that they were equally responsible for the kidnapping. (*Or Ha-Chaim*, ibid.)

Rape is a sexual offense, but there are also other aspects to the crime: a. the robbery dimension – taking a person's body against his will and using it by force; b. the physical injury, which imposes liability for the damage and embarrassment suffered by the victim.

The *Or Ha-Chaim* sees the people of Shechem as partners in that transgression, and this helps him explain why Shimon and Levi plundered the city:

Another explanation of "they had defiled" is that these words explain why [the brothers] took [the people of Shechem's] property, saying that the reason for their plundering the city and taking their possessions is that they had defiled their sister Dina. That is to say, it was payment for the embarrassment [suffered by Dina], which is calculated in accordance with the person causing the embarrassment and the person who was embarrassed. If only all of their property would cover the embarrassment of the daughter of Yaakov, unique in the world in the loftiness of his virtues, at the hands of the exceedingly despicable Shechem. (*Or Ha-Chaim* 34:25)

The *Or Ha-Chaim* offers an amazingly precise reading of the verse. The Torah describes the taking of the booty as follows:

**The sons of Yaakov** came upon the slain, and spoiled the city, ***asher* they had defiled their sister**. (*Bereishit* 34:27)

The word "*asher*"can be understood as "which" – introducing a description of the people of the city, "which had defiled their sister" (see, for example, Radak). But the *Or Ha-Chaim* understands it as "because" – introducing a reason for the taking of the booty, "because they had defiled their sister."

This understanding also sheds light on another difficulty in the text. At the beginning of the story, only Shimon and Levi are mentioned, while afterwards, it seems that all the "sons of Yaakov" come upon the slain. This can be explained based on the *Or Ha-Chaim's* understanding:

"The sons of Yaakov came." They all came together. The verse means to explain the reason for the looting of all the property of the city, because the embarrassment relates to all of them, and they had to take in correspondence to the embarrassment of each of them. Like the Rambam writes in chapter 2 of *Hilkhot Na'ara Betula*: "On this basis, the judges consider the stature of [the rapist or the seducer] and the stature of his victim. They evaluate how much a father and the girl's family would give to prevent [these relations] from taking place with this individual. This is the amount [the man] is obligated to pay." The brothers, who are included in the family for this purpose, gathered together to assess the sum appropriate for the embarrassment of them all, and they looted the entire city, which did not contain enough for the value of their embarrassment, and they took it all on behalf of Yaakov their father, to whom it attached. (*Or Ha-Chaim*, *Bereishit* 34:27)

Indeed, all the brothers were partners in the distribution of the loot, for the liability for the rape was toward the entire family.

**IV. The Halakhic Foundations**

In accordance with his general approach, the *Or Ha-Chaim* bases his approach on both the plain meaning of the verses and on Talmudic passages, with all their details. The *Or Ha-Chaim* sees a complete halakhic discussion in the words of Chamor, the father of Shechem, to Yaakov and his sons,:

"And Chamor spoke." The word *leimor*, "saying," perhaps comes to say that **he was prepared to execute the law governing the rape of a virgin,** to pay the fine and the payments for pain, embarrassment, and damage. He was also prepared to take her as a wife, if her father and brothers agree. This is what he meant when he said: "Give [her to him to wife]."

Or else he meant to exempt himself from the fine, as we learned in the Mishna (*Ketubot* 41a): "He who declares: I have raped or seduced the daughter of So-and-so, does not pay the fine based on his own confession." Therefore it says: "Saying, my son Shechem [longs for your daughter]." That is to say, Shechem admitted of his own and said that he raped Dina, and therefore he is exempt from the fixed obligation, which is a fine, both in the case of a seducer and in the case of a rapist. (*Or Ha-Chaim*, *Bereishit* 34:8)

The difference between the two interpretations of the *Or Ha-Chaim* lies in the question of whether Chamor accepted judgment in the wake of his son's action, or whether he meant to exempt his son, though he too "admits" his guilt. But if the second interpretation is correct, we have here an instance of the law that one who admits his liability for a fine is exempt. How then could the sons of Yaakov take the booty? The *Or Ha-Chaim* answers this question based on a Talmudic passage in *Ketubot*:

Even according to what I wrote above that he confessed to the act, this helps only to exempt him from the fine, but he is still liable for embarrassment, and the other things (*Ketubot* 41a). This is simple. (*Or Ha-Chaim* 34:25)

While it is true that confession grants exemption from the fine, there is no exemption from payments for embarrassment and damages. These are set in accordance with the stature of the rapist and his victim (Mishna *Ketubot* 3:7), and therefore we are dealing with very large sums.

The *Or Ha-Chaim* refers to another halakhic passage as well: If we accept his position that the people of Shechem were killed for kidnapping, it would seem that we should apply the principle of *kim lei bi-derabba minei*, that if a person committed an act entailing the death penalty or lashes *and* the payment of monetary compensation, the more severe penalty (death or lashes) is imposed and he is exempt from the lesser (monetary) penalty. Since the people of Shechem were killed, from a halakhic point of view, they should be exempt from the obligation to pay! Here, the *Or Ha-Chaim* makes use of the words of the *Tosafot* in tractate *Eiruvin*:

They are not exempt on the grounds of *kim lei biderabba minei*, because it does not apply to non-Jews. (*Eiruvin* 62a, s.v. *ben noach*).

In light of this, the *Or Ha-Chaim* writes:

Even though they were sentenced to death, we do not apply to non-Jews the principle of *kim lei bi-derabba minei.* (*Or Ha-Chaim*, *Bereishit* 34:27)[[1]](#footnote-1)

Another answer can be offered to this question. The *Or Ha-Chaim* assumes that the robbery here was the very act of Dina's rape, and therefore he defines it as "robbery that is not subject to return." However, it is possible to suggest that the robbery was not the rape, but the holding of Dina until her brothers removed her. According to this, there were *two separate actions*, punishable by death and monetary payment, respectively, and so the problem of *kim lei bi-derabba minei* does not arise.

**V. Yaakov's Attitude Toward His Sons**

Even the plain sense of the verses provides significant support for the *Or Ha-Chaim*’sunderstanding. As stated, any attempt to "justify" the action of Shimon and Levi seems to clash directly with Yaakov’s harsh words to them in *Parashat Vayechi*, cited above. According to plain meaning of these verses, Yaakov is criticizing the actions of Shimon and Levi in our *parasha* (see Rashi, *Pesikta Zutrata*, Ibn Ezra, Radak, and others). But if what we said is correct, a great difficulty arises. In our *parasha* itself, Yaakov's entire critique of the action of Shimon and Levi amounts to a practical criticism rather than a moral argument:

And Yaakov said to Shimon and Levi: You have troubled me, to make me detestable to the inhabitants of the land, to the Canaanites and the Pertizzites; and, I being few in number, they will gather themselves together against me and smite me; and I shall be destroyed, I and my house. (*Bereishit* 34:30)

Furthermore, Shimon and Levi's response to his rebuke seems to be accepted at the end of the story:

And they said: Should one deal with our sister as with a harlot? (*Bereishit* 34:31)

If indeed Yaakov saw such a great moral flaw in their actions, why did he wait until he was on his deathbed, in *Parashat Vayechi*, to say so?Wouldn't it have been appropriate to criticize Shimon and Levi on these grounds immediately after their actions?

In light of this, the *Or Ha-Chaim* says Yaakov's words do not relate to their actions in Shechem, but to their part in the sale of Yosef:

Indeed, the plain meaning of Scripture is that the entire passage is speaking about the affair involving Yosef…. (*Or Ha-Chaim*, *Bereishit* 49:6)

This view seems to be based on *Midrash Bereishit Rabba*:

[Yaakov] began calling: "Shimon and Levi are brothers" – brothers in degradation. He said to them: "You were brothers for Dina, as it is written: 'Two sons of Yaakov, Shimon and Levi, Dina's brothers, each took his sword' (*Bereishit* 34:25), but not brothers for Yosef, as you sold him." (*Bereishit Rabba* 99, 6)

Shimon and Levi were called brothers in our *parasha*, and according to the Midrash, they were in fact brothers in a positive sense, their actions stemming from concern for their sister – in accordance with the plain sense of the verses. But later, when a brother from another mother needed help and Shimon and Levi's brotherhood was put to the test, their failure was absolute. Yaakov's rebuke is not about their actions in Shechem, but about the contrast between the great sacrifice they made for their sister from their own mother, and the great hatred they showed to their brother from another mother.

(Translated by David Strauss)

1. For an explanation of this difference between Jews and non-Jews, see *Keli Chemda* on the Torah, *Devarim* 2. [↑](#footnote-ref-1)