YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**War in Halakha**

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**Shiur #12: *Bal Tashchit* in War**

As we saw in the previous *shiur*,the laws of warfare in *Parashat Shoftim* include the prohibition of *bal tashchit*, not to “destroy”:

When you lay siege to a town and wage war against it for a long time to capture it, you shall not destroy its trees by wielding an axe against them; for you may eat of them, but you shall not cut them down; for is the tree of the field a human being, that it should be besieged by you? Only a tree that you know is not a tree for food may you destroy and cut down, that you may build bulwarks against the city that makes war with you, until it falls. (*Devarim* 20:19-20)

These verses serve as the source of the general law of "*bal tashchit*," a prohibition against senseless damage and waste,[[1]](#footnote-1) but in this *shiur* we will focus on the plain meaning of the verse in the context of war, and on its significance for understanding the Torah's conception of war in general.

**The Scope of the Prohibition and the Extent of Permitted Destruction**

We shall open our study by clarifying the scope of the prohibition; what exactly does the Torah forbid?

The Rambam in *Sefer ha-Mitzvot* sees the focus of the commandment as a prohibition against distressing and hurting the enemy, as part of the general conception (which we already saw in previous *shiurim*) of an obligation to show mercy even in wartime:

The fifty-seventh mitzvais that when we go to besiege a city, He prohibited us from destroying trees *in order to distress its people and sadden their hearts*. And that is what is stated: "You shall not destroy its trees… for you may eat of them, but you shall not cut them down. (*Sefer ha-Mitzvot*, negative commandment no. 57)

In *Hilkhot Melakhim*, the Rambam extends this law to damage caused to other vital resources:

We must not cut down fruit trees outside the city, nor prevent an irrigation ditch from bringing water to them so that they dry up, as it is stated: "You shall not destroy its trees." Anyone who cuts down such a tree should be lashed. (*Hilkhot Melakhim* 6:8)

It seems so far that the prohibition applies in all situations; however, the Rambam goes on to explain that the prohibition applies even in times of peace, *but* not in every case:

This does not apply only in a siege, but in all situations: anyone who cuts down a fruit tree destructively should be lashed. Nevertheless, a fruit tree may be cut down if it causes damage to other trees or to fields belonging to others, or if [its wood] is worth a high price. The Torah only prohibited cutting down a tree with destructive intent.

What about a time of war; is it permitted then to cut down a tree for a constructive purpose? The *Acharonim* disagree about how to understand the Rambam's position on this matter. Rabbi Shlomo Goren (*Responsa* *Meishiv Milchama*, vol. 2, no. 157) says that according to the Rambam, cutting down trees in a time of war is prohibited even if doing so would be beneficial for the conquest of the city, for the Rambam does not make any distinctions. In contrast, the *Tzitz Eliezer* maintains that even the Rambam permits destruction for the sake of the war, and it is only indiscriminate destruction that is forbidden:

But there is room to reject this argument and say that what the Rambam forbids in *Sefer ha-Mitzvot* is only destruction that has no intrinsic value and comes only to distress the enemy and cause pain to their hearts, in that they will not [be able to] live off of them. But destruction that has intrinsic benefit, such as the building of a bulwark to fight the enemy, even the Rambam would concede that it is permitted. (*Tzitz Eliezer*, vol. 22, no. 46)

Before we explain this dispute further, let us see the words of the *Sifrei* on which the Rambam bases the prohibition of damming up an irrigation ditch:

"You shall not destroy its trees by wielding an axe against them." From this I only know about an axe. From where do I know that it is forbidden even to draw away an irrigation ditch? Therefore the verse states: "You shall not destroy its trees" – in any manner…

"That it should be besieged by you?" – but if it hinders the siege… cut it down. (*Sifrei Shoftim*, 203)

The *Sifrei* states explicitly that in a case where trees interfere with the siege and the war effort, they may be cut down, and it is difficult to say that the Rambam does not accept this. Therefore, it seems that a distinction must be made between different levels of destruction.

There is destruction that has no purpose at all, or that is intended to hurt the enemy by depriving them of food and water; there is also the cutting down of trees that truly interfere with the prosecution of the war; and there are also situations in which the trees do not assist in the defense of the enemy city, but the besiegers wish to cut them down in order to use them for purposes of the siege (e.g., the construction of siege engines).

It would seem that the *Acharonim* do not disagree about the first two levels we have described: all agree that according to the Rambam, the first is forbidden and the second is permitted, as stated in the *Sifrei.* The dispute relates to the precise definition of a "need" that permits destruction, akin to the third level we mentioned: Is it forbidden to destroy trees even for the sake of the war, as argued by Rabbi Goren, or is it only forbidden to destroy trees for no reason, as argued by the *Tzitz Eliezer*?

As we saw in the quotation from the Rambam above, he explicitly says that the general prohibition of *bal tashchit* only applies when the destruction is carried out with destructive intent, not when there is benefit in cutting down the trees. But we must understand whether the words "with destructive intent" refer to destruction for *no* purpose, in which case *any* purpose would serve as grounds for an allowance, or whether this relates to his words at the end of the *halakha* – that if the tree is causing damage, cutting it down is not considered as "destructive intent." This seems to be the point of contention between Rabbi Goren and the *Tzitz Eliezer.*

This dispute does not seem to be the exclusive province of the *Acharonim*, for in fact we find it already in the words of the *Rishonim.* The Rashbam explains in his commentary to the passage the context and situation to which it relates:

"When you lay siege to a town and wage war against it for a long time" – and you need to cut down trees to build siegeworks and ramps. (Rashbam, *Devarim* 20:19, s.v. *ki tatzor el ir yamim rabim*)

He explicitly states that the Torah's prohibition applies precisely to a case where the trees are needed for the sake of the siege. In contrast, Rashi understands the later verses as permitting, in the absence of an alternative, using fruit trees for the sake of the siege:

“This refers to a fruit tree” – And it means as follows: "Only a tree that you know…" (*Devarim* 20:20); if you do *not* know [of a suitable tree] close to the siege other than that one, take it, even if is a fruit tree. (Rashi, *Bava Kama* 91a, s.v. *zeh eitz ma’akhal*)

However, their views may not line up precisely, for a distinction can be made between the words of Rashi and the *Tzitz Eliezer's* understanding of the Rambam: According to the *Tzitz Eliezer*, such a use is not considered a destructive act and is not prohibited at all; whereas according to Rashi, it is permitted *only* when there is no other option. In other words, according to Rashi, the prohibition is pushed aside, whereas according to the *Tzitz Eliezer*, such an action was never included in the prohibition.

To conclude the discussion of the scope of the prohibition, it should be noted that even the Rashbam, who broadens the prohibition, writes explicitly like the view in the *Sifrei* that the prohibition does not apply when the enemy is aided by those trees, on the basis of a creative reading of the words of the verse:

"[But you shall not (*lo*)cut them down;] for (*ki*)is the tree of the field a human being, that it should be besieged by you?" – Every instance of the word "*ki*" after the word "*lo*" can be explained as "but": this one you shall not cut, *but*, the tree of the field that allows a person to come (*eitz ha-sadeh la-vo, ha-adam*) from before you in the siege (*mipanekha ba-matzor*) – that one, you may cut. These are the trees that are near the city, in which the people of the city who are running away from you hide and come into the city, as it is written: "So the city came [*va-tavo*] in seige" (II *Melakhim* 24:10). (Rashbam, ibid., s.v. *ki ha-adam eitz ha-sadeh la-vo mipanekha ba-matzor*)

That is to say, the above proposal, that all agree it is permitted to destroy the trees surrounding an enemy city when the city is being helped by those trees, can also be learned from the plain sense of the verses.

Thus, we have seen three approaches to the scope of the allowance to cut down fruit trees: according to the Rashbam and Rabbi Goren's understanding of the Rambam, we are permitted to cut them down only when the trees assist the city's inhabitants defend themselves against us; according to Rashi, it is also permitted to cut them down for the sake of the siege and for Israel's attack against the city, but only if there are no other trees available for the purpose; and according to the *Tzitz Eliezer's* understanding of the Rambam, using fruit trees for the sake of the siege was never included in the prohibition, and therefore there is no need to prefer non-fruit-bearing trees.

**The Reason for the Prohibition**

The main thrust of the discussion above related to the position of the Rambam, who, in his *Sefer ha-Mitzvot*, bases the prohibition on the excessive harm that would be done to the enemy. According to his understanding, the prohibition to destroy the enemy's trees is similar to the other prohibitions that limit and shape the military tactics of the Jewish people in order to instill morality and compassion even when a person is fighting against his enemy. The same idea also emerges from the words of the *Sefer ha-Chinukh* (*mitzva* 529):

The root of this commandment is well-known: it is in order to teach our souls to love good and benefit, and to cling to it. And through this, good will cling to us and we will distance [ourselves] from all bad and destructive things. And this is the way of the pious and people of [proper] action – they love peace and are happy about what is good for people and they bring them close to Torah, and they do not destroy even a grain of mustard in the world. And they are distressed by all loss and destruction that they see; and if they can prevent it, they will prevent any destruction with all of their strength. But not so are the wicked – the brothers of the destructive spirits. They rejoice in the destruction of the world, and they themselves are damaged – [for] “with the measure that a person measures, he is measured with it”; which is to say that he clings to it forever, as it is written: "And one who is glad at calamity shall not be unpunished" (*Mishlei* 17:5). And one who desires the good and rejoices in it, his soul will dwell in it forever. This is known and famous. (*Sefer ha-Chinukh*, *mitzva* 529)

The *Chinukh* gives a reason for the extension of the prohibition to all senseless destruction, even not in a time of war – because rejoicing in destruction is a bad quality that should be avoided at all times. The placement of the prohibition in the context of the laws of war was meant to emphasize the importance of guarding against this quality *even* in the violent context of warfare, where it can be tempting to destroy "just because."

Another approach to the reason for the prohibition is found in the commentary of *Ha-Ketav ve-ha-Kabbala*:

And the reason for the prohibition is that it is inappropriate to use any of the created things for the opposite of the purpose for which they were created, as they said in connection with the verse: "For if you lift up your tool upon it, you have profaned it" (*Shemot* 20:21) – the altar was created to lengthen the days of man, and iron was created to shorten them; it is not fitting that that which shortens should be lifted up upon that which lengthens [see Rashi, ad loc.]. Similarly, a tree that is directed in its creation to produce fruit for the sustenance of human beings should not be used for anything that destroys human beings and makes them perish – for the purpose of destroying fruit-bearing trees and building a rampart and a ditch around a city under siege is to prevent them from having a place for bringing food and drink for their sustenance, which will lead to their conquest. (*Ha-Ketav ve-ha-Kabbala*,[[2]](#footnote-2) *Devarim* 20:19, s.v. *lo tashchit…li-n’doach*)

Like the author of the *Chinukh*, he too understands that the prohibition is meant to limit the means permitted in war, but not because of the problematic nature of destruction as such; rather, because of the specific nature of fruit trees, that their purpose is to lengthen life. It would seem that according to his understanding, the prohibition applies even when the trees are cut down purposefully, not with "destructive intent"; it is precisely the use and derivation of benefit in war from things whose purpose is to increase life that is the problem.

**The Mitzva of Eating the Fruit and the Ramban's Position**

The Ramban forged a unique path in his interpretation of this commandment. As an introduction to his explanation, he cites the Gemara in *Bava Kama* that discusses laws of priority regarding the cutting down of trees in war and in general:

Rav said: A palm tree producing even one *kav* of fruit may not be cut down. An objection was raised [from the following]: “What quantity should be on an olive tree so that it is not permitted to cut it down? A quarter of a *kav*.” Olives are different, as they are more important. Rabbi Chanina said: My son Shivchat died only because he cut down a fig tree before its time. Ravina, however, said: If its value [for other purposes] exceeds that for fruit, it is permitted [to cut it down]. It was also taught to the same effect: "Only a tree that you know" implies even fruit-bearing trees; "is not a tree for food" – means a barren tree. But since we ultimately include all things, why then was it stated: "is not a tree for food"? To give priority to a barren tree over one bearing edible fruits. [As you might say] can it be that this is so even where the value [for other purposes] exceeds that for fruits? [In answer,] it says: "Only." (*Bava Kama* 91b-92a)

The Gemara clearly states that it is permitted to cut down trees for the siege, and the entire discussion is over the relative priority of different trees. In light of this, the Ramban explains that cutting down trees is forbidden only when the sole purpose is to vent spleen and anger, as is the way of those going to war:

If so, the meaning of the section, in their opinion, is that the Torah warned: “You shall not destroy its trees” to cut them down destructively, not for the purpose of the siege, as is the way of armies [to cut down trees needlessly]…. (Ramban, *Devarim* 20:19, s.v. *ki ha-adam eitz ha-sadeh*)

Thus, the Ramban understands that any cutting down of trees for the sake of war is permitted:

You are permitted to cut them down to build bulwarks and also to destroy them “until it falls,” for sometimes the destruction [of the trees] is for the purpose of capturing the city; for example, when the people of the city go out and gather wood from [the forest], or they hide there in the forest to fight against them, or when the trees are a refuge and a covert to the city from stones of stumbling.[[3]](#footnote-3)

On the face of it, the Ramban's rationale for the prohibition sounds similar to what we saw above in the *Sefer ha-Chinukh –* that it stems from the laws of morality and compassion, to which the Ramban elsewhere (*Devarim* 23:10) assigns special importance in a time of war. But here, he had something different in mind, and he offers a very novel rationale for the prohibition:

And the reason is that warriors destroy a city and its environs in the hope of conquering it, as it is stated: "And you shall fell every good tree and stop all fountains of water" (II *Melakhim* 3:19). You are not to do so, to destroy it, *for you are to trust in God* that He will deliver it into your hand.

The Ramban sees the destruction of fruit trees as a problem of faith. One who destroys the trees of a city does not believe that God will give him the city, and so he destroys its property, and this is a lack of faith in a time of war. This understanding of the rationale for the prohibition has serious practical ramifications when fighting a city without the intention of conquering it, as indeed the Ramban writes explicitly:

And you should know that this commandment – in both its positive and its negative [forms] – is when we besiege a city to fight against it and conquer it. As we were commanded to be concerned about it the way we would be concerned about our own, [since] perhaps we will conquer it. But upon leaving the land of the enemy, we destroy and wreck every good tree. Likewise, during the days of the siege, it is permitted to hurt the people of the city by the destruction of the trees so that they will not live off of them. The Torah only forbade its destruction for no reason. (*Hasagot ha-Ramban le-Sefer ha-Mitzvot*, forgotten positive precepts no. 6)

According to the Ramban, cutting down trees is permitted in such a situation even in a wanton manner, or for the purpose of harming the enemy and depriving it of sustenance – for in that case, there is no flaw in our faith, as we do not seek to conquer the enemy's land for ourselves.

It would seem that the dispute over the rationale of the prohibition is connected to how we understand the verses. When the Torah says: "For you may eat of them" (v. 19), is it giving a reason for the prohibition of cutting down the trees, as the plain sense of the verse would seem to indicate, or is this actually a new positive commandment? The *Sifrei* understood the verse in accordance with the second option:

"For you may eat of them" – a positive commandment; "but you shall not cut them down" – a negative commandment. (*Sifrei*, ibid.)

This positive commandment was codified by the Ramban as follows:

The sixth commandment is that we were commanded, when we besiege a city, to eat from the trees upon its borders all the days of the siege. (*Hasagot ha-Ramban*, ibid.)

We must understand the essence of this mitzva – why should there be a mitzvato eat of the city's fruit during the siege? Perhaps the Ramban sees this as part of the city's conquest. Eating the city's fruit and using its property are already considered acts of actual conquest and as such have significance as part of the war effort, whether on the practical plane or on the "mental" plane through which we express our faith in God that he will deliver the city into our hands, by behaving as if that has already happened.

**A Practical Implication – A law related to the action or to the result?**

Having seen the foundations of the prohibition, we will now discuss some practical details – and one question in particular, which is to a large extent dependent on the various approaches we have seen regarding the rationale: Does the prohibition relate to the action or to the result? In other words, is the issue the *act* of destruction, or does the problem lie in the *result* that there is no food for the city's residents (an understanding that we touched upon in the previous *shiur*)? According to Rabbi Goren's understanding of the Rambam, that the prohibition is limited to cutting trees without achieving any benefit, it would seem that the result is the problem. This also follows from the words of the *Ketav ve-ha-Kabala* and the Ramban. But according to the *Sefer ha-Chinukh*, and the *Acharonim* in whose view the Rambam defines the prohibition more broadly, the main problem seems to be that the action itself is morally corrupt.

One practical ramification of this question relates to the destruction of ownerless property. In a time of war, the enemy often flees, leaving much property behind, and the question arises whether these objects are also subject to the prohibition of destruction, since they are regarded as abandoned property. If we understand that the essence of the prohibition of destruction lies in preventing use of the object, perhaps destruction is permitted if it is abandoned property and there is no one to use it. Support for this argument can be brought from the Rosh: The Mishna in *Middot* (1:2) permits burning the garment of a Levite who fell asleep while on guard duty, and the Rosh explains why this does not violate the prohibition of *bal tashchit*:

“And he was permitted to burn his garment” – And there is no issue here of *bal tashchit*, because property declared ownerless by the court is indeed ownerless. (Rosh, *Tamid* 28a, s.v. *u-reshut haya* [*hayta*] *lo li-srof* [*et*] *kesuto*)

The underlying assumption reflected in his words is that there is no prohibition of *bal tashchit* regarding ownerless property. This is because, as suggested above, the prohibition relates to the *result* of preventing the enjoyment and use of the property.

The *Har Tzvi*, however, rejects this reasoning on the basis of a passage in *Chullin*, and especially in light of the explicit words of the *Shulchan Arukh ha-Rav* on the subject:

Regarding the matter of *bal tashchit* in the case of ownerless property, I wrote long ago that it would seem from the Gemara in *Chullin* (7b) that *bal tashchit* applies even to ownerless property, for it says [there]: "I shall kill [the dangerous mules]. [He replied: This is not a good solution, for] there is the prohibition of *bal tashchit.*" But let him first declare it ownerless? Rather, this certainly does not help… And in *Shulchan Arukh ha-Rav* (*Hilkhot Shemirat Nefesh u-Bal Tashchit*, par. 15), it is written in parentheses: If the Torah prohibited that which belongs to the gentiles against whom we are fighting, all the more so that which belongs to a Jew, or even ownerless property. (*Har Tzvi*, *Orach Chaim* 2, 102)

This position is based on the understanding that the very *act* of destruction is the problem, and therefore it makes no difference who the victim is – gentiles, Jews, or *hefker.*

The *Acharonim* also discuss other cases, in which it is possible to avoid the act of destruction but with the same ultimate result. The *Har Tzvi*, at the end of the responsum, permits uprooting fruit trees but adds a qualification:

However, if it is possible to cut it down by way of a gentile, all the better. What emerges from all of the above is that in the case before us, there are several arguments in favor of leniency to permit it, but nevertheless, if it is possible to cut it down by way of a gentile, all the better. (*Har Tzvi*, ibid.)

It would seem from these words that the prohibition is indeed exclusively in the action, and therefore it is preferable to arrange that the action be performed by a gentile. The *Chazon Ish* took the same approach:

Certainly, there is no *bal tashchit* except with a positive action, not in a passive manner. (*Chazon Ish*, *Hilkhot Melakhim* 6:8)

This would imply that even in cases where there is a need and an allowance to destroy property, it is preferable to arrange for a gentile to do it, or to perform the action in a manner that does not seem indicative of "destructive intent."

**Summation**

This *shiur* addressed the Torah prohibition against cutting down fruit trees in wartime, which also serves as the source for the general prohibition of *bal tashchit.* We saw various reasons for the prohibition: perhaps it is part of a system of prohibitions that seeks to limit and shape the wars of Israel in accordance with morality and compassion; perhaps it reflects a special attitude toward fruit trees that sustain mankind, according to which there is a problem in using them for war purposes instead; or perhaps the destruction of the trees indicates a lack of faith that we will conquer the enemy and enjoy the fruits of its city ourselves.

We also addressed the prohibition's practical applications: Is the felling of fruit trees forbidden only when they are of service to the enemy, or even when the Israelites who are laying the siege have a use for them in the siege? And is the prohibition focused on the *act* of wanton destruction that conflicts with positive character traits, or is the main problem the *result*, that the trees are felled and not put to their proper use?

In this matter too, the Torah's position is that there are moral and ethical principles that must be observed at all times, and especially in times of war – while on the other hand, this observance must not play into the hands of the enemy and be used to its advantage against us.

(Translated by David Strauss; edited by Sarah Rudolph)

1. See Rambam, *Sefer ha-Mitzvot*, negative commandment no. 57; *Hilkhot Melakhim* 6:8-10. [↑](#footnote-ref-1)
2. Authored by Rabbi Yaakov Tzvi Mecklenberg, a German rabbi of the nineteenth century. His goal in his commentary was to demonstrate that the Written Law and the Oral Law (the *Ketav* and the *Kabbala*) are inseparable, against the approach of the Reform Movement that began in his time. [↑](#footnote-ref-2)
3. Editor’s note: Translation of Ramban is based on that of Rabbi Chaim (Charles) Chavel, available at Sefaria.org, with some changes. R. Chavel notes that the phrases “refuge and covert” and “stones of stumbling” are taken from *Yishayahu* 4:6 and 8:14, respectively. [↑](#footnote-ref-3)