YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**War in Halakha**

**Rav Yishai Jeselsohn**

**Shiur #14: The Allowance to Take Booty**

**Introduction**

In the previous *shiur*, we addressed the technical proprietary aspect of taking spoils in war. We learned that if booty is taken, it is indeed the property of the conqueror, and we discussed the foundations of the mechanism that confers ownership. However, the question remains whether taking spoils in war and conquest is permissible and even laudable, or whether it is inappropriate behavior that should be avoided.

There is no Talmudic passage that explicitly deals with this issue, and so, as with many other halakhic matters pertaining to warfare, we must go back to the Biblical narratives and learn from them how the Torah views plunder. The people of Israel did take booty in many of the wars fought in Biblical times; for instance, regarding the war against Midyan, it is stated:

And they took all the spoil, and all the prey, both of man and of beast. (*Bamidbar* 31:11)

Similarly, in the wars against Sichon and Og:

And we utterly destroyed them [i.e., Og’s kingdom], as we did to Sichon king of Cheshbon, utterly destroying every city, the men, and the women, and the little ones. And all the cattle, and the spoil of the cities, we took as plunder for ourselves. (*Devarim* 3:6-7)

This is not only the case in wars fought outside the Land of Israel; the Torah permits taking booty in the course of conquering the land and eradicating the seven nations as well:

And if [a town] will not make peace with you, but will make war against you, then you shall besiege it. And when the Lord your God delivers it into your hand, you shall smite every male thereof with the sword; but the women, and the little ones, and the cattle, and all that is in the city, even all the spoil thereof, you shall take as plunder for yourself; and you shall consume the spoil of your enemies, which the Lord your God has given you. (*Devarim* 20:12-14)

Regarding the war of Ai, it is stated that this was even part of the Divine commandment:

Only the cattle and the spoil of that city Israel took as plunder for themselves, according to the word of the Lord which He commanded Yehoshua. (*Yehoshua* 8:27-28)

And thus we also find in many other sources dealing with Biblical wars. Moreover, even in wars in which there were restrictions on the taking and distribution of booty – the war against Amalek, the war against Midyan, and the war against Yericho, for example – these restrictions were due to a specific and explicit commandment, not based on a general directive. From all this, it is clear that taking spoils is the default assumption in warfare; restricting it requires a specific commandment.[[1]](#footnote-1)

This understanding is also supported by the discussion in the Oral Law, where we find no explicit statement regarding the permissibility of taking booty. The only reference to plunder relates to its distribution, with the king being awarded special rights:

Mishna: … The people take plunder [in war] and give it to him [= the king], and he takes a portion first [when it is divided].

Gemara: … Our Rabbis taught: Royal treasures [must be given] to the king, but all other spoils they take, half to the king and half to the people… From where do we learn that all other spoils they take, half to the king and half to the people? As it is written: "And they anointed him [Shlomo] to the Lord to be leader, and Tzadok [to be priest]" (*Divrei ha-Yamim* 29:21) – it compares the leader to Tzadok: just as in the case of Tzadok [High Priest], half [of the shewbread] belonged to him and half to his brothers, so too the leader, half to him and half to his brethren. And from where do we know it of Tzadok himself? As it was taught: Rabbi [Yehuda Ha-Nasi] said: "And it [=the shewbread] shall be for Aharon and for his sons" (*Vayikra* 24:9) – half went to Aharon and half to his sons. (*Sanhedrin* 20b-21a)

We see the same in the ruling of the Rambam, who lists taking plunder among the king's prerogatives:[[2]](#footnote-2)

All the lands that he conquers belong to him. He may apportion them to his servants and soldiers as he desires and keep for himself as he desires. In all these matters, the judgment he makes is binding. (*Hilkhot Melakhim* 4:10)

**An absolute allowance, or one with reservations?**

Thus, it emerges from Torah sources that it is permitted to take booty in war. We are even permitted to wage a *milchemet reshut*, where plunder and the augmentation of our strength at the expense of the enemy constitute an essential part of its objectives.[[3]](#footnote-3) It is possible that the Ramban even saw the consumption of booty as a mitzva:

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 le-Sefer ha-Mitzvot*,forgotten positive precepts no. 6)

Although he does not say so explicitly, the implication is that there is something positive in enjoying the property of a city that Israel conquers and in taking booty from it.

But these matters are not so simple, and require study and elucidation – especially in light of Torah sources which *forbid* the taking of booty in certain cases and portray it negatively. We will examine the relevant passages and try to ascertain the problematic aspect of taking booty in those cases, and from this, attempt to derive general principles regarding when taking booty is positive and when it is problematic. We will also read between the lines to discover certain character traits that are required of the individual when taking booty, even when absolutely permitted.

**Shabbat and the War of Yericho**

In the war against Yericho, Yehoshua forbids the people from taking spoils and designates it for the service of God:

And the city shall be proscribed; it and everything that is in it are for the Lord. (*Yehoshua* 6:17)

The commentators go in several directions to explain the rationale for this proclamation. Rashi (ad loc.) offers a most interesting reason: "'And the city shall be proscribed' – for today is the holy Shabbat, and it is fitting that spoils taken on that day be consecrated." Rashi’s source is a *midrash*:

Because the day they conquered Yericho was Shabbat; that is why he proscribed Yericho, sacred to the Lord, as it is stated: "And the city shall be proscribed; it and everything that is in it are for the Lord" (*Yehoshua* 6:17). Yehoshua said: Shabbat is entirely sacred, and everything that is conquered on Shabbat shall be sacred to the Lord. (*Bamidbar Rabba Naso* 14)

There is much to ponder in this statement, and in the idea that the sanctity of Shabbat "attaches" to the spoils. At any rate, it explains the fact that of all the wars of conquest of the land, only in the war against Yericho was there a prohibition against taking the spoils. There is no hint that any of the other wars were fought on Shabbat, and hence there was no reason for the prohibition of their spoils.

***Teruma* – Acknowledgment of God's Involvement**

Another reason mentioned in the same *midrash* also pertains only to the war against Yericho:

Rabbi Yuda ha-Levi bar Shalom said: He taught Israel what the Holy One, blessed be He, said: "Of he first of your dough you shall set apart a loaf for a gift" (*Bamidbar* 15:20). Yehoshua said: Since we conquered it first, we will consecrate all its spoils to the Most High. (Ibid.)

The Ralbag suggests a similar reason, from which one can infer a fundamental principle that applies to other wars as well:

And he commanded that they should ban all that is found in the city, and that they should not derive benefit from it in any way, so that Israel should not be led astray by the success that would come to them after this, and attribute it to what they had acquired from the spoil of that city. (Ralbag, *Yehoshua* 6:17)

The Ralbag relates the prohibition of taking the spoils of Yericho to a concern that the Israelites might think their success was due solely to their own strength and might, by which they acquired the spoils of their enemy. To prevent such pride, Yehoshua forbids taking the spoils. This same line of thought can explain the midrashic comparison of the first spoils of the Land of Israel to the mitzva of setting aside *challa.* The mitzvaof *challa* (like *teruma*, the first shearing, and first fruits, all of which are designated by the Torah as "firsts") was instituted to prevent a person from feeling his power and might and becoming arrogant on account of the produce that he grew, without remembering God's involvement in the process. This explanation could be relevant to other wars as well – but it is still difficult to apply it to them in practice, for we have not yet found our footing with the approach and determined when the Torah is concerned with excessive pride and forbids taking booty, and when it is not concerned and permits taking booty.

It is possible that even if there is no blanket prohibition against enjoying the spoils of war, there is still a duty to set aside a portion of them as a gift to God. This is an idea that emerges from the Ramban's explanation of why the *Halakhot Gedolot* counted the levying of tribute to God from the spoils of Midyan[[4]](#footnote-4) as one of the 613 commandments, even though it was applicable only for a limited period of time:

And perhaps the author of the *Halakhot* maintains that the passage dealing with the levying of tribute teaches for all generations, in every *milchemet reshut*, to offer a tribute to God from the spoils… and it is a statute and a memorial for all generations to do so. (*Hasagot ha-Ramban le-Sefer ha-Mitzvot*,principle no. 3)

The Ramban understands from the words of the *Halakhot Gedolot* that in any war in which booty is taken, there is a mitzvato levy a portion of the booty as a tribute to God. It is quite possible that this relates to the spiritual principle that we learned from the Ralbag regarding recognition of God's involvement in the war.

**"The Lord Will Fight for You"**

The *Malbim* proposes another explanation that is also based on a spiritual principle related to God's involvement in the war:

And since the conquest will be by miracle, it is fitting that the spoils be consecrated to God who performs the conquest. (*Malbim*, *Yehoshua* 6:17)

We saw an experience of "The Lord will fight for you, and you shall hold your peace" (*Shemot* 14:14) fulfilled at Yericho. The war was fought in a supernatural and miraculous manner, and it stands to reason that the spoils taken in the course of the war should go to God. However, here too, it is difficult to apply this explanation to other wars; for instance, the wars against Midyan and Amalek also involve special commands regarding the spoils, but we find no extraordinary Divine intervention beyond the command to wage war. All the more so in the war of Mordekhai and Esther in Shushan, where there is no Divine intervention at all, and not even a command to go to war – why did the Jews in that case “not lay their hands on the spoils” (*Esther* 9:10,15,16)?

**War "For Its Own Sake"**

After reading chapter 9 of the book of *Esther*, which mentions repeatedly that the Jews did not lay their hands on the spoils – despite the explicit words of King Achashverosh, "to take their spoil as plunder" (*Esther* 8:11) – it is possible to suggest another understanding of the principle that prohibits taking spoils, which can explain the various places where we find this prohibition.

Mordekhai and Esther's war against the persecutors of the Jews was not aimed at conquest or plundering; its sole purpose was rescue. According to the Vilna Gaon, this accounts for the abstention from taking spoils:

To show that they did not do so for the money, but only to fulfill the decree of the king. (Vilna Gaon, commentary to *Esther* 9:10)

When plunder is permitted, there is always a danger that taking the enemy's spoils will become the main object of the war, perhaps even at the expense of the war's true goals! In all the wars in which Israel was commanded not to take booty, the purpose of the war was significant and important in its own right – whether the war against Amalek, which was at its essence a "war of the Lord with Amalek" (*Shemot* 17:16), or the war against Midyan, which was fought to avenge (see *Bamidbar* 31:2-3), or the war against Yericho, which marked the opening of the war to conquer the Land of Israel. In such cases the taking of booty was forbidden or restricted, so that it would not distract the combatants from the purpose for which they were fighting.

We may perhaps find a hint to these principles in a ruling of the Rambam regarding the king's rights to the spoils of war, in a passage cited above:

All the lands that he conquers belong to him. He may apportion them to his servants and soldiers as he desires and keep for himself as he desires. In all these matters, the judgment he makes is binding. And in everything, his actions shall be for the sake of Heaven. His purpose and intent shall be to elevate the true faith, to fill the world with justice, and to destroy the power of the wicked and wage the wars of God. (*Hilkhot Melakhim* 4:10)

The conclusion of the Rambam's ruling shows that everything, even taking booty, must be done in the framework of "actions for the sake of Heaven." Therefore, even though the Torah recognizes the possibility of taking booty and permits it, there may still be restrictions – subject to the ultimate goal, which is to strengthen the cause of the true religion and that the war should be for the sake of Heaven. Thus, in a case where the taking of booty would weigh heavily on the war itself, it was forbidden; so too, when the war was God's war and it was important to remember that, the taking of booty was diverted from the hands of the warriors to the hands of God.

In light of this approach, it may be that a distinction should be made between a war whose primary purpose is the taking of booty and a war whose purpose is otherwise. We saw above that the Ramban counts consuming the spoils of the enemy as a positive commandment, but he distinguishes there between different types of wars:

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. (*Hasagot ha-Ramban le-Sefer ha-Mitzvot*,forgotten positive precepts no. 6)

When the purpose of the war is to capture and occupy the city, then taking plunder is part of the goal and is therefore permissible – perhaps even a mitzva, according to the Ramban – thus we should avoid destroying the property of the city so that we can take it. On the other hand, when Israel goes out against an enemy not to conquer their land but to defeat them and remove their threat,[[5]](#footnote-5) then plunder is not a mitzva, and consequently the destruction of the enemy's property is permitted for the sake of the war's success. This position of the Ramban, that the taking of booty in war is subordinate to the achievement of the war's essential objectives, fits well with the spiritual principle we learned from the Rambam's words above.

**Sticking to Evil**

It is possible to suggest another understanding of the problem of taking booty, based on a different context in which the people of Israel were commanded not to touch the spoils. Among the laws of a city of an *ir ha-nidachat,* a city that is condemned to destruction because its inhabitants worshipped idols, it is stated:

You shalt surely smite the inhabitants of that city with the sword, destroying it utterly, and all that is in it, and its cattle, with the sword. And you shall gather all its spoils into the midst of its square, and shall burn with fire the city and all its spoil… And nothing of what is proscribed shall cling to your hand, so that the Lord may turn from the fierceness of His anger and give you mercy, and have compassion upon you, and multiply you, as He swore to your fathers. (*Devarim* 13:16-18)

The Mishna in *Sanhedrin* explains the prohibition of taking booty in the following manner:

"And nothing shall cleave of the devoted thing to your hand," for as long as wicked people exist in the world, there is fierce anger in the world; when the wicked perish from the world, fierce anger is removed from the world. (Mishna *Sanhedrin* 10:6)

That is to say, the moral corruption of the inhabitants of the *ir ha-nidachat*, which brought down Divine wrath, remains to a certain degree as long as there is a memory of them and their deeds – even via their property – and it will not be removed until all the spoils are destroyed.

It may be suggested that the laws of an *ir ha-nidachat* can be extended to the laws of warfare. When the enemy is especially abhorrent, taking its spoils causes a certain taint and recognition of the enemy's importance, and this is the essential problem of taking spoils. We can easily make this suggestion with regard to Amalek, and perhaps it can also be applied to the war of Mordekhai and Esther in Shushan.

**A Moral Problem**

Apart from everything mentioned above, there may be a moral problem in taking the property of people who have been killed. The Rambam rules that the tribe of Levi does not take the spoils of the enemy:

The entire tribe of Levi are commanded against receiving an inheritance in the land of Canaan, and they were commanded against receiving a share in the plunder when the cities are conquered, as it is stated: "The Levitical priests – the entire tribe of Levi – shall not have a portion and an inheritance among Israel" (*Devarim* 18:1). "A portion" [refers to a portion] of the spoil; "an inheritance" [refers to a portion] of the land. (*Hilkhot Shemitta* *ve-Yovel* 13:10)

The *Sefer ha-Chinukh* explains as follows:

It is from the roots of the commandment [that] since they are the servants of God, it is not seemly for them to use vessels snatched from the hand of people…. Only a thing that has come by way of peace, uprightness, and faith should come to the House of God, and not [something] about which the heart of a man or a woman will be troubled. (*Sefer ha-Chinukh*, *mitzva* 505)

Thus, it would seem that even taking plunder in a permitted manner involves a certain moral problem; it may be permitted to laypeople, but not to holy people. The Rambam apparently does not accept this rationale, however, for he goes on to distinguish between a war over the Land of Israel, in which the tribe of Levi is forbidden to take booty, and wars in distant places, where they may take booty like the rest of Israel:

It appears to me that the above applies only with regard to the land for which a covenant was established with Avraham, Yitzchak, and Yaakov, and their descendants inherited it and it was divided among them. However, other lands that are conquered by a king of Israel, the priests and the Levites are considered like the rest of Israel regarding those lands and their spoils. (*Hilkhot Shemita ve-Yovel* 13:11)

Thus, it would seem that the Rambam did not see anything problematic in the very taking of the spoils, for if he did, it should be forbidden even in wars fought in other lands. According to his understanding of the rationale of the law, it would seem that the role of the priests as servants of God finds expression only in the Land of Israel, where they also have no inheritance. When the people of Israel conquer other places, the priests are like the rest of the people, both in the matter of inheriting the land and in the matter of the right to the spoils of war.

**The King's Role in Taking Booty**

Thus far we have dealt with the question of whether it is permissible and proper to take booty in war. In fact, however, there is another important point that should be noted with respect to the practical application of this question. The Rambam lays down a certain order in which booty is to be distributed among the soldiers:

Similarly, all the treasures belonging to the kings of the kingdoms which he conquers become the property of the king. With regard to the other spoil which is taken, [the soldiers may] take spoil, and they place it before [the king] and he takes half first, and [the other] half of the spoil is divided between the combat soldiers together with the people who remained in camp to guard the baggage. They divide equally, as it is stated: "For like the share of the one who goes down to the battle, so shall be the share of one who sits with the baggage; they shall divide together" ([I *Shmuel* 30:24](https://www.chabad.org/15859#v24)). (*Hilkhot Melakhim* 4:9)

Rabbi Moshe Feinstein comes to an interesting insight from this case: when it is the king who initiated the war, the spoils belong not to those who actually took them, but to the monarch; the king acquires all the spoils, and thus has the power to apportion the spoils and decide on their purpose. This is how he explains the detailed laws of the division of the spoils:

And perhaps the reason is that war is a royal prerogative and therefore everything belongs to the king, as the land itself is his, as stated in the Rambam there, *halakha* 10. But the novelty is that the king must give half to the soldiers and to those who guard the baggage. Therefore, in the Land of Israel, there was no such law that the king, i.e., Yehoshua, should receive it, as the spoils belonged to all of Israel, just as the land itself did not belong to the king. But in both cases, there is a good reason why each person did not receive in accordance with what he plundered, as with Midyan, for there it was not a law of the monarchy, as the war was not waged based on the king, and as we see that Moshe received no share of the booty, and therefore it belonged to each individual in accordance with what he plundered, based on the law of abandoned property. It was only a Scriptural decree regarding the animals, and not all of the animals, for the horses and camels were not considered, even though it stands to reason that there were some of them there, to divide up and to levy tribute, as is explicitly stated in the verse. (And in general, we do not find that Moshe acted as a king in monetary matters). And if a war was waged not by the king's decree, it would seem that the property was considered abandoned, as with Midyan, and the spoils and booty were also abandoned property. (*Iggerot Moshe*, *Yoreh De'a* I, 216)

This argument is very reasonable if the mechanism of acquiring the spoils is founded on the principle of "the law of the kingdom is the law" (see previous *shiur*). But even without this, it can be argued that the king, being the one who takes the people out to war, is the one who conquers and acquires. In light of this, the laws of taking booty in our day must follow the laws of the state and the army – for they are the ones who take the people out to war and therefore they determine the rules of plunder.

**Summation**

We have seen that the Torah recognizes the possibility of taking booty in principle but also sets various limitations on it. We have suggested several reasons for these limitations: in the spiritual realm, a reminder that it is God who fights the war and is responsible for the spoils that follow from it; in the human-moral realm, that there may be a moral flaw in plunder; and in the utilitarian realm, the necessity to stick to the goals of war without being distracted by side benefits. In the wake of this, we discussed the law that the Levites do not have a part in the spoils, and we tried to understand various cases where God or the Jewish people refrained from taking spoils. We concluded with the words of Rabbi Moshe Feinstein, that in our day, when conquest is carried out by the decree of the government, it is the government that reaps the spoils and decides what shall be done with them; therefore, we are obligated to obey the laws of the land in matters of plunder.

**The Booty of the Enemy and the Booty of Friends**

In conclusion, let us add a final point that emerges from the words of the Meiri:

If one kingdom fought another kingdom, and some were exiled, while others were left in their place, and the king sold the lands of those who left to those who remained, and later they returned, and they never despaired of their land, and the purchaser argued that he should be judged as one who buys from the possessor of confiscated property… In any event, if one kingdom entered into another kingdom, uprooting it completely and settling others in their place, this is a new kingdom with full possession, as they said that “Amon and Moav were purified through Sichon,” and the original owners have no claim, even if they never despaired. (*Beit ha-Bechira*, *Gittin* 59a)

Certainly, all the laws of spoils which we have discussed apply to the spoils of enemies against whom the war is being waged – but if there is Jewish property that was abandoned during the war, it is not subject to the laws of spoils and must be returned to its rightful owner like any other Jewish property. Even though the matter is self-evident, it is important to state this explicitly.

(Translated by David Strauss; edited by Sarah Rudolph)

1. Later in this *shiur*, we will try to clarify why and when the Torah restricts the taking of booty. [↑](#footnote-ref-1)
2. See also *Hilkhot Avadim* (9:4), regarding a non-Jewish king. [↑](#footnote-ref-2)
3. "A *milchemet reshut*, i.e., a war fought with other nations in order to expand the borders of Israel" (Rambam, *Hilkhot Melakhim* 5:1); see also *Berakhot* 3b, regarding: "Let them go out and make a living one from the other." [↑](#footnote-ref-3)
4. See *Bamidbar* 31. [↑](#footnote-ref-4)
5. Perhaps this is the difference that the Ramban makes between "besieging a city" and "the land of the enemy" – a siege is laid to conquer a city that has done us no wrong and is not an enemy, but when a war is waged against an enemy, the booty becomes, if anything, a secondary matter. [↑](#footnote-ref-5)