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"Taking Responsibility for Torah"

WAR, ETHICS, AND ESAV

By Rabbi Aryeh Klapper

An oft-cited but unsourced basic tenet of military strategy is “Never divide your forces in the face of a superior enemy”. Such principles are often honored in the breach, meaning that the discouraged tactic is used to gain the element of surprise against a by-the-book opponent.

But Yaakov does not seek any strategic advantage by dividing his forces in the face of Esav. His instructions are explicit; the camp that isn’t initially engaged must flee rather than outflank Esav. The hope seems to be that Esav and his troops will be sated by the destruction of the first camp, or weighed down by spoil.¹

But that’s a very short-term solution. Where will Yaakov’s second camp regroup, and to what purpose? How will they avoid being tracked, pursued, and destroyed as well? If the second camp is supposed to retreat in haste, why weigh them down with cattle and camels?!

The Torah (Genesis 32:7-8) seems to describe Yaakov as reacting emotionally rather than acting strategically.

The messengers returned to Yaakov, saying:

We have reached to your brother, to Esav,
and indeed, he is on the way to greet you, and four hundred men
with him.

ויירא יעקב מאד – Yaakov became very afraid
ויצר לו – he experienced affliction

He divided the people who were with him, and the flocks and the
cattle, and the camels, into two camps.

Rashi famously cites Midrash Rabbah to explain Yaakov’s emotions:

He became very afraid – lest he be killed;
He experienced affliction – if he would kill others.

Rabbi Samson Raphael Hirsch argues that *vayetzter lo* here is etymologically related to *narrowness*. He connects this to the experience of exile and powerlessness. In this reading, Yaakov’s strategy of dividing “so that at least the rest would be a surviving remnant” foreshadows G-d’s strategy of scattering us over the globe “so that when our blood is shed in the West, our brothers in the East are secure”. But are they?

Rav Hirsch’s etymology can instead be given a Zionist twist ala Golda Meir. The *narrowness* that Yaakov experienced was a sense that Esav was forcing him into a lose-lose choice between being killed and becoming a killer.

Yaakov overcomes this feeling of narrowness. He meets Esav with his camp unified and entire. Maybe he scrapped the two-camp plan overnight; maybe it was never more than a thought-experiment. If so, the presumed catalyst for the change must be the wrestling match, and that match must somehow counter the emotions that drove him to consider the division.

One possibility is that Yaakov’s lack of agency extended to believing that he could not defeat Esav. His only choices were to fight and lose, meaning to kill before being killed, or to surrender. He divided his camp so that fighting would not be a choice. Believing that he had no genuine choices, he tried only to deprive Esav of the moral illusion that he would be massacring in self-defense. But Yaakov learns from the wrestling match that resistance is not futile.

Another possibility is that Yaakov thought the moral price of defeating Esav would be too great. Aviva Zornberg beautifully contends that Yaakov was haunted by the success of his imposture – maybe the difference between him and Esav is only skin-deep. The simple pshat, as I learned from Nechama Leibowitz, is that the angel is both an avatar of Esav and a part of Yaakov, and the wrestling match is a process of reintegrating some aspect of personality/soul that he shares with Esav. Yaakov-in-the-morning knows that he can fight without losing himself. He goes to sleep Neturei Karta and wakes up dati leumi.

That story is also too simple. If Yaakov’s moral life is to be a model for us, we cannot simply say “then a miracle occurred” to solve his soul-challenging dilemma. It would be unrealistic, absurd, and soul-deadening to say that Yaakov suddenly realized that killing in a righteous cause carries no spiritual cost.

Chazal sometimes dramatize moral complexity as halakhic disputation. Here, many achronim challenge Rashi: Doesn’t the Torah say that “One who comes to kill you, arise early and kill

¹ However, Bekhor Shor suggests that the second camp will attack after Esav is exhausted from subduing the first.

² Malbim and others argue however that the division was between cattle and people, and that the “camp of cattle” met Esav first, as intended: *Who gave you all that camp that I encountered?*

them”?! Why should Yaakov have been bothered even initially by the prospect of killing Esav or his men?

The 13th Century commentator Rav Chaim Paltiel (see also Moshav Zekeinim, and others) suggests that Yaakov was afraid of killing unnecessarily.

He was afraid lest he be able to save life by (taking) only a limb
(of the pursuer),
and yet still kill him

However, the great posek and Rashi supercommentator Rabbi Eliyahu Mizrachi (1455-1525) contended that the obligation to use the minimum necessary force applies only to third parties. People acting to preserve their own lives can use whatever force they have available. Surely Esav intended to kill Yaakov! Mizrachi therefore offers a more nuanced solution:

It makes sense regarding the men who came with Esav –
it was proper for Yaakov to feel afflicted lest he kill some of
them,
because maybe they didn’t intend to kill Yaakov, rather only the
people with him,
which would make them *rodifim*/pursuers of third parties,
who may be killed only when one cannot save the
nirdafim/pursued by only maiming them,
and (Yaakov) was afraid lest he kill them
**at the time of the battle (*milchamah*)
out of his great distraction (*bilbul*)
even though he would be capable of saving through only
maiming,
which would make him like an absolute murderer (*k’rotzeach
gamur*).**

The halakhically radical claim here is that killing in warfare is subject to the same rules as lifesaving in civilian life.

Mizrachi envisions hand-to-hand combat among highly experienced warriors, tending inexorably toward a direct and decisive duel between chieftains or champions. This entirely plausible account of Biblical, Homeric, or Arthurian battlefields

seems irrelevant to the individual soldier in modern warfare. For that matter, the soldiers on either side were not constrained from killing each other.

However, I suggest that the key point in Mizrachi is that for Yaakov, Esav’s men were considered noncombatants for capital evaluations, even though their whole purpose in being there was to enable Esav to kill Yaakov³.

Mizrachi’s claim that Yaakov would be *like an absolute murderer* may be overstated regardless. Talmud Sanhedrin 57a (also 74a) records the following beraita:

Rabbi Yonatan ben Shaul⁴ says:

A pursuer who was pursuing his fellow to kill him,
and (a third party: Mizrachi) is able to save the pursued,
but he does not save (using the minimum necessary force, rather
kills the pursuer) –
(the killer) is killed for (killing) the pursuer.

While the Talmud records no alternative halakhic position, the Talmudic context and the introductory formula “X says” may suggest that the *beraita* is being excerpted.⁵ Therefore, when Rambam Mishneh Torah Laws of Murder writes:

Anyone capable of saving (a pursued) by (only) injuring one limb
of the pursuer
who did not bother to do so, rather saved by killing the pursuer –
behold this one is a bloodshedder and deserves death
but the beit din does not execute them.

It is unclear whether Rambam is ruling for or against Rabbi Yonatan ben Shaul.⁶

The formal halakhic conversation about the details of this issue could obviously extend indefinitely. My suggestion is that having this conversation is precisely how we follow in Yaakov’s footsteps and succeed in maintaining our moral identity while at war. We overcome the “narrowness” of a forced confrontation by recognizing that we still have moral agency, and our choices matter.

³ Rav Ovadyah Yosef z”l suggests (Yabia Omer 4CM:5) that Mizrachi’s exemption for self-defense applies only to soldiers in the fog of war; it does not exempt civilians defending themselves against individual assailants, nor military planners. However, all halakhists must account for the category *ba bamachteret*, the furtive trespasser with murderous intent, who may be killed preemptively even when capture is possible. My preferred account of *ba bamachteret* is Abravanel’s, who posits that the unacceptable alternative is requiring the targeted to live in perpetual terror of ambush. It’s not clear how Abravanel’s rationale, and legal outcome, would be affected by the existence of an effective criminal justice system which punishes attempted murder with extended imprisonment. Nor is it clear how Abravanel’s rationale would apply to the accomplices of a *ba bamachteret*, especially to conspirators who may hire a better assassin if the first one fails.

⁴ The name Yonatan ben Shaul is astounding and unlikely to be coincidental. Suggestions for its significance here are very welcome. Note that the Talmud’s prime example of a warrior who kills a pursuer unnecessarily is Avner ben Ner, general for IshBoshet ben Shaul, who kills Asahel brother of Yoav in the civil war following King Shaul’s death.

⁵ Compare the report on Eiruvim 96a of the position that “Michal bat Kushi wore tefillin, and the Sages did not object”. The conflicting position is found in the Talmud Yerushalmi (which makes it clear that Kushi=Shaul; this I think is coincidence), and literarily, it seems likely that the Bavli is excerpting a text that contained both positions.

⁶ Rambam Laws of Kings 9:4 rules that Noachides may be executed for killing a pursuer unnecessarily, but a Jew may not be. Raavad objects from the case of Avner – most commentaries understand Raavad to be suggesting that Jews can be executed for this crime. My preferred explanation is that Rambam accepts Rabbi Yonatan ben Shaul’s ruling but sees it as technically impossible to achieve the standard of proof necessary for execution.