

What is the relationship between Torah stories and Torah law? Here are two approaches I find stimulating:

- a) The stories help us understand why the laws are necessary. For example, the story of Joseph helps us understand why the Torah (in this week's parashah) forbids a father to favor the son of a more-loved wife over an older brother from a less-loved wife.
- b) The stories make clear the limits of law, in other words that there are always special circumstances in which following the Law will not accomplish the Divine Will. For example, it was necessary for Yaakov to marry two sisters. (I learned this broad *derekh* from a marvelous article by Rav Yehudah Kuperman of Mikhlalah.)

Of course, these two approaches generally yield opposite results when applied to the same texts. Thus b) would learn from Yosef that sometimes the Divine Will requires us to illegally favor the son of the less-loved wife, and a) would use the story of Rachel and Leah as an object lesson of why one ought not to marry sisters.

Furthermore, these approaches share the position that the Law is primary, and stories serve the law. This position may reach its extreme in Rashbam's apparent argument that the entire Creation narrative is included in Torah to justify the rationale offered in the Aseret HaDibrot for the legal obligation of observing Shabbat.

One might, however, argue the reverse – that the stories are primary, and the laws provide necessary context for understanding them. Thus, for example, one cannot even begin to understand the "motel episode" without knowing that Jews are commanded to circumcise their male children on their eighth day of life.

My primary thesis for this week is that the Law of the Beautiful Captive, which opens our parashah, should be read together with the episode of Deenah at Shekhem. The thematic connection – rape and its aftermath – is obvious, but I contend that there are linguistic and literary connections as well. For example:

- a) The story of Deenah begins with her going out = וּתְצֵא, in order to see (or be seen) = לִרְאוֹת, and instead (or in fact) being seen = וַיִּרְא אֹתָהּ. The consecutive narrative ends with an inclusio – the brothers take Deenah from Shekhem's house and "they went out = וַיֵּצְאוּ". Similarly, the Law of the Beautiful captive is introduced by "When you go out = כִּי תֵצֵא", followed by "and you see = וַיִּרְאֶיךָ".
- b) The recapitulation of Shimon and Levi's actions informs us that "they captured their wives = וָאֵת נְשֵׁיהֶם שָׁבוּ".
- c) Both sections make use of the verbs חָשַׁק and חָפַץ to describe the attitude of the male toward the female.

But granting the connection, which of the above approaches is most compelling and/or productive?

It is important to acknowledge that both sections are deeply troubling ethically. The Law of the Beautiful Captive seems to accommodate rape, and the episode of Deenah seems to have no fundamental objection to revenge massacres. I would very much like to find an approach that sees the two challenges as almost cancelling out, so that each story becomes more ethically comprehensible in light of the other. In other words, the Law seems to underreact, and the narrative seems to portray an overreaction – but is there a possible middle ground?

I think we can begin developing such an approach (which I admit I cannot as yet fit directly with any precedent) by closely studying the outcome of the Law. A beautiful woman is captured after her community loses a war; as a result, she ends up either a fully legal wife or else a divorcee, with the Torah having a clear bias toward the latter. She is not returned to her family, and she may not be enslaved. Either way, she is given a month in which to express her grief about her parents without interference.

What of Deenah? She is not given any time or power to process or affect what happens to her, by either Shekhem or her brothers. Shekhem tries to seduce her immediately after raping her, and the brothers intervene violently and then remove her from the scene without speaking to her.

In other words, the one option Deenah is not given is independence.

Rashi famously cites the Rabbinic dictum that the Law here is not a moral ideal, or even reflective of moral toleration, but rather an accommodation to an immoral reality – “the Torah spoke only in the context of the evil inclination”. Essentially all commentators interpret the regimen laid down by the Law as an attempt to prevent the move from חשק to חפץ, from lust to sustainable desire. This is generally understood as a way of protecting the Jewish soldier from the consequence of a (possibly polygamous) quasi-intermarriage, which will inevitably lead to marital strife, favoritism, and eventually evil children.

But we can also understand the Law as an attempt to give the captive women a chance at self-determination, to make the best of her terrible situation. It is not enough simply to release her – as a rape victim, she runs the risk of being killed by her own family to prevent their disgrace (which may not result from her supposed lack of chastity, but rather from their obvious lack of power to protect her), and as an unmarried nonvirgin, she runs the risk of ongoing sexual abuse. She can reconstruct her life in two ways – as a wife, albeit the wife of a man who previously has shown ultimate disrespect for her autonomy, or as an ex-wife. (Note: It is not clear to me why divorcees are less vulnerable sociologically than unmarried rape victims, but it seems clear to me that they are.) But recognizing the emotional vulnerability of victims (Stockholm syndrome), and the toxic mélange of guilt and affection that abusers often feel, the Torah insists that she be given an autonomous space – mourning her family – and time before the decision is made. It is exactly this that Shekhem fails to give Deenah. But Shimon and Levi likewise fail.

The Torah goes out of its way to express the subjective genuineness of Shekhem’s attachment to Deenah – “his soul cleaved to Deenah son of Yaakov, he loved the lass, and he spoke to the heart of the lass”. He does not hesitate to circumcise because he is genuinely יעקב בבת יעקב. But his father Chamor understands none of this – “Shekhem my son – his soul has חשק for your daughter”.

Shekhem understands that his father cannot understand. To his father he says only “Get this *girl-child* for me as a wife”. To his people he makes no romantic appeal, only a cold-blooded commercial argument. In other words, even if he repents what he has done to Deenah - and the Torah does not mention that his newfound love entails regret for what he did to her – his repentance does not lead him to challenge the cultural framework that led him to abuse, to prevent it from happening again.

Shimon and Levi respond on the axis that he sets up – they see Deenah as a pawn in a power game, and they seek only to win the game. So now it is Shekhem’s women who become captive, and the cycle can go on. Thus we reach the story of the Concubine of Giv’ah end of the Book of Judges,

when the Tribes of Israel play both sides of the story, rapists and avengers, and G-d's oracle sends them into battle to kill one another.

Thus the Law and the story work together – without the story, we might not realize that the Law is a salvage attempt, and without the Law we might not understand why no one in the story acts properly even after the abuse. Reading them together can enable us to escape the trap of Judges and build a genuinely just society with the positive goal of giving every human being the capacity to make their own decisions. May the Almighty grant that we build such a society.

Shabbat shalom!

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דברים פרק כא:י-יד

- (י) כי תצא למלחמה על איביך ונתנו ה' אלקיך בידך ושבת שביו:
(יא) וראית בשביה אשת יפת תאר וחשקת בה ולקחת לך לאשה:
(יב) והבאתה אל תוך ביתך וגלחה את ראשה ועשתה את צפרניה:
(יג) והסירה את שמלת שביה מעליה וישבה בביתך ובכתה את אביה ואת אמה ירח ימים ואחר כן תבוא אליה ובעלתה והיתה לך לאשה:
(יד) והיה אם לא חפצת בה ושלחתה לנפשה ומכר לא תמכרנה בכסף לא תתעמר בה תחת אשר עניתה: o

בראשית פרק לד

- (א) ותצא דינה בת לאה אשר ילדה ליעקב לראות בבנות הארץ:
(ב) וירא אתה שכם בן חמור החוי נשיא הארץ ויקח אתה וישכב אתה ויענה:
(ג) ותדבק נפשו בדינה בת יעקב ויאהב את הנער וידבר על לב הנער:
(ד) ויאמר שכם אל חמור אביו לאמר קח לי את הילדה הזאת לאשה:
(ה) ויעקב שמע כי טמא את דינה בתו ובניו היו את מקנהו בשדה והחרש יעקב עד באם:
(ו) ויצא חמור אבי שכם אל יעקב לדבר אתו:
(ז) ובני יעקב באו מן השדה כשמעם ויתעצבו האנשים ויחר להם מאד כי נבלה עשה בישראל לשכב את בת יעקב וכן לא יעשה:
(ח) וידבר חמור אתם לאמר שכם בני חשקה נפשו בבתכם תנו נא אתה לו לאשה:
(ט) והתחתנו אתנו בנתיכם תתנו לנו ואת בנתינו תקחו לכם:
(י) ואתנו תשבו והארץ תהיה לפניכם שבו וסחרו והאחזו בה:
(יא) ויאמר שכם אל אביה ואל אחיה אמצא חן בעיניכם ואשר תאמרו אלי אתן:
(יב) הרבו עלי מאד מהר ומתן ואתנה כאשר תאמרו אלי ותנו לי את הנער לאשה:
(יג) ויענו בני יעקב את שכם ואת חמור אביו במרמה וידברו אשר טמא את דינה אחתם:
(יד) ויאמרו אליהם לא נוכל לעשות הדבר הזה לתת את אחתנו לאיש אשר לו ערלה כי חרפה הוא לנו:
(טו) אך בזאת נאות לכם אם תהיו כמנו להמל לכם כל זכר:
(טז) ונתנו את בנתינו לכם ואת בנתיכם נקח לנו וישבנו אתכם והיינו לעם אחד:
(יז) ואם לא תשמעו אלינו להמול ולקחנו את בתנו והלכנו:
(יח) וייטבו דבריהם בעיני חמור ובעיני שכם בן חמור:
(יט) ולא אחר הנער לעשות הדבר כי חפץ בבת יעקב והוא נכבד מכל בית אביו:
(כ) ויבא חמור ושכם בנו אל שער עירם וידברו אל אנשי עירם לאמר:
(כא) האנשים האלה שלמים הם אתנו וישבו בארץ ויסחרו אתה והארץ הנה רחבת ידים לפניהם את בנתם נקח לנו לנשים ואת בנתינו נתן להם:
(כב) אך בזאת יאתו לנו האנשים לשבת אתנו להיות לעם אחד בהמול לנו כל זכר כאשר הם נמלים:
(כג) מקנהם וקנינם וכל בהמתם הלוא לנו הם אך נאותה להם וישבו אתנו:

- (כד) וישמעו אל חמור ואל שכם בנו כל יצאי שער עירו וימלו כל זכר כל יצאי שער עירו:
- (כה) ויהי ביום השלישי בהיותם כאבים ויקחו שני בני יעקב שמעון ולוי אחי דינה איש חרבו ויבאו על העיר בטח ויהרגו כל זכר:
- (כו) ואת חמור ואת שכם בנו הרגו לפי חרב ויקחו את דינה מבית שכם ויצאו:
- (כז) בני יעקב באו על החללים ויבזו העיר אשר טמאו אחותם:
- (כח) את צאנם ואת בקרם ואת חמריהם ואת אשר בעיר ואת אשר בשדה לקחו:
- (כט) ואת כל חילם ואת כל טפם ואת נשיהם שבו ויבזו ואת כל אשר בבית:
- (ל) ויאמר יעקב אל שמעון ואל לוי עכרתם אתי להבאישני בישב הארץ בכנעני ובפרזי ואני מתי מספר ונאספו עלי והכוני ונשמדתי אני וביתי:
- (לא) ויאמרו הכזונה יעשה את אחותנו: פ