

RUMBLINGS OF JUSTICE

SELECTIONS FROM THE TORAH PORTION
OF "KI TETZE" WITH COMMENTARY

*Ki Tetze (When You'll Go Out),
Devarim 21:10 - 25:19*

CHAVRUTA STUDY

The core texts in this session come from the Torah section of Ki Tetze, which is this week's *parasha* (portion). It is a collection of laws concerning sexual morality in war, human dignity, treatment of refugees, laws protecting workers and safeguarding the poor, animal welfare, and much more. According to Moses Maimonides (1135-1204), there are 72 *mitzvot* (commandments) in this section of the book of Devarim (Deuteronomy) - more than any other *parasha* in the Bible.

In studying the seven texts selected for this study booklet, you may wish to concentrate on one or a few of the topics. Ask yourself: how does it relate to ethical issues that we face today? How is the text and its interpretation similar, or different, to current human rights thinking? What can we learn from the ancient texts and their commentaries?

The collection of sources has been called "rumblings" because the core sources are early intimations of a matrix of ethics that only becomes fully textured and articulated through the many hundred years of interpretive tradition and lived history that have engaged it, struggled with it, refined it - and not uncommonly - changed its meaning entirely.

Each section may be studied in *chavruta* (paired learning) or in a small group. Please consider using the *Points to consider* at the bottom of each page as starting points for your own discussion. At the end of the session, it might be useful to share with the group what you have discussed. It may not be possible to cover everything but a key goal for this *chavruta* study collection is that everyone should grapple with the timeless themes it presents.

Rambam (Rabbi Moses Maimonides, 1135 -1204), Moreh Nevuchim - Guide to the Perplexed 3:41

This *mitzva* is included among the lofty attributes that are worthy for the pious to follow. What I shall testify concerning this is that he, although his desire overcame him and he was unable to control himself – he is still obligated to take her to a secluded place, as it is written, *into your home*, and it is forbidden for him to take her in the midst of the battlefield, as our Sages explained, and likewise it is forbidden for him to be intimate with her for a second time until her mourning and her sorrow are relieved, and she is not to be prevented from mourning and from appearing unattractive and from crying, as the text teaches, *And she shall cry for her father and her mother...*, for mourners find comfort in their weeping and the stimulation of their mourning until their physical strength is exhausted from the suffering of that psychological event – just as a celebrant has enjoyment from different types of entertainment, and therefore the Torah had mercy in her and permitted her this until her weeping and mourning are over.

FOURTH GENEVA CONVENTION, 1949

Article 27 - *Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.*

Source 1 Sexual Morality in War

Devarim (Deuteronomy) 21:10-14

If you go out to war against your enemies, and the Lord, your God, will deliver them into your hands, and you take their captives, and you see among the captives a beautiful woman and you desire her, you may take her for yourself as a wife. You shall bring her into your home, and she shall shave her head and let her nails grow. And she shall remove the garment of her captivity from upon herself, and stay in your house, and weep for her father and her mother for a full month. After that, you may be intimate with her and possess her, and she will be a wife for you. And it will be, if you do not desire her, then you shall send her away wherever she wishes, but you shall not sell her for money. You shall not keep her as a servant, because you have afflicted her.

דברים כא:י-יד

כִּי תֵצֵא לְמִלְחָמָה עַל אִיבֶיךָ וַיִּתְּנֶנּוּ
יְקֹנֶךָ אֱלֹהֶיךָ בְּיָדְךָ וְשָׁבִיתָ שְׁבִיּוֹ: וְרָאִיתָ
בְּשָׁבִיָּה אִשָּׁת יִפֹּת תֹּאֵר וְחָשַׁקְתָּ בָּהּ
וְלָקַחְתָּ לָּךְ לְאִשָּׁה: וְהִבֵּאתָהּ אֶל תּוֹךְ
בֵּיתְךָ וְגִלַּחְתָּ אֶת רֹאשָׁהּ וְעָשְׂתָה אֶת
צַפְרֹנֶיהָ: וְהִסִּירָה אֶת שְׂמֹלֶת שְׁבִיָּהּ
מֵעַלֶיהָ וְיָשְׁבָה בְּבֵיתְךָ וּבְכָתָהּ אֶת
אָבִיהָ וְאֶת אִמָּהּ יָרַח יָמִים וְאַחֵר כֵּן
תָּבוֹא אֵלֶיהָ וּבְעֵלְתָהּ וְהִיתָה לָּךְ לְאִשָּׁה:
וְהָיָה אִם לֹא חָפְצְתָּ בָּהּ וְשִׁלַּחְתָּהּ
לְנַפְשָׁהּ וּמָכַר לֹא תִמְכְּרָנָהּ בַּכֶּסֶף לֹא
תִתְעַמְרָהּ בָּהּ תַּחַת אֲשֶׁר עָנִיתָהּ.

Points to consider

What do you think about the above text?

Is it possible to legislate for war? Is it desirable? Why?

Is there any modern parallel in which this principle may have been of use?

Can we learn about the Torah's approach to war in general and the treatment of women in particular, from this passage.

Rashi (Rabbi Shlomo Yitzhaki, (1040-1105) on Devarim 21:23

A blasphemy against God - this is a degradation of the Divine King in whose image humankind is created.

Talmud Bavli Sanhedrin 46b

Rabbi Meir said, A parable was stated: To what is the matter comparable? To two twin brothers who lived in the same city. One was appointed king and the other took to highway robbery. At the king's command they hanged him. But all who saw him explained: The King is hanged!

UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948

Article 6 - *Everyone has the right to recognition everywhere as a person before the law.*

Source 2 Inalienable Human Dignity

Devarim (Deuteronomy) 21:22-23

If a man commits a sin for which he is sentenced to death, and he is put to death, you shall then hang him on a pole. But you shall not leave his body on the pole overnight. Rather, you shall bury him on that same day, for a hanging human corpse is a blasphemy against God, and you shall not defile your land, which the Lord, your God, is giving you as an inheritance.

דברים כא:כב-כג

וְכִי יִהְיֶה בְּאִישׁ חַטָּא מִשְׁפָּט מוֹת וְהוּמָת וְתָלִיתָ אֹתוֹ עַל עֵץ: לֹא תֵלִין נִבְלָתוֹ עַל הָעֵץ כִּי קִבּוּר תִּקְבְּרֶנּוּ בַיּוֹם הַהוּא כִּי קָלַלְתָּ אֱלֹהִים תָּלוּי וְלֹא תִטְמֵא אֶת אֲדָמָתְךָ אֲשֶׁר יְקֹדֵשׁ אֱלֹהֶיךָ נָתַן לְךָ נַחֲלָה.

Points to consider

In what sense is a hanging human corpse an affront to God?

What lies at the core of Rashi's interpretation?

The Talmud brings a simile to explain the biblical passage. What does the image of the twins represent?

Notwithstanding the admittedly problematic sanction of capital punishment, what may we learn from the text about the treatment of convicted criminals today?

Mishna Makkot 3:14

If the prisoner is caused to wet or soil himself on account of the pain to which he was being subjected, he is discharged.

Talmud Bavli Makkot 23a

Samuel said: If they had tied him down to the post and he broke away and escaped from the Court, he is exempt. What is the reason? — Because of the text, lest he be degraded. An objection was raised: If he befouled himself either at the first or at the second stroke, they let him go. If the whip snapped at the second stroke, they let him go... Our Rabbis taught: If they estimate him that he would befoul himself as soon as they applied the lash; they let him go...

Our Rabbis taught: Only men lacking in physical vigour and abounding in knowledge are appointed as 'superintendents'; Rabbi Judah says: Even men lacking in knowledge and abounding in physical vigour. Said Rava: Rabbi Judah's view seems the more logical, because it is written there, Forty he shall have him beaten, he shall not exceed; lest he exceed. Now, if you say that the superintendents are men lacking in knowledge, then I understand that such a warning is necessary; but if you say that only men abounding in knowledge may be appointed as superintendents, is such a warning necessary? And what say the Rabbis to this? — They say: We caution only those who are cautious of themselves.

UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948

Article 5 - *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*

Source 3 Humane Treatment of Prisoners

Devarim (Deuteronomy) 25:1-3

If there is a quarrel between men, and they approach the tribunal, and they the judges judge them, and they acquit the innocent one and condemn the guilty one and it shall be, if the guilty one has incurred the penalty of lashes, that the judge shall make him lean over and flog him in front of him, commensurate with his crime, in number. He shall flog him with forty lashes; he shall not exceed, lest he give him a much more severe flogging than these forty lashes, and your brother will be degraded before your eyes.

דברים כה:י-ג

כִּי יִהְיֶה רִיב בֵּין אָנָשִׁים וְנִגְשׁוּ אֶל
הַמִּשְׁפָּט וּשְׁפָטוּם וְהִצְדִּיקוּ אֶת הַצְּדִיק
וְהַרְשִׁיעוּ אֶת הָרָשָׁע: וְהָיָה אִם בֶּן הַכּוֹת
הָרָשָׁע וְהִפִּילוּ הַשֹּׁפֵט וְהִכְהוּ לְפָנָיו כְּדִי
רְשָׁעוֹ בְּמִסְפָּר: אַרְבָּעִים יִכְנוּ לֹא יִסִּיף
כִּן יִסִּיף לְהַכְתּוֹ עַל אֵלֶּה מִכָּה רַבָּה
וְנִקְלָה אַחֲדָה לְעֵינֶיךָ.

Points to consider

The text is concerned with the degradation of the prisoner. Why do you think that is?

The various opinions expressed in the Talmud seems to make the commandment more lenient. Why?

What is the conclusion of the last sentence in the second paragraph from the Talmud?

Any relevant modern instances to which this law might apply?

Talmud Bavli Gittin 45a

A slave of Rabbi Hisda's escaped to the Cutheans. He sent word to them that they should return him. They quoted to him in return the verse, *Thou shalt not deliver unto his master a servant*. He quoted to them in return, *So thou shalt do with his ass and so thou shalt do with his garment; and so shalt thou do with every lost thing of thy brother's*. But, they retorted, it is written, *Thou shalt not deliver unto his master a servant?...* Rabbi Abaye lost an ass among Cutheans. He sent to them saying, *Send it back to me*. They sent to him saying, *Give us a mark of identification*. He sent word to them, that its belly was white. They sent him back word: *Were you not Abaye, we would not send it to you. Have not all asses white bellies?*

UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948

Article 14 - *Everyone has the right to seek and to enjoy in other countries asylum from persecution.*

Source 4 Refugees and Political Asylum

Devarim (Deuteronomy) 23:16-17

You shall not deliver a slave to his master if he seeks refuge with you from his master. Rather, he shall be allowed to reside among you, wherever he chooses within any of your cities, where it is good for him. You shall not oppress him.

דברים כג:טז-יז

לֹא תִסְגִּיר עֶבֶד אֶל אֲדֹנָיו אֲשֶׁר יִנָּצֵל
אֵלָיךָ מֵעַם אֲדֹנָיו: עִמָּךְ יֵשֶׁב בְּקִרְבְּךָ
בְּמִקוֹם אֲשֶׁר יִבְחַר בְּאַחַד שְׁעָרֶיךָ בְּטוֹב
לוֹ לֹא תוֹנְנוּ.

Points to consider

According to the Torah text, what is the status of a refugee slave?

Are the Talmudic Rabbis disagreeing with Torah? If so, what do they?

What are the broad ethical principles that lie at the foundation of this text?

Can a wider principle of civic responsibility be learned from these texts? What would that be?

Talmud Bavli Bava Metzia 83a

MISHNAH. It once happened that Rabbi Yochanan ben Mathia said to his son, *Go out and engage labourers*. He went and agreed to supply them with food. But on his return to his father, the latter said, my son, should you even prepare for them a banquet like King Solomon's when in his glory, you cannot fulfil your undertaking, for they are the children of Abraham, Isaac and Jacob. Instead, before they start work, go out and tell them, *I engage you on the condition that you have no claim upon me other than bread and pulses*. Rabbi Shimon ben Gamliel said: It was unnecessary to stipulate thus: everything depends on local custom.

GEMARA. Is it not obvious? — It is necessary to teach it only when the employer pays them a higher wage than usual: I might think that he can plead, *I pay you a higher wage in order that you may start earlier and work for me until nightfall*; we are therefore taught that they can reply, *The higher remuneration is only for better work but not longer hours*.

Tosafot Baba Metzia 83a

The customs of the land are binding only if they are superior but if the custom is inferior and stands opposed to our values, it is not to be relied on. There are customs that are unreliable even in places where we are obligated to act in accordance with the custom of the land. Therefore, if there is legislation in any land depriving the labourer of his rights, we are obligated to oppose it.

UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948

Article 24 - *Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.*

Source 5 Labour Rights

Devarim (Deuteronomy) 24:14-15

You shall not withhold the wages of a poor or destitute hired worker, of your brothers or of your strangers who are in your land within your cities. You shall give him his wage on his day and not let the sun set over it, for he is poor, and he risks his life for it, so that he should not cry out to the Lord against you, so that there should be sin upon you.

דברים כד:יד-טו

לֹא תַעֲשֶׂק שֹׁכֵיר עֲנִי וְאֶבְיֹן מֵאַחֶיךָ אוֹ מִגֵּרְךָ אֲשֶׁר בְּאַרְצְךָ בְּשַׁעְרֶיךָ: בְּיוֹמוֹ תִּתֶּן שְׂכָרוֹ וְלֹא תָבוֹא עָלָיו הַשֶּׁמֶשׁ כִּי עֲנִי הוּא וְאֶלְיוֹ הוּא נִשְׂא אֶת נַפְשׁוֹ וְלֹא יִקְרָא עָלֶיךָ אֶל יְקֹוֹק וְהָיָה בָּךְ חַטָּא.

Points to consider

The Torah stresses the importance of promptly paying hired labourers. Why might this be so essential?

Why would a banquet fit for a king not be sufficient to honour one's contract with a worker?

What underlying assumptions are at work in the text and its commentary?

What wider principle may be learned from these texts?

Rambam (Rabbi Moses Maimonides, 1135 -1204), Mishne Torah, Matnot Aniyym 1:8

All the gifts to the poor are not in the benefit of the owner to dispose of them to whomever owner wishes, but the poor come and take them even against the will of the owners, even if the latter is himself a poor man, we take them away from him.

Vayikra Rabba 34:11

Said Rabbi Joshua ben Hanina: The poor man does more for the rich man by accepting his charity than the rich man does for the poor man by giving it.

Israel Salanter (1810 - 1883), founder of the Mussar movement

A person should be more concerned with spiritual than with material matters, but another person's material welfare is his own spiritual concern.

Aharon Shapiro, The Poverty Program of Judaism (1971)

To the end of eliminating poverty, Judaism as in all other faiths extols the virtues of giving. The uniqueness of Judaism's poverty program, however, is that its success does not depend on mere exhortation to give generously. Rather, the religion prescribes certain mandatory levels of giving and objective criteria of receiving above a certain minimum level. This makes the program somewhat analogous to our modern poverty programs based on taxation and minimum relief.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 1966

We recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

Source 6 Poverty and Justice

Devarim (Deuteronomy) 24:19-22

When you reap your harvest in your field and forget a sheaf in the field, you shall not go back to take it; it shall be left for the stranger, the orphan, and the widow, so that the Lord, your God, will bless you in all that you do. When you beat your olive tree, you shall not dishonour it by picking all its fruit after you; it shall be left for the stranger, the orphan and the widow. When you pick the grapes of your vineyard, you shall not glean after you: it shall be left for the stranger, the orphan and the widow. You shall remember that you were a slave in the land of Egypt: therefore, I command you to do this thing.

דברים כא:י-יד

כִּי תִקְצֹר קִצִּירְךָ בְּשָׂדֶךָ וְשָׁכַחְתָּ עֹמֶר
בְּשָׂדֶה לֹא תָשׁוּב לְקַחְתּוֹ לְגֵר לִיתּוֹם
וְלְאַלְמָנָה יְהִיָּה לְמַעַן יְבָרְכֶךָ יְיָ
אֱלֹהֶיךָ בְּכָל מַעֲשֵׂה יָדֶיךָ: כִּי תַחַבֵּט
אֵת זֵיתְךָ לֹא תִפְאַר אַחֲרֶיךָ לְגֵר לִיתּוֹם
וְלְאַלְמָנָה יְהִיָּה: כִּי תִבְצֹר כַּרְמְךָ לֹא
תַעוִיל לְאַחֲרֶיךָ לְגֵר לִיתּוֹם וְלְאַלְמָנָה
יְהִיָּה: וְזָכַרְתָּ כִּי עֶבֶד הָיִיתָ בְּאֶרֶץ
מִצְרַיִם עַל כֵּן אֲנֹכִי מִצְוֶיךָ לַעֲשׂוֹת אֶת
הַדְּבָר הַזֶּה.

Points to consider

The text states, *You shall not dishonour the olive tree by picking all its fruit.* What might this mean?

What principle of civic responsibility be learned from this passage? Is it sufficient?

What unifies the "stranger, the orphan and the widow"? Who might fall in similar categories today?

What does it mean to remember that you were a slave in Egypt?

We have a *duty* towards the poor, but do the poor have a *right* to aid?

Rambam (Rabbi Moses Maimonides, 1135 -1204), Moreh Nevuchim - Guide to the Perplexed 3:48:

It is prohibited to kill an animal and its young... in such a manner that the young is slain in the sight of its mother, for pain of the animals under such circumstances is very great. There is no difference in this case between the pain of man and the pain of other living beings, since the love and tenderness of the mother for her young ones... exists not only in man but in most living beings... The same reason applies to the law that obligates us to let the mother fly away when we take the young... If the law provides such grief not to be caused to cattle or birds, how much more careful must we be not to cause grief to our fellow human being.

Ramban (Rabbi Moses Nachmanides, 1194 - 1270), Commentary on Devarim 22:6:7

The ruling on the mother bird is not based on the Almighty's pity for the animal. Otherwise, God would have forbidden us their slaughter. The reason however for the prohibition is to teach us compassion and the avoidance of cruelty. Butchers and slaughterers become hardened to suffering by their occupation. These precepts of not slaughtering the mother and the young on the same day and sending away the dam are not inspired by feelings of consideration for their suffering but are decrees to inculcate humanity in us. In the same way our Sages regarded all the Torah's precepts, negative and positive, as decrees.

Can Animals have "Human Rights" too?' Professor Conor Gearty, LSE, 13th January 2008

The kind of reflections about nature that produce observable conduct classifiable as reflecting a 'human rights approach' might be replicated by similar observations producing a more general language of animal rights. What this entails in terms of exact rights would need to be worked through; which rights are available to each kind of animal (including the human) would naturally depend on the nature of the species under discussion, its capacity to feel pain, its ability to engage with the world around it, its conscious involvement with the world outside itself, and many other factors. But in this the sixtieth anniversary year of the Universal Declaration of Human Rights, those who are truly dedicated to human rights should not be afraid of characterising their subject as a subset of a wider topic, that of animal rights, albeit a subset without whose existence the larger category would never have been effectively articulated as such. This does not diminish the importance of human rights, which would inevitably remain more sophisticated and complete than their animal counterparts, but it might well do long term good to the subject by putting its intellectual foundations on a firmer basis than they presently enjoy.

Source 7 Concern for Animal Welfare

Devarim (Deuteronomy) 22:6-7

If a bird's nest chances before you on the road, on any tree, or on the ground, and it contains fledglings or eggs, if the mother is sitting upon the fledglings or upon the eggs, you shall not take the mother upon the young. You shall send away the mother, and then you may take the young for yourself, in order that it should be good for you, and you should lengthen your days.

דברים כב:ו-ז

כִּי יִקְרָא קוֹן צִפּוֹר לְפָנֶיךָ בַּדֶּרֶךְ בְּכֹל עֵץ
אוֹ עַל הָאָרֶץ אֲפֹרָחִים אוֹ בִּיצִים וְהָאִם
רֹבֶצֶת עַל הָאֲפֹרָחִים אוֹ עַל הַבִּיצִים לֹא
תִקַּח הָאִם עַל הַבָּנִים: שְׁלַח תְּשַׁלַּח אֶת
הָאִם וְאֶת הַבָּנִים תִּקַּח לָךְ לְמַעַן יִיטַב
לָךְ וְהִאֲרַכְתָּ יָמִים.

Points to consider

What is the principle put forward in the Torah text?

Whose moral standing is the text concerned with?

What are the differences between the views of Rambam and Ramban?

Are these ideas useful for those concerned for animal welfare today?