

SHE SHALL MOURN

BENJAMIN GOODNICK

The biblical passage in Deuteronomy 21:10-14 has always both fascinated and greatly puzzled me:

When you war against your enemies, God will give you victory over them, so that you will take captives. If you see a beautiful woman among the prisoners and desire her, you may take her as a wife. In such case, when you bring her home, she must shave her head and let her fingernails grow. She must take off her captive's garb and remain in your house a full month, mourning for her father and mother. Only then may you be intimate with her and possess her, making her your wife. If you do not desire her, however, you must send her away free. Since you have had your way with her, you may not sell her or keep her as a servant.

Prima facie, we are confronted here with a situation in which a soldier of a conquering army (i.e., Israel's) surveys the captives of the enemy and selects a woman among them to whom he is attracted. It might be worthwhile to ponder why the warrior would want this woman at all. As the text stresses, it is not because of her fine traits or moral character but simply that *you see a beautiful woman and you desire her*.¹ This scenario presents some questions, none of which – to my limited knowledge – has been considered by past commentators.

1. Was the woman crying for her parents simply because she is separated from them and her home, or were they casualties of the war?

2. Does this use of the word "woman" in this passage, rather than "maiden" or "girl," imply that she was married? Or does it simply describe her as a mature female? If the latter, it would seem unusual in that period for a grown woman to be still living at home with her parents. Yet, there were women in biblical times who did not marry. Miriam, for example, who stands out so prominently in the early history of Israel and supported her younger brothers Aaron and Moses in their sacred mission.

Benjamin Goodnick, Ph.D., is a diplomate of the American Board of Professional Psychology in private practice in the Greater Philadelphia area. He is a consultant to government agencies and private religious schools. His articles have appeared in Jewish and professional journals.

Perhaps the intent of the biblical law on captives was to limit the Israelite warrior's choice to single women. Yet, Rashi² asserts that even if she is married, the warrior can take her. He bases this view on the use of the word "*isha* [woman]" as applying to a married woman. However, though *isha* frequently does apply to a married woman, the usage is not universal. It can be taken in the general sense of a mature woman. Etymologically, *isha* is associated with "*ish* [man]," apparently derived from the "*yesh* [being]," with the focus on human beings.

3. If a woman still living with her parents is among the captives, does that imply that the entire population of the conquered territory is taken captive? It appears that all the inhabitants of the conquered town could be considered spoils of war, along with soldiers who surrendered, weapons, and material goods.

4. It seems strange that there is no mention of widows, with or without children, or of mourning a lost husband or mourning the loss of or separation from children. In the aftermath of war, many of the women available would be those who had lost their husbands, and they would have been among the captives.

They would be older than the single women, and perhaps be encumbered with children, but a young widow can still be attractive. Yet it seems to me intentional that a woman whose husband is slain, missing, or enslaved is not mentioned as suitable for marriage, because of attachment to the lost husband, loyalty to his family, and feelings of abhorrence or guilt at being bound to one of the enemy. So they would, for moral, religious and social reasons be out-of-bounds, and not even mentioned in the text.

As to the man, apparently whatever Hebraic upbringing or moral training this soldier had did not lessen his desire. (Rashi considers that the concession of allowing marriage with a non-Israelite is given only because of "man's evil inclination.") The biblical law places conditions on his treatment of the captive woman that are examples of a number of instances where the Bible uses a subtle approach intended to enhance the status of women.

The hands of the warrior are stained with the blood of other human beings. How can he touch the woman bound to those he killed? It is the biblical tradition that where a sword is lifted, sanctity departs. *When you eventually build a stone altar for Me, do not build it out of stone. Your sword will have been*

lifted against it; you will have profaned it (Ex. 20:22). Also, there is an additional reason to postpone a marriage. The woman has been steeped in her own religious practices and rites. Maimonides maintains that during the 30 days before a betrothal is allowed, the woman is permitted, without hindrance, to carry on all her religious practices and idol worship.³

The captive woman's plain appearance during this period, and her pagan worship, and her constant crying may so affect the would-be husband that he will not carry out his intentions after all. And if there is a marriage, it may not run smoothly. As in all relationships, an original attraction frequently dulls and dissipates. The new husband may thus tire of his new wife, who must still feel bonds to her former home at the same time that she is rejected in her new one.

Thus, we note that when the Israelite husband wearies of and "divorces" his "captive" woman, he is forced to treat her as a full-fledged wife, with all the privileges thereto appertaining.

Maimonides associates three commandments of the 613 in the Torah with the obligations of the Israelite warrior to the captive woman. One is positive (No. 221) and two are negative (Nos. 263 and 264).⁴ They emphasize the need to treat her as a fully entitled wife, so that even her conversion to Judaism cannot be coerced.

The positive commandment (No. 221) states that, quoting our sages: "This law is only a concession to human weakness." The soldier must take her to a private place (i.e., his own home) and marry her, after her month of adjustment.

It is my contention that the Torah is consistent in stating that only a single woman (i.e., living at home with her parents), a maiden (i.e., virgin), was available for the Israelite soldier in his conquest. Note that the term used (Deut. 21:14) as the reason for setting the married wife free is *innatah* [since he "forced" (i.e., violated) her]. This is precisely the term *innah* used (Deut. 22:29) in referring to the violator of the Israelite maiden. So the Torah text does not shirk from calling the soldier a "violator" of the woman he must marry. The only difference between the two instances is that the soldier violator may divorce his wife whereas the Israelite violator may not divorce her.

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In conclusion, the whole episode appears intended primarily to enhance the status of women, no matter what their original source or status. Finally, the text is telling the men: "Even in the unusual case where you find a young woman, attractive and still at home, with her parents, you must treat her as equal to any other woman you would marry. She must be give time to adjust to her new surroundings and new relationship with a man and his home, especially an enemy soldier. And when, for whatever reason, she has to leave you, she remains a free woman." All this, I conclude, is intended to uphold the dignity of women –whether of Israel or of other nations.

NOTES

1. Rabbi Aryeh Kaplan, *The Living Torah* (New York: Moznaim) pp. 987, 969.
 2. Deuteronomy 21:11. This view may be borrowed from Ketuvot 21b.
 3. Maimonides, *The Commandments*, translated by Charles B. Chavel (London and New York: Soncino Press) p. 221.
 4. Ibid.
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RESPONSES from Rabbi Hayyim Halpern's book TORAH DIALOGUES

1. Besides here, the phrase is found a number of times only in Genesis. There it is used exclusively for the three patriarchs, their brothers and ancestors. It is possible that the Torah used it here again in order to place Moses and Aaron on the level of the patriarchs.
2. The commentary *Kli Yakar* suggests that when people are in a state of anxiety and misfortune such as described in the *Tochahah*, they tend to make rash vows.
3. Despite God's help in the takeover of the land of Canaan, it would still be necessary to be familiar with the terrain and defensive capabilities. The Talmud (Sotah 34b) and commentators be-

lieve that Moses was not ordered to send spies but merely given permission to do so. They cite Deuteronomy 1:22 as proof.