

PARASHAT KI TETZE

The Female Captive: What is the Torah Teaching Us?

By Dr. Mordekhai Sabato

In Devarim 21, at the conclusion of the laws of warfare, we find an intriguing and enigmatic section:

(10) When you go out to war against your enemies and the Lord your God delivers them into your hand, and you take them captive,

(11) and you see among the captives a beautiful woman, and you desire her, and you take her as your wife,

(12) then you shall bring her into your home and she shall shave her head, and do her nails,

(13) and shall remove her robe of captivity from upon her, and she shall sit in your home and bemoan her father and her mother for a full month, and thereafter you shall come to her and be her husband, and she shall be your wife.

(14) But it shall be, if you do not desire her, then you shall send her free; you shall not sell her for money, nor shall you make her your slave now that you have caused her suffering.

What is this trying to teach us?

We shall begin with the words of Chazal:

The Torah permits this only as a concession to the evil inclination. [It is analogous to another case:] It is preferable that Israelites should eat the flesh of animals that were on the point of death but nevertheless were ritually slaughtered, than that they eat the flesh of unslaughtered carcasses. (Kiddushin 21b)

Rashi explains that the innovation presented by this parasha is the license given to combat soldiers to marry non-Jewish women. This license is a concession that the Torah makes with the knowledge that most fighters, in the situation in which they will find themselves at war, will not be able to observe the prohibition. The Torah therefore prefers to allow such a marriage, although it is not the ideal, for fear that if the soldier views himself as having transgressed a biblical prohibition by this marriage, he will degenerate to even more lowly acts.

In the above beraita, we find no reason for the procedure described in verses 12-13. Rashi, following R. Akiva's approach in the Sifrei (212-213), explains that these actions are designed to make her unappealing. Thus, the Torah begrudgingly permits him to marry her, lest he take her without the Torah's permission and thereby deteriorate religiously even further. However, he may take her only after she performs a series of actions aimed at making her undesirable to him, which may cause him to change his mind.

In his Torah commentary, Rashi does not explain whether the process includes the woman's conversion to Judaism. We may deduce his opinion from his Talmud commentary (Kiddushin 22a): the woman does not convert of her own free will, but apparently the husband forces her to observe the Jewish religion against her will. Thus, the innovation of the Torah is that it introduces a special license for marrying a non-Jewish woman as the lesser of evils, but this applies only under the extreme conditions of war, and after lengthy attempts to dissuade him.

IS THE TORAH TRYING TO MAKE HER UNAPPEALING? THE PROBLEMS WITH RASHI'S VIEW

This view of what the Torah aims to teach us here, and the explanation that she should perform acts aimed at making her unappealing to him, is difficult to square with a literal reading of the text. The following are the principle difficulties that this approach entails:

- i. According to this approach we are forced to say that PRIOR to our parasha the Torah had already established the prohibition of marrying a non-Jewish woman, and the process for her conversion. This prohibition may be included in the words, "You shall not intermarry with them" (Devarim 7:2), but the context of that verse shows that it refers only to the seven Canaanite nations. (Indeed, this is the opinion of Chazal – see Kiddushin 68b.) The procedure for conversion is likewise not set out in the Written Law. Why, then, does the Torah on the one hand hide the general prohibition of intermarriage and the regular procedure for conversion, while on the other hand paying special attention to the

unique license given here and the unusual conversion procedure involved?

ii. According to Rashi's interpretation, the words "You take her as your wife" (verse 11) represent the crux of the license. However, since taking the woman as a wife is dependent on conditions and actions that are listed further on (verses 12-13), it is unclear why the Torah would give the license first, before its conditions.

iii. R. Akiva interprets "doing her nails" as growing them long in order to make her appear unattractive. But the Sifrei brings a proof for R. Eliezer's argument that the text means for them to be cut short, from a verse in Shemuel (II 19:25): "And Mefiboshet the son of Shaul came down towards the king; he had not dressed (lit. done) his feet nor trimmed his beard..." From the context there, it is clear that these are acts of neglect, and hence we may learn that "doing" (nails, etc.) suggests an act of improvement, not the opposite. Ramban comments that this is a strong proof.

iv. Rashi's explanation, following to the Sifrei, that "her robe of captivity" is a beautiful garment meant to entrap enemy soldiers, is problematic. "The garment of her captivity" refers not to the robe that she wore when she went out to war, or that she was wearing at the time of her capture. It means, quite simply, the garment that she wears while in the prisoners' camp. It is logical that the term is used to denote a despised garment, such as that worn by prisoners – as we find, for example, in the case of Yehoyakhin, king of Yehuda, when Evil-Merodakh, king of Babylon, lifted him out of his lowly prisoner's status, and "changed his prison garments" (II Melakhim 25:29).

To the last two points above we may add that the month granted by the Torah to the woman to cry for her father and mother certainly need not be understood as an action aimed at making her unattractive. Likewise, bringing her into his home is not necessarily aimed at having this effect.

A MONTH OF MOURNING: RAMBAN'S VIEW AND ITS DIFFICULTIES

For these reasons, Ramban differs with Rashi, offering an alternate explanation for the actions listed in verses 12-13. He argues that these actions are meant as customs of mourning:

Therefore I say that all of these are customs of mourning, all culminating in "And she shall cry for her father and her mother" (verse 13). The command that she shave her head is in keeping with the way of bereavement, as in "And he shaved his head" (Iyov 1:20) concerning Iyov, and also "Cut off your hair" (Yirmiyahu 7:29). Cutting the nails is a sign of mourning, like shaving of the head. The Torah also says that she must remove her garment of captivity from upon her – in other words, she should wear garments of mourning. "And she shall sit in your home" – like a widow, not going out at all, "And she shall cry for her father and her mother" – and she does all this for a period of a month, which is the way of mourners.

Concerning the purpose of these action, the Ramban writes:

I believe that the intention here is not for one to pity her, but rather that the idolatry be uprooted from her mouth and from her heart, and that she bemoan the pain of her wandering and her separation from her father, her mother and her nation. For it is not proper to lie with a woman who is captive and mourning, as our Sages taught (Nedarim 22) concerning "mamzerim" who are born of a union where the man intends in his heart to divorce his wife – and how much more so in the case of a woman who cries out in her heart to her gods to save her and restore her to her nation and her gods!

Rather, when she is informed that she will be forced to abandon her nation and her birthplace and to convert, she is told, "Be comforted for your father and our mother and the land of your birthplace, for you shall never see them again; you shall be a wife for your husband according to the law of Moshe and Yehudit. Then she is given time to cry and mourn, as is the custom in bereavement, in order to relieve her of her pain and her desire, for every sadness will dissipate and be comforted later. And during this time she debates in her heart about converting, and thus some of the idolatry is uprooted from her heart, as well as her nation and her birthplace, for she is comforted over them, and she cleaves to this man, and becomes used to him. And for this reason the Torah says, "And you shall bring her into your house," and our Sages taught (Sifrei 7), "Your home – not the home of someone else," and likewise "she shall sit in your home" – that all this time she sits in the house that he uses – for perhaps she will be appeased and come to desire him.

Thus, according to the Ramban, this woman must carry out the customs of bereavement before the soldier can marry her, in order to allow her the opportunity to

become accustomed to her new religious and social status, with a view to minimizing the extent of coercion involved in her conversion.

This interpretation, too, entails certain difficulties:

i. Cutting nails is not necessarily a custom of bereavement. Although the Ramban draws a parallel between this and shaving the head, careful examination reveals the difference between these two actions. Moreover, the Torah uses the word "doing" rather than "cutting" specifically in order to teach us not only about the content of the action, but also about its nature: we are concerned with repair and improvement, not destruction. An act of mourning is always an act of destruction – i.e., not in accordance with the way of the world, but in order to express the sorrow of the mourner.

ii. Removal of the garment of captivity does not in itself express bereavement; it is rather the wearing of mourning clothes in their place that has this function. But it is specifically this detail – the wearing of mourning clothes – that is missing from the text.

iii. In addition, some of the difficulties that applied to Rashi's interpretation are valid here too.

A THIRD VIEW: CONCERN FOR THE WOMAN

An opening for a completely different view of the nature of our parasha is to be found in the Rambam's Guide of the Perplexed (3:41):

We already know the statement of the Sages that "the Torah permits this only as a concession to the evil inclination." At the same time, 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 ON HER and permitted her this until her weeping and mourning are over.

"The lofty attributes that are worthy for the pious to follow" include the self-restraint and, principally, the simple human concern for a helpless captive. The motivation of this section is not religious (namely, fear of marriage to a non-Jewish woman), but rather moral - it teaches the soldier to restrain his desire and to have consideration for the plight of the woman and her feelings.

Proof for this view is brought by the Rambam from the conclusion of the parasha (v. 14): "And it shall be, if you do not desire her, then you shall send her free... you shall not make her your slave, after having caused her suffering." Clearly, this law comes to protect the rights of the captive and to limit the rights of the captor, and we may now use this perspective to re-examine the parasha as a whole.

Firstly, let us mention once again that the soldier finds the woman "among the captives" – i.e., in the prisoners' camp. Some amount of time elapses between the time when the woman fell captive and the moment that the soldier sees her in the prisoners' camp.

It should also be kept in mind that captive women were always regarded as part of the booty belonging to the victorious soldiers, and the accepted practice among the nations was for the soldiers to abuse them at will (see, for example, Shoftim 5:30).

Against this background, let us try to understand the Torah's instructions. It appears that this parasha comes to speak out against this custom regarding the treatment of captive women.

"When you go out to war against your enemies... and you see among the captives a beautiful woman, and you desire her" – do not treat her as you will, as an object for pleasure. It seems that the words, "And you take her as your wife," are not a license, as we have explained thus far, but rather a command. In other words, there is no way for you to consummate your desire other than through marriage. Thus, the Torah does away with the wartime custom of treating women captives as prostitutes. The halakhic status of these words is therefore a sort of "positive prohibition" – you shall take her as a wife, not as a casual opportunity to fulfill your desires. This statement is the crux of our parasha's innovation, and therefore it appears at the very start.

Thereafter, the Torah elaborates on the practical meaning of this principle: "You shall bring her into your home" – you shall not take her in the prisoners' camp, as is the

wartime custom of the nations, but rather you shall bring her into your home, like a free woman.

"And she shall shave her head and do her nails" – we have already commented that the literal text would suggest that this action concerning the nails involves improvement – i.e., cutting, as R. Eliezer argues in the Sifrei. During the long period that the woman sat in the prisoners' camp, her nails must certainly have grown long, and therefore they need to be cut.

This instruction would seem to contradict the previous one – "and she shall shave her head," which would make her unattractive. But in truth this is not the case. R. Yaakov Zvi Mecklenburg, the author of *Ha-ketav Ve-ha-kabbala*, notes that in biblical language, "shaving" does not mean removal of all the hair; it means the same as what we would call today a "haircut." Thus we find concerning Yosef, when he was taken out of the prisoners' dungeon, "And he shaved and changed his garments and he came to Pharaoh" (Bereishit 41:14). (See also II Shemuel 14:25-26 concerning Avshalom.) During the long period of her imprisonment her hair must have grown wild, and therefore she must be permitted to cut it. The two instructions are therefore perfectly complementary, and both are meant to restore the woman's self-respect and honor.

"And she shall remove her robe of captivity from upon her" – the garment of captivity is the most prominent sign of her captive status, and its removal eloquently expresses the change in status required by the Torah.

"And she shall sit in your home and bemoan her father and her mother for a full month" – the captive woman is not an inanimate object that is there to serve your desire; she too has feelings and they must be respected – "for mourners find solace in their weeping," as the Rambam teaches.

Only after all of these actions, including the removal of all signs of captivity and the expression of consideration for her feelings, "You shall come to her and be her husband, and she shall be your wife."

According to this explanation the parasha has nothing to do with the question of marrying a non-Jewish woman. It is concerned solely with the proper moral attitude towards a helpless captive. The Torah requires of a soldier who desires her that he not treat her in traditional wartime fashion, but rather treat her as a completely free woman – i.e., he should marry her after removing all signs of her captivity after waiting for her period of mourning to end.

Ha-ketav Ve-ha-kabbala also notes that this may be R. Eliezer's interpretation; after all, the concept of making her unattractive appears not in his words but rather in the

words of R. Akiva. R. Eliezer says only, "The Torah mentions an action concerning the head and an action concerning the nails; just as the action pertaining to the head refers to removal [of the hair], so the action pertaining to the nails refers to removal." The comparison between cutting her hair and cutting her nails, with no mention of unattractiveness, is entirely consistent with our explanation that the Torah is talking about repair – both in outer form and in inner essence.

Perhaps we may say that the debate between R. Eliezer and R. Akiva represents a fundamental difference in the understanding of our parasha. R. Eliezer reads it in its literal sense, and therefore interprets it as concern for the helpless woman captive. Even R. Akiva may agree that this expresses the literal meaning of the text. But R. Akiva deduces from other sources the Torah's aversion to the possibility of marrying non-Jewish women, and interprets our parasha after adding this aspect to the moral one. He therefore adds that the Torah tries to prevent this marriage by making her unattractive.

In effect, two ideals clash in the parasha: one is the moral concern for the woman captive; the other is the aversion to marriage to a non-Jewish woman which may, as we know, lead to moral degeneration over time. The Halakha comes to establish the proper balance between these two ideals.

(Translated by Kaeren Fish)

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