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Deuteronomy 21:10-14: The Beautiful Captive Woman

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The biblical text of Deuteronomy 21:10-14 deals with the treatment of sexually desirable non-Jewish women who are captured in war. It addresses the sexual privileges of the captors, as well as the legal rights and the process of the socialization into Israelite society of the captives. In light of recent events in Bosnia, the system of behaviours this section of Deuteronomy posits is particularly germane.

This paper will explore some of the attitudes and laws relating to the captive woman which developed in the post-biblical literature, tracing the way in which particular issues are addressed through the various levels of commentary - the Midrashei Halakhah (Sifrei Deuteronomy, Midrash Tannaim, Midrash Hagadol),^[1] the Talmudim,^[2] and various Targums, commentators and midrashic compilations such as Rashi, Leqah Tov, Toldot Adam, Rabbenu Hillel, Maimonides (Rambam), Nahmanides (Ramban), Yalqut Shimoni and Torah Tmimah.^[3] The tapestry of commentaries is numerous, rich and varied; it is beyond the scope of this paper to consider more than a small number of them.

I shall examine in particular the following issues:

1. The nature of the sexual act contemplated by Deut. 21: 10-14.
2. The type of war in which it is permissible to take captives.
- 3a. The possible reasons for and effect of biblical permission to marry a captive woman.
- 3b. The attitude of the post-biblical sages to this permission.
4. When intercourse may take place.
5. The biblical rituals, their later development by the sages, and the attitude of the sages to these rituals.
6. Was the conversion of the captive woman mandatory or optional, Noahide or Israelite?
7. The rules regulating the release of the captive woman.
8. Can Deuteronomy 21:10-14 be understood as anti-rape legislation?.

1. What is the Nature of the Sexual Act Contemplated in Deut. 21:10-14?

Deut. 21:10-14 provides as follows:

When you go forth to war against your enemies, and the Lord your God has delivered them into your hands, and you have taken them captive,
 And you see among the captives a beautiful woman, and desire her, and take her for a wife -
 Then you shall bring her home to your house, and she shall shave her head and do her nails,
 And she shall remove the garment of her captivity from her, and remain in your house and weep for her father and mother a for month, and after that you may approach her and have intercourse with her, and she shall be your wife.
 And if you do not want her, you shall send her out on her own; you shall not sell her at all for money, you shall not treat her as a slave, because you "violated" her.

We shall focus on the expression "violated her," *'initah* in Hebrew, from the root *'anah*. It is in the translation of this word that an attitudinal difference between the Targumim becomes apparent. In 2 Samuel 13:11-14, the story of Amnon and Tamar, the root *'anah* is used twice: "do not violate me," and then "he overpowered her, he violated her, and he lay with her." If we understand "and he lay with her" to mean "and he had intercourse with her," we may understand from the juxtaposition of the two concepts that *'anah* can be considered sexual violence. That is, in this instance the use of *'anah* together with "had intercourse" seems to imply actual rape.

This seems to be the case as well in Gen.34:2, the story of Dinah and Shechem. There the text says: "He [Shechem] took her, and he lay with [had intercourse] with her and he violated her [*vaye'anehah*]." *'Anah* alone would not mean necessarily rape, but simply sexual violence of some sort. Rape is again implied here by the use of *'anah* and "had intercourse" together.

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The idea of rape may also be expressed with other terminology. In Deuteronomy 22:25, 28 we find the verb "had intercourse" used with the verbs "took hold of," "grabbed", to imply the idea of forced intercourse i.e. rape. The verb '*anah*' is used alone in Lamentations 5:11, Ezekiel 22:10, and Judges 19:25, and from the context in these instances seems to imply rape.

We must recognize, however, that though it is important to determine what is meant by '*anah*' in Deuteronomy 21:14, rape is only one way of exerting sexual violence. Clearly sexual violence is conveyed in all the quoted instances where '*anah*' is used. Thus although there is no specific mention of rape in Deuteronomy 21:14, the word '*initah*' implies that the woman's consent (if any) to intercourse was due to her circumstances.

The expression '*initah*' is particularly poignant, a point that seems to have been recognized in both the Onqelos and Neophyti Targums. Onqelos actually uses the root '*anah*' in his translation, while Neophyti 1 has "you have exercised your power/authority [*reshut*] over her." Targum Pseudo-Jonathan, on the other hand, considers '*anah*' to be only actual intercourse, translating with the verb *shamash*, and thus failing to transmit the Bible's sensitivity to the captive's powerlessness.

2. When is it Permitted to Take Captives?

As it is permitted to take live captives in only certain types of war, this is the first issue which is addressed in the sources. Sifrei (*parshat* Ki Tezeh *pisqa* 211) and Midrash Tannaim clarify that this war in which captives are subsequently going to be taken is a non-obligatory war (*milhemet reshut*) as opposed to an obligatory war (*milhemet hovah*). The phrase "and when you go forth to war against your enemies" appears in only one other place in the Tanach in addition to our section, Deuteronomy 20:1. That pericope outlines allowable battle exemptions, and explains that if the inhabitants of a besieged city do not open their gates and agree to become a labour force for the Israelites, all the males are to be killed. The women, children and the riches of the city become booty (Deuteronomy 20:14). Halakhically, these rules apply to a war that is considered non-obligatory (Mishnah Sotah 8:7)

However, this is not the only possible scenario. Deuteronomy goes on to say that these rules apply only in the case of cities that are far away and which do not belong to the seven nations mentioned in 20:17 and in 7:1-3. God specifically ordered that these nations have to be totally killed - nothing that breathes must be allowed to live (20:16). There is a discussion in Mishnah Sotah 8:7 and B.T. Sotah 44b as to the exact terminology used to describe a war which is commanded by God. Raba points out that all agree that the wars waged by Joshua (having been commanded by God) are obligatory wars. As well, all agree that the expansionary wars fought by King David are non-obligatory. The grey area of classification concerns wars against heathens who live close to or outside the boundaries of the country: are they pre-emptive i.e., are they to protect the land which God had commanded the Israelites to have, or are they expansionary? It is for this reason that the Sifrei and Midrash Tannaim make the statement that this war in which captives will be taken is a non-obligatory war, i.e., it is perfectly legal to take a female captive. Rashi, Leqah Tov, Midrash Hagadol and Toldot Adam also discuss this issue in their commentaries.

A further issue troubled the sages: as it is an imperative to kill anyone from the seven nations mentioned in Deut. 7: 1-3 and 20:17, what if some of those people had been captured in previous wars by the city now under siege? Must they be killed or is it permitted to capture them, thus allowing the possibility of a Canaanite captive woman?

The biblical text states "and you have taken them captive"; however, the literal meaning of the Hebrew is "you have captured its captives," a phrase both redundant and grammatically problematic. Sifrei and Midrash Tannaim succinctly state: "[This redundancy is] to include Canaanites," i.e., any members of the seven nations, who are now within the besieged city. It can be construed that both Sifrei and Midrash Tannaim find the literal instructions of the Bible problematic.

In Sotah 35b the Babylonian Talmud also addresses this issue of not killing Canaanites but taking them captive. R. Judah takes great pains to illustrate that the nations had a chance to learn the Torah as it was inscribed on the stones Joshua had erected (Deuteronomy 27:8). They failed to do so and so their fate is sealed. R. Simeon maintains that those who repent will be accepted and brings as his proof text Deuteronomy 20:18. From this debate, one gets a sense that capturing but not killing Canaanites found as captives in non-Canaanite cities is a debatable point in the Talmud. Later commentators such as Rashi, Leqah Tov, Midrash Hagadol, Yalkut Shimoni accept Sifrei's position, but refer in an aside to Sotah 35b. Torah Tmimah accepts that the redundancy indicates the release of the Canaanites, quoting Rashi, and states that since it is permissible, after her conversion, to marry a female captive, who may be among the Canaanites who had been captured, it is clear that Canaanites who repent are accepted.

3. The Biblical and Post-Biblical Attitudes to the Captive Woman

The biblical text, read without later commentary, can be construed as being non-judgemental. It seems to outline the procedure without condemning it. However, in post-biblical sources there is displeasure expressed about the idea of an Israelite soldier marrying a captive.

Sifrei makes this point very clearly in *pisqa* 218: relying on the proximity of our pericope to the section on the stubborn and rebellious son (Deut. 21: 18-21), Sifrei claims that the reason for the father having a rebellious son is that he married a beautiful captive woman. This introduced a disturber (*satan*) into his house, which set off a chain of events leading to the father's unnatural death. Even the marriage itself will not be happy according to the Midrashei Halakhah. This is very strongly expressed in all the Midrashei Halachah attached to Deuteronomy 21:14. The Bible states: "And if you do not want her"; the Midrashei Halakhah comment: "Scripture is saying that you will hate her in the future."

Midrash Hagadol and Midrash Tannaim point out that allowing this marriage is merely an accommodation for the evil inclination. They propose an analogy, comparing this situation to that of Israelites eating meat from dying yet ritually slaughtered animals: it is permitted but not desirable. The comparison does not convey a sense of approval. The parable is also told in Midrash Tannaim and Midrash Hagadol of a son who lusted after something not permitted him. The father tried to persuade him against it by pointing out that it would harm him. When the father saw that he was unsuccessful, he permitted it but within certain parameters so that the harm would be dissipated. Again, the sages' disapproval seems obvious.

The Babylonian Talmud in Kiddushin 21b also mentions the analogy to meat, and explains that the Torah "spoke" to man's evil inclinations. The Bavli has little good to say about the outcome of a marriage with a captive woman, with one exception: it does conjure up a positive image of David's four hundred children born of captive wives. These had long hair, sat in golden carriages and were men of power in the house of David. (bSanhedrin 21a, 49a). However, the remainder of the references in the Bavli to marriage with a captive woman generally end in disaster.

The story of Amnon and Tamar is a case in point. We read in bSanhedrin 21a that Tamar was actually David's daughter by an unconverted beautiful captive wife. The Bavli inferred this because had she been the product of a legitimate marriage her father, David, could not have allowed Amnon to have her. After Amnon rapes her, he hates her greatly. R. Isaac explains that this was because she entangled his genitals with hair and mutilated him. This act might be construed by some as justifiable revenge, but Raba does not seem to think so. He points out that daughters of Israel have no pubic or underarm hair, the implication being that Israelite women could not have done such a thing. Tamar had underarm and pubic hair because she was the daughter of a captive wife and therefore not one of the daughters of Israel. The veracity of Jewish women not having underarm or pubic hair seems to have bothered Rashi, and he explains that Jewish women were indeed hairless until they sinned and became haughty, as is mentioned in Isaiah 3:16.

The sages seem to be saying more here than meets the eye. They were certainly aware of a woman's signs of sexual maturity (Mishnah Niddah 5:7ff). As well, undoubtedly, the idea that female pubic hair can mutilate a man's genitals or possibly emasculate him seems symbolic of their perception rather than reality. They may have used this symbolism to make a very strong point that proper Jewish women are hairless, read powerless, and therefore they submit and certainly do not retaliate. Clearly, this section of the Talmud is not sympathetic to Tamar the rape victim, the daughter of a captive wife. It would seem that the sages use the fact that she is the daughter of an unconverted beautiful captive to emphasize the attributes of proper Jewish women.^[4]

Bavli Sanhedrin 107a, again in a discussion about David, states: "Whoever marries a beautiful captive woman will have a rebellious son." The proof, as in Sifrei above, is the biblical proximity of the two sections. The dire consequences - a raped daughter, a sexually mutilated son, a rebellious son, an unnatural death - make the talmudic disapproval quite obvious.

Such disapproval is also evident in the later commentators. Rashi explains that this concession was made to avoid having a man break the law. Because of lust, the captor would marry the captive he finds desirable without permission. Nevertheless, if he marries her, even with permission, he will grow to hate her and she will bear him a rebellious son. Rashi, like the Bavli, brings as his proof the biblical proximity of the pericopes concerning the captive woman, the hated wife (Deut. 21: 15-17), and the rebellious son. Maimonides (*Guide for the Perplexed*, chap. 41), Leqah Tov (p. 70), Yalkut Shimoni (p. 633), and Torah Tmimah (p. 279) also take the position that marrying a captive woman is an accommodation to the evil inclination: permissible but not desirable. Maimonides, in Hilkhoh Melakhim 8: 1, states that soldiers are permitted to eat food that is normally forbidden to Jews if no other food is available, thus implying that captive women are allowed because no other women are available. It can be seen very clearly that the post-biblical sages disapproved strongly of an Israelite's marriage with a captive woman.

Considering the sages' disapproval, one can only speculate why there was biblical permission to marry a female captive. Clearly, the sages felt that a captive woman who became a wife was a great threat. If the same attitude

prevailed biblically, the text gives no such indication.

Both Deuteronomy 20: 1ff and 21: 10ff, each beginning with "When you go forth to war against your enemy," obviously address situations in which the Israelites are at war, but the implications for enemy women are entirely different in each case. This difference seems to be a function of theological pollution, political control, and geography.

In Deuteronomy 7: 1ff we read of certain Canaanite nations that are to be entirely destroyed as they may theologially pollute the Israelites. This admonition is repeated in Deuteronomy 20: 16,17. The nations whose annihilation was commanded are nations who were present in Canaan when Joshua led the Israelites. Their destruction not only prevents the theological pollution of the Israelites, it assures the Israelites' political and military sovereignty of the land.

However, in Deuteronomy 20: 10ff we read that in the case of war with cities far away, cities not of the specific nations mentioned above, the same rules of total destruction do not apply. In the case of non-Canaanite cities, if they surrender willingly, all inhabitants become subservient to the Israelites. If they do not surrender, the men in the besieged city are to be killed. The women, children, and possessions are to be kept as spoil by the Israelites. The question arises as to why the Bible would allow the Israelites to take some of these women as wives.

We know from Judges 21: 14 that occasionally there were shortages of women. In that situation, to allow captive women into Israelite families in order to procreate would be an expedient measure. Josephus in his discussion of the captive woman (*Antiquities* IV: 258 [5]) mentions that when a man takes a woman in order to have children by her, he should be considerate of her wishes. The fact that he mentions this directly in relation to the captive woman is significant.

It can be construed that we see a tension biblically between the fear of theological pollution and the occasional need to replenish the breeding stock, whatever the reason. This might explain the inclusion of the law allowing captive wives. It would seem that the effect of Deuteronomy 20: 16,17 was to ensure political and theological continuation, while the effect of Deuteronomy 21: 10ff was to help biological continuation by enlarging and diversifying the genetic pool from a non-threatening source.

4. When was Intercourse with the Captive to take Place?

The post-biblical literature is very concerned with defining exactly when the first intercourse with the captive can take place.

The Bible says that if a man desires a captive, he may take her home and she stays in his house for a month; while there she must perform certain rituals. It then states very specifically: "And after that you may approach her and have intercourse with her and she shall be your wife." It would seem from a straightforward reading of the biblical text that no intercourse is permitted until after all the rituals have been performed. Sifrei states that if he has intercourse with her before all these rituals are completed, it is a licentious act. Yerushalmi Makkot 2: 6 agrees with this reading, Rabbi Yohanan reiterating there that no intercourse is permitted until all the necessary rituals have been carried out. He points out that the Babylonian sages, who teach in the name of Rab that the first sexual intercourse is permitted before that time, are wrong.

As discussed above, the biblical permission for an Israelite to take a captive woman was regarded only as an accommodation to the evil inclination of lust. This is problematic: if the captor must wait at least thirty days and follow a proscribed ritual before he can have intercourse with her, as the Bible seems to indicate, how can this be considered an accommodation to lust?

Midrash Tannaim and Midrash Hagadol partially address this dilemma and allow intercourse at a stage earlier than Sifrei and the Yerushalmi. They state that if he has intercourse with her before all the prescribed rituals are followed, it is licentious. However, if she willingly wishes to convert, she is ritually immersed and is permitted to him immediately. This then satisfies his lust, seemingly the biblical intention according to the sages, and also his legal obligation to marry only a Jewess. These sources have moved the timing of intercourse forward dependent upon the conversion of the captive, and thus seem to interpret the law differently than the Yerushalmi.

Bavli Kiddushin 21b addresses a number of issues related to intercourse with a captive in its discussion on whether captive women are allowed to priests. The fact that this question is asked confirms that it is only intercourse, but not marriage, which is being discussed; unlike other Israelites, priests are not allowed to marry converts. The issue is resolved that since the Torah allows captive women as a concession to the evil inclination, i.e. lust, one act of intercourse is definitely permitted. As priests also have evil inclinations, they too are allowed one act of intercourse. However, as a priest is not allowed to marry the captive, a second act of intercourse is not permitted. Clearly, one act of intercourse is the absolute minimum with which the sages can satisfy what they consider to be biblical law. It can be interpreted that the Bavli is setting limitations on availability while trying not

to contravene the biblical law as the Bavli's sages understood it.

Clearly, the Yerushalmi, Bavli, and Midrashei Halakhah did not understand the law in the same way. The Yerushalmi allows intercourse only after a thirty day period, and then conversion. The two Midrashei Halakhah allow intercourse only after conversion. The Bavli allows intercourse, but only once, before the captor is required to accept responsibility.

The Bavli goes on to say that a captive woman must be taken only for the warrior himself and not for someone else, and he must not oppress her (*yelahatsenah*) on the battlefield. The sages derive this teaching from the precise sequence recorded in Deut. 21: 11,12: you desire her, and you want to take her as a wife, then you shall bring her to your home, but you must not oppress her on the battlefield (bKiddushin 22a).

The root *lahatz* is also used biblically to describe incidents of oppression (Exod. 3: 9, Jud. 4: 3 and others). From the sexual context of the discussion in the Bavli, and the fact that one act of intercourse is actually permitted, the 'oppression' could be understood to be intercourse. If intercourse is meant, it is difficult to know exactly what the Bavli sages intended by this admonition. Did they consider the one permitted act of intercourse to be an act of oppression? If they did, does the prohibition against it mean that intercourse occurs not on the battlefield, but only after the warrior takes her home and the proper waiting time has passed, or, conversely, does it mean that intercourse occurs not on the battlefield *per se*, but somewhere private near by, but still before she is converted? A private place seems to be indicated, based on the case of priests: they as priests cannot take the captive woman home but they are permitted one act of intercourse.

If, on the other hand, the sages did not consider the first act of intercourse an oppressive act, what exactly do they intend by the term *lahatz*? Possibly, even though they permit one act of intercourse, the sages are prohibiting rape on the battlefield. If that is so, the exact parameters of that prohibition remain unclear.

This possible prohibition against rape seems to address only warriors who are in the process of taking a captive home as a wife. It can be construed that rape is not allowed on the battlefield because presumably, the warrior will be able to have intercourse with her after they are married. Priests are not allowed to marry captives, but are allowed one act of intercourse. If this is a prohibition against rape, does it extend to priests also? This does not seem to be addressed.

Midrash Hagadol and Midrash Tannaim also state, with respect to the biblical requirement "you shall bring her to your house," that the warrior should not oppress her on the battlefield. They seem to understand this in the same way as the Bavli, but the issue of men who are not allowed to take the captive home, i.e., priests, is again not addressed.

Maimonides, Hilkhhot Melakhim 8: 3ff, seems to interpret the passage discussed in the following way: a warrior is allowed one act of intercourse which must be in a private place. It seems a priest is allowed this act without any responsibility as he is not allowed to marry her. This opinion is quoted by Nahmanides in his commentary on Deuteronomy. He states that the simple meaning of the Bible is to prohibit intercourse until after the entire conversion procedure is complete, and that the Yerushalmi agrees with the simple meaning. He explains that the Bavli Kiddushin prohibition against oppression on the battlefield means that the soldier takes her home, has intercourse with her once, and then cannot have intercourse again with her until the entire conversion procedure is complete. Nahmanides, like the other commentators, does not address the issue of the priests and the captive woman.

5. The Captive Woman's Rituals

Just as the later sources developed the laws surrounding intercourse with a captive, as discussed above, so also there was much development in the laws surrounding the rituals a captive woman must follow at the home of her captor. The question of the intent of these rituals in the Bible, how they were later developed by the sages, and the attitude of the sages to these rituals will be examined.

Biblically, the captive must be taken by the captor to his house, she must cut/shave her head, either trim or let grow her nails,^[6] remove the garment she was wearing when she was captured, and weep for her mother and father for a solid month.

The Midrashei Halakhah maintain that by "his house" is meant the house he normally uses, so that he will see her often. She will resemble a gourd or pumpkin shell and will appear unattractive.

The question of resembling a gourd seems to be a reference to shaving her head, though the Midrashei Halakhah insert it after "she shall remain in your house" instead of after "she shall shave her head." In bSotah 16a there is a reference to a leper who 'shaves himself like a gourd'; the implication seems to be 'as smooth as a gourd.' Steinzaltz in his commentary to this text explains that it means his entire body; this is not applicable to the captive woman, as the Bible specifically states "her head". However, if "head" is understood to include "face" an

unmasked question seems to be whether shaving her head includes shaving her eye-brows. This would certainly contribute to unattractiveness, but I did not find this question addressed. Perhaps it may be inferred from the usage in the Bavli that eyebrows are included; a head that is as bald as a gourd would indicate the exclusion of eye-brows and upper lip hair, both prominent features in Levantine women.

Maimonides interprets her stay in his house for a month in a way that is sympathetic to the captive. He explains that she needs the month to mourn her losses and that during this month she may decide that she wants to marry him.

The Midrashei Halakhah explain why she must remove the garments she was wearing when she was captured: these garments were deliberately attractive because in those "accursed nations"^[7] women dressed very attractively in time of war in order to seduce their foes. The captive's mother and father are taken by Rabbi Akiva to mean her pagan idols. Mourning them certainly indicates their religious loss in her life.

With respect to the month of waiting, certain Sifrei manuscripts^[8] record that according to Rabbi Akiva the full month is actually three months, so that the captive's beautiful clothes can wear out and the paternity of any pregnancy can be established. This three month period to determine pregnancy is mentioned in Tosefta Yevamot 6: 8 as well.

The Midrashei Halakhah tell us that Rabbi Eliezer claims that the reason for all these procedures is so that an Israelite woman will be happy while this enemy captive is miserable. However, the specific issue of the reaction of the warrior's first or other wives, if any, to this new addition, is not addressed by the sages of this polygamous patriarchal society. Midrash Tannaim, Midrash Hagadol, bYevamot 48aff, Rashi, R. Hillel in his commentary to Sifrei, Maimonides, Toldot Adam, and Torah Tmimah all suggest that the purpose of the restrictions is to make the captive unattractive. It is quite evident that the sages are not pleased with the addition of this heathen captive woman to an Israelite household, and consider the purpose of the rituals to be a hindrance to this marriage in the hope that it will not occur.

The sources have also enlarged upon the biblical reference to a "beautiful woman." Sifrei and Midrash Tannaim include a woman who is not beautiful; she need only be desirable only to her captor, and may even be a married woman. Leqah Tov explains that the latter is deduced from the word "woman" in the biblical phrase (*'eshet*). As this word is in construct form it must always appear with a supporting noun; the commentary supplies the example "a woman of foolishness," a foolish woman, and deduces from this that she can be a married woman. In fact, there are in Mandelkern's *Concordance to the Tanach* (s.v. *'ishah*) at least seventy-five examples of constructs using the word *'eshet* in a neutral way. With all the choices available to him, it is difficult to understand why Leqah Tov chose this particular derogatory construct to demonstrate his point.

The sages further define the permissible parameters so that the woman can only be taken by the captor to be his own wife, not a wife for anybody else, and she can only be a woman whom the captor saw and found desirable at the time of her capture. She cannot be a woman who was captured earlier but about whom the captor remained indecisive.

The post-biblical attitude to the biblical rituals demanded of the captive woman, and their later development, convey a sense of the feelings the sages had towards the captive women of enemy tribes - animosity toward their non-Israelite religious beliefs and fear of their sexuality. Clearly, their understanding was that these women posed a threat. If their sexual appeal could be lessened by the observance of very strict rituals for at least a month, the initial attraction the warrior had might disappear.

6. Conversion of the Captive Woman

If the warrior's desire continued and the captive woman remaining in the household became a reality, conversion would be necessary to ensure no theological pollution. Although conversion of this captive woman is not specifically mentioned biblically, many sages address this issue in their commentaries; it is also mentioned in Targum Pseudo-Jonathan.

Sifrei's allusion to conversion appears to consider it mandatory. In *pisqa* 213 Rabbi Akiva states that the ritual of weeping, which biblically is for her parents, is actually for her idolatrous idols. Considering the captive's plight, it is impossible to know exactly which loss she is mourning. Nevertheless, weeping for her gods certainly indicates that Rabbi Akiva considered them lost to her. However, discarding idolatrous ways is not necessarily conversion to Israelite ways.

Midrash Hagadol states that if she doesn't want to convert after thirty days, she is given twelve months' time for consideration (*megalgel alehah*).^[9] If she doesn't want to convert after that, she accepts upon herself the seven Noahide commandments and becomes like all resident aliens. If she doesn't want to accept the seven commandments after the twelve month period, she is killed. This commentary adds a completely new

perspective on the issue of conversion: it would seem that according to the Midrash Hagadol, conversion is not mandatory, but neither is heathenism allowed.

In bYevamot 47b, 48a there is an apparent difference of opinion. With respect to a male proselyte, we find that after his immersion the proselyte is considered an Israelite in all respects and is allowed to marry the daughter of an Israelite. The anonymous tanna claims that the male captive is permitted to refuse conversion. Rabbi Simeon ben Eleazar says that a female slave can be forcibly immersed twice and then her master can marry her. The discussion then continues as to whether forced immersion applies to a captive woman; countering an argument made by Raba, Rav Papa states that captive women were not obligated to perform the commandments (however, it is unclear whether this means in all cases or only before she is converted).

Bavli Kiddushin 21b appears to lead to the opposite conclusion. The Talmud states that a warrior can take only one captive, and he has the right to marry her. The Bavli here does not seem to address the possibility that the warrior may not want to marry her at all, as this would contravene the biblical text. It would seem from the context that she has no right to refuse, probably because of her status as a captive. Rashi, in his commentary on Kiddushin 21b, seems to imply that this is a right to a legal marriage. Therefore, as an Israelite may not marry a pagan, but may marry a convert, it would appear she can be converted without her consent.

Maimonides, Hilkhot Melakhim 8: 7ff, like Midrash Hagadol, states that the captive woman is kept for thirty days. If she refuses to convert at the end of that time, she accepts the seven Noahide commandments and becomes a resident alien. She is not forced to convert to Judaism, but if she refuses to accept the seven Noahide commandments, she is killed. Nahmanides, in contrast, states that the captive woman is forced to convert to Judaism. Unlike other proselytes, she is not asked if she wants to leave her own faith; her husband/captor tells her that she must obey the Torah of Israel under duress, and leave her gods. Nahmanides confirms, however, that even if her conversion was due to fear, it stands. The notes to this ruling quote as its source bYevamot 24b, a section that discusses who should and should not be accepted as converts. Among the categories of converts under discussion are people who converted out of fear, and clearly the captive woman who is forced to convert fits into this category. However, the discussion ends with the statement: "The halakhah is that all are accepted as converts. "

It would seem that the sages were greatly concerned with the theological threat posed by an unconverted woman. The post-biblical sources all forbid an Israelite man marrying a non-Israelite woman. However, there seems to be divided opinion as to the captive woman's choices. Some sources conclude she was converted by force; others state that she could opt to accept the seven Noahide commandments. If she exercised the latter option, the Israelite was forbidden to marry her, and she became a resident alien. If she refused even the Noahide commandments after staying with the man for a year, she was killed.

7. The Release of the Captive Woman

If and when the captive woman is no longer desired by the Israelite, she is allowed to leave and go wherever she wants. She is not allowed to be sold for money, and she is not allowed to be traded as merchandise (Deut. 21: 14). Sifrei points out that she can go anywhere she wants to except back to her idols.

There is a difference of opinion among the commentators as to whether she actually requires a bill of divorce, a *get*, or is merely allowed to leave. Sifrei states that according to Rabbi Yonatan, the captor does send her away by means of a *get*. If she is sick, he must wait until she is well, and how much more so is this done for the daughters of Israel who are holy and ritually pure. It would seem from this analogy that she is accorded the same legal rights as a Jewish wife. However, this statement does not appear in Midrash Hagadol or in Midrash Tannaim. Further, Finkelstein (Sifrei *pisqa* 214 at line 6) explains that this statement does not appear in all Sifrei manuscripts, and that neither Maimonides nor Nahmanides had access to it.

In Hilkhot Melakhim 8: 7 Maimonides plainly says that the captor lets her go where she pleases, and makes no mention of a *get*. However, this is problematic as in 8: 6 he states that after conversion the captive waits three months and then she is legally married with ketubah and kiddushin. She would then require a *get*. Perhaps it can be understood that Maimonides means that if he releases her within the three months she requires no *get*. As well, Nahmanides makes a point of saying that she doesn't require a *get*. He quotes Sifrei but does not quote the statement mentioned above.

It seems the issue of a *get* is tied to the issue of conversion. If yMakkot 2: 6 is followed, then there is no intercourse until after conversion. At that time, as the captive is Jewish, the marriage is binding and a *get* is necessary. If the Bavli is followed, then the captor can send her away after the first intercourse but before conversion, at which point she is not legally married and doesn't require a *get*. She must be released but not sold or traded.

8. Is Deut. 21: 10-14 Anti-Rape Legislation?

Clearly, biblically and post-biblically, it was understood that intercourse, even once, was an oppression to the captive. Sifrei states as a commentary to the biblical "because you have violated her": "even once." Midrash Tannaim explains that this conclusion is derived from Gen. 34: 2 - the story of Dinah and Shechem, and the mention there of the term *'anah*. That the sages chose to interpret intercourse as oppression displays sensitivity to the captive's plight.

Rape of captive women by soldiers has been the inevitable consequence of military action throughout history, as has been highlighted by recent events in Croatia. Can Deut. 21: 10ff be considered anti-rape legislation for soldiers at war? The answer is: not as it was eventually developed.

Biblically, it seems the captive woman, by virtue of being a captive, has no choice but to go home with her captor. He is only allowed to have intercourse with her after a period of thirty days during which time she stays in his house. Clearly, immediate rape is not allowed. It can be understood that biblically we may be looking at anti-rape legislation for soldiers at war.

We see actual anti-rape legislation for soldiers directly after battle in the Yerushalmi in Makkot 2: 6 - no intercourse is allowed with the captive unless all the rituals demanded biblically have been performed.

However, this changes in the Bavli. The Bavli does not understand this section of Deuteronomy in the same way as the Yerushalmi. Rather we see in Kiddushin 21b the general agreement that a soldier is allowed one act of intercourse with a captive, but not on the battlefield. Whether he is allowed to have intercourse with her again before he brings her home is a matter of divided opinion. As the Bavli allows the soldier this one act of intercourse, what was biblical anti-rape legislation for soldiers after a battle can no longer be perceived as such.

The Yerushalmi and the Bavli clearly disagree on this issue. As the Bavli is the authoritative Talmud halakhically, it is the Bavli's position that prevails. Thus Deut. 24: 10ff cannot be understood as anti-rape under current halakhah.

Conclusion

This paper has examined the Targumim and a number of post-biblical texts relevant to Deut. 21: 10-14, the beautiful captive woman. It has examined certain of the post-biblical texts in an attempt to trace the development of some of the relevant issues mentioned in the introduction. Some of the conclusions reached are as follows:

It is difficult to conceive of a war which the participants would consider non-obligatory. Such assessments have only been attributed in hindsight. Even obviously expansionary wars can be explained as "offence is the best defence". As the capture and subsequent marriage of an enemy woman to an Israelite is only permitted in a non-obligatory war, it can perhaps be construed that such a situation would not occur often. Yet the Talmud tells us that David had four hundred captive wives. One possible (non-traditional) explanation might lie in a conclusion of source criticism - that Deuteronomy was later than David.

A biblical imperative is sacrosanct, but the sages were unhappy with the situation of a heathen captive woman attached to an Israelite soldier. According to the Bavli sages in Kiddushin 21b, the permission offered to the soldier in this case is an accommodation to lust. The captive woman then becomes the vehicle for the satisfaction of his evil inclination. In bHullin 109b it is explained that the Torah forbids a man a non-Jewess, but permits him the captive woman. Not only is she the vehicle by which he releases his lust, she is not even his first choice. The captive woman can be described as a consolation prize.

As these women were heathens and by definition sexually desirable, the sages felt threatened by the possibility that the captive women's sexual power might entice men away from Judaism. This attitude can be seen in the way the laws applicable to the captive woman were developed.

Other than the compassion displayed by Maimonides, there was very little if any sympathy expended on the plight of the captive. The sages' major concern, given the inviolability of the biblical permission, was the conversion of the woman to Judaism. If that could not be done, then the absolute minimum was her conversion away from heathenism. Once the captive woman's heathenism could be obliterated, the effect of having a diverse and larger genetic pool could be accepted as beneficial.

There was no uniform opinion as to when the first intercourse was permitted. The timing varied from immediately after the battle, but in a private place, to not until after thirty days and conversion. Clearly, there was coercion in both cases, whether physical or psychological or both.

According to the Bavli, first intercourse could occur before the captive arrived at the man's home, perhaps as soon as the actual fighting stopped. The journey to his home could be lengthy, as she was taken from a city far away (Deut. 20: 15). It might occur that very shortly after she arrived at the man's home she would discover

that she was pregnant. Even if she was not, her options were very limited. In order to simply survive, she might choose to be converted and remain in the household. It can be understood that a woman in these circumstances would be unhappy and resentful, and possibly full of hatred against the one she perceived to be the cause of her unfortunate circumstances. Possibly the sages were sensitive to this when they claimed that the marriage would not be a happy one.

When the man no longer wanted her, he had to let her go. Once he had intercourse with her, he could no longer enslave her. The captive woman was not a wife before conversion and not a captive after conversion. Once converted and married she was accorded the same privileges and had the same obligations as a Jewish born wife.

The post-biblical sources use the biblical term "woman of beautiful appearance," to describe the woman in Deut. 21: 10- 14. This paper has used the term "captive woman" instead. Sifrei *pisqa* 211 points out that her actual appearance is of no consequence. She merely has to be sexually desirable to a soldier at the time of her capture. As the term "beautiful woman" is used biblically, so it is used throughout the sources. It is interesting that in the post- biblical development of this section, a number of major changes were introduced by the sages. That they chose not to change or add to the term "beautiful woman" is an indication that they either did not find it inappropriate or it was not important enough to address.

Clearly, however, the operating principle in her description was not her appearance but her powerlessness. This may have been an issue the sages did not wish to confront. Perhaps they understood that if their perception of the captive woman changed from perpetrator to victim, it would be very difficult to set down the stringent rules of conversion. As theological pollution was their primary concern, it was easier to implement their goal if she were objectified.

Legislating behaviour is no guarantee that it will be followed, but it does demonstrate the intention of the legislators. The Yerushalmi clearly was against rape of captive women by soldiers at war. In light of recent events in Bosnia, it must be appreciated how ethically and morally forward this thinking was.

Notes

[1] For the purposes of this this paper I have examined the two halakhic midrashim Sifrei Dvarim: L. Finkelstein, *Sifre on Deuteronomy* (New York: Jewish Theological Seminary of America, 1969) and Midrash Tannaim: D. Hoffmann, *Midrash Tannaim on Deuteronomy*. Midrash Tannaim follows the school of R. Ishmael but its original date of redaction and even the original name are unknown; six folios are extant. Sifrei follows the school of Rabbi Akiva and is comparatively late - end of fourth century C.E. For purposes of this paper, I have also included the *Midrash Hagadol, Deuteronomy* (the edition of S. Fisch, Jerusalem, 1972) in this category; although it is substantially older (thirteenth century Yemen) it incorporates many tannaitic midrashim. Midrash Tannaim and Midrash Hagadol are virtually the same in their treatment of Deut. 21:10 -14.

[2] Citations from the Mishnah, Jerusalem Talmud (Yerushalmi) and Babylonian Talmud (Bavli) are to standard printed editions. I have also made reference to the Steinsaltz edition of the Babylonian Talmud.

[3] Citations to the Torah commentaries of Rashi and Nahmanides and to Targum Onqelos and Targum Jonathan are from standard editions of *Miqra'ot Gedolot*. Citations to Targum Neophyti are from A. Diez Macho, *Neophyti I*, Book 5 (Madrid, 1978). Other texts are as follows: S. Buber, *Midrash Leqah Tov with Pesiqta Zutarta* (Vilna: Rom, 1884); Moses Maimonides, *The Guide for the Perplexed*, trans. M. Friedlander, 2nd ed. (London: Routledge, 1919); Moses Maimonides, *Mishneh Torah*, Sefer Sho'etim, Hilkhot Melakhim, commentary by S. T. Rubinstein (Jerusalem: Mosad HaRav Kuk, 1962); M. Ashenazi, *Sifrei with the Commentary of Toldot Adam* (Jerusalem: Mosad HaRav Kuk, 1972-74); S. Koleditzky, *Sifrei with the Commentary of Rabbenu Hillel* (Jerusalem: Mosad HaRav Kuk, 1948); D. Hyman, *Yalqut Shimoni on the Torah, Deuteronomy* (Jerusalem: Mosad HaRav Kuk, 1991).

[4] It is interesting to note that there is a pun, possibly intentional, in the next line dealing with Tamar: the next sage was named Joshua ben Karhah (baldness).

[5] Josephus. *Jewish Antiquities*, Vols. I-IV. Translated by H. St. J. Thackeray. London: William Heinemann.

[6] A difference of opinion occurs regarding the meaning of the phrase *ve'astah et tsiparneha* "and she shall do her nails" in Deut. 21:12. The root *'asah* is not explicit as to the action demanded. The same root is found in II Sam. 19: 25, in which Mephiboshet the son of Saul came down to meet the king, and had neither dressed his feet nor "done" his beard. Onqelos translates there with *safar*, "to cut".

Both bYevamot 48a and Sifrei *pisqa* 212 contain almost identical discussions on the meaning of the phrase in our verse. R. Eliezer maintains that the captive woman should cut her nails; just as the first part of 21: 12 denotes an action which involves removal - i.e. cutting/shaving her hair - so the second part denotes an action which means removal - i.e. cutting her nails. R. Akiva disagrees, stating that just as the reason for the act of

shaving her head was to make her unattractive, so she should let her nails grow and thereby look unattractive. The talmuds seems to support R. Eliezer's view, quoting II Sam. 19: 25 and then stating: "What is meant by 'did' - removal."

This difference of opinion is reflected in the Targumim, and later commentators are divided on the issue as well. Onqelos, who translated *'asah* in II Sam. 19: 25 as "cut", here displays the influence of the school of R. Akiva and translates with *vetarbi* - "she shall let [her nails] grow." Rashi, Rambam (Hilkhot Melakhim 8: 5) and Torah Temimah take the same position. Targums Jonathan and Neophyti, on the other hand, translate *vetazmi* - "she shall cut"; Ramban supports this position.

Leqah Tov (Pesiqta Zutarta p. 70) explains that both positions are correct: she allows her nails to grow for a month in order to be unattractive, and then she cuts them in time for her conversion immersion. This explanation is cited in the Toldot Adam Sifrei commentary.

[7] The Sifrei text of Toldot Adam has "Canaanites" in place of the "accursed nations" of Finkelstein's Sifrei text. A study of the different manuscripts of Sifrei is beyond the scope of this paper.

[8] See Sifrei *pisqa* 213 line 10 and the list of manuscripts cited by Finkelstein in the apparatus. It is Finkelstein's opinion that this addition was not part of the original Sifrei text.

[9] M. Jastrow, *Dictionary of the Targumim, Talmud Babli, Yerushalmi and Midrashic Literature*, s.v. "gilgel".

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