"*Ki Tetzei*: A comparison of the Torah law of 'the beautiful war-captive' and the Taliban treatment of slave-girls."

By Rabbi Dr Jeffrey M Cohen

The traditional Taliban treatment of captured women, depriving them of their human rights and treating them as sex slaves, has long upset those with any degree of moral sensitivity. The same applies to their fearful public decapitations, the floggings, and violent dismembering of limbs for theft and other minor crimes, with all the punishments administered on the spot and after the briefest of hearings, leaving no opportunity for any appeal against such sentences. Their take-over of Afghanistan this week has increased the likelihood of such cruelty and discrimination on an even greater scale.

The justification given by the Taliban is that their actions are entirely in accordance with Shari'a law, based on the Quran and the Sunnah, the reported sayings and actions of the Prophet Muhammad. This system of religious law – which does not recognise gender equality - is today also applied by many 'Shari'a Councils' in Muslim communities within the UK and some other Western countries, though obviously without the authority to implement any of the prescribed punishments. In this context, we recall the bitter controversy that raged following the high-profile lecture (7th February 2008) by the then Archbishop of Canterbury, Dr Rowan Williams, in which he suggested that English law should explore how better to accommodate such minority religious systems).

Bearing in mind that so much in the Quran represents a direct adaptation of biblical law and Midrashic traditions, some Islamic theologians have attempted to draw parallels between the Taliban's heartless treatment of captured women – and its general application of Shari'a

gender inequality - and the biblical law of the *eishet yefat to'ar*, 'the beautiful war-captive' (Deut. 21:11), which appears to give the Israelite soldier the right to assuage his passion and pent-up emotional and physical tension by raping the captive on the spot, and, if he wished to take her to wife, by allowing her a prescribed waiting/grieving period to come to terms with her dramatically changed condition and dislocation from home and family:

> *When you go to war against your enemies and the Lord your God delivers them into your hands and you take captives, if you notice among the captives a beautiful woman and are attracted to her – v'lakachta lecha l'isha - you may take her as your wife. Bring her into your home and have her shave her head, trim her nails, and put aside the clothes she was wearing when captured. After she has lived in your house and mourned her father and mother for a full month, then you may come to her and take her as your wife. If you are not pleased with her, let her go wherever she wishes. You must not sell her or treat her as a slave, since you have dishonoured her (Deut. 21:10-14).*

While the law of 'the beautiful war-captive' might well be regarded as controversial, yet the text seems unclear as to precisely when the soldier may gratify his desire. Is the implication that immediately when he 'notices her and is attracted to her' he may 'take her to wife' sexually, or is it only after she has lived in his house for a full month and complied with all the stated requirement?

Two opposing views are quoted in the Talmud. The sages, following the view of Rav, understood this to mean that the soldier was permitted to take her (just once) at the very outset, whereas R. Yochanan was adamant that the concession was only given at the end of the month's stay at the soldier's home, (See Tal. *Kidd.* 22a; Tal. Y. *Makk.* ch.2 (6)).

Rashi follows the latter view. The month was clearly given to her to enable her to come to terms with her changed situation, as well as for the young man who, seeing her unadorned and with head shaven, would be in a position to determine whether he still desired her or whether it had been no more than an overwhelming, mad moment of passion, and that common sense had now cooled his ardour.

Rashi took the view that the text gave no support to the notion that the Torah was giving the Israelite soldier permission to rape a captive girl. This is supported by the fact that it emphasizes the status of marriage that he would subsequently be entering into should he decide to keep her. It would be inconceivable and uncharacteristic of the Torah to allow the infliction of rape on a woman with whom there was every probability of an ensuing sacred union and who would earn thereby the honoured status of a convert.

Tosafot took the diametrically opposite view, interpreting the text as granting the combatant a licence to gratify his passion - a sentiment reflective of the Talmudic comment that such licence was a concession to the soldier's *yetzer ha'ra*, 'unstable, uncontrolled, passion.'

(I translate הרע in this way, rather than the commonly rendered, 'evil desire,' for two reasons: first, because the rabbis did not regard human passion as innately 'evil'; hence the statement, 'Were it not for the *yetzer ha'ra*, no man would build a house, marry or have children' (Mid. *Ber Rabb*. Ch.9). The adjective רע, commonly rendered 'evil' (from the root רעע), is closely related to the root רוע, from which comes the noun תרועה, 'an alarm, wavering trumpet-sound, war-cry'); and hence the notion of 'shakiness, instability,' as in the Talmudic term, כותל רעוע - 'an unstable wall.' The soldier's emotions were truly highly unstable at that time, and hence the concession given to him!)

In support of Tosafot, it should not be forgotten that the Torah was referring here to a woman reared in the climate of the immorality of the neighbouring Canaanite tribes, and who would consequently not have regarded being treated as a sexual object as anything unusual or unexpected. Hence Tosafot read the text as providing the soldier with the concession of treating her – just once – as would all other conquerors

Both views have their problems: Rashi's interpretation is difficult to harmonise with the final statement that, if he didn't wish to retain her as his wife, he must release her, but was not permitted to sell or treat her as a slave. The reason provided is תחת אשר עניתה - 'because he had dishonoured her' (v.14). But what 'dishonour' was there, given the immorality of her upbringing, on the one hand, and the fact that (on Rashi's view) he had, as yet, been forbidden to touch her?

The suggestion of some, that the dishonour lay in the act of her seizure, her forceable removal from her home, family, and land, and the humiliating shaving of her head, is not persuasive, given that the Hebrew term עניתה (in the *Pi'el* conjugation) has the specific nuance of a 'physical or sexual assault' (See Gen. 34:2 [re the rape of Dinah]; Deut. 21:14; 22:24, 29 [re the rape of a maiden]; Ju. 19:24, et al.). This compounds the difficulty of accepting Rashi's view that he had not been permitted to touch her before bringing her to his home, for, in that situation, the reference to dishonouring her would have been anachronistic!

The view of Tosafot - that the Torah did, in fact, grant the soldier licence to indulge his passion at the very outset - still remains problematic, given that, at the time of that sexual encounter, she was bedecked in her best robes and jewellery and anointed with her finest oils and cosmetics – as was the wont of conquered women coming to welcome a

conquering army. Her attractiveness and the sexual pleasure she offered would not have been dissipated – indeed his anticipation would more than likely have been intensified in the imagination of the soldier – even after a waiting period of a month! If, as we may assume, the Torah had preferred him to abide by its moral code, sublimating his passion and distancing himself from an immoral and idolatrous woman, then why allow him to take her on the battlefield and make his temptation and desire to marry her even stronger?

To sum up: the biblical account of the treatment of conquered women is clearly short on detail and rationale, with the Talmudic sages and mediaeval commentators compounding the speculation. What is beyond doubt, however, is the fact that the Torah was setting out to ensure that women captives were not brutalised and made into sex-slaves, but were to be treated with dignity and consideration, even according to the view of Rav (and adopted by Tosafot). They were to be regarded at the very outset as a potential wife-in-waiting, and allowed time to mourn the loss of their family and homeland, time to get to get to know their suitors– and possibly to develop an affection for them and their families; time to learn their customs, as well as their religion. The Torah law offered her protection and the unique status of a Jewish wife.

To return to the Taliban: Their treatment of women is based on the Quran which permits Muslims to have sex with their female servants even against their will (See Quran 33:50) – not just as a one-off concession in the heat of war. It should also be noted that, by contrast with the behaviour of victorious armies down the ages - who would go on the rampage, looting, and raping - the Israelite treatment of the beautiful captive was uniquely sensitive.

One final thought: To determine how frequently the episode of the beautiful war-captive would have occurred we might consider that people married young in those days, so most

of the soldiers would already have been married and would consequently have been deterred from taking a captive girl by the law which demanded that he bring her back to his home. Imagine the welcome he would get from his parents, wife and family when he arrived back with a captive-girl – however vigorous his protestation that he had not had a sexual encounter with her! Imagine also the tittle-tattle of the locals and the reaction of the village elders at the arrival of non-Israelite pagan beauties!

A soldier would have been most naïve and thoughtless not to have taken all that into consideration before being tempted, especially given the scenario that victory had already been achieved and before long he would be re-entering his city for a family reunion. The odds are that, however beautiful the captive girl, those considerations would prompt him to pause and take stock of himself, and would do wonders to cool his ardour! I can't imagine, therefore, that this entire ritual was particularly common in biblical Israel! What brilliant Torah psychology!

***Shabbat shalom*,**

R. Jeffrey