



DVAR TZEDEK

Parshat Ki Tetze 5769

By Rachel Farbiarz

August 29, 2009

Parshat Ki Tetze opens with a chilling portrait of the inevitability of man's brutality. *When*—not if—you go to war against your enemies and take as captives those whom you do not slay: *Then*, you will see among the conquered “a woman of beautiful form” whom you will desire and take for your “wife.”¹ That is the premise: War, conquest, captivity, rape.

Now the intervention: After the victorious soldier has taken home his comely captive, the Torah instructs that her head is to be shaved and her nails made to grow long. She is to remove the fetching “garment of her captivity”—a particularly alluring dress donned in a calculus of sex and survival. And for one full month, she is to remain in this state; unmolested in her captor's home and “weep[ing] for her father and her mother.”²

At the close of this period, the captor is permitted to “come to her and live with her” and make her his wife. If, however, the soldier's desire has withered during this period of cultivated dishevelment and grief, he is to set her free “for her soul.” He may not sell or otherwise enslave the woman because he has already “afflicted her,” both by taking her captive and putting her through a singularly alienating process.³

The commentators interpret these paces as both an accommodation and containment of the sexual violence that is often war's companion.⁴ The soldier may violate the captive woman—and continue to do so as her husband—but first he must forebear, disciplining his desire through a process meant to extinguish it. And the craft of this process—calibrated so well to the contours of *his* desire—conspicuously asks nothing after her own.

The unspoken concession here is that even God's word cannot compel the taming of man's lust in wartime. At best, with time and subterfuge, it can be cajoled or tricked out of existence. But even these outcomes—in contrast to the Torah's myriad, non-negotiable commands—are not obligatory. The Torah, that is, never explicitly prohibits man's rapacious wartime actions as it does so many other human behaviors. Its preferred course is instead implied through the text's barely-concealed condemnation of the soldier.

This coupling of sexual violation and war in a relationship “considered natural and inevitable, an essential engine of war” has persisted in our time, with institutions of international justice taking until the 1990s to recognize such violence among the gravest of international crimes.⁵ Along with this shift has come a sea change in understandings of sexual violation during wartime. No longer cast simply as the product of battle's inflamed desire, rape is understood as a powerful tool in war's modern arsenal—used to sow terror and demoralization and sometimes reconfigure a population's ethnic make-up through widespread, forced pregnancies.⁶

¹ Deuteronomy 21:10-12.

² Deuteronomy 21: 12-14; Rashi, Deuteronomy 21: 13.

³ Deuteronomy 21: 14-15.

⁴ For example, see Rashi and Rambam on Deuteronomy 21:10-15.

⁵ Copelon, Rhonda. “Rape and Gender Violence: From Impunity to Accountability in International Law.” 2.10 *Human Rights Dialogue*. Fall 2003.

www.cceia.org/resources/publications/dialogue/2_10/articles/1052.html; Oosterveld, Valerie. “When Women are the Spoils of War.” *The UNESCO Courier*. July-August 1998. www.unesco.org/courier/1998_08/uk/ethique/intro.htm

⁶ In the 1990s, for example, Bosnian women and girls endured systemic rape by Serbian soldiers as a means of “ethnic cleansing.” Smith Park, Laura. “How Did Rape Become a Weapon of War?” *BBC News*, 8 Dec. 2004. http://news.bbc.co.uk/2/hi/in_depth/4078677.stm

Nowhere today is this reality more devastating than in eastern Democratic Republic of Congo (DRC). DRC's long civil war has spawned a horrific legacy of sexual violence perpetrated by the many disparate armed groups—including the Congolese Army—that have ravaged DRC's civilian population for over a decade. Aside from the outrageous breadth of these crimes—at least 200,000 raped over the past 12 years—is the almost unfathomable level of brutality that accompanies them—young girls violated by gangs of soldiers; women forced to watch their husbands murdered before being raped themselves; mutilations to genitalia and internal organs. And now, as the joint military operations that began in January between DRC and Rwanda have plunged the region into ever-more staggering levels of violence, comes a new scourge—the rape of men alongside women.⁷

Denis Mukwege, an extraordinary doctor who runs a clinic for victims of DRC's violence, explains how rape functions in the strategic interest of the conflict's various armed groups:

Once they have raped these women in such a public way, sometimes maiming them, destroying their sexual organs—and with everybody watching—the women themselves are destroyed... They are traumatized and humiliated on every level, physical and psychological. That's the first consequence.

The second consequence is that the whole family and the entire neighborhood is traumatized by what they have seen. The ordinary sense of family and community is lost. ... Many flee. Families are dislocated. Social relationships are lost. ... Not only the victims have been destroyed; the whole village is destroyed.⁸

With reality as brutal as this, we have well passed the threshold where our *parshah's* humane aspirations for the captive “woman of beautiful form” can be left to languish in the implications of the text. Rape is a hideous crime for which neither war—nor our law—must extend cover. If the Torah cannot here voice the unequivocal condemnation of sexual violence during war, then it is up to us—now—to do so in its name.



Rachel Farbiarz is a graduate of Harvard College and Yale Law School, as well as of an Orthodox *yeshivah* high school. Rachel worked as a clerk for the Ninth Circuit Court of Appeals in San Francisco, after which she practiced law focusing on the civil rights and humane treatment of prisoners. In this role, she helped to improve the basic living conditions on California's death row at San Quentin. Rachel currently lives with her husband in Washington, D.C., where she works on her own writing and art.

Rachel can be reached at rachel.ajws@gmail.com.

⁷ Hochschild, Adam. “Rape of the Congo.” *The New York Review of Books*, 13 August 2009. Pp. 18-20; Gettelman, Jeffrey. “Symbol of Unhealed Congo: Male Rape Victims.” *New York Times*. 4 August 2009. www.nytimes.com/2009/08/05/world/africa/05congo.html?scp=1&sq=congo+rape&st=cse; Drash, Wayne. “Girl, 9, Details Rape in Congo to Photographer.” *CNN.com*, 11 August 2009. www.cnn.com/2009/WORLD/africa/08/11/congo.rape/index.html

⁸ As quoted in Herbert, Bob. “The Invisible War.” *New York Times*, 21 Feb. 2009. www.nytimes.com/2009/02/21/opinion/21herbert.html?_r=1&scp=3&sq=Denis%20Mukwege&st=cse

©2009 American Jewish World Service

To subscribe to this publication, please visit www.ajws.org/parshah.

The writers of the Dvar Tzedek are the recipients of the Lisa Goldberg Memorial Fellowship. As President of the Charles S. Revson Foundation and as a mother, wife, colleague and friend, Lisa Goldberg had a profound commitment to social justice and the Jewish community. She died tragically at the age of 54. Lisa was a good friend and generous supporter of AJWS, and we hope that, through these words of tzedek, we can contribute to her legacy.

AJWS is committed to a pluralistic view of Judaism and honors the broadest spectrum of interpretation of our texts and traditions. The statements made and views expressed in this commentary are solely the responsibility of the author.

45 West 36th Street, New York, NY 10018 • t 212.792.2900 • f 212.792.2930 • e ajws@ajws.org • www.ajws.org