**PARASHAT HASHAVUA**

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**PARASHAT KI TETZE**

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***Eishet Yefat To’ar* – A Non-Jewish Female Prisoner of War**

**By Prof. Yonatan Grossman**[[1]](#footnote-1)

**The Placement of the Section Concerning an *Eishet Yefat To’ar***

 There is a disagreement regarding where to locate the section concerning an *eishet yefat to'ar* between those who divided the Torah into chapters and those who divided it into *parashot*. According to the division into chapters, the section concerning an *eishet yefat to'ar* is a continuation of chapter 21, which deals with the laws of war, whereas according to the division into *parashot*, this section opens a new *parasha*:

When you go forth to battle against your enemies, and the Lord your God delivers them into your hands, and you carry them away captive, and see among the captives a woman of goodly form, and you have a desire unto her, and would take her to you to wife; then you shall bring her home to your house; and she shall shave her head, and do her nails; and she shall put the raiment of her captivity from off her, and shall remain in your house, and weep for her father and her mother a full month; and after that you may go in unto her and be her husband, and she shall be your wife. And it shall be, if you have no delight in her, then you shall let her go whither she will; but you shall not sell her at all for money, you shall not deal with her as a slave, because you have humbled her. (*Devarim* 21:10-14)[[2]](#footnote-2)

***Eishet Yefat To’ar* as Part of the Laws of War**

At first glance, it seems that the division into chapters is correct. The section concerning an *eishet yefat to'ar* seems to be part of the series of sections dealing with the laws of war. We can easily identify the chronological sequence according to which that unit progresses:

1) 20:1-9: Who goes out to fight

2) 20:10-18: A call for peace

3) 20:19-20: Siege

4) 21:1-9: *Egla arufa* – the procedure involving a heifer whose neck is broken[[3]](#footnote-3)

5) 21:10-14: Victory in war and the treatment of prisoners: "When you go forth to battle against your enemies, and the Lord your God delivers them into your hands, and you carry them away captive" (*Devarim* 21:10).

Linguistically as well, the section concerning an *eishet yefat to'ar* belongs to the linguistic style of the unit of the laws of war. In the section following that of an *eishet yefat to'ar* (the section concerning a beloved son and a despised son) and in the sections that follow that, Scripture speaks in third person: "**If a man has** two wives…," "then it shall be, in the day that **he causes** his sons to inherit that which he has…," "**if a man has** a stubborn and rebellious son…," and so forth. In contrast, the mode of speech in the unit dealing with the laws of war is speech in the second person: "When **you draw nigh** unto a city to fight against it, **then proclaim peace** unto it," "When **you shall besiege** a city a long time," and many others.

Thus, both the substantive sequence and the linguistic expression indicate that the division into chapters, which associates the section concerning an *eishet yefat to'ar* with the sections preceding it, is correct.

Furthermore, a verse in the previous chapter clearly hints to our section:

And if it will make no peace with you, but will make war against you, then you shall besiege it. And when the Lord your God delivers it into your hand, you shall smite every male thereof with the edge of the sword; **but the women, and the little ones, and the cattle, and all that is in the city, even all the spoil thereof, shall your take for a prey unto yourself; and you shall eat the spoil of your enemies, which the Lord your God has given you.** (*Devarim* 20:12-14)

Thus, the section dealing with the obligation to call for peace uses wording that directly hints to the section concerning an *eishet yefat to'ar*.

***Eishet Yefat To’ar* as an Introduction to the Sections that Follow**

However, when we examine the matter in greater depth, we see that the division of the Torah into *parashot* is indeed correct. Despite the gap in the form of linguistic expression, there is considerable correspondence between the linguistic style of the section concerning the *eishet yefat to'a* and the sections that follow. Although the linguistic use of the second person is shared by our section and the sections dealing with the laws of war, there is a fundamental difference in the ways in which we find this use. In the section concerning an *eishet yefat to'ar*,the use of the second person is directed at the individual: "And you see among the captives a woman of goodly form, and you have a desire unto her, and would take her to you to wife." In the rest of the sections, in contrast, the use of the second person is directed at the collective: "When you draw nigh unto a city to fight against it, then proclaim peace unto it."[[4]](#footnote-4) In all the other laws in the unit of war the Torah addresses the collective; in the section concerning an *eishet yefat to'ar*,it addresses the individual who experiences sexual urges on the battlefield.

This transition between the Torah's appeal to the individual and its previous appeal to the collective begins in the section concerning an *eishet yefat to'ar* and continues the entire length of *Parasht Ki-Tetzei.* From this perspective, it would appear that there is no better place to divide the *parashot* than at this point.

If we look back a bit, it seems that the Torah indeed makes a subtle transition from the collective to the individual by way of the passage dealing with an *egla arufa.* The Torah inserts the section dealing with an *egla arufa* in the middle of the sequence of the laws of war, thereby concluding *Parashat Shoftim. Egla arufa* clearly deviates from the laws of war, and if the Torah introduced an unrelated section into the unit of the laws of war, it must be of significance. In our context, it may be argued that the section dealing with *egla arufa* is meant to teach us that human life – the value of which can easily erode during times of war – enjoys utmost value, which must not be underestimated.

The section dealing with *egla arufa* prepares the ground for the section concerning an *eishet yefat to'ar* to proceed to speak to the individual. When the reader reaches the section concerning an *eishet yefat to'ar*,he is no longer certain that we are dealing here with laws of war, even though the use of second person is preserved.

**The *Rishonim* on *Eishet Yefat To’ar***

The question of whether to understand the section of *eishet yefat to'ar* as connected to the section dealing with the laws of war that precedes it or to the sections that follow it is not merely a technical matter regarding how to divide up the units in the *parasha*. This question has exegetical significance, as reflected in the words of the *Rishonim*.

**Rashi**

Rashi is one of the commentators who clearly connect the section dealing with an *eishet yefat to'ar* to the sections that follow it:

"That you would take her for your wife” – Scripture is speaking only in view of man's evil inclination. For if the Holy One, blessed be He, would not permit her to him as a wife, he would nevertheless marry her, though she would then be forbidden to him. However, if he does marry her, in the end he will hate her, for Scripture writes immediately afterwards (v. 15): "If a man have two wives, one beloved and another hated." And ultimately he will beget a refractory and rebellious son (*ben sorer u-moreh*) by her (v. 18). It is for this reason that these sections are put in juxtaposition. (Rashi, *Devarim* 21:11)[[5]](#footnote-5)

Rashi views the section as opening a series of negative scenarios. First, the person brings the *eishet yefat to'ar* into his home, which leads to his preferring the woman and her children over his other children, which will in the end cause one of his children to become a *ben sorer u-moreh*.

A theological examination of Rashi's interpretation leads us to a far-reaching spiritual conclusion: The Torah sees fit to permit that which should otherwise be prohibited when it understands that overcoming the temptation is too difficult a task: "The Torah speaks only in view of man's evil inclination."

Rashi's fundamental assumption, according to which the sections that follow are a continuation of the section of an *eishet yefat tohar*, has implications for Rashi's entire interpretation of the laws of an *eishet yefat to'ar*:

"And she shall do her nails" – The reason is that she may become repulsive to her captor. "And she shall remove the raiment of her captivity" – The reason is because these are fine clothes, for the women of the heathen peoples adorned themselves in time of war in order to lure others to unchastity with them. "And she shall dwell in your house" – Not in the women's quarters, but in the house which he continually uses. When he goes in, he knocks up against her; when he leaves, he knocks up against her; he sees her endless crying, sees her neglected appearance, and all this in order that she should become repulsive to him. "And she shall weep for her father and her mother a full month" – Why all this? In order to make a contrast – that while the Jewish woman [the captor's Jewish wife] is happy, she should be downhearted; while the Jewish woman adorns herself, this should bear a neglected appearance. "And it shall be, if you are not pleased with her" – Scripture tells you that you will in the end hate her. (Rashi, *Devarim* 21:12-14)

 The principle that arises from the words of Rashi is that all of the laws governing an *eishet yefat to'ar* have one and the same objective: to humiliate the woman in the eyes of her husband so that he will want to divorce her.

 Rashi's reading of the verse finds support in the plain sense of the Biblical text:

And it shall be, if you have no delight in her, then you shall let her go whither she will; but you shall not sell her at all for money, you shall not deal with her as a slave, because you have humbled her. (v. 14)

Why does the Torah assume that the person will not love his wife? Rashi reasonably concludes that it is the Torah's hope that the laws in the previous verses will bring about that the woman will become repulsive in her husband's eyes and that he will no longer want her.

Many difficulties can be raised against Rashi's interpretation. For example, why doesn't the Torah explicitly state that the objective of these laws is that the woman should be come repulsive in her husband's eyes? And if indeed the purpose is to make her repulsive, we could easily come up with many other possible ways to accomplish this goal.

It is difficult to accept Rashi's explanation of the woman's crying – namely, that it comes to make her repulsive in her husband's eyes. According to the plain sense of the text, the Torah does not hint to the idea that the Jewish wife should be happy while the non-Jewish wife is sad. The simple understanding is that the crying responds to the woman's most fundamental emotional needs – to mourn the loss of her family.

**Ramban and Rambam**

 In contrast to Rashi, the Ramban writes as follows:

"And she shall do [*ve-aseta*] her nails" – That she may become repulsive to her captor. This is the view of Rashi, in accordance with R. Akiva (*Yebamot* 48a). And so too understood Onkelos. According to them, *ve-aseta* should be understood like: "And it shall bring forth [*ve-aseta*] produce," for growth is called *asiya*.

In the *Sifrei*, however, it says that proof can be brought for R. Eliezer from: "And he had neither dressed his feet, nor trimmed [*asah*] his beard" (II *Shemuel* 19:25).[[6]](#footnote-6) This is indeed a strong proof.

The Ramban cites Rashi, R. Akiva, and Onkelos, who adopted the view that the objective of the various laws is to remove the woman from her captor's house. The Ramban notes that according to this understanding, the word "*ve-aseta*" means that the woman should let her nails grow long. He rejects this understanding, and to support his view, he brings the position of R. Eliezer in the *Sifrei*, who disagrees with R. Akiva and maintains that "*asiya*" in connection with nails means cleaning and trimming them, and not letting them grow long in a repulsive manner.[[7]](#footnote-7)

The Ramban expands upon this idea:

I therefore say that all of these things are mourning rites, and they are all connected to: "And she shall weep for her father and her mother" (v. 13). The Torah commands that she should shave her head in the manner of mourning, as in: "And he shaved his head" (*Iyov* 1:20), and similarly: "Cut off your hair" (*Yirmeyahu* 7:29). So too, trimming one's nails is a sign of mourning like shaving one's head. And it says: "And she shall remove the raiment of her captivity from off her" – that is to say, she should wear mourning clothes; "and she shall dwell in your house" – like a widow, and not go out at all; "and she shall weep for her father and her mother" – she shall do all this for a month, as is the way of mourners. (Ramban, ibid.)

The objective of the laws governing an *eishet yefat to'ar*, according to the Ramban, is to allow the woman to practice mourning rites with the goal of helping her to digest the new situation in which she is found.

The position of the Rambam is similar to that of the Ramban:

He must obligatorily bring her to a hidden place; as it says: "Home to your house." And as the Sages have explained, he is not permitted to do her violence during the war. And he is not allowed sexual intercourse with her for the second time before her grief has calmed down and her sorrow has been quieted. And she should not be forbidden to grieve, to be disheveled, and to weep, as the text says: "And she shall weep for her father and her mother." For those who grieve find solace in weeping and in arousing their sorrow until their bodily forces are too tired to bear this affection of the soul, just as those who rejoice find solace in all kinds of play. Therefore, the Law has had pity on her and gave her the possibility to do so until she is weary of weeping and of grieving. You know that he can have sexual intercourse with her while she is still a gentile. She may also, for thirty days in public, profess her religion, even in an idolatrous cult, and may not during that period be taken to task because of a belief. Nevertheless, if he does not succeed afterwards to covert her to the statutes of the Law, she may not be sold or treated as a slave. For the Law safeguards her inviolability on account of her having shown herself naked in sexual intercourse, even if this has happened through a certain act of disobedience. I refer to her having then been a gentile. (*Guide for the Perplexed* III:41)

In contrast to the Ramban, who focuses on the emotional needs of the woman, the Rambam emphasizes that these laws are also necessary in order to detach the woman from the idolatry to which she had been connected her entire life.[[8]](#footnote-8)

Whereas the Ramban and the Rambam see the process that the *eishet yefat to'ar* must undergo as a way of bringing the woman into her captor's house, Rashi, following the Midrash, sees it as a way to remove the woman from the house.

It seems that the disagreement between the Ramban and the Rambam, on the one hand, and Rashi, on the other, is rooted in the location of the Torah section under discussion. The Ramban and the Rambam view these laws as part of the process of removing the woman from the gentile culture in which she had been immersed. Rashi is not interested in removing the woman from this culture; he sees the problem in the fact that she is entering a Jewish house, and he interprets the laws as doing whatever possible to remove her from that house. While the Ramban and the Rambam view the laws governing an *eishet yefat to'ar* as part of the laws of war, Rashi identifies it as one of the sections dealing with families, found at the beginning of *Parashat Ki-Tetzei*.

**Another Interpretation in Accordance with the Plain Meaning of the Text**

 I wish to propose a different understanding, one that I have not found in any other commentator, though in my opinion it is supported by the plain meaning of the text:

When you go forth to battle against your enemies, and the Lord your God delivers them into your hands, and you carry them away captive, and see among the captives a woman of goodly form, **and you have a desire unto her, and would take her to you to wife.** (*Devarim* 21:10-11)

Verse 11 does not speak of sexual intercourse, but rather of "taking" – that is to say, betrothal. This is an enormous change in wartime culture in general, and especially in the ancient world, when the rape of women was fully acceptable. The Torah introduces a hugely novel idea and forbids the rape of women on the battlefield. From now on, should a man wish to take a woman from the female captives of war, he must not act in the manner of the world and simply take her as he so desires; rather, he must take her into his house as his wife, provide her with all of her elementary needs for thirty days, and then marry her in accordance with Torah law.

There is no shortage of examples in the Bible that reflect this practice of raping women captured in times of war. We find this, for example, in *Amos* 7, when the prophet goes to Amatzya the priest of Bet-El and delivers a prophecy of doom:

Therefore, thus says the Lord: **Your wife shall be a harlot in the city,** and your sons and your daughters shall fall by the sword, and your land shall be divided by line; and you yourself shall die in an unclean land, and Israel shall surely be led away captive out of his land. (*Amos* 7:17)

It is difficult to say that Amatzya's wife will become a harlot of her own free will. Amos means that Amatzya's wife will be raped by the enemy that comes to conquer Bet-El.

An even clearer example is found in the book of *Shoftim* following the fall of Sisera, when Devora describes Sisera's mother as thinking that the reason for her son's delay in returning from the battlefield was that he was involved in dividing up the female captives:

Through the window she looked forth and peered, the mother of Sisera, through the lattice: Why is his chariot so long in coming? Why tarry the wheels of his chariots? The wisest of her princesses answer her, yea, she returns answer to herself: **Are they not finding, are they not dividing the spoil? A damsel, two damsels to every man**…. (*Shoftim* 5:28-30)

This is even more striking in the literature of the ancient world. Take, for example, Homer's *Iliad*, in which we find an entire literary work revolving around an argument about women captives. In that very same work, we see that the women themselves recognize the phenomenon and even take it as self-evident, stating their preferences as to which soldier they were to be given.

According to our proposed understanding, not only does the Torah ban rape on the battlefield, it turns the act of sexual intercourse with the female captive into an act of betrothal. The intercourse takes place only after the woman recovers from the sharp turnaround that she underwent.

In our day, the prohibition of rape on the battlefield seems elementary,[[9]](#footnote-9) but if we consider the Torah's novelty in light of the prevailing practice in the ancient world, we note that the Torah's ban of rape on the battlefield totally veers from the culture of the ancient world. The new moral criterion established by the Torah is not found in any other codex of laws that preceded the Torah, such as the Code of Hammurabi or the like.

**Scripture is Speaking Only in View of Man’s Evil Inclination**

 In light of this insight, we can propose a new interpretation of the idea cited by Rashi: "Scripture is speaking only in view of man's evil inclination."

When the *gemara* in *Pesachim* (8b) explains the words, "Neither shall any man covet your land" (*Shemot* 34:24), it says that these words come to counter a person's evil inclination, which prevents him from undertaking a festival pilgrimage because of concern that something will happen to his land over the course of the festival. The Torah promises such a person that nothing will happen to his land while he is away, thereby silencing the evil inclination in the person's heart that tries to block him from making his pilgrimage.

 It seems that the same idea applies in our case. The fact that the Torah prohibits intercourse at the battlefield silences the evil inclination of the soldiers. The Torah categorically prohibits rape, against the counsel of the evil inclination.

**Rav’s Position Concerning an *Eishet Yefat To’ar***

 Against our proposed reading comes the reading of Rav in *Kiddushin* 21b, in the context of a discussion regarding whether or not an *eishet yefat to'ar* is permitted to a *kohen*, who is ordinarily prohibited to have relations with a convert. Rav maintains that the first act of intercourse at the battlefield is permitted, but a second act of intercourse is prohibited. According to Rav, "Scripture is speaking only in view of man's evil inclination," and it is therefore clear that the woman is permitted to the *kohen* on the battlefield (just the opposite of what we have proposed). Afterwards, however, the woman begins to enjoy certain protections, and here the *kohen* must leave her. Rav's words do not portray the revolutionary novelty that I have tried to demonstrate based on the plain meaning of the Scriptural text.

On the halakhic level, we must accept Rav's interpretation of the section dealing with an *eishet yefat to'ar.* However, we cannot ignore the plain sense of the verses, which teaches us extraordinary sensitivity. It must be remembered that we are not dealing with the return of lost property belonging to a friend, but with the proper attitude towards the wives of our enemy, who has just tried to kill us. Even they must be treated in a positive manner.

We may view the process undergone by a captive woman, who is apparently the woman furthest away at this stage from entering the Jewish People, as a process undergone by someone who wishes to come in from the outside. Without relating to all of the *mitzvot* in *Parashat Ki-Tetzei*, we can say that it is very appropriate to set the laws governing an *eishet yefat to’ar* at the beginning of the *parasha*, as the vast majority of the *mitzvot* in the *parasha* deal with that same movement from the outside inward. Thus, those who divided the Torah into *parashot* were right when they decided to open the next unit with the section dealing with an *eishet yefat to'ar.*

(Translated by David Strauss)

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1. Based upon an oral presentation by Prof. Grossman, transcribed and edited by VBM staff. [↑](#footnote-ref-1)
2. Unless otherwise specified, all references to verses are to *Devarim* 21, and all references to chapters are to the book of *Devarim.* [↑](#footnote-ref-2)
3. We will relate below to the location of this section within the laws of war. [↑](#footnote-ref-3)
4. It is difficult to imagine that this verse obligates each and every soldier to call out to the enemy to make peace. The simple understanding is that this obligation falls upon the leader. [↑](#footnote-ref-4)
5. Rashi's position is based on that of Rav in *Kiddushin* 21b. We will deal with Rav's position at length below. [↑](#footnote-ref-5)
6. At the end of the story of Avshalom's rebellion, Scripture emphasizes how Mefiboshet mourned by not grooming his feet or his beard. [↑](#footnote-ref-6)
7. This disagreement appears in the gemara in *Yebamot* 48a:

Our Rabbis taught: “And she shall shave her head, and do her nails” – R. Eliezer said: She shall trim them. R. Akiva said: She shall let them grow. R. Eliezer said: An act was mentioned in respect of the head and an act was mentioned in respect of the nails; as the former signifies removal, so does the latter also signify removal. R. Akiva said: An act was mentioned in respect of the head and an act was mentioned in respect of the nails; as disfigurement is the purpose of the former so is disfigurement the purpose of the latter. The following, however, supports the view of R. Eliezer: “And Mefiboshet the son of Shaul came down to meet the king, and he had neither dressed his feet, nor had he done his beard.” By “doing,” removal was meant. [↑](#footnote-ref-7)
8. See also what the Rambam writes in *Hilkhot Melakhim* 8:5:

After he had had relations with her once while she was still a gentile, if she desires to enter under the wings of the *Shekhina*, he may have her immersed in a *mikveh* for the purpose of conversion immediately. If she does not accept the Jewish faith, she should dwell in his house for thirty days… He must be patient with her so that she will accept the Jewish faith. If she accepts Judaism and he desires her, she may convert and immerse in the *mikveh* for that purpose, like other converts. [↑](#footnote-ref-8)
9. The truth is that war-time rape has only recently become prohibited. There are disgusting reports of rape in World War II, committed both by the Germans and by the Russians, and the phenomenon was not uncommon even in later conflicts. [↑](#footnote-ref-9)