

Rape

by: Rabbi Jeremy Rosen

As I read the lines in lamentations, over the fast of the Ninth of Av, the sentences about Jewish virgins being raped in the streets of Jerusalem were particularly poignant. I have recently had to defend Judaism against the charge, both from yet another anti-Semitic website and also from a Jew, that Jewish law, or at least the Bible, condones rape.

The Jewish correspondent wonders how I can base my morality today on a Bible that says that if a man rapes an unmarried woman he can marry her or pay compensation. No mention at all of consent. (No marriage, as opposed to betrothal, could take place without consent, even in Biblical times). No mention of the importance of financial compensation as a way of giving the raped woman some independence. No mention of all the civil claims that would have to be met. And no concession at all to the fact that in all other societies the victim ended up being abandoned altogether usually to a life as a prostitute whereas here provisions are made for her protection or independence. No mention either that if she was betrothed or married the rapist would have been liable for much heavier punishment. In biblical law no one who is coerced can ever be found blameworthy.

The anti-Semite seems to think Jews are allowed to rape all non-Jews, because of the case in Deuteronomy of the woman captured in war, who can be brought home, converted, and then married. The mere fact that the Bible insists on a whole slew of preparatory actions and delays without allowing him to have his way with her is apparently of no significance. He seems oblivious or ignorant of the obligation to treat her as a full wife and to provide for her until death, again at a time when raping foreign captives and selling them off as whores was the norm.

At the root of the issue is the relationship to texts that are at over three thousand years old. The Torah was written, our rabbis all agree, in a language that humans would understand at the time and in their specific context. Institutions that were the norm then, like slavery, were modified, and safeguards and protections unseen elsewhere in the ancient world were introduced. War was violent, with children killed and women raped. The Torah tries to modify and ameliorate and, indeed, protect captured women. But it is true, to us moderns, there is much that sounds archaic.

The Torah was indeed given in a patriarchal environment. What is surprising is that two thousand years ago the rabbis started to use texts and ideas from within the Torah, itself, to improve women's lot. They stopped the Torah-given right of a jealous husband to challenge his wife in the Temple. They argued that men were not on a higher moral level and ought not be given this privilege. They banned marriage through intercourse, and marriage without providing documentary economic protection and many other legal improvements in a women's position in society. They did all this using tools the Bible, itself, gave them. It is true that since then these creative attitudes seem

to have stalled. But you cannot blame either the Bible or the Talmud for that.

The greatness of the Torah is that it was not only a system applicable then, but it also held within it sources to support new rules and laws to meet new situations. Just think how sacrifices disappeared from Jewish life and prayer replaced them. You might even wonder how the rabbis could disobey the Bible and refuse to allow one to blow the shofar or carry the lulav if the festival fell on a Shabbat.

Any legal system needs continual updating. The Supreme Court of America is constantly reinterpreting its constitution, which is barely hundreds of years old, let alone thousands. Every year, in our day, volumes of Jewish Law are written, dealing with entirely new issues our forefathers could not possibly have imagined, such as genetic engineering, computer copyright, and space travel. They are dealt with through a system that starts with the Bible, but obviously must go and has gone way beyond it.

What amazes me is not that three thousand years ago there were laws that would need to be altered and modified later on, as economic and social conditions changed. What amazes me is that the Torah itself says that legislature must be in place to deal with new circumstances. And with regard to rape it makes the morally significant statement (Deuteronomy 22:26) that rape can be compared to murder. A statement like that, way ahead of today let alone its time, enables later legislators to innovate. When one is committed to Torah, one is committed to a dynamic system—one that was way ahead of its time, in that it allowed for change within defined parameters.

Here we are three thousand years after the Torah and still an Italian judge, not untypical of much of European justice, can say that women who get raped deserve it. In Britain conviction for rape is still notoriously difficult and in the USA men still are less likely to be convicted than not. In most parts of the Muslim world, raped women are regarded as having asked for it. Remember Yugoslavia, where rape was used as a tool of war with virtually no limitations or restrictions ruining the lives of tens of thousands of women. Look at how many have been raped in Sudan, as we live. Even modern Turkey has only just introduced nominal legislation protecting women from rape.

Now here is another issue. In our modern, egalitarian societies women increasingly feel free enough to dress in the most revealing and provocative way, there is a culture of drunkenness in which young women often find themselves helplessly drunk and out of control. There are those who say that it's hardly surprising if they get into trouble and I confess I'm amazed that more do not. But it has never been the halachic position to put the blame on a woman who is victimized. It's true that halacha puts a high value on modesty in dress and behavior and strongly urges its adherents not to lose control. But there never is any justification whatsoever for a man to take advantage of a woman. All sexual activity must be by consent. It can never be by compulsion, even between husband and wife.

If there are individuals who do not always act on this basis, it is because they themselves have been brought up in societies that devalue women or are

otherwise morally defective. Ironically, they might be borrowing either from Eastern European drunken male chauvinism or from primitive Middle Eastern cultures who regard women as chattels to be bought and sold. If there are still some Jewish men whose mindset is barbaric, it is not the Bible to blame or Jewish Law, but a clear deficiency in human sentiment.

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