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בס"ד

העגלה הערופה

Parashat Shoftim Part III

Following the passages that prescribe how Israelites are to act in war, acknowledging the sad reality of killing and being killed, necessary contraventions to the Sixth Commandment, comes a case of a non-warfare murder. A man is found slain in a field between two cities and “it is not known who struck him” (Deut. 21:1-9). The setting in a field reflects the dense living conditions prevalent in the cities of the ancient world. Had the crime occurred in the city (although we translate “עיר” as “city,” it should be understood as “town”) the victim’s shouts would probably have attracted neighbors’ attention and the killer detected, as portrayed in the case of the unfaithful betrothed maiden (Deut. 22:24). In that case it is assumed that since the prohibited liaison was in the city, had it been a case of molestation she would have shouted and been heard and the molester detected (see our study on *Parashat Ki Tese Part III*).

Murder and an unapprehended murderer are the most serious of matters. Our passage addresses the situation by prescribing elaborate rituals with profound symbolism that reflect the great importance attached to each individual human life and the enormity of the crime of unlawfully taking a single life.

This case dealing with a civilian murder is clearly out of place in the section of warfare passages, disconnected from its neighboring passages except in that it shares with them the issue of killing and thus all relate to the Sixth Commandment. Its natural placement is several passages earlier, immediately following articulation of a standard homicide case in Chapter 19. There, it would fit perfectly after verse 13 which prohibits one who killed intentionally from availing himself of the cities of refuge protection. The unusual placement here provides a message connected to the often profuse bloodshed of war. It proclaims that wars may occur that will entail killing, perhaps

much killing, but the Israelites must be careful not to become jaded by that experience, indifferent to the supreme value of each individual human life.

Elsewhere, the Torah explicitly portrays the shedding of innocent blood as defiling the land and states that, “the land cannot be cleansed from the spilling of innocent blood except with the blood of he who spilled it” (Num. 35:33). Sanctity of the land is critical especially as regards the land that is to be the arena where the covenant with G-d is to flourish. Thus, the Israelites are warned, in a discussion of other abominable acts, to be careful “that the land not spew you out for defiling it, as it spewed out the nation that preceded you” (Lev. 18:28). In an application of G-d’s curse upon Cain for shedding innocent blood, murder is deemed as retarding the earth’s productivity and leads to exile: “When you work the land it will not yield its strength to you, an itinerant wanderer shall you be in the land” (Gen. 4:12). Murder is a major blot on the whole society within which it occurred; until justice is done the land cannot regain its productivity for all its inhabitants.

In our case, the text indicates that the prescribed rituals are multi-purposed. They are designed to bring *kaparah* (atonement) for what occurred, to remove the aftereffects of the spilled blood and to prevent any future similar occurrence. In addition, as the Rambam states, it is assumed that the rituals may aid in discovering the perpetrator. These goals are accomplished by dramatically heightening the consciousness of the town leaders to the enormity of what occurred and to their responsibility to preserve the lives of their charges; the activity will create keen interest in the case on the part of the public and bring to its attention the value of each individual life and of achieving justice. The tragedy may thus be used to foster an improvement of society as well as bring

forth witnesses or information that may lead to apprehending the murderer.

Elders and judges determine the city closest to the corpse and place upon it the responsibility for performing the rituals. That city's elders take a calf that had not previously been worked into an uncultivated wadi area and slay it by breaking the back of its neck (hence the term עֲרִיפָה עֲנִלָּה). This act appears to be a symbolic reenactment of the murder, dramatizing the declaration that follows by having it attached to the representation of the crime. The Sages interpret the uncultivable ground and the young, as yet unproductive, calf as focusing attention on the sadness of the lost potential of a life snuffed out.

At this point *kohanim* (priests) come forth. They were not involved earlier, perhaps to assure that slaying the calf not be confused with some type of sacrifice. But more fundamental to the purpose, the reason for their previous non-involvement may be so that the slaying of the calf is clearly connected to the elders, a crucial element of the ritual as we shall discuss shortly. More than one *kohen* is called for. This is in contrast to the ceremony of declaring the exemptions from battle of the previous chapter (20:2) where the same verb is used in singular (וּבְגִישׁ-וּבְגִישׁוֹ) and only one *kohen* comes forth. Of course requiring several *kohanim* further highlights the value of every single life.

The *kohanim* are here described with an unusually long series of appellations: they have been selected by Hashem to minister unto Him, to pronounce blessing in His name and to decide lawsuits and cases of assault. (*Kohanim* have a degree of judicial responsibilities, as indicated in Deut. 17:9 and 19:17; the verb here used, לְשַׁרְתּוֹ, is linked with judicial matters in Deut. 17:12.) The lengthy description of their status and function in this context is probably ironic, constituting a subtle complaint, namely: Of what benefit was their service of G-d, where is the blessing and where is resolution of conflict if a man was murdered and the murderer is at large?

In any event, the priestly presence provides the ritual with an extra measure of sanctity; priests bring the *kaparah* purpose associated with the sanctuary to bear and it may be they who recite the prayer (as will be discussed shortly).

Following the slaughter of the calf, the elders wash their hands by the calf and make a declaration. For this, "all the city's elders" are called for, in contrast to the selection of the calf and taking it down to the wadi, which merely required "the city elders." Whoever is on occasion considered a city elder participates in this crucial ritual. With an unusual phrase the Torah subtly, but unmistakably, links the elders with the crime: they are referred to with the strange locution as "הַקְרִבִים אֶל הַחֵלֶל" (the ones close to the corpse, v. 6), in contrast to the earlier, natural usage of a similar reference, wherein it is the city which is termed "הַקְרִבָה אֶל הַחֵלֶל" (v. 3). Washing hands is universally symbolic of cleansing from a crime committed. Upon washing, the elders must declare, "Our hands did not shed this blood and our eyes did not see [who did]." Leadership demands responsibility.

The Mishnah (Sota 9:6), in commenting on this declaration, points out that of course there is no suspicion that the elders had shed blood. It explains the ritual to mean that there is the issue of indirect causation. The crime may have come about because a hungry man could not find food or a traveler was allowed to enter a dangerous area unescorted, etc. According to the Sages, the lack of safe and appropriate community infrastructure, the neglect of providing vital socio-economic and security needs, etc., is viewed by the Torah as having led to the crime. It is thus a failure of leadership that the elders must answer for. Such introspection leads to improvement within the leadership and betterment of society.

"Our eyes did not see" may also connote their not having ignored information relevant to the investigation, or alternatively, not having averted their sight from recognizing the plight of the needy. These are powerful prods to leaders to be more actively engaged in matters affecting the safety and welfare of their communities and being more vigorous in preventing abuses.

This declaration of innocence is followed with a prayer beseeching Hashem to cleanse Israel from the consequences of having innocent blood shed in its midst. Despite the prayer formula being directly attached to the declaration of the elders, the Mishnah and *Targumim* assume the prayer is recited by the *kohanim*. Since an unresolved murder requires

kaparah for all Israel, it is understood without being explicitly mentioned that the *kohanim* – whose responsibility it is to bless the nation and whose service is always focused on *kaparah* – lead the prayer. The prayer that concludes the ceremony recognizes that the rituals serve their purpose in expressing important concepts but it is only G-d who has the power to cleanse Israel. It invokes His past redemption of Israel, אשר פדית ה', because unrequited innocent blood requires no less than redemption (Ibn Ezra).

In the passage's closing verse, Moshe informs his audience ואתה תבַּעַר הדם הנקי מְקַרְבֵךְ, that thus “you shall remove guilt for innocent blood from your midst by doing (or when you do) what is right in Hashem's sight” (v. 9). What exactly does he mean? Ibn Ezra understood him to be saying that G-d protects a righteous society by preventing innocent blood from being shed in its midst. He explains this in accordance with the concept expressed in the rabbinic aphorism, “the reward [wages] of a transgression is transgression, the reward of a *misvah* is a *misvah*.” We may add that it might be expected that if the powerful lessons of the rituals performed just before Moshe's statement were fulfilled sincerely they should serve as measures to prevent murder.

However, use of the definite articles הדם הנקי seems to indicate that the clause refers to innocent blood already spilled. Also, to the same effect, the fuller clause ואתה תבַּעַר הדם הנקי מְקַרְבֵךְ recalls the statement previously used at the conclusion of the passage dealing with execution of a murderer ובערת דם הנקי מִיִּשְׂרָאֵל (Deut. 19:13).

The NJPS translates ואתה תבַּעַר הדם הנקי מְקַרְבֵךְ as Moshe assuring his audience that if they do what is right in G-d's sight they will successfully remove the guilt of the innocent blood from their midst whenever it may arise. Perhaps. But the murderer of our case is still at-large. And it does not appear to be that “doing what is right in G-d's sight” refers merely to performing the rituals just described; it appears to

refer to doing what is right in everything, as Ibn Ezra understood that detail.

In the Jerusalem Talmud ואתה תבַּעַר הדם הנקי מְקַרְבֵךְ is expounded as indicating that if the perpetrator was caught subsequent to the performance of the *'eglah 'arufah* ceremony he is to be put to death (JT Sota 9:6). Although this is an *asmakhta* – “deriving” a law from a verse even if not its *peshat* – it does highlight the important distinction between “*kaparah*” and “*teba'er*,” and may, indeed, be based on the *peshat*.

Targume Onqelos and *Yonatan* seem to render the statement as follows: In conclusion, Moshe says, “You will rid yourselves of the shedder of innocent blood when you do what is right in Hashem's sight,” similar to how they translated Deuteronomy 19:13 when referring to the execution of a murderer. In other words, that is an ultimately desired result of the elaborate ceremony and doing what is right. This supports the Rambam's view that a primary purpose of the *'eglah 'arufah* ceremony – publicizing the investigation, the solemnity of the rituals, focusing on the leaders' and community's responsibilities, etc. – is apprehension of the murderer (Guide III:40).

S. D. Luzatto interpreted this passage as at least partly intended to prevent mob psychology from causing the apprehension and execution of the wrong person. As the public recognizes that the unrequited innocent blood that was shed causes the land to be less productive for all, and with the fear of a murderer in its midst, the populace would be tense and uneasy and greatly desire to capture the perpetrator. In their eagerness, emotional people may be moved to act precipitously and erroneously, as so often has been borne out in history. The *'eglah 'arufah* ceremony, under the aegis of the priests and with its capacity to bring *kaparah*, will reassure the people that restoration of the land's productivity is being achieved, while bringing the case under the authority of the court, protecting a potentially innocent victim.

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