

# SEPHARDIC INSTITUTE

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בס"ד

## Parashat Shoftim Part III The 'Eglah 'Arufah Case

### 1. Setting

Following the passages that prescribe how Israelites are to act in war, acknowledging the sad reality of an exception to the sixth Decalogue commandment, Moses presents a case of a murder in a nonwarfare context. A man is found slain in a field between two towns 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 towns of the ancient Near East. Had the crime occurred in the town, the victim's shouts would have attracted neighbors' attention and the killer would probably have been detected, as portrayed in the legislation regarding the unfaithful betrothed maiden (Deut. 22:24). In the first scenario of that case it is assumed that since the prohibited liaison was in the town, had it been a case of molestation she would have shouted and would have 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 a section prescribing warfare legislation. Its only connection with neighboring passages is that it shares with them the issue of killing, and thus all relate to the sixth commandment. Its natural location is several passages earlier, in chapter 19, immediately following articulation of a standard homicide case. There, it would fit smoothly after verse 13, which prohibits one who killed intentionally from availing himself of the protection of the cities of refuge. Its unusual placement 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 such occurrences, 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 him who spilled it" (Num. 35:33). Sanctity of the land is a critical matter, especially as regards the land that is to be the arena where the covenant with G-d is to flourish. In an application of G-d's curse upon Cain for shedding innocent blood, murder is deemed as restraining 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). In a discussion of other abominable acts, the Israelites are warned 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) and murder would surely be included with those abominations. 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 serve multiple purposes. 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. The Rambam explains how these rituals also aid in discovering the perpetrator of the crime. These goals are accomplished by dramatically heightening the consciousness of the local leaders to the enormity of what occurred and to their responsibility to preserve the lives of their charges. The flurry of activity will create keen interest in the case on the part of the

public and reinforce its commitment to the value of each individual life and of achieving justice. It may bring forth witnesses or information that may lead to apprehending the murderer. The tragedy may thus be used to foster an improvement of society.

## 2. The Rituals

Elders and judges determine which town is closest to the corpse and place upon it the responsibility for performing the rituals. Although being closest does not prove that the murderer stemmed from that town, it is a fair device to select the town upon which to place responsibility to perform the rituals on behalf of the whole society. That town's elders take a heifer that had not previously been worked to a rugged wadi area that cannot be plowed or sown, and slay it by breaking the back of its neck (hence the term *הַעֲרוּפָה*, "the heifer slain from the back of its neck" [Deut. 21:6]). 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 young, as yet unproductive, heifer as well as the uncultivable wadi as focusing attention on the sadness of the lost potential of a life snuffed out. The uncultivable wadi, as a desolate area, may also be representative of the field where the murder was committed.

At this point priests come forth. They were not brought in earlier probably to ensure that slaying the heifer would not be confused with some type of sacrifice. It is also possible that the prior noninvolvement of the priests may be in order to clearly connect the slaying of the heifer to the elders, a crucial element of the ritual as we shall discuss shortly. More than one priest is called for. This is in contrast to the description of the priestly responsibility to proclaim the exemptions from battle of the previous chapter (20:2); in that case the same verb is used in singular (*וַיִּגַּשׁ הַכֹּהֵן*) in contrast to our (*וַיִּגַּשׁוּ הַכֹּהֲנִים*) and only one priest comes forth. The requirement of multiple priests further highlights the value of every single life and enhances the present procedure.

The priests are here described with an unusually long series of appellations: they have been selected by G-d to minister unto Him, to pronounce blessing in His name and to decide lawsuits and cases of assault. (Priests have judicial responsibilities, as indicated in

Deut. 17:9 and 19:17; the verb employed here, *לְשָׂרְתוּ*, meaning to serve G-d, is linked with judicial matters in Deut. 17:12.) The lengthy description of priestly status and function in this context is apparently ironic and seems to constitute a subtle complaint. Of what benefit is 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 invests the ritual with an extra measure of sanctity. Priests bring the atonement element associated with the sanctuary to bear and it may be they who recite the prayer for the occasion (as will be discussed shortly).

Following the slaughter of the heifer, the elders wash their hands in the wadi by the symbol of the slain man and make a declaration. For this procedure "all the town's elders" are called for, in contrast to the selection of the heifer and taking it down to the wadi, which merely required "the town elders." Whoever is on occasion deemed a town 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 *הַקְּרִבִּים אֶל הַהֶקֶל* ("the ones close to the corpse" [v. 6]). This is in contrast to the earlier, natural usage of a similar phrase used in reference to the town, which is termed *הַקְּרִבָּה אֶל הַהֶקֶל* ("closest to the corpse" [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]" (v. 7). Leadership demands responsibility.

The Mishnah (*m. Sotah* 9:6), in commenting on this declaration, points out that of course there is no suspicion that the elders had shed the 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 socioeconomic and security needs, etc., are to be viewed as having led to the crime. The elders are required to answer for a failure of leadership. Such introspection often leads to a commitment by leadership to work toward the betterment of society.

“Our eyes did not see [who shed the blood]” may be the elders’ way of saying that they did not ignore information relevant to the investigation. Alternatively, “Our eyes did not see” may mean that they did not avert their eyes from recognizing the plight of the needy. These statements are powerful prods to leaders to be more actively engaged in matters affecting the safety and welfare of their communities and more vigorous in preventing abuses.

The declaration of innocence is followed with a prayer beseeching G-d 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 that the prayer is recited by the priests. Since an unresolved murder requires atonement for all Israel, it is understood without being explicitly mentioned that the priests – whose responsibility it is to bless the nation and whose service is always focused on atonement – lead the prayer. The prayer that concludes the ceremony explicitly acknowledges 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 (אֲשֶׁר פָּדִיתָ הָאֵל [v.8]), because unrequited innocent blood requires no less than redemption (Ibn Ezra).

### 3. Closing

In the passage’s final verse Moses informs his audience that וְאַתָּה תִּבְעֵר הַדָּם הַנֶּקִי מִקֶּרְבְּךָ (“you shall remove innocent blood from your midst” [v. 9a]) כִּי-תַעֲשֶׂה הַיָּשָׁר בְּעֵינֵי ה’ (“when you do what is right in Hashem’s eyes” [v. 9b]). What exactly does Moses 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 wages [reward] of a transgression is a transgression, the wages [reward] of a *misvah* is a *misvah*.” Divine providence is extended to a righteous society. Others take it as stating that if the powerful lessons of the rituals prescribed in the ceremony described just before this closing statement were sincerely fulfilled they would serve as measures to prevent the shedding of innocent blood.

However, use of the definite articles הַדָּם הַנֶּקִי seems to indicate that the clause refers to innocent blood already shed. Also, to a similar effect, וְאַתָּה תִּבְעֵר הַדָּם, וְאַתָּה תִּבְעֵר הַדָּם הַנֶּקִי מִקֶּרְבְּךָ recalls the statement previously used at the conclusion of the passage dealing with execution of a murderer, וּבִעַרְתָּ דַם-הַנֶּקִי מִיִּשְׂרָאֵל (“You shall remove [the shedder of] innocent blood from Israel” [Deut. 19:13]). The ellipsis in that verse may indicate the need for an ellipsis in our context. Perhaps the clause should be translated “and you shall remove [guilt for] innocent blood from your midst.”

The NJPS translates וְאַתָּה תִּבְעֵר הַדָּם הַנֶּקִי מִקֶּרְבְּךָ as “Thus you will remove from your midst guilt for the blood of the innocent” and כִּי-תַעֲשֶׂה הַיָּשָׁר בְּעֵינֵי ה’ as “for you will be doing what is right in the sight of the Lord.” In other words Moses assures his audience that by faithfully performing the rituals prescribed they will remove the guilt of the innocent blood from their midst. But the murderer in 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 associated with our case, but rather to doing what is right in everything, as Ibn Ezra understood that detail. Also, it appears strained to translate כִּי-תַעֲשֶׂה as “for you will be doing” as opposed to the more natural “when you do.”

In the Jerusalem Talmud, וְאַתָּה תִּבְעֵר הַדָּם הַנֶּקִי מִקֶּרְבְּךָ is expounded as indicating that if the perpetrator was caught subsequent to the performance of the prescribed ceremony he is to be put to death (y. *Sotah* 9:6). Although this is translating a clause out of context and is an *asmakhta* – connecting a law to a verse even if not its *peshat* – it does highlight the important distinction between *kaparah* (atonement) and *teba‘er* (removal) and may, indeed, be based on the *peshat*.

*Targume Onqelos* and *Jonathan* seem to render the statement as Moses informing the people as follows: “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, apprehending the murderer would be a result of the elaborate ceremony and doing what is right. This supports the Rambam’s view that a primary purpose of the ceremony – publicizing the investigation, the solemnity of the rituals, focusing on

the leaders' and community's responsibilities, etc. – is apprehension of the murderer (*Guide for the Perplexed* III:40).

S. D. Luzatto interpreted this passage as at least partly intended to prevent mob psychology from leading to the apprehension and execution of the wrong person. As the public had internalized the principle 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, it would be tense and uneasy. There would be a great 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 in similar-type circumstances. The *'eglah 'arufah* ceremony, under the aegis of the priests and with its capacity to bring atonement, 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. From this perspective it is critical that at the conclusion Moses reassures the public that they have rid themselves of guilt for the shedding of innocent blood despite the fact that the murderer remains at large.

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