

Mourning the Destruction of Doubt

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Part I: Who is the Murderer?**תוספתא סוטה (ליברמן) י"ד:א'**

רבן יוחנן בן זכאי אומ' משרבו הרצחנין, בטלה ערופה, לפי שאין עגלה ערופה באה אלא על הספק, עכשיו רבו ההורגין בגלוי.

Tosefta Sotah (Lieberman) 14:1

Rabbi Yochanan ben Zakkai said: When murderers multiplied, the ceremony of breaking the neck was nullified, because breaking the neck of a calf is done only because of doubt. Now, the number of murderers in public has multiplied.

דברים כ"א:א'-ט'

(א) כִּי־יִמָּצָא חֵלֶל בְּאֶדְמָה אֲשֶׁר־יְהִי אֵלֶיהֶּיךָ נִתָּן לְךָ לְרִשְׁתָּהּ נָחַל בְּשֶׁגֶה לֹא נֹדַע מִי הִכָּהוּ: (ב) וַיֵּצְאוּ זִקְנֵיהֶּיךָ וּשְׂפִטֶיךָ וַיִּמְדְּדוּ אֶל־הָעִירִים אֲשֶׁר סְבִיבֹת הַחֵלֶל: (ג) וְהִינֵה הָעִיר הַקְּרִיבָה אֶל־הַחֵלֶל וְלִקְחוּ זִקְנֵי הָעִיר הַהִוא עֲגֹלַת בָּקָר אֲשֶׁר לֹא־עֲבָדָה בָּהּ אֲשֶׁר לֹא־מִשְׁכָּה בָּעֵל: (ד) וְהוֹרְדוּ זִקְנֵי הָעִיר הַהִוא אֶת־הָעֲגֹלָה אֶל־נַחַל אֵיתָן אֲשֶׁר לֹא־יֵעָבֵד בּוֹ וְלֹא יִזְרַע וְעָרְפוּ־שָׂם אֶת־הָעֲגֹלָה בְּנַחַל: (ה) וְנִגְשׂוּ הַכֹּהֲנִים בְּנֵי לֵוִי כִּי כֵּם בְּעִיר יְהִי אֵלֶיהֶּיךָ לְשָׂרְתוֹ וּלְבָרֶךְ בְּשֵׁם יְהוָה וְעַל־פִּיָּהֶם יִהְיֶה כָּל־רִיב וְכָל־גִּנְעָה: (ו) וְכָל זִקְנֵי הָעִיר הַהִוא הַקְּרִיבִים אֶל־הַחֵלֶל יִרְחֲצוּ אֶת־יְדֵיהֶם עַל־הָעֲגֹלָה הָעֲרוּפָה בְּנַחַל: (ז) וְעָנוּ וְאָמְרוּ יְדֵינוּ לֹא [שִׁפְכוּ] אֶת־הַדָּם הַזֶּה וְעֵינֵינוּ לֹא רָאוּ: (ח) כִּפְרוּ לְעַמְּךָ יִשְׂרָאֵל אֲשֶׁר־פָּדִיתָ יְהוָה וְאֶל־תִּתֵּן לָהֶם נָחִי בְּקִרְבֵּי עַמְּךָ יִשְׂרָאֵל וְנִכְפַּר לָהֶם הַדָּם: (ט) וְאַתָּה תִּבְעַר הַדָּם הַזֶּה מִקִּרְבֶּךָ כִּי־תַעֲשֶׂה הַיָּשָׁר בְּעֵינֵי יְהוָה: {ס}

Deuteronomy 21:1-9

(1) If, in the land that your God יהוה is assigning you to possess, someone slain is found lying in the open, the identity of the slayer not being known, (2) your elders and magistrates shall go out and measure the distances from the corpse to the nearby towns. (3) The elders of the town nearest to the corpse shall then take a heifer which has never been worked, which has never pulled in a yoke; (4) and the elders of that town shall bring the heifer down to an everflowing wadi, which is not tilled or sown. There, in the wadi, they shall break the heifer's neck. (5) The priests, sons of Levi, shall come forward; for your God יהוה has chosen them for divine service and to pronounce blessing in the name of יהוה, and every lawsuit and case of assault is subject to their ruling. (6) Then all the elders of the town nearest to the corpse shall wash their hands over the heifer whose neck was broken in the wadi. (7) And they shall make this declaration: "Our hands did not shed this blood, nor did our eyes see it done. (8) Absolve, יהוה, Your people Israel whom You redeemed, and do not let guilt for the blood of the innocent remain among Your people Israel." And they will be absolved of bloodguilt. (9) Thus you will remove from your midst guilt for the blood of the innocent, for you will be doing what is right in the sight of יהוה.

כי ימצא. ולא בשעה שמצוי. מכאן אמרו, (סוטה מז) משרבו הרצחנים בטלה עגלה ערופה.

Sifrei Devarim 205:1

(Devarim 21:1) "If there be found a slain one on the earth": "If there be found": and not if there were *generally* found" — to exclude (its being found) near the border or near a city inhabited mostly by gentiles — where it was stated: When murderers proliferated, the breaking of the heifer's neck was abolished.

משנה סוטה ט"ז:

נמצא ההורג עד שלא נערכה העגלה, תצא ותרעה בעדר. משנערכה העגלה, תקבר במקומה, שעל ספק באתה מתחלתה, כפרה ספקה והלכה לה. נערכה העגלה ואחר כך נמצא ההורג, הרי זה יהרג:

Mishnah Sotah 9:7

If the killer is found before the heifer's neck was broken, the heifer shall go out and graze among the herd. It is not considered sacred at all, and it may rejoin the other animals. If the killer is found **from the time when the heifer's neck was broken**, even if the rest of the ritual has not yet been performed, it is prohibited to benefit from the animal, despite the killer having been found; **it should be buried in its place.** This is **because the heifer initially came for uncertainty**, as the killer was unknown, and **it atoned for its uncertainty and left**, i.e., it fulfilled its purpose of bringing atonement and is considered a heifer whose neck is broken in all regards. **If the heifer's neck was broken and afterward the killer was found, he is killed.** The ritual does not atone for him.

משנה סוטה ט"ט:

משרבו הרצחנים, בטלה עגלה ערופה, משבא אליעזר בן דינאי, ותחינה בן פרישה הגיה נקרא, קזרו לקרותו בן הרצחן.

Mishnah Sotah 9:9

The mishna further states: **From the time when murderers proliferated, the ritual of the heifer whose neck is broken was nullified. From the time when Eliezer ben Dinai, who was also called Tehina ben Perisha, came, they renamed him: Son of a murderer.**

Maybe put in something about the land screaming out / kicking us out because of blood?
Maybe figure out this Yerushalmi thing about lots of murdered vs. lots of murderers?

Part II: Did She...or Did He?

תוספתא סוטה (ליברמן) י"ד:ב'

משרבו המנאפין, פסקו מי מרים, לפי שאין מי מרים באין אלא על הספק, עכשיו כבר רבו הרואין בגלוי.

Tosefta Sotah (Lieberman) 14:2

When adulterers multiplied, they stopped the bitter waters, because bitter waters is a ritual done only because of doubt. Now, those who committed this openly multiplied.

משנה סוטה ט"ט

משׁרבו המנאפִים, פסקו המים המרים, ורבן יוחנן בן זכאי הפסיקו, שפאמר (הושע ד) לא אפקוד על בנותיכם פי תזנינה ועל פלוגתיכם פי תנאפנה פי הם וגו'.

Mishnah Sotah 9:9

From the time when adulterers proliferated, the performance of the ritual of the bitter waters was nullified; they would not administer the bitter waters to the *sota*. **And it was Rabbi Yoḥanan ben Zakkai who nullified it**, as it is stated: **“I will not punish your daughters when they commit harlotry, nor your daughters-in-law when they commit adultery; for they consort with lewd women”** (Hosea 4:14), meaning that when the husbands are adulterers, the wives are not punished for their own adultery.

במדבר ה': י"ד-ט"ו

(יד) ועבר עליו ריח־קנאה וקנא את־אשתו והוא נטמאה או־עבר עליו ריח־קנאה וקנא את־אשתו והיא לא נטמאה: (טו) והביא האיש את־אשתו אל־הכהן והביא את־קרבנה עליה עשירת האיפה קמח שערים לא־יצק עליה שמן ולא־יתן עליו לבנה כִּי־מנחת קנאת היא מנחת זכרון מזכרת עון:

Numbers 5:14-15

(14) but a fit of jealousy comes over him and he is wrought up about the wife who has defiled herself—or if a fit of jealousy comes over him and he is wrought up about his wife although she has not defiled herself— (15) that party shall bring his wife to the priest. And he shall bring as an offering for her one-tenth of an *ephah* of barley flour. No oil shall be poured upon it and no frankincense shall be laid on it, for it is a meal offering of jealousy, a meal offering of remembrance which recalls wrongdoing.

סוטה מ"ז ב: י"ג-ט"ז

משׁרבו הנואפין כו' תנו רבנן ונקה האיש מעון בזמן שהאיש מניקה מעון המים בודקין את אשתו אין האיש מניקה מעון אין המים בודקין את אשתו ואומר לא אפקוד על בנותיכם פי תזנינה כו' מאי ואומר וכי תימא עון דידיה אין דבניה ודבניה לא תא שמע לא אפקוד על בנותיכם פי תזנינה ועל פלוגתיכם פי תנאפנה וכי תימא עון אשת איש אין עון דפגויה לא תא שמע פי הם עם הזנות יפרדו ועם הקדשות יזבחו וגו' מאי ועם לא יבין ילבט אמר רבי אלעזר אמר להם נביא לישׁראל אם אתם מקפידין על עצמכם מים בודקין נשותיכם ואם לאו אין המים בודקין נשותיכם

Sotah 47b:13-16

The mishna also taught that **from the time when adulterers proliferated**, the performance of the ritual of the bitter water of a *sota* was nullified. **The Sages taught:** It states: **“And the man shall be cleared of transgression, and that woman shall bear her transgression”** (Numbers 5:31), which indicates that **when the man is clear of transgression the waters evaluate if his wife** was unfaithful, but **if the man is not clear of transgression the waters do not evaluate if his wife** was unfaithful. **And it states: “I will not punish your daughters when they commit harlotry, nor your daughters-in-law when they commit adultery; for they consort with lewd women, and they sacrifice with prostitutes; and the people that is without understanding is distraught”** (Hosea 4:14). The Gemara clarifies: **What is the purpose of the addition of: And it states?** What is lacking in the exposition from the verse of the Torah? The Gemara explains: **And if you would say** that based on the verse: **“And the man shall be cleared of transgression,”** the *halakha* would be that with regard to **his transgression, yes**, it will cause the waters to be ineffective, but the transgression **of his sons and daughters does not** impact the effectiveness, **come and hear** the verse: **“I will not punish your daughters,”** i.e., I will not punish your wives, due to your daughters, **“when they commit harlotry, nor your daughters-in-law when they commit adultery.”** **And if you would say:** With regard to the **transgression of adultery with a married woman, yes**, it will cause the waters to be ineffective, but the **transgression of one who engaged in sexual intercourse with an unmarried woman does not** impact the effectiveness, **come and hear** the continuation of the verse: **“For they consort with lewd women, and they sacrifice with prostitutes.”** The Gemara turns its attention to the end of the verse. **What is the meaning of: “And the people that is without understanding is distraught”?** **Rabbi Elazar says: The prophet said to the Jewish people: If you are particular about yourselves, the water evaluates your wives; but if not, the water does not evaluate your wives.** This would make people distraught, as they would not know how to overcome their suspicion if they are concerned that their wives have been unfaithful.

Part III: What Are We Eating?

משנה סוטה ט"ז

יִחָזְקוּ כִּהְיוּ גְדוֹל הַעֵבִיר הַדְּבִיר הַמְּעַשֵּׂר ... וּבְיָמָיו אֵין אָדָם צָרִיף לְשָׂאֵל עַל הַדְּמָאִי:

Mishnah Sotah 9:10

Yohanan the High Priest took away the declaration of the tithe. After his time, no one recited the passage about the elimination of tithes that had previously been said at the end of a three-year tithing cycle...**And furthermore, in his days there was no need to inquire about doubtfully tithed produce [*demai*], as everyone was careful to tithe...**

תוספתא סוטה (ליברמן) י"ג:י

אף הוא גזר על הוודיי, וביטל את הדמיי. לפי ששלח לכל עיירות ישראל ומצאן שאין מפרישין אלא תרומה גדולה בלבד, מעשר ראשון ומעשר שני מקצתן מפרישין, ומקצתן אין מפרישין. [אמר] הואיל ותרומה גדולה עון מיתה, ותרומת מעשר עון טבל, יהא אדם קורא שם לתרומה ותרומת מעשר ונותנן לכהן, ומעשר שני מחללו על המעות, והשאר מעשר, מעשר עני, המוציא מחבירו עליו הראיה.

Tosefta Sotah (Lieberman) 13:10

He also decreed on that which was certain, and nullified *demai*. He sent messengers to all the cities of Israel and found that they were only separating *terumah gedolah*. However, when it came to *ma'aser rishon* and *ma'aser sheni*, some were separating it, and some were not. He said: Since *terumah gedolah* is a sin that brings about the death penalty, and *terumat ma'aser* is a sin of *tevel*, a person should call out their *terumah* and *terumat ma'aser* and give them to a priest, and then redeem their *ma'aser sheni* for money, and the rest of the the *ma'aser* and *ma'aser ani* - one the burden of proof is on the who takes property from another.

סוטה מ"ז ב: כ"ג-מ"ח א'ו'

יִחְזְקוּ פֶהוּ גְדוֹל הַעֲבִיר הַדְּבִיר הַמַּעֲשֵׂר כּוֹי מֵאֵי טַעֲמָא אָמַר רַבִּי יוֹסִי בְּרַבִּי תַנְיָנָא לְפִי שְׂאִין נוֹתְנִין אוֹתוֹ כְּתִיקוּנּוֹ דְרַתְמָנָא אָמַר דִּיקְהִי לְלוֹיִם וְאַנְוּ קָא יְהִיבִינוּ לְכַהֲנִים... וְהָא תַנְיָנָא אִף הוּא בֵּיטֵל אֶת הַיְיָדוּי וְגִזַּר עַל הַדְּמָאֵי לְפִי שְׂשֻׁלַח בְּכָל גְּבוּל יִשְׂרָאֵל וְרָאָה שְׂאִין מְפָרִישִׁין אֶלָּא תְרוּמָה גְדוֹלָה בְּלִבְד וּמַעֲשֵׂר רֵאשׁוֹן וּמַעֲשֵׂר שְׁנִי מְקַצְתָּן מְעַשְׂרִין וּמְקַצְתָּן אִין מְעַשְׂרִין אָמַר לְהֵם בְּנֵי בּוֹאוּ וְאוֹמַר לְכֶם כְּשֵׁם שְׂתְרוּמָה גְדוֹלָה יֵשׁ בָּהּ עוֹן מִיְתָה כִּד תְרוּמַת מַעֲשֵׂר וְטַבֵּל יֵשׁ בָּהּ עוֹן מִיְתָה עֲמַד וְהִתְקִין לְהֵם הַלוֹקֵחַ פִּירוֹת מֵעַם הָאֶרֶץ מְפָרִישׁ מִהֶן מַעֲשֵׂר רֵאשׁוֹן וּמַעֲשֵׂר שְׁנִי מַעֲשֵׂר רֵאשׁוֹן מְפָרִישׁ מִמֶּנָּה תְרוּמַת מַעֲשֵׂר וְנוֹתְנָה לְכַהֵן וּמַעֲשֵׂר שְׁנִי עוֹלָה וְאוֹכְלוּ בִירוּשָׁלַיִם מַעֲשֵׂר רֵאשׁוֹן וּמַעֲשֵׂר עֲנִי הַמוֹצִיא מִחֲבִירוֹ עָלָיו הַרְאָיָה תְרַתִּי תִקּוּן בֵּיטֵל וַיְדוּי דְחֲבִירִים וְגִזַּר עַל דְּמָאֵי שְׁל עַמֵּי הָאֶרֶץ

Sotah 47b:23-48a:6

The mishna further taught that **Yohanan the High Priest took away the declaration of the tithe**. The Gemara poses a question: **What is the reason he did this? Rabbi Yosei, son of Rabbi Hanina, says: Because they did not give the tithe in the proper manner** as stated by the Torah. In what way is that? **As the Merciful One states in the Torah that they should give the first tithe to the Levites, and we give it to the priests**. Ezra penalized the Levites for not ascending with him from Babylonia to Eretz Yisrael by taking away their right to the first tithe. Consequently, the owner of the produce can no longer recite the declaration of tithes, which includes the statement: "I have done according to all that You have commanded me" (Deuteronomy 26:14), as he did not give the tithe to the Levites....**But isn't it taught (Tosefta 13:10): He, Yohanan the High Priest, also canceled the declaration of tithes and decreed with regard to doubtfully tithed produce [demai]? Why did he issue this decree? Because he sent messengers throughout the land, to all the borders of Eretz Yisrael to investigate, and saw that they would separate only *teruma gedola*, and as for first tithe and second tithe, some people would tithe and some people would not tithe. He said to them: My sons, come and I will tell you something: Just as the *halakhot* of *teruma gedola* include a transgression punishable by death at the hand of God, as one who ate produce from which *teruma* has not been separated is punished with death from Heaven, so too, the *teruma* of the tithe, the portion the Levites must separate from their first tithe and give to priests, and untithed produce, these include a transgression punishable by death at the hand of God, if the produce is eaten without**

the tithes having been taken. Realizing that it was uncertain with regard to whether or not people were separating tithes, **he arose and instituted an ordinance for them** with regard to doubtfully tithed produce: **One who purchases produce from an *am ha'aretz***, which may or may not have been tithed, **must separate from the produce first tithe and second tithe** due to the uncertainty as to whether or not the *am ha'aretz* separated them. As for **first tithe**, he then **separates *teruma of the tithe from it and gives it to a priest, and*** with regard to **second tithe**, **he goes up and eats it in Jerusalem.** However, with regard to the giving of **first tithe** to the Levite, **and the poor man's tithe**, which can be eaten by anyone, as the Levites and the poor only have monetary rights to the produce, **the burden of proof rests upon the claimant.** Since the Levites and the poor cannot prove that these tithes had not already been set aside by the *am ha'aretz*, they cannot force the buyer to give them those tithes. In any case, the Gemara proves from the *baraita* that not all people would separate tithes in the time of Yoḥanan the High Priest. The Gemara answers: **He instituted two ordinances: He canceled the declaration of tithes of those devoted to the meticulous observance of mitzvot [*haverim*]**, especially *halakhot* of *teruma* and tithes, **and he decreed with regard to doubtfully tithed produce purchased from *amei ha'aretz***, because they may not have separated tithes at all.

תלמוד ירושלמי סוטה ט"ו:א:ג-ט"ו

יִחְנַן כְּהֵן גְּדוֹל שְׁלַח וּבְדַק בְּכָל-עָרֵי יִשְׂרָאֵל וּמִצָּאָן שְׁלֵא הָיוּ מִפְּרִישֵׁין אֶלֶּה תְּרוּמָה גְּדוּלָּה בְּלִבָּד. אָבַל מִעֲשֵׂר רֵאשׁוֹן וּמִעֲשֵׂר שֵׁנִי מִהֵן הָיוּ מִפְּרִישֵׁין וּמִהֵן לֹא הָיוּ מִפְּרִישֵׁין. אָמַר הוּאֵיל וּמִעֲשֵׂר רֵאשׁוֹן בְּעוֹן מִיתָה. וּמִעֲשֵׂר שֵׁנִי בְּעוֹן טָבַל הֵא אָדָם קוֹרָא שֵׁם לְתֵרוּמָה וְלְתֵרוּמַת מִעֲשֵׂר וְנוֹתְנֵוּ לְכֹהֵן. וּמִעֲשֵׂר שֵׁנִי מְחַלְלוּ עַל הַמַּעוֹת וְהַשָּׂאָר מִעֲשֵׂר עֲנִי הַמוֹצִיא מִחֻבְרֵי עָלְיוֹ הָרֵאשִׁי. ... וּבִנְיָמִי אֵין אָדָם צָרִיף לְשֵׁאוֹל עַל הַדְּמָאֵי שְׁהַעֲמִיד זִוגוֹת. מִילְתֵּיהּ דְּרַבִּי יְהוֹשֻׁעַ בֶּן לִוִּי אָמְרָה מִהֵן לְגִנְאֵי וּמִהֵן לְשִׁבְחָה. דָּאֵמַר רַבִּי יוֹסִי בְּשֵׁם רַבִּי תַנְחוּם רַבִּי חִיָּיָה בְּשֵׁם רַבִּי יְהוֹשֻׁעַ בֶּן לִוִּי. בְּרֵאשׁוֹנָה הָיָה מִעֲשֵׂר נִעֲשֶׂה לְשִׁלְשָׁה חֻלְקִים. שְׁלִישׁ לְמַכְרֵי כְּהוֹנָה וְלוֹנָה. וְשְׁלִישׁ לְאוֹצָר. וְשְׁלִישׁ לְעֲנִיִּים וְלְחֻבְרִים שְׁהָיוּ בִירוּשָׁלַם. אָמַר רַבִּי יוֹסִי בִּירְבִי בּוּן. מָאן דְּהוּהוּ סְלִיק לְמַדְיָן בִּירוּשָׁלַם עַד דְּתַלְתַּת אֵיגְרֵן הוּהוּ יְהִב מְדִילֵיהּ. מִכֵּן וְאֵילָף מִשְׁלָאוֹצָר. מִשְׁבָּא אֶלְעָזָר בֶּן פְּחוּרְהָ וְיְהוּדָה בֶּן פְּכוּרְהָ הָיוּ נוֹטְלִין אוֹתָן בְּזָרוּעַ. וְהָיָה סְפִיקוֹן בְּיָדוֹ לְמַחוּת וְלֹא מִיתָה. וְהַעֲבִיר הוֹדִינֵת הַמִּעֲשֵׂר. וְזוֹ לְגִנְאֵי.

Jerusalem Talmud Sotah 9:11:3-9

Yoḥanan the High Priest sent and checked in all localities of Israel and found that they separated only Great Heave. But First and Second Tithes some were separating and some did not. He said, since [omitting] First Tithe is a deadly sin and [omitting] Second Tithe [implies] the sin of *tevel*, a person should give a name to heave and heave of the tithe and give them to the Cohen; Second Tithe he exchanges for coins. About the remaining tithe of the poor, he who has a claim on another person must bring proof...“And in his days nobody had to ask about *demay*” because he sent out teams The word of Rabbi Joshua ben Levi implies some are censure and some praise. Since Rabbi Yose said in the name of Rabbi Tanḥum bar Ḥiyya, Rabbi Ḥizqiah, Rabbi Eleazar ben Rabbi Yose, Rabbi Tanḥum, Rabbi Ḥiyya in the name of Rabbi Joshua ben Levi, originally tithe was split into three parts. One third to his acquaintances among Cohanim and Levites, one third to the public treasury, one third to the poor and the fellows in Jerusalem. Rabbi Yose ben Rabbi Abun said, a person who went to court in Jerusalem, up to three letters he paid for himself, from there on from the public treasury. When Eleazar ben Paḥora and Judah ben Pakora came, they took it by force and it would have been in his hand to stop this but he did not but disestablished the declaration of tithes, and this is for censure.

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