



Peshat, Midrash and Halakhah IX

Marty Lockshin, Torah in Motion 5781

Deuteronomy 21

כִּי יִמָּצָא חָלָל בְּאֶדְמָה אֲשֶׁר ה' אֱלֹהֶיךָ נֹתֵן לְךָ (א)

If, in the land that the LORD your God is assigning you to possess, someone slain is found lying in the open, the identity of the slayer not being known, your elders and magistrates shall go out and measure the distances from the corpse to the nearby towns. 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; 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.

Deuteronomy 21 (cont.)

(ה) וְגַם
גְּשׁוֹ הַכֹּהֲנִים בְּנֵי לֵוִי כִּי בָם בָּחַר ה' אֱלֹהֶיךָ לְשׁוֹ

The priests, sons of Levi, shall come forward; for the LORD your God has chosen them to minister to Him and to pronounce blessing in the name of the LORD, and every lawsuit and case of assault is subject to their ruling. 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. And they shall make this declaration: "Our hands did not shed this blood, nor did our eyes see it done. Absolve, O LORD, 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. 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 the LORD.

Atoning for the Land (Num 35; Gen 9)

וְלֹא תַחְנִיפוּ אֶת הָאָרֶץ אֲשֶׁר אֲתֶם בָּהּ
כִּי הַדָּם הוּא יַחְנִיף אֶת הָאָרֶץ וְלֹא אֶרֶץ
לֹא יִכָּפֵר לַדָּם אֲשֶׁר שִׁפָּךְ בָּהּ כִּי אִם
בְּדָם שִׁפְכוּ. וְלֹא תִטְמֵא אֶת הָאָרֶץ
אֲשֶׁר אֲתֶם יֹשְׁבֵיהּ בָּהּ אֲשֶׁר אָנֹכִי שֹׁכֵן
בְּתוֹכָהּ . . .

שִׁפְךָ דַּם הָאָדָם בְּאָדָם דָּמוֹ יִשְׁפָךְ כִּי
בְּצֶלֶם אֱלֹהִים עָשָׂה אֶת הָאָדָם

You shall not pollute the land in which you live; for blood pollutes the land, and the land can have no expiation for blood that is shed on it, except by the blood of him who shed it. You shall not defile the land in which you live, in which I Myself abide,

Whoever sheds the blood of man, by man shall his blood be shed; for in His image did God make man

Ibn Ezra's Torah Commentary

ויתכן, שהשם צוה לעשות כן העיר
הקרובה, כי לולי שעשו עבירה כדומה
לה, לא נזדמן להם שיהרג אדם קרוב
מהם. ומחשבות השם עמקו וגבהו
לאין קץ אצלנו:

It is possible that God commanded the closest city to perform this ceremony since had they not performed some similar crime, it would not have happened that anybody would have been killed in the vicinity of their town. For us, God's thoughts are infinitely deep and lofty.

Mishnah Sotah 9:6

זקני אותה העיר רוחצין
ידיהם במים במקום עריפתה
של עגלה ואומרים [דברים
כא ז] ידינו לא שפכו את הדם
הזה וגו' וכי עלה על לבנו
שבית דין שופכי דמים הן
אלא **שלא בא לידינו ופטרנוהו**
לא ראינוהו והנחנוהו

The Elders of that city wash their hands in water in the place of the breaking of the neck of the heifer, and they recite: "Our hands did not spill this blood, nor did our eyes see". [The mishnah explains:] Did it enter our minds that the Elders of the court are spillers of blood? Rather, [they declare:] **he did not come to us and then we sent him away; we did not see him and then forsake him/leave him be.**

Jerusalem Talmud Sotah 9

רבנין דהכא פתרין קרייא בהורג. ורבנין
דתמן פתרין קרייא בנהרג.

The rabbis here [in Israel] explain the declaration [?] as referring to the murderer; the rabbis there [in Babylonia] explain it as referring to the victim.

רבנין דהכא פתרין קרייא בהורג שלא בא על
ידינו ופטרנוהו ולא הרגנוהו ולא ראינוהו
והנחנוהו ועימעמנו על דינו.

The rabbis here explain: it was not the case that **he** came to us and then we sent him away without executing him; nor that we saw him and then let him be by muddling his trial.

ורבנין דתמן פתרין קרייא בנהרג לא בא על
ידינו ופטרנוהו בלא הלוייה. ולא ראינוהו
והנחנוהו בלא פרנסה.

The rabbis there . . . explain: it was not the case that **he** came to us and then we sent him away without accompaniment; nor that we saw him and left him without support [food].

Babylonian Talmud Sotah 38b

וא"ר יהושע בן לוי: אין עגלה ערופה באה
אלא בשביל צרי העין, שנאמר: וענו
ואמרו ידינו לא שפכו את הדם הזה, וכי
על לבנו עלתה שזקני ב"ד שופכי דמים
הם? אלא, לא בא לידינו ופטרנוהו ולא
ראינוהו והנחנוהו, לא בא לידינו ופטרנוהו
בלא מזונות, לא ראינוהו והנחנוהו בלא
לוייה.

Rabbi Yehoshua b. Levi says: The *eglah arufah* is brought only because of stingy people. For it is written: "Our hands did not shed this blood, nor did our eyes see." Did it enter our minds that the Elders of the court are spillers of blood? Rather . . . it was not the case that he came to us and then we sent him away without food; nor that we saw him and left him without accompaniment.

Rashi Sotah 38b

ופטרנוהו בלא מזונות - כלומר
למזונות הוצרך ולא היה לו וראה אחד
נושא מזונות ובא לחוטפם ממנו
לאונס רעבון ועמד זה עליו והרגו.

In other words, he needed food and had none. He then saw someone who had food and tried to grab some of it because of the compulsion of his hunger. The owner of the food then killed him.

Rashi's Torah commentary

ידינו לא שפכה - וכי עלתה על לב שזקני
בית דין שופכי דמים הם, אלא לא
ראינוהו ופטרנוהו בלא מזונות ובלא לויה.

והכהנים אומרים כפר לעמך ישראל:

ונכפר להם הדם - הכתוב מבשרם
שמשעשו כן יכופר להם העון:

“Our hand did not spill”: Did it enter our minds that the Elders of the court are spillers of blood? Rather it was not the case that he came to us and then we sent him away without food; nor that we saw him and left him without accompaniment

The priests then say: “Absolve, O Lord, your people Israel.”

“They will be absolved of bloodguilt”: Scripture announces to them that when they have done this (the ceremony prescribed) their sin will be absolved

Deuteronomy 21

(א) כִּי יִמָּצָא חָלָל בְּאֲדָמָה אֲשֶׁר ה' אֱלֹהֶיךָ נָתַן לְךָ
הָעָרִים
אֲשֶׁר סְבִיבֹת הַחָלָל: (ג) וְהָיָה הָעִיר הַקְּרֹבָה אֶל
אֵל נֶחֱל אִיתָן
אֲשֶׁר לֹא יַעֲבֹד בּוֹ וְלֹא יִזְרַע וְעָרְפוּ שָׁם אֶת הָעֶגְלָה

If, in the land that the LORD your God is assigning you to possess, someone slain is found lying in the open, the identity of the slayer not being known, **your elders and magistrates shall go out** and measure the distances from the corpse to the nearby towns. **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; 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.

Deuteronomy 21 (cont.)

(ה) וּנְגִשׁוּ הַכֹּהֲנִים בְּנֵי לֵוִי
כִּי בָם בָּחַר ה' אֱלֹהֶיךָ לְשִׁרְתּוֹ וּלְבָרְכָהּ בְּשֵׁם ה'
הַקְּרִבִּים אֶל הַחֹלֶל יִרְחֲצוּ אֶת יְדֵיהֶם
עַל הָעֵגְלָה הָעֲרוּפָה בַּנַּחַל : (ז) וְעָנוּ
וְאָמְרוּ יְדֵינוּ לֹא
שָׁפְכוּ אֶת הַדָּם הַזֶּה וְעֵינֵינוּ לֹא רָאוּ : (ח) כִּפָּר

The priests, sons of Levi, shall come forward; for the LORD your God has chosen them to minister to Him and to pronounce blessing in the name of the LORD, and every lawsuit and case of assault is subject to their ruling. 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. And they shall make this declaration: "Our hands did not shed this blood, nor did our eyes see it done. Absolve, O LORD, 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. 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 the LORD.

Rashbam's Torah Commentary

ונגשו הכהנים בני לוי {וגו'} – וענו
ואמרו {וגו'} כפר לעמך ישראל.

The priests sons of Levi shall
come forward ... (7) and they
shall make this declaration:
["our hands did not] ... (8)
absolve your people Israel... ."

Maimonides *Guide* 3:40

The beneficial character of the law concerning "the breaking of the neck of a heifer" is evident. For it is the city that is nearest to the slain person that brings the heifer, and in most cases the murderer comes from that place. The elders of the place call upon God as their witness, according to the interpretation of our Sages, that they have always kept the roads in good condition, have protected them, and have directed everyone that asked his way; that the person has not been killed because they were careless in these general provisions, and they do not know who has slain him.

Maimonides (cont.)

As a rule, the investigation, the procession of the elders, the measuring, and the taking of the heifer, make people talk about it, and by making the event public, the murderer may be found out, and he who knows of him, or has heard of him, or has discovered him by any means, will now name the person that is the murderer, and as soon as a man, or even a woman or handmaid, rises up and names a certain person as having committed the murder, the heifer is not killed.

Maimonides (cont.)

When the murderer is discovered, the benefit of the law is apparent. If the *beit din* cannot sentence him to death, the king, who has the power to sentence to death on circumstantial evidence, may find him guilty; and if the king does not put him to death, the avenger of blood may scheme and plan his death, and ultimately kill him. We have thus shown the use of the law concerning the breaking of the neck of the heifer in discovering the murderer.

Shadal's Commentary

מצות עגלה ערופה איננה למען יתגלה הרוצח
(כדעת הרמב"ם מורה ח"ג פרק מ'. ואחריו בעל
ס' החינוך ודון יצחק ובעל מנחה בלולה
והמעמר), אלא לשתי כוונות:

האחת, לחזק האמונה המפורסמת באומה שכל
ישראל ערבים זה לזה, ושלארץ לא יכופר לדם
אשר שפך בה כי אם בדם שופכו; ולכן אחרי
שאינן הרוצח ידוע להם, ולא יוכלו לעשות בו דין,
יערפו תחתיו העגלה, וירחצו הזקנים את ידיהם,
לסימן כי הם ושולחיהם נקיים, וכפיהם לא נגואלו
בדם ההרוג.

The purpose of the law of *eglah arufah* is **not** so that the murderer will be discovered (as Maimonides and others claimed). Rather it has two purposes:

1. To promote the well-known belief of the Jewish people that they are all responsible for each other and that "the land can have no expiation for blood that is shed on it, except by the blood of him who shed it." (Num 35:33) Accordingly, since they don't know who the murderer was and cannot punish him, they should break the neck of a heifer instead. The elders should wash their hands as a sign that they and their constituents are guiltless, and their hands have not been soiled by the blood of the victim.

Shadal's Commentary (cont.)

והשנית כדי שבתוקף אמונתם בעונש המגיע
לארץ בשביל הדם אשר שופך בה, לא יבאו
להרוג נקי שיהיה נחשד על הרציחה ההיא,
בזולת ראיה גמורה ועדות ברורה.

כי אמנם אעפ"י שיודעים היו שאין כל העם
ערבים על מכה רעהו בסתר היה אפשר להם
לחשוב שזה אמנם אינו אלא כשאין ההרוג ידוע,
אבל בנדון שלנו שהחלל נמצא, יתכן שיהיו כל
הקהל נענשים אם לא ישתדלו עד שימצא
הרוצח.

2. They will not put to death—as a result of their strong belief that punishment befalls the land when innocent blood is spilled—anyone who is suspected of this murder without strong proof and clear testimony. For even though they knew that they were not all responsible for each other in cases where someone was secretly killed, it was possible that they might think that that exemption applies only when the murder is not known. But in our case, where the victim was found, they might think [ML: as Maimonides suggests] that they would all be punished if they did not find the murderer.