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Center for Modern Torah Leadership



חרות ואחריות

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"Taking Responsibility for Torah"

“OUR HANDS HAVE NOT SHED THIS BLOOD”

By Rabbi Aryeh Klapper

When a murdered body is found in the ground that Hashem
your G-d is giving you to inherit
fallen in the field
unknown who struck it down
then your elders and judges must go out . . .

They must recite:

יְדֵינוּ לֹא שִׁפְכוּ וְעֵינֵינוּ לֹא רָאוּ

“Our hands have not shed this blood, and our eyes have not
seen” . . .

Rashi on Chumash raises the obvious question:

וכי עלת על לב שזקני בית דין שופכי דמים הם!?

Did any heart consider it possible that the elders of beit din
are bloodshedders?”

His response is:

אלא, לא ראינוהו ופטרנוהו בלא מזונות ולוייה

*Rather, we did not see him and send him away without food
and without accompaniment.*

Rashi's question and response appear to be taken almost
word for word from Mishnah Sotah 9:6:

וכי על דעתינו עלתה שזקני בית דין שופכי דמים הן!?

אלא

שלא בא לידנו ופטרנוהו בלא מזון

ולא ראינוהו והנחנוהו בלא לוייה

Did our minds consider it possible that the elders of beit din
are bloodshedders?!

Rather,

that he did not come into our hands and have us send him
away/exempt him without food,

and that we did not see him and leave him be without
accompaniment.

However, many commentators note that the influence may
be in the reverse direction. Rashi didn't copy the Mishnah;
rather, Rashi (or some predecessor) interpreted the Mishnah,
and this interpretation became part of the Mishnah. The
original text of the Mishnah was

אלא

שלא בא לידנו ופטרנוהו

ולא ראינוהו והנחנוהו

that he did not come into our hands and have us send him
away/exempt him

and that we did not see him and leave him be.

How do we know that the original text of the Mishnah did
not mention food or accompaniment? Because Yerushalmi
Sotah 9:6 records a dispute about how to interpret the
underlying verse, in language that clearly reflects a dispute
about how to interpret our Mishnah:

רבנין דהכא פתרין קרייא בהורג

= שלא בא על ידינו ופטרנוהו ולא הרגנוהו

ולא ראינוהו והנחנוהו ועימעמנו על דינו;

ורבנין דתמן פתרין קרייא בנהרג

= ולא בא על ידינו ופטרנוהו בלא הלוייה

ולא ראינוהו והנחנוהו בלא פרנסה

The Rabbis of here (Israel) explain the verse as being about
the killer

= that he did not come into our hands and have us send him
away/exempt him and not kill him

and we did not see him and leave him be and put his verdict
on a slow burner;

but the Rabbis of there (Babylonia) explain the verse as being
about the killed

= he did not come into our hands and have us send him away
without accompaniment

and we did not see him and leave him be without provisions.

The disagreement likely centered on whether to interpret
the word *petarnuhu* in the Mishnah as “exempted from
punishment”, or rather as “sent away”. The Babylonian
interpretation was eventually incorporated by a version of the
Mishnah and was assumed by their Talmud. Nonetheless,
many traditional Biblical commentators adopt the Israeli
view, among them Seforno:

ידינו לא שפכה = שלא הנחנו שום נודע לרוצח בארץ

Our hand did not shed = that we did not leave anyone known
as a murderer in the Land.

Acharonim connect this Amoraic dispute to the Tannaitic
dispute in Mishnah Makkot 1:10:

סנהדרין ההורגת אחד בשבוע - נקראת חובלנית;

רבי אלעזר בן עזריה אומר:

אחד לשבעים שנה;

רבי טרפון ורבי עקיבא אומרים:

אילו היינו בסנהדרין - לא נהרג אדם מעולם;

רבן שמעון בן גמליאל אומר:

אף הן מרבין שופכי דמים בישראל.

A Sanhedrin that kills once in seven years is called ‘prone to
harming’;

Rabbi Elazar ben Azaryah says:

Once in seventy years;

Rabbi Tarfon and Rabbi Akiva say:

Had we been on the Sanhedrin – no one would ever have been killed;

Rabban Shimon ben Gamliel says:

They would surely have multiplied bloodshedders in Israel.

The Israeli rabbis' interpretation of the Mishnah channels Rabban Shimon ben Gamliel's riposte, while the Babylonian rabbis don't blame too-lenient courts for murder.

It's not clear how much practical weight we should give to either side of either dispute, however, because their conversations were hypothetical. Rabbi Tarfon and Rabbi Akiva make their statement in the subjunctive because the Sanhedrin had given up capital jurisdiction before they received semikha; and as for the *eglah arufah*, the Mishnah itself informs us that

משרבו הרוצחנין - בטלה עגלה ערופה.

When the murderers became numerous – the *eglah arufah* was suspended.

It's interesting to consider the logic here: Why would an increase in murders lead to the suspension of the *eglah arufah*? R. Ovadia MiBartenura comments on our mishnah:

לפי שמכירין היו בהם מי רגיל להרוג

Because they knew who among them killed regularly

Supercommentaries on Bartenura deduce that he must be following the Yerushalmi interpretation. They unpack his reasoning as that when the usual murderers are known, the elders cannot recite *Our hands have not shed this blood*. Why not? Because they have responsibility for this bloodshed, because they failed to execute the known killers who probably killed this victim as well.

I am not convinced. Bartenura might instead be based on the verse *לא נודע מי הכהו*, *unknown who struck it down*. A reading somewhat along those lines was offered by Rabbeinu Yosef Bekhor Shor in his commentary on Chumash:

The Holy Blessed One commanded all this so that word would be spread about the murder victim, and so that there would be publicity about this because of the cities being measured, and the Great Sanhedrin coming there, and the calf having its neck broken and being buried, which is something to astonish. This way anyone who left their home and had not returned, and it was not known what had happened to them – their households and families would be drawn by the word to see if they recognized the victim, and that way his wife would not be chained, and his sons would not be orphans (without resources) – they would be able to claim their father's inheritance without objection from *beit din*. And once the victim is recognized, it will be known who went with him, and who joined him, and sometimes the murderer would become

common knowledge as a result. This would also show how great a matter this is, and how much trouble the Holy Blessed One imposes out of concern for one life.

Bekhor Shor sees exposure of the murderer as a goal of the ritual; it follows that if the murderer is known, the ritual becomes a mockery and must be suspended. (However, Deborah Klapper argues that according to Bekhor Shor, the ritual is justified even if the murderer is known so long as the victim remains unknown. My counterargument is that the verse only mentions the anonymity of the killer.)

The multiplication of murderers is also given as a reason for the Sanhedrin surrendering capital jurisdiction. A standard explanation is that political murder became rampant, and the Sanhedrin could not interfere without being caught up in political strife, which would lead both to a loss of judicial legitimacy and to risk of assassination. This would explain why people "known to kill regularly" were tolerated by communal authorities.

One can imagine an even worse situation, in which the machinery of justice is in fact politicized. For example, if a state's Minister of Police ordered his department to ignore killings by one side of a political dispute, the *eglah arufah* would surely become a mockery.

The Babylonian interpretation of our mishnah and verse also make a difficult causal claim. We understand how their failure to provide accompaniment to the victim can make us liable for their murder; but what how does failure to provision lead to death by violence? Rashi on the Talmud answers:

והיינו ידינו לא שפכו –

לא נהרג על ידינו שפטרנוהו בלא מזונות

והוצרך ללסטם את הבריות ועל [ידי] כך נהרג

This is the meaning of our hands have not shed –

that he was not killed because of us in that we did not send him away without food, making it necessary for him to rob people, which is what got him killed

Rashi apparently holds that when people are made desperate by hunger, those who fail to provide them with food are responsible for what happens to them, even if they make very wrong choices in their attempt to get food, and even if they die at someone else's hands as a direct consequence of their very wrong choices. Of course, the murderer is primarily responsible, and legally responsible – but not exclusively responsible.

Shabbat shalom!

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