

DIMENSIONS IN CHUMASH

Parshas Shoftim

“If a corpse will be found on the land”

The Mitzvah of Eglah Arufah

כִּי יִמָּצָא חָלָל בְּאֶדְמָה אֲשֶׁר ה' אֱלֹהֶיךָ נָתַן לְךָ לְרִשְׁתָּהּ נִפְלַ בְּשׂוּדָה לֹא נֹדַע מִי הִכָּהוּ

If a corpse will be found on the land that Hashem, your God, gives you to possess it, it was not known who smote him.¹

INTRODUCTION

The final section of our parsha discusses the mitzvah of *eglah arufah* – the decapitated calf. As the verses describe, if a person should be found slain and the identity of his killer is unknown, the elders of the city closest to where the victim was found bring a calf down to a valley and decapitate it there. They then declare that they had no part in the death of this victim and ask for atonement for the people of Israel. However we understand the procedure and details of this mitzvah, the underlying message is that a tragedy of this sort cannot be allowed to pass without response from those nearby – even if it was in no way of their doing. Although the identity of the killer is unknown, and that of the victim perhaps equally so, a fellow Jew’s life has been cut short and that loss needs to be felt and addressed.

BETWEEN THE WARS – LOCATION OF THE MITZVAH

It is most interesting to consider, in this regard, the place where the Torah chooses to discuss this mitzvah. As we know, immediately following this section is the parsha of Ki Seitzei, which begins, “When you shall go out to war against your enemy.”² What is equally important to note, however, is that the section that precedes *eglah arufah* begins in exactly the same way – “when you shall go out to war against your enemies!”³ It turns out that the mitzvah of *eglah arufah* is sandwiched “between the wars.” We may ask: Why not put all the laws relevant to war together? Why interject with a private matter?

Apparently, the Torah seeks to highlight the gravity and significance of a single life *under all circumstances*. As we know, in times of war, people’s sensitivities toward an individual’s plight can unfortunately become somewhat jaded in the face of broader danger and tragedy. To this end, the Torah

1 Devarim 21:1.

2 Ibid. verse 10.

3 Ibid. 20:1.

places this discussion of an individual tragedy in the midst of its discussion of war, as if to say, the one can never be allowed to be eclipsed by the other.

UNDERSTANDING THE MITZVAH

The mitzvah of *eglah arufah* itself is somewhat elusive. What is behind its many details and how does it effect atonement for what has happened? Ultimately, the Rambam informs us that this mitzvah is classified among the *chukim* – those whose understanding is beyond us.⁴ Nevertheless, in the Moreh Nevuchim,⁵ he elaborates upon one aspect of the mitzvah that can be appreciated on a rational level. By the elders of the city performing the *eglah arufah* procedure with all of its details, awareness of what has happened will spread to the surrounding cities, and it will become the topic of conversation and discussion. This, in turn, may encourage someone who saw or knows something pertaining to the incident to come forward and provide information which might lead to identifying and apprehending the killer.

MEASURING OUT JUSTICE

This explanation will shed new light on the requirement, mentioned in verse 2, of measuring to the nearest city. Seemingly, this procedure is done purely in order to ascertain which city is closest. However, the Gemara⁶ states that even if the corpse is found right next to a city, so that there is no doubt that it is the closest one, there is still a mitzvah to measure toward it. This formal procedure publically marks that city as the closest one, effectively placing it under a cloud of association and thereby further encouraging it to make an effort to get to the bottom of what happened. Indeed, according to some commentators, even in this situation where the closest city can be clearly and visibly determined, the elders proceed to measure to *all the surrounding cities*, as the simple reading of verse 2 indicates. The effect of this is that, in addition to highlighting the responsibility of the closest city, the other cities are also formally enlisted in this situation, thereby widening the net of people who could potentially shed light on the situation.⁷

“OUR HANDS DID NOT SPILL THIS BLOOD”

After the calf has been decapitated, verse 7 states that the elders of the city need to wash their hands and declare, “Our hands did not spill this blood.” Understandably, this declaration is somewhat baffling. As the Gemara⁸ expresses it: Does anyone imagine that the elders of city are the culprits?

The Gemara explains that what the elders are required to declare is that they did not see this person leave the city and allow him to go without provisions and accompaniment. How would doing so be tantamount to bloodshed? These are things that affect a person’s mood and morale. If he had left town with food and accompaniment in positive spirits, perhaps he would have been better able to defend himself against his attacker; whereas without them, his subdued disposition may have left him less able to fend off an attack – and may even have invited it.⁹

A fascinating alternative explanation of the elders’ declaration is found in the Talmud Yerushalmi.¹⁰ It begins by noting that the above interpretation is indeed the one offered in Bavel,

4 *Hilchos Me’ilah* 8:8. See also *Commentary of Ramban to verse 1.*

5 3:40.

6 Sotah 45a. [See Rashi Devarim loc. cit. s.v. *u’mededu* with commentary of Mizrahi *ibid.* and *Mishneh Lemelech, hilchos rotzeach* 9:1.]

7 R’ Yissachar Ber Eilenberg, *Commentary Be’er Sheva to Sotah* *ibid.*

8 Sotah 45b, cited in Rashi to our verse.

9 Heard from my father, R’ Isaac Bernstein *zt”l.*

10 Sotah Chap. 9 halachah 6, cited in *Hamek Davar.*

but then proceeds to say that in Eretz Yisrael they explained this declaration as relating, not to the victim, but to the perpetrator:

He [the killer] did not come before us and we exempted him from judgment, ignoring his liability.

According to the Yerushalmi, what the elders are required to declare is that they did not have a killer in custody and then released him! If they were to have done so, then he may well have been the one behind this attack and, having had him in their custody, the elders would also be liable for the spilling of the victim's blood.

THE FINAL VERSE

It is fitting to conclude our discussion with the Torah's own concluding words in this section. The final verse reads:

וְאַתָּה תִּבְעֵר הַדָּם הַנִּקִּי מִקִּרְבְּךָ כִּי תַעֲשֶׂה הַיֵּשֶׁר בְּעֵינֵי ה'

You shall remove the innocent blood from your midst, when you do what is upright in the eyes of Hashem.

To what is this verse referring and what does it add to the parsha? Having performed the procedure of *eglah arufah* as set forth in the preceding verses, what more is there to do in this situation?

Rashi¹¹ explains that the entire procedure of *eglah arufah* only effects atonement to the extent that the identity of the killer is unknown. Should the killer be found, however, he will need to be brought to justice, and we do not say that the matter has already been dealt with through the *eglah arufah*. Thus, the final verse serves to qualify the effectiveness of the procedure, alerting us to the fact that further action may yet need to be taken in the event that new developments arise.

WHAT'S IN A WORD – THE MEANING OF “VE’NIKAPER”

The words which conclude the *eglah arufah* procedure read: “וְנִכְפַּר לָהֶם הַדָּם”, which is commonly translated as “and the blood shall be atoned for them.” Actually, the word “וְנִכְפַּר” is very unusual, for it does not fit into any established grammatical form:

On the one hand, the vowelization of the word is appropriate for the *hispael* (reflexive) form. However, a reflexive word always contains the letter *tav* after the *nun*. Here, the letters of the word indicate the *nifal* (passive) form.

So which is it?

We have discussed elsewhere the fascinating idea that there are times when the Torah blends together different forms into one word in order to reflect the blended nature of the situation being described. Here, too, the atonement achieved by the *eglah arufah* is not absolute and unequivocal; it is effective if the killer remains unknown, but not if he should be found. How is this conditional

11 S.v. *ve'ata*, based on *Sotah 47b*.

element expressed in the word?

- The *nifal* form always reflects something that has actually happened.
- The *hispael* form can sometimes reflect something which is apparent, but not necessary actual.¹²

Therefore, the Torah combines both of these elements into the word that expresses the effect of the *eglah arufah*, reflecting the two possible outcomes subject to subsequent developments. If the killer is never found, the *eglah arufah* will indeed provide some atonement (*nifal*); but if he is found, then it will no longer actually fulfill that role (*hispael*).¹³

Beautiful!

IBN EZRA – A MESSAGE TO THE CITY’S POPULACE

According to the Ibn Ezra, however, the final verse does not relate to dispensing justice to the killer, but rather seeing to it that catastrophes such as this do not occur in the first place. There is a principle of “שכר מצוה מצוה – *the reward for a mitzvah is another mitzvah.*”¹⁴ This means that being faithful to the mitzvos results in bringing about further good deeds, and vice versa. As such, even though no one in the city was guilty regarding this particular individual, nevertheless, in a more general sense, the entire city is implicated. The fact that this tragedy could occur in their environs is an indication that the city in a general sense is lacking, for had they been sufficiently engaged in good deeds, the positive effects would have precluded such a disaster. Thus the section concludes: If you wish to prevent tragedies like this from happening in the future, reinforce your commitment and dedication to doing that which is just in Hashem’s eyes.

Although the Ibn Ezra has referenced the spiritual concept of “the reward for a mitzvah is a mitzvah,” it is also possible to apply his basic approach in a more down-to-earth way. Often, a person’s ability and readiness to commit a crime will be influenced, not only by the laws themselves, but also by the attitude among the populace in enforcing those laws and identifying with their values. While the Torah court formulates the laws, it is the citizens who create the climate that either tolerates violations or excoriates them. Does a potential attacker feel that his actions will be swiftly responded to by vigilant individuals to whom life is precious and an assault on it abhorrent to the core? Or will it perhaps be met with apathy and indifference? The answer to this question will often be decisive in terms of whether or not the crime itself will occur.

Thus, the section of *eglah arufah* serves as a fitting conclusion to Parshas Shoftim. The parsha begins with the command to set up courts in every city. However, it concludes by alerting us to the mistake of thinking that maintaining law and order lies solely in the hands of those few individuals that make up the judiciary. Rather, creating a lawful society requires the participation of the *entire* people. It is a sacred partnership between the judges and the community, with the latter promoting and protecting the laws handed down by the former, striving together to do “that which is upright in Hashem’s eyes.”

12 For example, the verse states in Mishlei (13:7): “יש מתעשר ואין כל מתרושש והון רב – *There are some who pretend to be rich but have nothing, while others pretend to be poor but have great wealth.*”

13 *Hakesav ve’Hakabbalah*. See, similarly, his commentary to Bereishis 41:8.

14 Pirkei Avos 4:2.