

23.7.3

52a (משנה ב') → 53a (ליגמרו מאשת איש)

1. וּבַת אִישׁ כִּהֵן כִּי תַחַל לְזַנּוֹת אֶת אַבְיָהּ הִיא מַחֲלֵלֶת בְּאֵשׁ תִּשְׂרֹף: וּיְקָרָא כֹּהֵן ט  
 2. אֶת מַחְתּוֹת הַחֹטָאִים הָאֵלֶּה בְּנִפְשָׁתָם וְעָשׂוּ אֹתָם רֻקְעֵי פָחִים צְפוּי לְמַזְבֵּחַ כִּי הִקְרִיבָם לִפְנֵי ה' וְיִקְדְּשׁוּ וְיִהְיוּ לְאוֹת לְבָנֵי יִשְׂרָאֵל: בְּמַדְבַּר יו, ג  
 3. בַּחֲנֹפֵי לְעִגְי מַעוּג חֶרֶק עָלֵי שְׂנִימוֹ: תַּהֲלִים לַה, טו  
 4. וַתֵּצֵא אֵשׁ מִלִּפְנֵי ה' וַתֹּאכַל אוֹתָם וַיָּמָתוּ לִפְנֵי ה': וּיְקָרָא י, ב  
 5. לֹא תִקֵּם וְלֹא תִטֹּר אֶת בְּנֵי עַמֶּךָ וְאַחֲבַת לְרֵעֶךָ כְּמוֹךָ אֲנִי ה': וּיְקָרָא יט, יח  
 6. וּבֵאתָ אֶל הַפְּתָנִים הַלְוִיִּם וְאֶל הַשֹּׁפֵט אֲשֶׁר יִהְיֶה בְיָמֵינוּ הֵם וְדָרְשֵׁת וְהִגִּידוּ לְךָ אֵת דְּבַר הַמִּשְׁפָּט: דְּבָרִים יז, ט  
 7. כְּמַעֲשֵׂה אֶרֶץ מִצְרַיִם אֲשֶׁר יִשְׁבַּתְּם בָּהּ לֹא תַעֲשׂוּ וְכַמַּעֲשֵׂה אֶרֶץ כְּנָעַן אֲשֶׁר אֲנִי מְבִיא אֶתְכֶם שָׁמָּה לֹא תַעֲשׂוּ וּבְחַקְתֶּיהֶם לֹא תִלְכוּ: וּיְקָרָא יח, ג  
 8. בְּשָׁלוֹם תָּמוּת וְכַמִּשְׁרָפוֹת אַבּוֹתֶיךָ הַמְּלָכִים הָרֵאשִׁוּנִים אֲשֶׁר הָיוּ לִפְנֵיךָ כִּי יִשְׂרָפוּ לָךְ וְהָיוּ אֲדוֹן יִסְפְּדוּ לָךְ כִּי דָבַר אֲנִי דְבַרְתִּי נְאֻם ה': יִדְמִיחוּ לְךָ, ה  
 9. הִנֵּה תִפְּקֶה אֶת יִשְׁבִּי הַעִיר הַזֹּאת לְפִי תִרְבַּח הַחֲרָם אֲתָהּ וְאֶת כָּל אֲשֶׁר בָּהּ וְאֶת בְּהֵמָתָהּ לְפִי תִרְבַּח: דְּבָרִים יג, טז  
 10. וְכִי יָפֶה אִישׁ אֶת עַבְדּוֹ אוֹ אֶת אִמְתּוֹ בְּשִׁבְטֵי וּמַת תַּחַת יָדוֹ נָקָם וְנָקָם: שְׁמוֹת כ, כ  
 11. וְהִבְאֵתִי עֲלֵיכֶם תִּרְבַּח נִקְמַת נָקָם בְּרִית וְנִאֲסַפְתֶּם אֶל עֲרִיכֶם וְשִׁלַּחְתִּי דָבָר בְּתוֹכְכֶם וְנִתַּתֶּם בְּיַד אוֹיְבֵי: וּיְקָרָא כו, כה  
 12. וְאֲתָהּ תִּבְעַר הַדָּם הַנִּקְמִי מִקֶּרְבֶּךָ כִּי תַעֲשֶׂה הַיִּשָּׁר בְּעֵינֵי ה': דְּבָרִים כ, ט  
 13. וְאִישׁ אֲשֶׁר יִנְאָף אֶת אִשְׁתּוֹ אִישׁ אֲשֶׁר יִנְאָף אֶת אִשְׁתּוֹ רַעוּהוּ מוֹת יוֹמָת הַנֹּאֲפִי: וּיְקָרָא כ, י  
 14. וְאִישׁ אוֹ אִשָּׁה כִּי יִהְיֶה בָהֶם אוֹב אוֹ יִדְעֵנִי מוֹת יוֹמָתוֹ בְּאָבֶן יִרְגְּמוּ אֹתָם דְּמִיקָם בָּם: וּיְקָרָא כז, כ  
 15. אוֹ בְּאִיבָה הִפְהוּ בְּיָדוֹ וַיָּמָת מוֹת יוֹמָת הַפְּקֵה רִצְחָהּ הוּא גְּאֹל הַדָּם יָמִית אֶת הַרְצִיחַ בְּפִגְעוֹ בּוֹ: בְּמַדְבַּר ל, כא

I שריפה: Process of משנה ב'

- a First: they would sink him into dung up to his knees (to keep him from moving)
- b they would put a hard cloth into a soft one, put it around his neck and pull from two sides to open his mouth
  - i Dissent (ר' יהודה): they would use pincers to open his mouth (since, if he died by the cloths, שריפה חובת שריפה)
- c Then: they would light a lead bar and throw it in and it would burn out his insides
  - i Report (ר'אב"ב): a כהן was convicted of זנות and the ב"ד put wraps of wool around her and burnt her
    - 1 Response: that ב"ד was unfamiliar with the procedure
    - 2 also: reported seeing a case like that when he was young; report was discounted as a childhood recollection
      - (a) observation: this must have been the first report; then he reported what he saw as a גדול, which was discounted as this was an errant ב"ד (ר' יוסף) – רב דין (צדוקים of בית דין – רב יוסף)

II Source for method of שריפה

- a (v. 1) from death of קרח – v. 2 indicates that the body was intact and the insides were burnt
- b from שריפה: שריפה: ת"ק
  - i interprets v. 2 as real burning, but נפשות indicates the reason, as per ר"ל's application of v. 3
  - ii interprets v. 4 as real death, but it began inside, as per tradition about four shoots of fire
    - 1 And: (v. 4) implies that they were burnt, but not their clothes
- c Question: why not infer from the burnt פרים (normal burning)
  - i Answer: more analogous to קרח or בני אהרון – both people, sinning, the soul is burnt and פיגול doesn't obtain
    - 1 Counter: פרים הנשרפים is more analogous as it is the proper method and is a perennial law
    - 2 Defense: קרח/בני אהרון are closer, as they have more things in common (4 > 2)
- d Analysis: why doesn't ת"ק infer from אהרון בני אהרון?
  - 1 Answer: that is real burning (as above) and, applying ר"נ's read of v. 5 – more humane killing
  - 2 Challenge: if so, why need the גז"ש?
    - (a) Answer: if not for גז"ש, א"ס that "inside burning" isn't שריפה at all
    - (b) And: ר"נ alone would suggest that we use the "wraps of wool" to kill quicker – קמ"ל
- e Tangent: אהרון ומשה אנדה about נדב ואביהווא אנדה
  - i And: note about קרח, how he was able to amass a group of followers
- f Story: of a כהן who was burnt by an אמורא, using the "wool wraps"
  - i Note: 2 errors – method and mandate (as per v. 6) – executions can only be carried when there is a כהן (i.e. מקדש)

III משנה גו: process of הרג (סייף)

- a חכמים: they would behead him while standing, just as the Romans do
- b ר' יהודה: this is degrading to body; rather, they put his head on a stand (like an anvil) and use a cleaver to behead him
  - i Response: there is nothing more degrading
  - ii Conversation: ר' יהודה admits that his method is most degrading; but v. 7 militates against using Roman execution
    - 1 Counter: since the תורה provided for סייף, v. 7 is no longer a consideration, as we aren't imitating them
      - (a) Proof: ruling that we burn vessels etc. to show mourning for death of kings, as per v. 8

- iii *Discussion*: in the next chapter, murder and עיר הנדחת are listed as crimes which carry סייף as punishment
- 1 *Understood*: source for עיר הנדחת - v. 9 explicitly uses חרב
  - 2 *However*: source for רוצח - v. 10 - doesn't explicitly use חרב; how do we know סייף?
    - (a) *Answer*: end of v. 10 uses נקום יינקם, as per v. 11 - that is with a חרב
    - (b) *Challenge*: perhaps it means to pierce their stomachs
      - (i) *Answer*: חרב לפי חרב implies use of the blade, not the tip
      - (ii) *Challenge*: perhaps it means to slice them in half
        1. *Answer*: ר"י's application of v. 5 militates against that
    - (c) *Note*: this only supports method for killer of slave (v. 10) - what of killing a freeman?
      - (i) *Answer*: ק"ו - if killing a slave carries סייף, certainly killing a freeman can't be חנק
        1. *Note*: this argument will not work for ר"ש, who grades חנק as more serious than סייף
        2. *Answer*: v. 12 compares all executions of murderers to עגלה ערופה - blade and at the neck
          - a. *Challenge*: if so, imitate עגלה ערופה exactly and use a cleaver from the back!
          - b. *Answer*: ר"י's application of כמוך לרעך כמוך
- IV חנק: משנה ג
- a *First*: they would sink him into dung up to his knees (to keep him from moving)
  - b *then*: they would put a hard cloth into a soft one, put it around his neck and pull from each side until he died
- V source for חנק: exegesis of v. 13: *adult male having relations with wife of an adult Jewish male* - מות יומת - by חנק
- a ר' יאשיה - if there is no specific method mentioned, we can go no further than the "lightest" form of execution
  - b ר' יונתן - not for that reason; rather, default of מיתה means חנק
    - i *Explanation* (רבי): just as מיתה בידי אדם leaves no obvious impact, so too אדם בידי שמים
      1. *Answer*: since בת כהן was singled out for שריפה (explicitly), a non-כהן must not be שריפה
      2. *Question*: how does ר' יאשיה know that חנק even exists as a potential method of execution - perhaps its סייף?
        - (a) *Note*: we understand ר' יונתן's source - as רבי explained it
        - (b) *Answer*: there was a tradition of ב"ד
    - iii *Suggestion*: their dispute revolves around whether חנק or סייף is the lightest (ר"ש/רבנן)
- VI *Question* (ר' זירא לאב"י): all נסקלים where we don't have explicit mention of סקילה and they are learned from אוב וידעוני (v. 14)
- a *Are they*: inferred via מות יומת OR from במ דמיהם?
  - b *Answer*: from במ דמיהם; else what is the purpose of that phrase?
  - c *Counter*: then what is the purpose of מות יומת?
    - i *Answer*: as per ברייתא explicating v. 15 - use any means necessary to kill him
  - d *Related question* (רבינא of ר' אחא מדיפתא): why would אב"י be bothered if it was inferred via מות יומת?
    - i *Cannot be*: אשת איש (v. 13) that would be inferred from אוב וידעוני and get סקילה
      1. *Reason*: since the תורה singled out ארוסה for סקילה → אשת איש doesn't get סקילה
    - ii *Suggestion*: perhaps he was bothered by מכה אביו ואמו - instead of inferring from אשת איש (חנק), infer from אר"י
      1. *Rejection*: if we can infer from אר"י or אשת איש, we'll go for the lenient one (אשת איש)
    - iii *Answer*: he was bothered by all non-explicit נסקלים - why infer from אר"י, infer from אשת איש