

23.9.5

79b (משנה ג) → 81a (מקרא כתוב בתורה)

- I 'lost in a crowd' רוצח: משנה ג'
- a If: a murderer was mixed in with "others" (discussion below), they are all exempt
- i Dissent (?) ד' יהודה they are all brought into the כפה (to die, as per next משנה)
- b General rule: all מחוייבי מב"ד who were mixed together are given the "lighter" death
- i Implication: התראה for a "severe" execution subsumes a "lighter" one?
- 1 Defense (ר' ירמיה) perhaps the התראה was unspecific; contra ר' יהודה who requires התראה to specify mode of מב"ד
- (a) Proof (for ת"ק): from מקושש (by definition couldn't have specified סקילה)
- (i) ד' יהודה מקושש was a שעה הוראת שעה and can't be a model
- ii Therefore: if some נסקלים fall into a crowd of נשרפין:
- 1 ד'ש they all get סקילה, as it is "lighter"
- 2 דבנן they all get שריפה, as that is the "lighter" one
- (a) Argument (ל"ש): בת כהן's singular treatment proves שריפה to be more severe
- (b) Counter (רבנן): סקילה for ע"ז and מגדף proves that it is the most severe
- (i) Story: רמי רב יחזקאל (his son, brother of רב יהודה) this משנה as inverted; "base group" was נסקלים
1. דב יהודה corrected him (in appropriately) that if so, the reason for סקילה (ל"ש) would be רוב
2. And: father should teach as per our version, which makes the point of בקלה ה' נידון
- a. Challenge: חכמים's position still plays into the רוב-argument
- b. Answer: that was their response to ר"ש, that סקילה is more severe
3. Note: רב יהודה rebuked שמואל for the manner in which he corrected his father; should have said "the תורה states...", not "you violated..." or "is this what the תורה says?"
- iii And: if some נהרגין fell into a group of נחנקין
- 1 ד'ש they all get סייף (which is lighter)
- 2 חכמים they all get חנק
- II Analysis – identity of "אחרים" (cannot be innocent people; obviously they are exempt and ר' יהודה wouldn't execute them)
- a שמואל: others are murderers who had גמ"ד; our רוצח didn't yet have גמ"ד
- i חכמים: since גמ"ד has to be in the presence of the accused; cannot be fulfilled
- ii ר' יהודה agrees; but they cannot be let go, as they are murderers → כיפה
- b ר"ל: ר"ל would agree re people); our רוצח is an ox that killed a person, but hadn't yet had גמ"ד
- i And: "others" are oxen who had killed people and had גמ"ד for סקילה
- ii מיתת שור: מיתת בעלים חכמים – cannot be executed without גמ"ד in presence of שור
- iii ד' יהודה כיפה he is killed via
- 1 Challenge (רבא) ר' יוסי commented on our משנה that even if there was a murderer who got mixed up with others; even if the other was a righteous person (like his father, אבא חלפתא), they're both exempt –
- (a) Explanation: cannot be referring to oxen!
- c דבא: first clause in משנה is a case 2 standing together and an arrow comes out from between them but we don't know which one killed; both are exempt (even if, as ר"י pointed out, one is a known צדיק)
- i Then: (missing text) if an ox that killed was mixed in with others – they are all stoned (to fulfill מיתה)
- 1 ד' יהודה instead of stoning them, bring them all to כיפה
- ii Support: ברייתא reporting parallel dispute between חכמים (כיפה) and ראב"ש (stone them) about a cow that killed a person and it got mixed with others etc.
- III Evaluating the ברייתא about the cow:
- a ברייתא: if a cow gored (and killed a person) and then gave birth
- i If: it gave birth before גמ"ד, the calf is מותר (and lives)
- ii But if: it gave birth after גמ"ד, the calf is stoned
- 1 If it: got mixed in with others, and those others with others – taken to כיפה (ראב"ש – stoned)
- b Assessment: if it was in utero at time of attack, should be killed as per רבא's dictum: אסור ליד הנוגחת/נרבעת אסור
- i Rather: if she conceived and gave birth before גמ"ד – מותר; if after גמ"ד – אסור
- 1 Challenge: this is only valid if אסור זה וזה גורם אסור (i.e. the stud bull also contributed – he didn't gore)
- (a) But: if מותר זה וזה גורם מותר – no reason to kill calf if conception was after גמ"ד
- (b) מותר – גמ"ד: if she conceived and birthed before גמ"ד (דבינא)
- (c) But: if she conceived before גמ"ד & while pregnant גמ"ד – killed, as the foetus is "the thigh" of the mother