

SICHA SUMMARY

Likkutei Sichos, Vol. 29

Shoftim, Sicha 1

The Rambam:

In laying out the procedure for capital punishment in the Sanhedrin, the Rambam writes: “When all the judges of a Sanhedrin begin their judgment of a case involving capital punishment and say that the defendant is liable, he is exonerated. There must be some who seek to exonerate him and argue on his behalf, and yet the majority hold him liable. Only then he is executed. (Sanhedrin, 9:1)

Exploring Rambam’s Reasoning:

The source of the Rambam’s ruling is the Gemara in Sanhedrin which states, “In a Sanhedrin where all the judges saw fit to convict the defendant, they acquit him. ...Since there is a tradition that suspension of the trial overnight is necessary in order to create a possibility of acquittal. And as those judges all saw fit to convict him they will not see any further possibility to acquit him.” (Sanhedrin 17a)

There are two possible interpretations of this law: 1) It is a technicality relating to the mandated procedure of capital cases. As the Gemara states, “suspension of the trial overnight is necessary.” If there is no use in suspension because the verdict is unanimous, then the verdict is faulty. 2) It reveals a deficiency in the judges themselves. As the Gemara continues, “Those judges all saw fit to convict him they will not see any further possibility to acquit him.” Implied is that because all of the judges could not find a merit for the defendant, they are inadequate and their verdict is therefore invalid.

But the Rambam does not allude to either approach. He omits the procedural need for overnight deliberation. And Rambam seems to avoid ascribing a deficiency in the judges. For when he explains the exoneration he says, “he is exonerated. There must be some who seek to exonerate him and argue on his behalf... only then he is executed.” Rambam here deviates from the Gemara slightly, whereas the Gemara said, “they

acquit him,” Rambam writes, “he is exonerated.” The Gemara’s language implies that the **judges** must exonerate him since their verdict reflects personal imperfection as judges. Rambam’s wording implies that the verdict fails because of the outcome, “there must be some who argue on his behalf.” The verdict the judges reached is valid, yet it cannot be implemented since there must be someone to argue on his behalf. If someone does, Rambam concludes, “only then he is executed.” Meaning, the original verdict can be implemented.

If the reason for this exoneration is not procedural and not relating to the judges’ deficiency, what is it?

The Explanation:

Corporeal punishments in the Torah are not purely punitive; they achieve atonement for the offender. Often, however, we find transgressions in the Torah or scenarios where the court cannot apply capital punishment. This points to the possibility that the transgression was so severe that the offender is not worthy of the atonement the corporeal punishment offers.

The mechanism of atonement is this: Every Jewish soul is a fragment of G-d and

therefore possesses unalterable good. When the judges see this glimmer of goodness and discuss it, they reveal his goodness further. Then, the Divinely ordained consequence for the sin can be carried out and the soul can achieve atonement. But if the goodness of the soul remains so dormant that even the wisest sages cannot detect it, then the soul is not primed for atonement, and thus cannot be a candidate for capital punishment.

This is not a deficiency in the judges, for the judges are only human and cannot see to the essence of the sinner if he has so thoroughly concealed his goodness. And yet, as long as the goodness has not surfaced, there cannot be the death penalty, for it would not accomplish its objective of atonement.

The Lesson:

Torah rules clearly that there can be a merit found in every Jew because of their Divine soul. If we search for this merit and reveal it to them, then it will begin to manifest within the person and their desire to be connected to G-d will flourish. This is especially true in this generation when the consciousness of the Jew is asleep, yet the essential soul of the Jew is awake and alive.
