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## WHY DIDN'T THE RABBIS ELIMINATE MAMZERUT? PART 7

Rabbi Aryeh Klapper, Dean

Several passages in Rabbinic literature reject halakhic arguments on the ground that they would prevent a Torah law from ever applying in practice. It is tempting to see these passages as rejecting any and all claims that a Torah law can be purely hypothetical, and as ruling against the Tannaitic positions (Sanhedrin 73a) that certain Torah laws "never were and never will be."

We must resist this utterly incorrect temptation. However, understanding **why** it is wrong opens up a more sophisticated taxonomy of claims that Torah laws are not intended for practical application, and enables us to better understand the positions of post-Talmudic authorities.

Devarim 19:19 teaches that the punishment for bearing perjured witness against another is

וְעִשְׂתֶּם לוֹ כַּאֲשֶׁר זָמַם לַעֲשׂוֹת לְאָחִיו

*You must do to him as he plotted to do to his brother.*

Mishnah Makkot 5b records a dispute between the Sadducees and the Sages. The Sadducees held that perjured witnesses (*edim zomemim*) in capital cases may be executed only once the defendant has been **executed**, while the Sages held that *edim zomemim* may be executed once the defendant has been **convicted**. A beraita cites Beribbi as taking the Sages' position one step further – *zomemim* may be executed **until** the defendant has been executed, but not afterward. Beribbi's father points out that this makes no moral sense, but Beribbi responds by citing the general principle that punishments for Torah law can be derived only via exegesis, not via logic.

The Sages' law of *edim zomemim* embodies a moral paradox. How can attempted murder-by-testimony deserve execution, when successful murder-by-testimony does not?!

Mishnah Makkot 1:1 addresses a peculiar non-capital *zomemim* case. What if the perjured testimony aimed at desanctifying a kohen by claiming that his mother was a divorcee? If the witness is not himself a kohen, we must resort to lashes as punishment – but what if the witness is a kohen? R. Yehoshua ben Levi (RYbL) answers that we *do to him*, and not to his descendants; since desanctifying a kohen automatically desanctifies his descendants, the *zomem* kohen can only receive lashes. But, the Talmud asks, maybe in this case, where the desanctification is a punishment

rather than a consequence, it would not extend to descendants? RYbL responds that the verse does not permit punishing the witness but not his descendants, because that would not be punishing the witness *as he plotted to do to his brother*, as the witness intended to desanctify the other person's children.

An Amora named Bar Peda is not satisfied with RYbL's answer. Perhaps he believes that desanctifying the *zomem* alone would fulfill *as he plotted to do to his brother*, since the verse does not require "doing to him as he plotted to do to his brother's **descendants**." Bar Peda therefore proposes an alternative:

ק"ו!

– ומה המחלל –

אינו מתחלל,

הבא לחלל ולא חילל –

אינו דין שלא יתחלל?

*A fortiori:*

*If the desanctifier (the kohen who marries a woman who invalidates the kebbulah of their sons)*

*is not himself desanctified,*

*The one who comes to desanctify (via perjured testimony) but fails –*

*does it not follow that he should not be desanctified?*

Bar Peda's proposal inverts the rule that punishments cannot be derived from logic. Rather than using logic to derive a punishment for a more severe case, he seeks to eliminate punishment in a less severe case.

Ravina launches a devastating attack on Bar Peda:

אם כן, בטלת תורת עדים זוממין!?

– ומה הסוקל –

אינו נסקל,

הבא לסקול ולא סקל –

אינו דין שלא יסקל!?

*If this is so, you have eliminated Torah law regarding zomemim!?*

*[One would argue:]*

*Just as the successful stoner (the witness whose victim is executed)*

*is not stoned,*

*doesn't it follow that the one who merely attempts stoning  
is not stoned?!*

The Talmud accepts Ravina's attack as dispositive, and rejects Bar Peda's approach.

At first glance, Ravina appears to be assuming that all Torah laws must have practical application, and thus to take sides in the dispute as to whether one can say that a Torah law "never was and never will be." If Bar Peda's interpretation made the law of *zomemim* impossible, Ravina argues, then the interpretation itself must be false. We might then construct Bar Peda's position as taking the other side of that dispute. He accepts Ravina's claim that his logic eliminates *zomemim* in practice, but is willing to make the law purely hypothetical.

But this understanding is very wrong, a complete category error. Let me explain why.

Ravina's objection is that Bar Peda's reasoning makes the **idea** of the perjured witness incoherent. Since the successful perjured witness is not punished *as he plotted*, Bar Peda's reasoning yields the result that if the successful *zomem* is not punished *as he plotted*, then the unsuccessful *zomem* must also not be punished "*as he plotted*." However, the Sages (as understood by Beribi) held that the verse allows punishing *zomemim* when and only when their plot fails! The law thus makes utterly contradictory claims, and can teach us nothing, **whether or not it is ever implemented**. Unlike the laws of the Rebellious Son, the Idolatrous City, the Leprous House, and the *Zav*, it cannot be expounded, and therefore there can be no purpose in (or reward for) studying it.

Ravina's rejection of Bar Peda does not require him to believe that a house will ever exist that meets the requirements of a Leprous House, or that parents will ever actually be willing to condemn their son to execution as Rebellious. Those are **practically** unlikely. His objection is only to making the law **logically** impossible.

Bar Peda may agree that the law cannot be **logically impossible**, and contend only that Ravina's **reasoning** is wrong. Ravina assumes that if an argument would yield a punishment, but the law does not give that punishment, the law must reject the argument. Bar Peda disagrees. He holds that the rule that punishments cannot be derived via logic is a black box; it does not mean that all logical frameworks that would yield punishments are therefore wrong. Therefore, even though a logical argument cannot be used to **generate** punishment, it can be used to prevent punishment.

Bar Peda's argument takes no position one way or the other on the issue of whether Torah laws can be interpreted in ways that make them **practically** impossible, let alone highly unlikely to happen.

The same analysis applies to the challenges of the form "If so, then you have eliminated" found on Ketubot 32b and Temurah 28b.

The bottom line is that nothing in Rabbinic literature supports interpreting a Torah law so that it becomes logically impossible. The discussion is only about making it extreme unlikely in practice.

Extreme practical unlikelihood can itself be divided into at least two categories. This can be seen from Mishnah Nedarim 9:1.

רבי אליעזר אומר  
פותחין לאדם בכבוד אביו ואמו  
וחכמים  
אוסרין  
אמר רבי צדוק  
עד שפותחין לו בכבוד אביו ואמו,  
יפתחו לו בכבוד המקום!?  
אם כן, אין נדרים!?

*Rabbi Eliezer said:*

*We open a way for a person (to permit his oath) via the  
honor of his father and mother,  
but the Sages  
forbid.*

*Said Rabbi Tzadok:*

*Once they open for him via the honor of his father and  
mother,  
let then open for him via the honor of the Omnipresent!?  
If so, there would be no oaths!?*

Why does "opening for him via the honor of the Omnipresent" mean that "there would be no oaths?" One answer is that since G-d (generally) disapproves of oathtaking, every oath could be permitted on the basis of this argument.

In other words: The argument here is not that the law becomes logically impossible, or that it becomes practically unlikely, but rather that it will have no effect, as there will be a universally available mechanism for avoiding its consequences. "If so, there would be no oaths" seems to reject even that kind of practical elimination of the law.

However, it is not clear what exactly that line means, or that it reflects a consensus or even a majority. On Nedarim 84b, Abbaye and Rava dispute the meaning of the line, and each of their positions is understood in various and sometimes opposite ways by subsequent interpreters. Furthermore, many commentators disagree (to some extent based on variant texts) as to whether the line is said by Rabbi Tzadok or rather is an anonymous attack on Rabbi Tzadok.

The bottom line is that it is certainly unacceptable to interpret a Torah law so that it becomes logically impossible; but it **may** (or may not) be acceptable to interpret Torah law so that the law has no practical effect.