

In high school I was taught that R. Meir Simchah of Dvinsk's **Meshekh Chokhmah** was written earlier than his commentary on Rambam, Or Sameiach, but that he was told that, as it seemed radical, he would be wiser not to publish it until his credentials as an analyst of halakhic texts were firmly established. Indeed, Meshekh Chokhmah is a highly original work that often contains insights that appeal to modern tastes, and I have long cited the section translated below as one of them. Rereading it, however, I feel much more ambivalent, and welcome your reactions.

This is a fit occasion to thank many of you for your emailed comments or challenges to previous installments.

The issue is the troubling halakhic ruling that a Jew is executed for killing a fellow Jew, whereas the punishment for killing a Gentile is death at the hands of Heaven. The Mekhilta enigmatically explains "because they became more significant, they became lighter" – but is this to be read declaratively or with astonishment? I had recalled Meshekh Chokhmah as the source of the second reading. In other words, I thought that his last paragraph suggested that, as it is inconceivable for the acceptance of the Torah to have made killing less severe than it was previously, death at the hands of Heaven must in this case mean that the crime is too great for even judicial execution to atone for. I assimilated this to a class of cases regarding which a claim has been made that a lesser punishment reflects a greater crime, including

- a. testifying falsely in a capital case to the point that someone is unjustly executed, as opposed to testifying falsely but being caught out before sentence is carried out (Kessef Mishnah)
- b. sacrificing all one's children, as opposed to the eldest, to Molekh (Maharsha)
- c. killing in fashion not quite accidental but also not quite deliberate, as opposed to either accidental or deliberate (Talmud).

However, R. Yehuda Copperman (founder of Michlalah, an extremely serious and, at the time of its founding, pioneering women's seminary in Jerusalem) in the notes to his edition of Meshekh Chokhmah, asserts that this is actually the accepted reading, and is found in the works of the author of Mirkevet HaMishnah, and that Meshekh Chokhmah rejects it! Which reading is correct seems to me to depend on whether one reads line 13 below as introducing an alternative reading, as I had thought, or simply continuing the previous line of reasoning, perhaps by explaining that Hashem finds it painful to cause the death of Jews when this will not lead to atonement. Either way the flow of the argument is difficult, and I welcome your assistance in getting at the full and true meaning of this passage.

Shabbat Shalom.

משך חכמה כא:יד

1. במכילתא:
2. "רעהו" – להוציא אחרים.
3. אסי בן עקיבא אומר:
4. קודם מתן תורה - היינו מוזהרים על שפיכות דמים;
5. [פירוש: דישראל שהרג עכו"ם אז חייב מיתה]
6. לאחר מתן תורה – תחת שהוחמרו הוקלו.
7. [פירוש: דבאמת גם כעת אנו מוזהרין על רציחת אחרים, ומה שפטור ישראל שהרג עכו"ם (בימים הקדמונים) הוא משום שהוחמרו,
8. פירוש: שדמו של ישראל חשוב בעיני מלכו של עולם, ולכך אינו נהרג עבור עכו"ם.
9. ולכן אמר:]
10. באמת אמרו: פטור מדיני בשר ודם ודינו מסור לשמים.
11. ומהאי טעמא נראה דאדם המזיק לעכו"ם חייב לשלם, אע"ג דאם הורגו אינו נהרג, ולא שייך בזה "ולא יהיה ממונו חמור מגופו" (בבא קמא קיט.).
12. דטעמא דפטור בהורגו משום שקשה בעיני השם להרוג ישראל, "ויקר המותה לחסידיו", מה שאין כן ממונו.
13. ויתכן משום דישראל שהרג בן נח איכא מלבד חטא הרציחה עוד עון דחילול השם יתברך,
14. וכמו שהפליגו בירושלמי אלו מציאות: "ניחא ליה לשמוע 'ברוך אולותהן דיהודאי' מן כל אגר עלמא", כל שכן ברציחת גופו החילול השם,
15. ובזה אמרו:
16. "אין יום הכיפורים ותשובה ויסורים . . . רק מיתה ממרקת . . . אם יכופר לכם העון עד תמותון".
17. נמצא דין עונש מיתה על חילול השם, ואיך יכופר לו על ידי מיתה חטא הרציחה?! ועל כרחין דינו מסור לשמים,
18. ודו"ק.

1. From the Mekhilta:
2. "(When a man plots deliberately against) his fellow (to kill him)" – "his fellow" comes to exclude others (here referring to at least some, and likely all, Gentiles: ADK).
3. Issi ben Akiva says:
4. Prior to the Giving of the Torah – we were commanded against bloodshedding;
5. meaning: that a Jew who killed an idolater then was liable to be executed",
6. After the giving of the Torah – because they became more valuable, the laws became more lenient
7. meaning: In truth we are also commanded in our time against murdering others, and the exemption from execution of a Jew who killed an idolater (in ancient days This seems to me an addition for the sake of the censor - ADK) is because they became more valuable,
8. meaning: that the blood of a Jew is significant in the eyes of the King of the World, and therefore he is not killed for the sake of an idolater.
9. Therefore the Mekhilta said:
10. In truth they said: "He is exempt from the rulings of flesh and blood, and his case is handed over to Heaven".
11. For this reason it appears that a person who causes damage to an idolater must pay, even though one who killed him would not be executed, and the principle "his money should not create more severity than his life does" is not relevant,
12. because the reason that he is exempt when killing him is that it is difficult in the eyes of Hashem to kill a Jew – 'dear is the death of His Pious' – which is not the case regarding his property,
13. and it is likely that this is because when a Jew kills a Son of Noach there is, aside from the sin of murder, a further iniquity of desecrating the Name,
14. as they said hyperbolically in Talmud Yerushalmi: "It is more pleasing to me to hear 'Blessed is the G-d of the Jews' than all the reward in the world" - all the more so with regard to murdering his body there is desecration of the Name,
15. regarding which they said: (From Rav Copperman: Rambam Hilkhos Teshuvah 1:4)
16. "Yom Kippur and repentance and chastisements do not . . . rather death washes out . . . 'If this iniquity will be atoned for you until you die'".
17. So it turns out that there is a punishment of death for desecration of the Name, and then how can the sin of murder be atoned for via death?! We are compelled to say that his judgment is given over to Heaven.
18. Investigate this and you will find it easy.