

הריגת שכם הרב צבי איינשטטר

This week we will discuss the *inyan* of *Ma'aseh Shechem*. We know the story of how Shimon and Levi killed out the whole city of Shechem following the kidnapping of their sister Dina. Ramban in our *parsha* discusses the famous question of what legal (*halachic*) grounds did Shimon and Levi have to eradicate Shechem. How did the *bnei Yaakov*, who were *tzadikim*, spill innocent blood?

Ramban cites the Rambam's answer which is written in *Hilchos Melochim Ch. 9*. Rambam says that *bnei Noach* are obligated in establishing courts. In every district, they must have a court to rule over cases involving the *zayin mitzvos* in which they are obligated. The punishment for a *ben Noach* who violates any of the *zayin mitzvos* is *misas sayif*, death by sword. Addressing the instance where one non-Jew witnesses another non-Jew violate one of the *zayin mitzvos* but does not judge him, Rambam writes that he who watched the *aveirah* but took no action is also *chayiv misas sayif* because that itself violates the *mitzvah* of *dinim*. Because of this, Rambam concludes that all the inhabitants of Shechem was *chayiv misah*. They witnessed Shechem (the *nasi*) steal Dina, which is an act of *gezel*, but they took no action to judge him for violating that *mitzvah*.

Ramban has six different points against Rambam's explanation, but the scope of this shiur will only be able to cover two of them. We will address the first and last arguments of the Ramban.

Ramban's first question is the following: If it is true that *bnei Shechem* were all *chayiv misah*, then what Shimon and Levi did was just. If so, why was Yaakov so angry at them? We see in *Parshas Vayechi*, at the end of Yaakov's life, he is still quite angry at them and curses their anger ("*achalkeim Yaakov, afitzeim Yisroel*") because they killed out Shechem. Why did he have this reaction if they did the right thing? Ramban continues by saying, even if we say that Yaakov was afraid of killing out Shechem, as the *pesukim* portray, why would he curse them after the fact when they did the right thing with *bitachon* and Hashem kept them safe to accomplish it?

How can we answer this and defend the Rambam? Before continuing, I want to be *modeh al ha'emes* and say that I don't fully understand the Ramban's *kushya* on Rambam. Just because I don't understand does not mean that it's a *teretz*. Maybe someone can explain to me what I'm about to ask.

We know the *befeirushe gemara (Shabbos 32, Taanis 20)* which states, "*I'olam al ya'amod adam atzmo b'makom sakono shema lo ya'asu lo neis.*" One cannot rely on a miracle and therefore may not put himself in a *makom sakono*. Even if he does receive the miracle, it cleans him out of all his *zechusim*.

Why can't we simply suggest that the *maaseh Shechem* was definitely *makom sakono*, as seen by Yaakov's reaction? Even if it is a *mitzvah* to kill them all, Shimon and Levi did not need to be *moser nefesh* over it. Why can't we say that Yaakov Avinu held that they made a faulty *psak* due to the circumstance of *sakono*. They did it because it was *avadeh* a *mitzvah*, but Yaakov was angry because he felt that they certainly should not have put themselves at risk over it.

I don't have an answer to this but it seems clear that Ramban holds if it was indeed a *mitzvah* then there should have been no issue with their actions.

The *Radvaz* has an interesting *teretz* to Ramban's *kushya*, which can be found on the side of this Rambam in *Hilchos Melochim*. He says that the *bris milah* which the entire city of Shechem performed

upon themselves gave them the status of being Jews. The *din* of *ger she'nisgayer k'katan she'nolad dami* dictates that everything done before a *geirus* is erased from the *ger's* record. Therefore, Yaakov Avinu told Shimon and Levi that they had no right to kill Shechem anymore. Even if it's true that they were culpable for transgressing the *mitzvah* of *dinim* previously, once they were *megayer* they were no longer *chayiv misah*.

There are two *ha'aros* on this *Radvaz*. The first is an interesting *ha'aro* which I heard in the name of the Brisker Rov. I cannot tell you that I heard it straight from one of the Soloveitchiks themselves, so I cannot vouch for it, but HaRav Shraga told over that he heard it in the name of the Brisker Rov. When the *posuk* describes the *bnei Yaakov* answering Shechem with "*mirmah*" (*Bereishis 34: 13*), Targum Onkelos and Rashi both *teitch* it as meaning *b'chochmo*. The Brisker Rov explains that the *chochmo* was as follows. We know that full *geirus* requires *milah* and *tevilah* and the *din* is that a *milah* without *tevilah* does not work. Therefore, *bnei Yaakov* purposely told them only to do the *milah*. (This avoids the *Ridvaz*.) That way, they would still be non-Jews and *chayiv misah* for violating *dinim*.

According to this, they were able to kill out Shechem. However, *lichorah*, the *Radvaz* is *shver*. Why was Yaakov Avinu upset at them if Shechem did not complete their *geirus*? To answer this, we can apply a *yesod gadol* which I saw first in the *Turei Even* on *Megilah 13* and then later printed in *Shiurei Avodas Levi* in *Meseches Kesubos*. They say that there is a difference between a *Yid* before *Matan Torah* and a *Yid* after *Matan Torah*. Any *Yid* that was *megayer* before *Matan Torah* did not need a *tevilah* after his *milah*. For example, we know that Avrohom Avinu was *mal* himself because, as *Tosafos* in *Chagiga 3a* explains, he was *nitz'taveh al hamilah*. He is even called *techila l'geirim*- the first *ger*. However, nowhere does the Torah mention that he was *tovel* afterwards. To my knowledge, there is no source that he had a *tevilah*.

Moreinu V'Rabbeinu HaRav Ruderman explains the difference between requiring *tevilah* and not requiring *tevilah* as follows. The two parts of *geirus* accomplish separate functions. The *milah* sheds the *tumas ha'orla* of *avodah zara/akoom* while the *tevilah* gives a *ger* the full *kedushah* of a *Yid*. Before *Matan Torah*, *geirus* basically meant removing one's self from *avodah zara*. To have the *kedushah* of a *Yid* one must have the special *mitzvos* of *Yidden*, which were only given at Har Sinai. (This is what we mean when we make *brachos*- "...*asher kideshonu b'mitzvosav*...") [Even though we know Avrohom Avinu kept the whole Torah, he did it as an *aino metzvuvah v'oseh*.] Because of this, there was no *inyan* of *tevilah* to become a full *Yid* until *Matan Torah*.

Based on this, we can understand that Yaakov's position was that Shechem were full *Yidden* with their *milah* alone. *Bnei Yaakov*, on the other hand, held that even before *Matan Torah* *tevilah* is required for *geirus*.

Even with this *cheshbon* for the *Radvaz*, we have a second *ha'oro* which is a significant *kushya* to be dealt with. There is a clear *gemara Sanhedrin 71b* which is *paskent* in the Rambam, *Hilchos Melachim Ch. 10*, which states the following. There is no such rule in the Torah that becoming a Jew absolves a *ger* of his prior *zayin mitzvos* transgressions. The *gemara* says the actual rule is that if a non-Jew commits an *aveira*, and as a Jew that same *aveira* yields the exact same type of *misah*, he is still *chayiv* even after his *geirus*. In order to be absolved through his *geirus*, it must be an instance of *ishtanei dina v'ishtanei katolo*. For instance, if a non-Jew steals, he is *chayiv misah* but if a Jew steals, he is not *chayiv misah*. Therefore, the *geirus* of the non-Jew who stole would make him *patur m'misah* from his theft as a non-Jew.

Let us say that the city of Shechem became Jewish and they would have done the same action after their *geirus*. Would they have been *chayiv misah*? It is clear from the Ramban that nothing would have changed. Being a Jew did not relieve one of the *zayin mitzvos bnei Noach*. There were no *kulos* back then. Becoming a *ger* just added on a certain level of commitment to *emunah BaShem* and perhaps the ability to be *mekayem Taryag Mitzvos* as a *aino metzvuvah v'oseh*. We see this from the fact that Yaakov *ubonov*

were *chayiv* to kill out Shechem because of their violation of the *mitzvah* of *dinim*. They were Jewish and still *chayiv* in the *zayin mitzvos*. According to this, the *Radvaz's teretz* does not work because Shechem was in fact still *chayiv* for their *aveirah* even after their *geirus*.

The only suggestion we can make for the *Radvaz* is that he holds their *geirus* was binding as full-fledged Jews which removed them from being obligated in *zayin mitzvos*. I just recently found this *pshat* quoted in the *mafte'ach* of the Frankel Rambam from the *Kli Chemda* in his *sefer "Chemdas Yisroel"* on page 99. We see that this *Radvaz* is not a *pashuteh teretz* as it is based on this premise of Shechem being absolved from *zayin mitzvos* as a result of their *geirus*.

I would like to offer a different *teretz* which is a bit of a *chiddush*. It is based on the last *kushya* of the Ramban. He asks how Shechem can be *chayiv misah* for not killing the *nesi ha'aretz*? How can we expect a common person to pull off such a feat? Other *Rishonim* add *ones rachmono patrei* to the question. *Chidushei haRan* in *Sanhedrin* among many other *Rishonim* discuss this *kushya*.

In answering this question, I would like to suggest a *machlokes* between the Ramban and Rambam whether the *chiyuv* of "*dinim*" is on the *yochid* (each individual non-Jew) or on the *tzibbur* of non-Jews as a whole. The Ramban views it as a *chiyuv* on each on each *yochid* to set up a court and judge those to violate *zayin mitzvos*. (The Rambam himself even says that *bnei Noach* only need a *beis din* of one judge, not three, in order to sentence another *ben Noach* to death.)

[Just as an aside, many people have asked me if this means that if one non-Jew sees another non-Jew pick-pocketing someone that he should kill him on the spot. The *Chazon Ish* says that there are two *yesodos* to qualify as a *dayan* for *bnei Noach*. First of all, he needs to know all the *halachos* of *bnei Noach* on the level of a real *dayan*. Meaning to say, he would need to know all the *protim* of all the related issues and the *sugyos* inside-out. Killing someone is no simple matter and the bar for *dayan* is set pretty high. Also, the other qualification is that if a non-Jew ever committed the *aveirah* himself, that makes him *pasul l'dayanus*. We can see that it's no easy feat for a non-Jew to kill another for violating the *zayin mitzvos*.]

Ramban therefore holds that Shechem cannot be held responsible for not killing their *nasi* because we cannot expect any of the individuals to be able to carry it out. Rambam, on the other hand, holds "*dinim*" to be a *chiyuv hatzibbur* for the city to revolt and kill the perpetrator. We see even nowadays that a whole city or country can have an uprising to overthrow the leader if they want to. Therefore, Rambam holds that Shechem was absolutely responsible to do so and it was an *avlo* that they didn't and they were *chayiv misah*.

I want to also add that this is *merumaz* in Yaakov's *lashon* in *Parshas Vayechi (49: 6)*. He said, "*ki b'apom hargu ish*," employing the singular form, which Rashi explains that Shimon and Levi viewed Shechem as one man. According to my *pshat* in Rambam, this fits beautifully because Shechem violated a *chiyuv hatzibbur* as one entity. This is what *bnei Yaakov* held when they killed Shechem.

According to this *mehalech*, maybe Yaakov was upset at them because he held otherwise. Maybe he held it to be a *chiyuv hayochid* and they were each *b'geder ones* and not *chayiv misah*.

I suggested this *pshat* to one of my friends, R' Noam Hinberg, but he had a nice *ha'oro* on it. My *teretz* would mean that there is a *machlokes l'halocho* between Yaakov Avinu and the *bnei Yaakov*. How then does the Rambam know that Shechem was in fact *chayiv misah*? It is a big *acharyus* to get involved in a *machlokes* and side against Yaakov Avinu. Especially since Yaakov cursed the brothers for it in *Vayechi*.

Perhaps we have to change one detail in our answer. That is, maybe Yaakov Avinu agreed that it as a *chiyuv hatzibbur*. However, even so he felt that it was too dangerous and they were all *b'geder ones* even as a *tzibbur* since it was too dangerous for any of them to start the revolution against the *nasi*. He would have killed any protesters as soon as they started. Therefore, it remains a *machlokes* between Yaakov and

the brothers whether Shechem was actually *chayiv misah* or not despite agreeing on “*dinim*” being a *chiyuv hatzibur*.