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Sanhedrin Daf 46

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**Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h**  
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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

The Mishnah had stated: A man is hanged etc. What is the Rabbis' reason? Scripture states: then you shall hang him — 'him,' but not her. And Rabbi Eliezer? — 'Him' implies without his clothes (but a woman is hung as well). And the Rabbis? — [They admit that] that indeed is so; but Scripture says: And if a man has committed a sin, implying, [the law of hanging applies to] a man, but not a woman. And R. Eliezer, — how does he interpret the words: And if a man has committed? Rish Lakish answered: As excluding a wayward son [from that mode of execution]. The Gemora asks: But has it not been taught in a braisa: A wayward son is stoned and [afterwards] hanged these are the words of Rabbi Eliezer? Rather, Rav Nachman bar Yitzchak said: [He interprets it] as including (into the law of hanging) a wayward son. What is the reason? Scripture says: If a man has committed a sin — 'a man,' but not a son; 'a sin' implies one who is executed for his [present] sin, thus excluding a wayward son, who is executed on account of his (eventual) outcome. So we have one exclusion following another, and such always indicates inclusion.

The Mishnah had stated: Rabbi Eliezer said to them: but didn't Shimon ben Shetach hang etc.

Rav Chisda said: They taught this only of two different death penalties, but if a single mode of execution is involved, they [two charges] may be tried [on the same day].

The Gemora asks: But in the instance of Shimon ben Shetach, only one mode of execution was involved, and yet

[the Sages] said to him that the cases should not [legally] have been tried!

The Gemora answers: Rather, if a statement was made, it was made as follows: They taught this only of a single death penalty appearing as two. And how can that be? E.g., [when one is accused of] two different transgressions, but cases dealing with the same transgression and the same mode of execution may be tried.

Rav Adda bar Ahavah raised an objection (from the following braisa): Two [capital] cases may not be tried in one day; not even that of an adulterer and an adulteress?

Rav Chisda explained this as referring to the daughter of a Kohen and the man who cohabited with her (whose executions are not similar; the woman is punished by burning and the man by strangulation if she be a nesu'ah, or by stoning, if she be an arusah); or to the daughter of a Kohen and the refuters of the refuting witnesses. [If Reuven and Shimon, who testified against the daughter of a Kohen, were found to be zomemim by Levi and Yehudah, and the latter were afterwards themselves found to be zomemim by Yissochar and Zevulun, the woman undergoes her due death penalty — burning — since her refuting witnesses Levi and Yehudah were proved to be collusive, and the false witnesses are punished by the same penalty as the male adulterer (strangulation or burning, according to the status of the woman).]

It has been taught: Rabbi Elozar ben Yaakov said: I heard from my teachers that even without any Biblical authority

for their rulings, *Beis Din* may administer lashes and death penalties. They may not be done for the sake of transgressing the words of the Torah, but in order to build a fence for the Torah. And it once happened that a man rode on horseback on Shabbos in the days of the Greeks, and he was brought before *Beis Din* and he was stoned. They didn't do this because he deserved this penalty, but rather, it was because the times demanded it. And another incident occurred with a man who cohabited with his wife under a fig tree, and he was brought before *Beis Din* and received lashes. They didn't do this because he deserved such a penalty, but rather, it was because the times demanded it.

The Mishnah states: How is he hanged? A post is sunk into the ground with a [cross] piece branching off [at the top]. He (the hangman) brings together the two hands of the corpse one over the other and hangs him up [thereby]. Rabbi Yosi said: The post is leaned against the wall, and he hangs him up in the manner that butchers do.

He is immediately afterwards let down. If he is left [hanging] overnight, a negative commandment is thereby transgressed (by the court), for it is written: his body shall not remain overnight upon the gallows, but you shall surely bury him the same day. For a hanging person is a curse of God. As if to say why was he hanged? — Because he 'blessed' the name [of God]; and so the Name of God is profaned.

Rabbi Meir said: When man suffers, what expression does the Shechinah use? My head is too heavy for Me, My arm is too heavy for Me, and if God is so grieved over the blood of the wicked that is shed, how much more so over the blood of the righteous!

And not only of this one [the corpse of a criminal,] did they [the sages] say it, but whoever leaves his dead lie overnight transgresses a negative commandment. If he kept him overnight for the sake of his honor, to procure for him a

casket or a shroud, he does not transgress [any prohibition].

And they did not bury him [the executed person] in his ancestral gravesite, but two burial places were prepared by the court, one for those who were decapitated or strangled, and the other for those who were stoned or burned. When the flesh was completely decomposed, the bones were gathered and buried in their proper place.

[After the execution] the relatives then came and greeted the judges and witnesses, as if to say: We have no [ill feelings] against you in our hearts, for you gave a true judgment. And they observed no mourning rites, but grieved [for him], for grieving is in the heart alone.

Our Rabbis taught in a braisa: Had it been written; If he has sinned, then you shall hang him, I should have said that he is hanged and then put to death, as the (gentile) regimes do; therefore Scripture says: And he be put to death, then you shall hang him — he is first put to death and afterwards hanged. And how is this done? It [the verdict] is delayed until just before sunset. Then they pronounce judgment and put him [immediately] to death, after which they hang him. One ties him up and another unties [him], in order to full the mitzvah of hanging.

Our Rabbis taught in a braisa: [Then you shall hang him on] a post: this I might understand as meaning either a cut or a growing tree; therefore Scripture states: You shall surely bury him; [thus, it must be] one that needs only burial,<sup>7</sup> so excluding that which needs both felling and burial.<sup>8</sup> R. Jose said; [It must be] one that needs only burial, thus excluding that which requires both detaching and burial. And the Rabbis? Detaching is of no consequence.

The Mishnah had stated: As if to say why was he hanged? — Because he 'blessed' the name [of God]; and so the Name of God is profaned.

It has been taught: Rabbi Meir said: A parable was stated: To what is this matter comparable? To two twin brothers [who lived] in one city; one was appointed king, and the other took to banditry. At the king's command they hanged him. But all who saw him exclaimed, "The king is hanged!" whereupon the king issued a command and he was taken down.

Rabbi Meir said etc. How is that implied? Abaye answered: It is as though one said: I am not light. Rava objected: If so, he [the Tanna] should have said: My head is heavy upon Me, My arm is heavy upon Me! Rava therefore explained it thus: It is as though one said: The world is too light for me. The Gemora asks: But this [the word kilelas] is needed for its own purpose! [It teaches us that a blasphemer and those guilty of similar crimes are hung.] The Gemora answers: If so, Scripture should have stated 'mekallel,' why 'kilelas'! The Gemora asks: Then perhaps the entire verse was written for that purpose? The Gemora answers: If so, it should have stated, 'kilas,' why 'kilelas.' Hence both [meanings] are inferred from it.

The Mishnah had stated: And not only of this one etc. Rabbi Yochanan said in the name of Rabbi Shimon ben Yochai: From where is it inferred that whoever keeps his dead [unburied] overnight transgresses thereby a negative commandment? From the verse: You shall surely bury him; from here we learn that he who keeps his dead [unburied] overnight transgresses a negative commandment.

Others state: Rabbi Yochanan said in the name of Rabbi Shimon ben Yochai: Where is burial [as a means of disposing of the dead] alluded to in the Torah? In the verse: You shall surely bury him; here we find an allusion to burial in the Torah.

King Shapur once asked Rav Chama: From what passage in the Torah is the law of burial derived? The latter remained silent, and made no answer. Thereupon Rav Acha bar Yaakov exclaimed: The world has been given over into the

hands of fools, for he should have quoted: For you shall bury! The Gemora notes: [That is no proof, since] it might merely have meant, that he should be placed in a coffin! The Gemora asks: But it is also written: [bury] you shall bury him. The Gemora answers: He [King Shapur] would not have accepted this. The Gemora asks: Then he should have proved it from the fact that the righteous were buried! The Gemora answers: [He might object:] That was merely a general custom. The Gemora asks: Well then, from the fact that the Holy One, Blessed be He, buried Moshe! The Gemora answers: But, [he might answer,] that was so as not to depart from the general custom.

But come and hear (from the following braisa)! And all Israel shall eulogize him and they shall bury him. The Gemora asks: That [too] might have been done so as not to depart from the general custom. [But again it is written (regarding the wicked people of Anasos):] They shall not be eulogized, neither shall they be buried; they shall be as dung upon the face of the ground? The purpose of that, however, might have been to depart from the established custom.

The scholars inquired: Is burial [intended to avert disgrace, or a means of atonement? What is the practical difference? If a man said, "I do not wish myself to be buried." If you say that it is to prevent disgrace, then it does not depend entirely upon him; but if it is for atonement, then in effect he has declared, "I do not desire atonement." What [then is its purpose]?

Come and hear! From the fact that the righteous were buried. If then you say that it is for atonement, are the righteous in need of atonement?

The Gemora rejects the proof: Even so, for it is written: For there is not a righteous man upon earth who does [only] good and does not sin.

Come and hear! [It is written:] And all Israel shall eulogize him, and they shall bury him, [for only he of Yeroboam shall come to the grave]. Now should you assert [that burial] is for the attainment of forgiveness, then the others too should have been buried, that there might be atonement for them?

The Gemora rejects the proof: This one [Aviyah], who was righteous, deserved to find forgiveness, but the others were not [worthy] to attain it.

Come and hear! They shall not be eulogized, neither shall they be buried.

The Gemora replies: [It may be precisely] in order that there might be no atonement for them.

The scholars inquired: Is the eulogy in honor of the living or of the dead? What is the practical difference? If the deceased had said, "Pronounce no eulogy over me," or again in respect of collecting [the cost] from the heirs!

Come and hear! And Avraham came to eulogize for Sarah and to weep for her. Now, should you maintain that it is no honor of the living; in that case for Avraham's honor he delayed Sarah's [burial]!

The Gemora replies: [There] Sarah herself was pleased that Avraham should attain honor through her.

Come and hear! And all Israel shall eulogize for him and they shall bury him. If you say that it is in honor of the living, were these [Aviyah's relatives] worthy of honor?

The Gemora replies: It is pleasing to the righteous that people should be honored through them.

Come and hear! They shall not be eulogized, neither shall they be buried!

The Gemora replies: The righteous do not wish to be honored through evil-doers.

Come and hear! They shall die in peace, and with the pyres of your fathers, the former kings that were before you, so shall they make a pyre for you, and they shall eulogize you, saying "Ah! Master!" Now if you maintain that it is in honor of the living, of what consequence was this to him?

The Gemora replies: He spoke this to him: Israel will be honored through you, as they were honored through your parents.