

HOW THE TORAH WAS GIVEN

by Nechama Stampler

How The Torah Was Given¹

Take out the blasphemer to outside the camp. All who heard should press their hands upon his head. The entire congregation shall stone him.

Rashi: They say to him, "Your blood is upon your own head. We will not be punished for taking your life, because you are the cause."

Gur Aryeh: The placing of hands on the blasphemer is an anomaly. It is not part of any other court-ordered execution.

Some wish to explain this as an artifact of the way the blasphemer is tried in beis din. Ordinarily, the two eyewitnesses are separated, and individually subjected to a series of questions regarding details of their testimony. If the answers of the two do not coincide, or in some cases if the witness cannot remember some detail, the two witnesses are not approved as a unit of admissible testimony. The procedure is changed at the trial of a blasphemer. Only one of the two witnesses is encouraged to repeat the exact words he heard from the accused. We do not allow a repetition of those words by the second witness. He merely signifies that he heard the same as his partner testified, without articulating the precise words.

Because we do not allow the second witness to repeat exactly what he heard, the opportunity to catch some contradiction between the two is diminished. Such a contradiction would have invalidated the testimony, conceivably resulting in an acquittal. We therefore turn to the accused and tell him, "Indeed, you had fewer chances than others to beat the charges. We, however, take none of the blame for this - and for the death penalty that will now be imposed upon you. Your own actions left the court no choice. You are the one at fault, not us."

This explanation is entirely off-base. Witnesses who are examined prior to their testimony about blasphemy never pronounce one of the holy names of G-d to which the blasphemer directed his curse. They always use some substitution for the name of G-d that the blasphemer employed. This does not hamper the beis din in its attempt to look for inconsistencies during the pre-testimony interview. They are certainly able to subject the two witnesses separately to the two panels of questions that are ordinarily put to witnesses. It is only when the two witnesses formally testify before the court that we ask only one of the pair to repeat the exact words of blasphemy, and

suffice with the second witness indicating that this is also what he heard.

A much better explanation of the laying of hands is based on the premise that death penalties prescribed by the Torah match the severity of the crime. While a Shabbos violator is put to death, his demise cannot be said to occur because his sin has made death cling to him. He dies because HKBH commands the beis din to punish him, not because he has sinned so terribly that he has destroyed himself from within, so that his blood is truly on his own head. That can only be said about a sin which is so terrible that it has no peer, where no other transgression can claim to be more severe. Only blasphemy fits that description, because it is aimed at, and as it were attempts to diminish Hashem Himself. (Even idolatry does not do that. While it adds deities and honors non-existent "competitors" alongside Hashem, it does not try to directly detract from Him.) Therefore it is only in the case of blasphemy that those present lay their hands on the criminal and tell him that he, and only he, is the cause of his demise.

Another way to view this distinction is that blasphemy impugns G-d at His source, His essence. For this reason, the blasphemer's death is truly upon his own head, meaning the ultimate head and source of his own existence as well as that of all things: Hashem Himself. By rejecting his Head, he loses his connection to existence, and thus brings about his death.

Halachically, we are still uncertain how to approach this episode. No one can be executed by beis din without explicit warning to the perpetrator before the commission of the crime.² According to one opinion,³ the warning must include the exact form of execution that applies to the crime. If so, why were the blasphemer and the gatherer of wood on Shabbos⁴ executed. The Bnei Yisrael at the respective times of the two transgressions did not yet know about the death penalty for blasphemy and the method of punishment for the violation of Shabbos!

It is appropriate to assume that in both instances the perpetrators were warned. They were told, "Do not do as you threaten. If you do, you will be guilty of a crime, and dealt with through whatever punishment G-d will specify." Because the Torah had not yet been given in its entirety, that form of warning sufficed.

It would not suffice after the halacha had become fully clarified through Moshe's teaching it to the Bnei Yisrael. If such a vague, generalized warning were given today, the perpetrator could argue that he had no idea that the specified form of execution applied to his crime. This argument would be sufficient to block his execution. At the time of the two biblical episodes, however, a person could not argue that he did not believe he would be punished in a given manner, because at that moment any form of punishment was possible, if Hashem would indicate as much.

We could also answer (although the previous answer is to be preferred) that we should not apply later halachic categories to these episodes. They were special cases, in which Hashem Himself specified how the criminal should be punished. They did not have to match the rules of a human

court.

We are still surprised by the doubt surrounding these two episodes. We believe that when Moshe received the Torah at Sinai, he was instructed in the fullness of each mitzvah - its general principles, as well as all its halachic detail.⁵ How could the Bnei Yisrael not know how to deal with a Shabbos violator or a blasphemer?

We must conclude that when Chazal tell us that all of the halachic detail of every mitzvah was given at Sinai, they do not mean that Moshe received a set of halachic conclusions. Rather, everything came from Sinai in the sense that Moshe was shown how all halacha was already resident in the text, waiting to be explicated by the application of the methods of derashah that Hashem showed him. The details of halacha were "given" not in fixed, final form, but as a methodology of derivation.

Sources:

1. Based on Gur Aryeh, Vayikra 24:14
 2. Sanhedrin 8B
 3. Sanhedrin 80B
 4. Rashi Bamidbar 15:34
 5. R. Akiva in Sotah 37B
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