

PUTTING PHARAOH IN HIS PLACE

by Rabbi Eliyahu Hoffmann

The Gemara (Sanhedrin 17a) rules that if a majority of judges on the Sanhedrin (Jewish high court) convict a person accused of a crime punishable by death, he is put to death. If, however, all 23 judges find the accused guilty, he is spared. (The logic behind this counterintuitive ruling is that when it comes to the death penalty, the Sanhedrin must go out of its way to examine every possible argument for the accused's innocence. If not even one of the judges was swayed in his favor, we deem the process flawed, and he is acquitted.)

This raises the interesting question of what the last judge to rule should do in a case where he's convinced beyond a shadow of a doubt as to the accused's guilt, and all the previous judges have already ruled guilty. If he speaks his mind, and rules guilty, the accused will walk free on the heels of this unusual halacha. Conversely, if he rules innocent, the accused will rightly be put to death.

The Or HaChaim comments on the verse (Shemos/Exodus 23:2), "Do not follow a multitude to do evil; nor shall you speak in a case to incline a multitude to pervert justice," that it hints to this scenario. Do not follow a multitude to do evil - refers, he says, to the case where the last judge deems the accused is innocent, while all the other judges have already ruled guilty. If he speaks his mind, he will sway the verdict to guilty, because his ruling of innocent becomes the one dissenting voice. He may, therefore, be tempted to rule guilty, in order to acquit a man he thinks deserves to live. Do not follow a multitude to do evil - i.e. don't adjust your ruling to match theirs in order that the accused go free. This is evil, for a judge must speak his mind, regardless of the consequences.

Furthermore: Don't speak in a case to incline a multitude to pervert justice - this refers to a case where the last judge agrees the accused is guilty, yet might be tempted to rule innocent in order to bring about his downfall, as above. By ruling innocent, he would incline the ruling of the multitude to what they all feel is correct, i.e. a conviction. Yet to do so, the Torah states, is a perversion of justice.

The Gemara (ibid.) says that in order to be appointed to the Sanhedrin, a judge must be so sharp that he could find grounds to rule that the proverbial sheretz (an impure rodent) is pure. Tosafos wonders what such intellectual gymnastics have to do with receiving the right to judge, since the Torah clearly rules a sheretz is not pure.

Ya'aros D'vash (2:8) suggests that a judge might need to exercise creative thinking in the case where his predecessors have all ruled guilty. If he wishes to insure the accused receives his just punishment, he will have to come up with some "creative" thinking in order to advance an

acceptable argument that results in a conviction, because if he follows the rest, the accused will go free.

At first glance, the Ya'aros D'vash seems to imply it's acceptable for the judge to alter his ruling in order to bring about what he feels is the correct conclusion. Yet the Or HaChaim says this is a perversion of justice.

The Midrash (Shemos Rabba 14:61) says that the entire beis-din shel ma'alah (heavenly court) consented to the plague of darkness for two reasons: 1) To allow the Jews to stroll uninhibited through the property of the Egyptians and search out their valuables, which they would later 'borrow' when they left. 2) Four out of five Jews, Chazal say, were wicked, and could not take part in the Exodus. In order that the Egyptians not know that Jews were dying, they all died and were buried during the plague of darkness.

Chanukas HaTorah explains why the Midrash needed to give two reasons. Since all the angels agreed to the plague, their vote should have been overturned based on the law of a court who is in complete agreement. However, he says, although they all agreed, since there were those who agreed in order to discover the Egyptians' wealth, while others felt it was justified in order to hide the Jews' death, it was not truly unanimous. Therefore, he says, the conviction was allowed to stand.

Based on this, Berach Moshe says, we can understand the Ya'aros D'vash. He never meant to say the judge should alter his ruling and declare the accused innocent in order to secure his conviction - that would be a perversion of justice. Rather, what he meant was that a creative judge would come up with a different reason to convict him, removing the court's unanimity, while insuring the correct ruling.

Arvei Nachal uses the same halacha to explain the first verse of the parsha: Come to Pharaoh, for I have made his heart hard, in order to place my signs within him. The verse implies the harsh judgment, i.e. the plague, was a result of Hashem having hardened Pharaoh's heart.

When Pharaoh's case, so to speak, came before the heavenly tribunal, there was little to be said in his favor. We are talking about a man who not only tortured and enslaved an entire nation, but who denied Hashem's existence. The beis din shel ma'alah was in a quandary - if they all agreed Pharaoh deserved to be punished, he would be absolved. It was only because they were able to make a case for his innocence - that it wasn't his fault since Hashem hardened his heart - that Pharaoh was convicted and the plagues allowed to continue. Have a good Shabbos. Text Copyright © 2008 by [Rabbi Eliyahu Hoffmann](#) and [Torah.org](#)