

THE YESHIVA PIRCHEI SHOSHANIM SHULCHAN ARUCH PROJECT

The Noahide Laws - Lesson Fifty-Nine



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Introduction

In the last lesson we learned that the first in-depth examination of *dinim* came from the pen of [Rabbi Moshe Isserles, the Rema](#), in the 16th century. His conclusions and methods for reaching them, however, are puzzling. A big problem is that the Rema's ruling contradicts precedents found in the *rishonim*. Are there any *rishonim* that support the Rema? If not, then it becomes much harder to understand and accept the Rema's ruling. There is, possibly, one *rishon* who would support the Rema. To get to this *rishon* we first have to turn to the Torah.

Shechem

Genesis 34 records that Shechem, the prince of his eponymous city, abducted Dina, the daughter of Jacob. In doing so he violated Noahide injunction against theft. The citizenry, however, took no initiative to bring Shechem to justice. Shortly thereafter, Shimon and Levi put the entire city to the sword.

Maimonides

[Maimonides](#) refers to this incident in his presentation of the law of *dinim*:

How must the gentiles fulfill the commandment to establish laws and courts? They are obligated to set up judges and magistrates in every major city to render judgment concerning these six mitzvot and to admonish the people regarding their observance.

A gentile who transgresses these seven commands shall be executed by decapitation. For this reason, all the inhabitants of Shechem were obligated to die. Shechem kidnapped. They observed and were aware of his deeds, but did not judge him.¹

¹ *Hilchos Melachim* 9:14

According to Maimonides, the people of Shechem violated the *mitzvah* of *dinim* by not bringing their prince to justice.

Nachmanides [Nachmanides](#), however, disagrees with Maimonides on many points, namely:

- If Shimon and Levi were justified in executing the people of Shechem, then why did Jacob chastise them for it? If the people of Shechem were truly liable for death, then Jacob himself should have put them to the sword!
- *Dinim* is a positive commandment, yet Noahides are only liable to the death penalty for the transgression of negative *mitzvos*. Therefore, any punishment they deserved could not have been for transgressing the *mitzvah* of *dinim*.

Based upon these two difficulties (and others), Nachmanides takes issue with Maimonides's description of *dinim*. Most important for our discussion, Nachmanides writes:

*As I understand it, the mitzvah of dinim enumerated among the seven noahide laws does not mean [as Maimonides writes] only the requirement to establish judges in every place, rather, **God also commanded them in the laws of theft, price gouging, withholding wages, bailees...the laws of creditors and debtors, buying and selling... comparable to the to the civil laws commanded to Israel.***

Nachmanides is making two crucial points:

- 1) **Point #1: God also commanded them in the laws of theft...** *Dinim* is not merely procedural. It also includes substantive monetary and civil laws,
- 2) **Point #2: ...comparable to the civil laws commanded to Israel...** These monetary and civil laws are “comparable” to those commanded to Israel.

“Comparable?”

In what way is the substantive portion of *dinim* “comparable” to Jewish law? There are, generally speaking, two approaches to this question:

- 1) **Nachmanides supports the Rema** – *Dinim* equally obligate Noahides and Jews in the Torah's civil and monetary laws. However, there are some

differences in how these laws apply to Noahides. Because of these differences, Jewish and Noahide monetary/civil laws are called “comparable,” but not “identical.” Read this way, Nachmanides and the Rema are saying the same thing. Therefore, Maimonides and Nachmanides’s dispute is a continuation of the supposed dispute between R’ Yochanan and R’ Yitzchok in the Talmud. The Rema follows the line of Rabbi Yitzchok and Nachmanides while Maimonides follows R’ Yochanan. This is how things are understood by [Minchas Chinuch](#) 1:8; [Nachal Yitzchak](#) CM 91; [Maharsham](#) IV:86; [Avnei Neizer](#) CM 55. [Shu"t Maharam Shick](#), OC 142.

- 2) **Nachmanides is irrelevant to the Rema** – Nachmanides is not saying the same thing as the Rema. Instead, the Maimonides/Nachmanides disagreement is entirely unrelated to the Rema. In fact, it even contradicts the Rema!

Another Reading of Nachmanides

There is another way of reading Nachmanides that brings his words in-line with the understanding of many other *rishonim*. Let’s return to Nachmanides’s words:

God also commanded them in the laws of theft, price gouging, withholding wages, bailees...the laws of creditors and debtors, buying and selling... comparable to the to the civil laws commanded to Israel.

There is an obvious problem here: how is it that *dinim* includes the laws of theft? Are not the laws of theft already included under the Noahide prohibition of theft!? Indeed, many of the specific areas of law mentioned by Nachmanides as part of *dinim* (i.e. price gouging, withholding wages) have already been enumerated under theft!

Therefore, Nachmanides is not saying that *dinim* obligates the courts to judge according to Jewish law. Rather, he understands *dinim* as a two-fold obligation that includes both procedural and substantive laws. However, he defines the substantive aspect very differently from the Rema:

- 1) **Procedural** – Like Maimonides, *dinim* requires the establishment of courts and administration of justice.
- 2) **Substantive** – Unlike Maimonides, there is a substantive aspect to *dinim*. Unlike the Rema, this substantive aspect requires courts to make additional laws and decrees as needed to preserve order and maintain society. These additional regulations fall out under *dinim* and not under any other

category of Noahide law.² Therefore, if a Noahide court decides to impose punishments for cruelty to animals, such penalties would fall under *dinim*, and not *ever min ha-chai* (assuming this is the parent prohibition of animal cruelty). These additional laws do not need to resemble Jewish law in any way.

According to this reading, Nachmanides is actually disagreeing with the Rema!

This reading is given weight by Nachmanides himself. In a responsum,³ it seems Nachmanides does not hold that Noahide *dinim* is equivalent to Jewish law. See also Nachmanides's commentary on the Torah, beginning of *Parshas Mishpatim*, and to Exodus 26:1.

Other Rishonim

This reading of Nachmanides is consonant with many other *rishonim*. For example, [Rabbi Yaakov of Anatol](#) writes in his *Malmud*:⁴

When the Noahides were commanded in dinim, they were obligated to create a legal order... The judges must draw up rules of equity that shall be appropriate for their country and for the customs in which such things are handled. It is also incumbent upon merchants and tradesmen to establish their own rules and regulations... Whatever is established as law in this way is the law and carries biblical authority. Anyone who breaks this [established] law violates the Torah.

This also appears to be Rashi's understanding based on his comments to the Talmud, Gittin 9b.

Furthermore, many *poskim* points out that even Maimonides may agree to this interpretation of *dinim*.

² See *Chasam Sofer, Likkutim* 6:14 for another way of understanding this issue of classification. Although the *Chasam Sofer* holds that the Maimonides/Nachmanides dispute is unrelated to the Rema, he nevertheless upholds the Rema's ruling in *Shu"t CM* 91.

³ *Shu"t HaRamban* #225. It is unlikely that these responsa were widely available in earlier generations. It should be noted that many responsa published in Nachmanides's name were actually written by his students. They were later misattributed to Nachmanides. Many of these have been identified as authored by the [Rashba](#), Nachmanides's main student. Therefore, it is not with 100% certainty that the *teshuva* cited here is actually by Nachmanides.

⁴ Cited in *Margolios HaYam*, 56b:9.

Summary

So, either Nachmanides is **supporting the Rema**, or his words have **nothing to do with the Rema**. If he is **supporting the Rema**, then the Rema has a precedent upon which to rely (albeit, a lone one). If Nachmanides has **nothing to do with the Rema**, then the Rema is left without precedent among the *risbonim*. In that case, his opinion is substantially weakened by the fact that many *risbonim* openly contradict him.⁵

Conclusions

This debate about the nature of *dinim* has gone on since 1550. A full survey of Torah literature since then reveals that an overwhelming majority of later *poskim* disagree with the Rema, accepting instead the approach of Maimonides and Rabbi Yaakov of Anatol:

- *Rema, Tumim*,⁶ *Nachalas Yaakov*,⁷ *Chasam Sofer*⁸ – Noahide *dinim* are identical to the laws of the Torah except in specific cases mentioned in the Talmud and codes.
- *Nachal Yitzchak*,⁹ *Chazon Ish*,¹⁰ *Even Ha-Azel*,¹¹ *Aruch Ha-Shulchan He-Asid*,¹² *Ha-Emek She'elah*,¹³ *Rav Avraham Yitzchok Kook*,¹⁴ *Har Tzvi*,¹⁵ *Yechaveh Daas*¹⁶ 4:65, *Minchas Yitzchok*,¹⁷ *Rav*

⁵ For example, see *Maimonides, Hilchos Melachim* 10:10; *Shu"t Ritva* 14 in *Bais Yosef, CM* 66:18; *Tosafos, Erwin* 62a; *Sefer ha-Ikkarim* 1:25.

⁶ 110:3.

⁷ 3.

⁸ CM 91.

⁹ *Choshen Mishpat* 91

¹⁰ *Hilchos Melachim* 10:10 and *Bava Kama* 10:3.

¹¹ *Chovel uMazik* 8:5.

¹² *Melachim* 79:15.

¹³ 2:3.

¹⁴ *Eitz Hadar* 38, 184.

¹⁵ *Orach Chaim II, Kuntres Mili d'Brachos* 2:1.

[Meir Simcha of Dvinsk](#),¹⁸ [Ksav Sofer](#)¹⁹ - They hold there is no requirement for Noahide civil/monetary laws to be based upon Torah law. Rather, their legal systems should be based upon the needs and customs of their countries and cultures.

In the next lesson we will see how these *poskim* incorporate all of the considerations discussed thus far into actual practice.

The Rema Revisited

The Rema's ruling in Bragadini v. Guistiniani is puzzling in the extreme and most *poskim* do not accept it. It is hard to imagine that the Rema would, *ab initio*, take such a difficult approach. However, there is a subtle detail to the Rema's case that we must note: he not issuing a *psak* (ruling) for Noahide courts. His actual task was to establish whether or not a Jewish court (his court) should judge non-Jews according to Jewish law or their own laws. What is more, Bragadini v. Guistiniani was not purely a case of Noahide law. The entire dispute between Bragadini and Guistiniani was brought to the Rema by Bragadini's partner, Rav Meir Katzenellenbogen, a party to the litigation. Therefore, it was really a dispute between Jews and non-Jews. The curious wording of the Rema's conclusion seems to acknowledge this fact: "We have clarified and proven that non-Jews are judged according to the laws of Israel, **and therefore a dispute between a non-Jew and a Jew just like a dispute between two circumcised people.**"

A close reading of the later *poskim* who agree with the Rema reveals that their rulings, like the Rema's, obliquely address the content of Noahide *dinim*. Their primary relevance is for the conduct of Jewish courts judging cases between Jews and non-Jews.

The language of the Rema, however, definitely discusses *dinim* in a general way and not in a manner unique to his situation. Does this fact imply that the Rema would even hold by his ruling for Noahide courts judging solely between non-Jews? It certainly seems so. However, certain historical factors may have influenced the Rema's approach and presentation of his ruling. We will discuss these in the live class.

¹⁶ IV:65.

¹⁷ IV:52:3

¹⁸ *Meshech Chochma, Vayeiru; Ohr Somayach, Melachim 3.*

¹⁹ *Parshas Mishpatim.*

Summary

1. According to Maimonides, *dinim* is primarily procedural. It dictates the requirement to establish courts and judge cases. He learns many details of *dinim* from the incident of Shechem.
2. Nachmanides takes issue with Maimonides's interpretation of the events surrounding the massacre of Shechem. He makes two curious points: 1) *Dinim* includes more than just procedural laws, and 2) That the Noahide *dinim* laws are comparable to the Jewish monetary/civil laws.
3. Nachmanides's intent is unclear. Although some view him as supporting the Rema, most see the Nachmanides/Maimonides dispute as irrelevant to the Rema.
4. Most *poskim* do not accept the Rema as *halacha*.
5. The Rema's ruling is puzzling for many reasons. It is possible that it was influenced by unusual external factors.