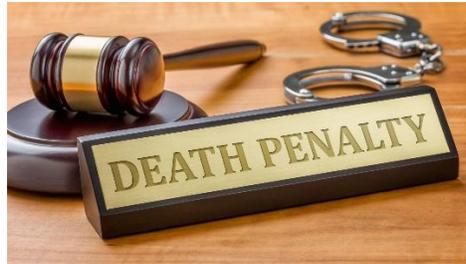


From the Rabbi's Desk
Rabbi Manes Kogan

Hillcrest Jewish Center
183-02 Union Turnpike, Flushing, NY 11366
rabbikogan@hillcrestjc.org

Mishnah with a Twist
[1]

**They Too Would Increase the Number of Murderers
Among the Jewish People**
Insights into Mishnah Makkot 1:10



Background to Our Story (What you need to know to better understand the story)

The Death Penalty in the Torah



The Torah imposes a penalty of death for a range of misdeeds. These include ritual infractions, such as violating the Sabbath, worshiping idols and cursing God; sexual sins, including incest, adultery, anal sex between men and bestiality; and various criminal acts, including murder, kidnapping and giving false testimony in a capital case. Stoning is the most common method of execution described in the Torah, prescribed for murder, blasphemy, breaking the Sabbath and idolatry. The Torah specifies that a person may be put to death only on the testimony of two witnesses — never by one alone — and that the witnesses who testified must be the first to lay their hands on the accused to kill him. Death by fire is mandated for a number of sexual sins, mainly various forms of incest.

The death Penalty in the Talmud



The rabbis of the Talmud discussed the legal requirements of capital punishment at great length, establishing significant barriers that made such a sentence extremely difficult to carry out. According to the Mishnah, capital cases had to be decided by a Sanhedrin of 23 judges. If the conviction in a capital case was unanimous but rendered too quickly the accused was acquitted on the assumption that the judges had not adequately considered the possibility of the defendant's innocence. Perhaps most onerous of all, the offense had to be witnessed by two people who warned the perpetrator immediately prior to committing the act that it was a capital offense.

Such stringencies are often understood to account for the famous Mishnah passage that states that if a Sanhedrin executed one person in seven years, it was considered destructive.

Rabbi Louis Jacobs in *The Jewish Religion: A Companion*, has noted that the power of Jewish courts to impose a death sentence was ended by the Romans sometime in the first century of the Common Era, and as a result the Talmudic discussions of the matter, including their imposition of stringent rules of evidence in capital cases, should be understood as purely theoretical — not as practical guidance for how such cases should actually be adjudicated.

Jacobs also pointed to passages in the Talmud and elsewhere that permit extrajudicial execution in certain circumstances as evidence that Jewish law is not as uncomfortable with the death penalty as is sometimes said to be the case.

Furthering this line of thought is the fact that the Talmud discusses in detail the various types of executions, which some take as evidence that the mechanics of carrying out a death sentence were of more than theoretical concern. Four methods of execution are discussed in the Talmud: stoning, burning, beheading and strangulation.

The Jewish Court System

By Yehuda Shurpin



The Sanhedrin was the Second-Temple-era name of the central Jewish court, made up of 71 members, centered in Jerusalem. In addition, there were lesser courts, both in Jerusalem and throughout the Land of Israel.

Supreme Court: The Great Sanhedrin of 71 Members

The Jewish supreme court was called the Sanhedrin ("Council") or Sanhedrin ha-Gadol ("the Great Council") and consisted of 71 rabbis.

Why 71? God told Moses, "Gather for Me 70 men from the elders of Israel." Moses presided over them, as the verse continues, "And they shall stand there with you." Thus, the 70 judges plus Moses equals 71.

Once Moses passed away, the judge with the greatest knowledge was appointed in his stead. Called the *nasi*, he would sit at the head of the court. To his right sat the *av bet din* (patron of the court), the second greatest judge, who was appointed as the *nasi's* assistant. The remaining 69 would sit before them, arranged according to age and stature. The wiser the judge, the closer he would be seated to the *nasi*.

The Sanhedrin was always located close to the Tabernacle or the Temple. In Moses' time it was near the entrance to the Tabernacle; in later times it was seated in a special chamber in the Temple compound. Toward the end of the Second Temple era, it convened in other locations in the Holy Land and continued to function in an ever-decreasing capacity until approximately the 5th century.

Any laws and *takanot* (decrees) issued by the Sanhedrin were binding on the entire Jewish nation. Although lower courts consisting of 23 judges could try capital cases, only the Sanhedrin had authority over cases involving the king, capital crimes committed by the high priest, or crimes committed by an entire tribe or city.

Powers exclusive to the high court also included:

Crowning a king.

Authorizing "voluntary" wars, such as wars for the sake of expanding the country's borders.

Expanding holy sites, such as Jerusalem and the courtyard of the Holy Temple.

Appointing lesser courts of 23 judges.

Additionally, since the Sanhedrin was required to hear all testimony directly, rather than through an interpreter, it was preferable that its members be familiar with every language spoken by Jews around the world. When a foreign language was used in testimony, the Sanhedrin had to have at least two members who spoke that language to examine the witnesses, and a third member who at least understood the language.

Unlike modern-day supreme courts, the Sanhedrin was not an “appeals court” in the sense that a litigant could appeal a verdict. However, if a lower court was unsure of how to rule, it could refer the case to a higher court.

Lesser Sanhedrin: 23 Members

There were also lesser *sanhedrins* that consisted of 23 judges, the minimum number of judges required to try capital cases. (Interestingly, even the case of an animal that was liable to be put to death had to be judged by such a court, unless of course there was immediate danger.)

In addition to the two lesser *sanhedrins* located at the entrances to the Temple courtyard and the Temple Mount respectively, every sizeable city, as well as every tribe, had its own lesser *sanhedrin*.

Standard Rabbinical Court: Three Judges

An ordinary tribunal consisted of three judges and had the power to adjudicate monetary issues as well as cases involving corporal punishments. They could not, however, judge any case that could even potentially evolve into a case of capital punishment.

Rabbi Elazar ben Azarya



Koren Talmud Bavli, The Noe Edition. Sukkah. Koren publishers Jerusalem. Page

200

One of the most significant *tanna'im* in the generation following the destruction of the Temple, Rabbi Elazar ben Azarya descended from a family blessed with great wisdom, distinguished lineage, and wealth. His father, Azarya, was also a Torah scholar and an extremely wealthy man. Azarya supported his brother Shimon, one of the Sages, who is therefore referred to as Shimon, brother of Azarya. Rabbi Elazar ben Azarya was from a family of priests descended from Ezra the Scribe, and there are traditions that draw parallels between them. The Gemara describes how his knowledge, wealth, and family lineage led to his being chosen by the Sages to replace Rabban Gamliel as Nasi when the latter was removed from his position of leadership after publicly humiliating Rabbi Yehoshua repeatedly (Berakhot 27b).

Rabbi Akiva



Koren Talmud Bavli, The Noe Edition. Kiddushin. Koren publishers Jerusalem. 459.

Rabbi Akiva ben Yosef was one of the greatest of the *tanna'im*. He lived from just after the destruction of the Second Temple until the bar Kokheva revolt. According to legend, Rabbi Akiva began his studies at the age of forty, when Raḥel, the daughter of the wealthy Kalba Savua, consented to marry him on condition that he would study Torah.

Rabbi Akiva became the student of Rabbi Eliezer ben Hyrcanus and Rabbi Yehoshua ben Hananya. Ultimately, he became a prominent Torah scholar with twenty-four thousand students. Among Rabbi Akiva's first students were Shimon ben Azzai and Shimon ben Zoma, with whom he entered the orchard (see *Hagiga* 14b), i.e., engaged in the study of esoteric elements of the Torah.

Subsequently, Rabbi Meir and Rabbi Shimon bar Yoḥai, among others, became his students. He was a staunch supporter of bar Kokheva's revolt against Rome and even declared him the Messiah. During the period of the Roman emperor Hadrian's decrees, Torah study was prohibited, but Rabbi Akiva continued convening assemblies and teaching Torah. Ultimately, he was apprehended and executed, and he is one of the ten martyrs whose execution is described in liturgy.

Rabbi Akiva collected early rabbinic statements and began organizing the material of the Oral Torah. The Mishna, redacted by Rabbi Yehuda HaNasi and his disciples, is based on his work.

Rabbi Tarfon



Koren Talmud Bavli, The Noe Edition. Ketubot Part 2. Koren publishers Jerusalem.

Page 122.

Rabbi Tarfon was one of the great *tanna'im* in the generation following the destruction of the Second Temple. Rabbi Tarfon was a priest, and although he was young in the days when the Temple still stood, it appears that he served there as a priest. Apparently, he lived in the town of Lod. It seems that he was the same age as the students of Rabbi Yoĥanan ben Zakkai and perhaps even studied under him. He is also said to have been on close terms with Rabbi Eliezer and Rabbi Yehoshua, with the latter calling him: Tarfon, my brother. He was often in the great academy of Yavne, engaged in Torah discussions with its important Sages. It is likely that he first served as a kind of teacher to Rabbi Akiva before becoming his colleague after Rabbi Akiva grew in stature. Rabbi Akiva and Rabbi Tarfon were regularly engaged in Torah discussions, and Rabbi Tarfon honored and esteemed him greatly. Several of the Sages of the next generation were disciples of Rabbi Tarfon, with Rabbi Yehuda being his chief disciple.

Rabban Shimon ben Gamliel



Koren Talmud Bavli, The Noe Edition. Sukkah. Koren publishers Jerusalem. Page

262.

The reference here is to Rabban Shimon ben Gamliel the Elder, who followed in the footsteps of his father Rabban Gamliel the Elder and his grandfather Hillel the Elder and served as Nasi. According to his testimony, he was raised among the Sages (Avot 1:17). Josephus relates that Rabban Shimon ben Gamliel was appointed Nasi eighteen years prior to the destruction of the Temple. From the little we know about him; he was a forceful yet pious individual. Aside from the story that appears here, the mishna records his sensitivity to community needs and describes how he brought down the price of turtledoves in Jerusalem by ruling that women needed to bring only one sacrifice even after several births (Keritot 8a). Rabban Shimon ben Gamliel supported the rebels in their revolt against Roman rule, and according to tradition he was one of the Ten Martyrs killed before the Temple was destroyed. His son, Rabban Gamliel of Yavne, served as Nasi after Rabban Yoĥanan ben Zakkai.

The Text: Mishnah Makkot 1:10

מי שנגמר דינו וברח ובא לפני אותו בית דין, אין סותרים את דינו. כל מקום שיעמדו שנים ויאמרו, מעידין אנו באיש פלוני שנגמר דינו בבית דינו של פלוני, ופלוני ופלוני עדיו, הרי זה נהרג. סנהדרין נוהגת בארץ ובחוצה לארץ. סנהדרין ההורגת אחד בשבוע נקראת תבלנית. רבי אלעזר בן עזריה אומר, אחד לשבעים שנה. רבי טרפון ורבי עקיבא אומרים, אלו היינו בסנהדרין לא נהרג אדם מעולם. רבן שמעון בן גמליאל אומר, אף הן מרבין שופכי דמים בישראל:

Concerning one whose verdict was delivered, and he was sentenced to death and he fled, and he then came before the same court that sentenced him, they do not overturn his verdict and retry him. Rather, the court administers the previous verdict.

Consequently, in any place where two witnesses will stand and say: We testify with regard to a man called so-and-so that his verdict was delivered and he was sentenced

to death in the court of so-and-so, and so-and-so and so-and-so were his witnesses, that person shall be executed on the basis of that testimony.

The mitzva to establish a Sanhedrin with the authority to administer capital punishments is in effect both in Eretz Yisrael and outside Eretz Yisrael. A Sanhedrin that executes a transgressor once in seven years is characterized as a destructive tribunal. Since the Sanhedrin would subject the testimony to exacting scrutiny, it was extremely rare for a defendant to be executed.

Rabbi Elazar ben Azarya says: This categorization applies to a Sanhedrin that executes a transgressor once in seventy years.

Rabbi Tarfon and Rabbi Akiva say: If we had been members of the Sanhedrin, we would have conducted trials in a manner whereby no person would have ever been executed.

Rabban Shimon ben Gamliel says: In adopting that approach, they too would increase the number of murderers among the Jewish people.



Explaining the Story - What is going on in our story? (Explain the sequence of events)

Comprehension and Analysis Questions

? The Romans took away the power of Jewish courts to impose a death sentence 2000 years ago. That power was never restored, even after the Jewish people gained independence through the State of Israel in 1948. How do you feel about the death penalty? Are you surprised to find out that the Torah espouses the death penalty?

? Rabbi Elazar ben Azarya, Rabbi Tarfon, Rabbi Akiva, and Rabban Shimon ben Gamliel represent a broad range of opinions on the death penalty. Can you see yourself embracing the different opinions depending on the circumstances involved?

? Rabban Shimon ben Gamliel sees the death penalty as a deterrent against violent crimes. Do you agree with him? If not, what approach would you use to curb violent crimes?

? Unlike the Romans, Rabbi Elazar ben Azarya, Rabbi Tarfon, Rabbi Akiva, and Rabban Shimon ben Gamliel were never in a position of political and military power and their discussion on merits of the death penalty is a theoretical one. How do you think their position would look if they were found in a position of political and military power, i.e. running the country?

“The Twist” – Or the Lessons We Can Learn from This Text.

! Beware of “absolutes;” especially if you are not in charge of the decision-making process.



In our 2000-year-old Mishnah, different Sages share their different opinions on the worth/unworthiness of the death penalty. The subject is a “charged” one today, and as we see it was a “charged” one then. Perhaps the lesson we can draw from this short Rabbinic text is to beware from “absolutes” and to be open to having difficult conversations on complex subjects.