

Is There Space for an Extra-Torah Judicial System?



The Halachik State Part 2
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Limitations of Din Torah

1. Mishna, Sanhedrin 40a

מתני' היו בודקין אותן בשבע הקירות באיזו שבוע באיזו שנה באיזו חודש בכמה בחדש באיזה יום באיזה שעה
באיזה מקום ר' יוסי אומר באיזה יום באיזה שעה באיזה מקום

MISHNA: The court **would examine** the witnesses in capital cases **with seven interrogations**, i.e., interrogatory questions, and they are: **In which seven-year** period, that is, in which cycle of seven years within a jubilee did the event occur; **in which year** of the Sabbatical cycle did the event occur; **in which month** did the event occur; **on which day of the month** did the event occur; **on which day** of the week did the event occur; **at which hour** did the event occur; and **in what place** did the event occur. **Rabbi Yosei says:** The court would examine the witnesses with only three interrogations: **On which day** did the event occur, **at which hour**, and **in what place**.

מכירין אתם אותו התרתם בו העובד ע"ז את מי עבד ובמה עבד

They would also ask: **Do you recognize him** as the man who committed the transgression? **Did you warn him?** They would then ask the witnesses about the particulars of the incident. For example, in the case of **one who** is an accused **idol worshipper**, they ask the witnesses: **Whom**, i.e., which idol, **did he worship, and in what manner did he worship** it, and so on.

כל המרבה בבדיקות הרי זה משובח מעשה וברך בן זכאי בעוקצי תאנים

With regard to **all judges who increase** the number of **examinations**, i.e., who add questions about the details of the event, **this is praiseworthy**, as this may clarify that the witnesses are lying. **An incident** occurred and **ben Zakkai examined** the witnesses by questioning them **about** the color and shape of **the stems of figs** in order to unearth a contradiction between the witnesses.

2. Mishna, Makkos 7a

סנהדרין נוהגת בארץ ובחוצה לארץ סנהדרין ההורגת אחד בשבוע נקראת חובלנית רבי אליעזר בן עזריה אומר אחד לשבעים שנה רבי טרפון ורבי עקיבא אומרים אילו היינו בסנהדרין לא נהרג אדם מעולם רשב"ג אומר אף הן מרבין שופכי דמים בישראל:

The mishna continues: 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**. The death penalty would lose its deterrent value, as all potential murderers would know that no one is ever executed.

3. TB, Makkos 7a

רבי טרפון ורבי עקיבא אומרים אילו היינו וכו': היכי הוּו עבדי רבי יוחנן ורבי אלעזר דאמרי תרוייהו ראיתם מריפה הרג שלם הרג

The mishna teaches that **Rabbi Tarfon and Rabbi Akiva say:** **If we had been** members of the Sanhedrin, we would have conducted the trials in a manner where no person would have ever been executed. The Gemara asks: **How would they have acted** to spare the accused from execution if witnesses testified that he intentionally committed murder? **Rabbi Yoḥanan and Rabbi Elazar both say** that they would have asked the witnesses: **Did you see** whether the accused **killed a tereifa**, i.e., a person with a condition that would lead to his death within twelve months, or if **he killed** someone who was **intact?** The halakhic status of a *tereifa* is like that of one who is dead, in the sense that one who kills him is not executed. Since no witness can be certain with regard to the victim's physical condition, they would invalidate any testimony to a murder.

אמר רב אשי אם תמצא לומר שלם הוה דלמא במקום סייף נקב הוה

Rav Ashi said: Even if you say that they examined him postmortem and **he was intact** the testimony could be challenged, as **perhaps in the place** that the **sword** pierced the victim's body **there was a perforation** in one of the organs that renders the person a *tereifa*, but which was rendered undetectable by the wound caused by the sword.

בבועל את הערוה היכי הוּו עבדי אביי ורבא דאמרי תרוייהו ראיתם כמכחול בשפופרת ורבנן היכי דיינו כשמואל דאמר שמואל במנאפים משיראו כמנאפים:

The Gemara asks: **With regard to one who engages in intercourse with a forbidden relative, how would they have acted** to spare the accused from execution? **Abaye and Rava both say** that they would have asked the witnesses: **Did you see** the intercourse, **like a brush entering into a tube?** Since witnesses rarely witness the act that closely, one could claim that the testimony is incomplete. The Gemara asks: **And concerning the Rabbis**, who disagree with Rabbi Tarfon and Rabbi Akiva, **how would they have adjudicated** that case? The Gemara answers: They hold **in accordance with** the statement of **Shmuel, as Shmuel says:** In cases involving **adulterers** one can testify and convict them **from when they will appear as adulterers**, without any need for him to witness the act in graphic detail.

4. TB, Avoda Zara 8b

מ"ט כיון דחזו דנפישו להו רוצחין ולא יכלי למידן אמרו מוטב נגלי ממקום למקום כי היכי דלא ליחייבו

The Gemara explains: **What is the reason** that the members of the Sanhedrin ceased to meet in their proper place and thereby ended the adjudication of capital cases? **Once they saw that the murderers were so numerous and they were not able to judge** them and punish them with death, **they said:** It is **better that we should be exiled** from the Chamber of Hewn Stone and move **from place to place, so that offenders will not be deemed liable** to receive the death penalty in a time period when the court does not carry out their sentences.

דכתיב (דברים יז, י) ועשית על פי הדבר אשר יגידו לך מן המקום ההוא מלמד שהמקום גורם:

The Gemara explains why a court may not adjudicate capital cases once the Sanhedrin has left the Chamber of Hewn Stone. **As it is written:** **“And you shall do according to the tenor of the sentence, which they shall declare to you from that place”** (Deuteronomy 17:10). This verse **teaches that it is the place** where the Sanhedrin resides that **causes** the judgment to take place. In other words, if the Sanhedrin has abandoned its proper place, the Chamber of Hewn Stone, all courts must cease judging capital cases.

Alternatives

5. Drashos HaRan, 11

אבל בעיני פשט הכתוב כך הוא. ידוע הוא כי המין האנושי צריך לשופט שישפוט בין פרטיו, שאם לא כן איש את רעהו חיים בלעו ויהיה העולם נשחת, וכל אומה צריכה לזה ישוב מדיני, עד שאמר החכם שבת הלסטים הסכימו ביניהם היושר, וישראל צריכין זה כיתר האומות, ומלבד זה צריכין אליהם עוד לסבה אחרת והוא להעמיד חוקי התורה על תלם, ולהעמיד חייבי מלקיות וחייבי מיתות ב"ד העוברים על חוקי התורה, עם היות שאין באותה עבירה הפסד ישוב מדיני כלל. ואין ספק כי בכל אחד מהצדדים יזדמנו שני ענינים, האחד יחייב להעניש איזה איש כפי משפט אמיתי. והשני שאין ראוי להענישו כפי משפט צודק אמיתי אבל יחוייב להענישו כפי תקון סדר מדיני וכפי צורך השעה, וה' ית' יחד כל אחד מהענינים האלו לכת מיוחדת, וצוה שיתמנו השופטים לשפוט המשפט הצודק האמיתי, והוא אמרו ושפטו את העם וגו', כלומר בא לבאר השופטים האלה לאיזה דבר יתמנו ובמה כחם גדול, ואמר שתכלית מנויים הוא כדי לשפוט את העם במשפט צדק אמיתי בעצמו ואין יכלתם עובר ביותר מזה. ומפני שהסדור המדיני לא ישלם בזה לבדו השלים האל תיקונו במצות המלך.

I understand the plain meaning of the verse as follows: It is accepted that men need judges to judge between them, for in their absence (Avoth 3:2) "One man would swallow the other alive" and the world would become corrupt. And every people requires some form of government, the sage going so far as to say: "Even thieves recognize the necessity of justice within their society." And Israel needs this just as the other nations do. But they also need judges for an additional reason — to enforce the laws of the Torah and to punish those liable to stripes or to judicial death penalties, whether or not their transgression is detrimental to society. And,

certainly, these two considerations entail two functions, respectively: one, punishing a man in accordance with true justice; the other (though he not be liable to punishment in terms of true justice), punishing him for the benefit of society and the exigencies of the hour. The Blessed One assigned each of these functions to distinct functionaries. He commanded that judges be appointed to administer true, righteous judgment. This is the intent of "and let them judge the people a righteous judgment." That is, the verse indicates the function and jurisdiction of these judges, saying that the purpose of their appointment is to judge the people with a judgment that is true and righteous in itself, and that their jurisdiction does not extend beyond this function. And because the needs of society are not completely served with this alone, G-d provides for the appointment of a king.

ולפיכך אני סובר וראוי שיאמן כמו שהחוקים שאין להם מבוא כלל בתקון בסדור המדיני הם סבה עצמית קרובה לחול השפע האלהי, כן השפטי התורה יש להם מבוא גדול וכאלו הם משותפים בין ענין חול הענין האלהי באומתנו ותקון ענין קבוצנו, ואפשר שהם היו פונים יותר אל הענין אשר הוא יותר נשגב במעלה ממה שהם היו פונים לתקון קבוצנו. כי התקון ההוא המלך אשר נעמיד עלינו ישלים ענינו, אבל השופטים והסנהדרין היה תכליתם לשפוט העם במשפט אמת צודק בעצמו שימשך ממנו הדבק ענין האלהי בנו ישלם ממנו לגמרי סדור עניני הממוני או לא ישלם, ומפני זה אפשר שימצא בקצת משפטי ודיני האומות הנ"ל מה שהוא יותר קרוב לתקון הסדור המדיני ממה שימצא בקצת משפטי התורה, ואין אנו חסרים בזה דבר, כי כל מה שיחסר מהתקון הנזכר היה משלימו המלך, אבל היתה לנו מעלה גדולה עליהם כי מצד שהם צודקים בעצמם, ר"ל משפט התורה כמוש"ה ושפטו את העם משפט צדק ימשך שידבק השפע האלהי בנו.

Therefore, I hold (and it should, indeed, be believed) that just as the statutes do not enter at all into the societal area but are exclusively confined to the investiture of the Divine Immanence — in like manner, the judgments [mishpatim] of the Torah enter, to a great extent, into this last area, so that they are divided, as it were, between effecting the investiture of the Divine Immanence among us and furthering the societal common good. And it is possible that they are more greatly oriented to the more sublime area than they are to the ordering of society, for this last function is completed by the king that we appoint over us. The function of the judges and the Sanhedrin, however, is to judge us with judgments which are true and righteous in themselves, and which cause the divine Immanence to cleave to us, whether they do or do not completely fulfill the societal objective. It is therefore possible [paradoxically] that some of the judgments and laws of the nations will be found more effective in furthering societal order than some of the laws of the Torah. We lose nothing thereby, however, for whatever is left incomplete in this regard is completed by the king, and, of course, we gain great eminence thereby, for the laws of the Torah, being righteous in themselves (as stated: "and let them judge the people a righteous judgment"), ennoble us through the investiture and cleaving of the Divine Immanence.

Different Branches of Government

6. L'Esprit des Lois (Spirit of the Laws 1748), Charles-Louis de Secondat, baron de La Brède et de Montesquieu

"Liberty does not flourish because men have natural rights or because they revolt if their rulers push them too far; it flourishes because power is so distributed and so organised that whoever is tempted to abuse it finds legal restraints in his way."



"In every government there are three sorts of power: the legislative; the executive in respect to things dependent on the law of nations; and the executive in regard to matters that depend on the civil law.

By virtue of the first, the prince or magistrate enacts temporary or perpetual laws, and amends or abrogates those that have been already enacted. By the second, he makes peace or war, sends or receives embassies, establishes the public security, and provides against invasions. By the third, he punishes criminals, or determines the disputes that arise

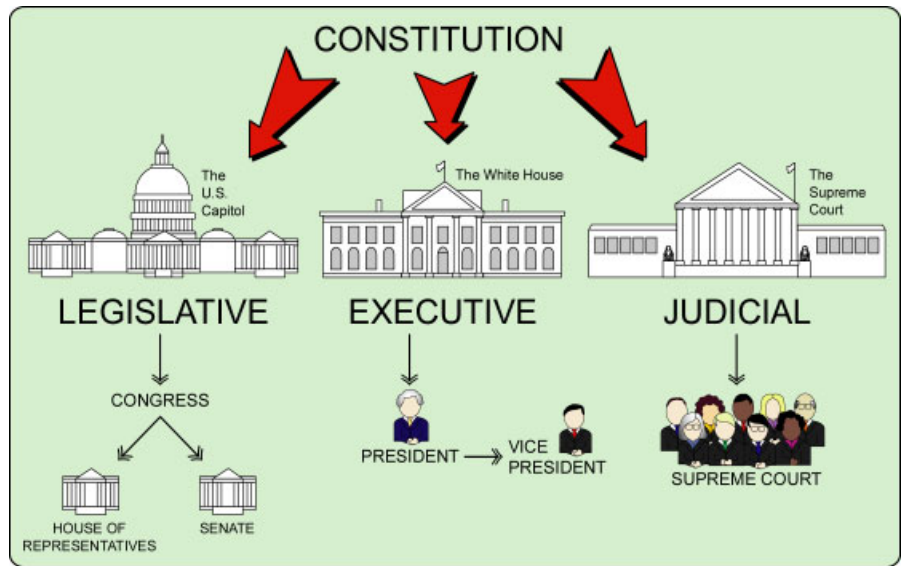
between individuals. The latter we shall call the judiciary power, and the other, simply, the executive power of the state. When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

Again, there is no liberty if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.

There would be an end of every thing, were the same man, or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.

The executive power ought to be in the hands of a monarch, because this branch of government, having need of dispatch, is better administered by one than by many: on the other hand, whatever depends on the legislative power, is oftentimes better regulated by many than by a single person.

But, if there were no monarch, and the executive power should be committed to a certain number of persons, selected from the legislative body, there would be an end of liberty, by reason the two powers would be united; as the same persons would sometimes possess, and would be always able to possess, a share in both.”



7. Yeshayahu 33:22

כי יהוה שפִּטְנוּ יהוה מוֹחֲקֵנוּ יהוה מַלְכֵנוּ הוּא יוֹשִׁיעֵנוּ

For the LORD shall be our ruler,
The LORD shall be our prince,
The LORD shall be our king:
He shall deliver us.

8. Mishna Avos 4:13

רַבִּי שִׁמְעוֹן אוֹמֵר, שְׁלֹשָׁה כְּתָרִים הֵם, כְּתֵר תּוֹרָה וְכְתֵר כְּהֻנָּה וְכְתֵר מַלְכוּת, וְכְתֵר שֵׁם טוֹב עוֹלָה עַל גְּבִיָּהּ:

Rabbi Shimon said: There are three crowns: the crown of Torah, the crown of priesthood, and the crown of royalty, but the crown of a good name supersedes them all.

The King

9. Devarim 17:14-15

כִּי תָבֵא אֶל־הָאָרֶץ אֲשֶׁר יְהוָה אֱלֹהֶיךָ נָתַן לָךְ וּירְשָׁתָהּ וּישְׁבַתָּה בָּהּ וְאָמַרְתָּ אֲשִׁימָה עָלַי מֶלֶךְ כַּכֹּל הַגּוֹיִם אֲשֶׁר סְבִיבֹתַי

If, after you have entered the land that your God יהוה has assigned to you, and taken possession of it and settled in it, you decide, “I will set a king over me, as do all the nations about me,”

Rabbi Ya'akov Trump

שום תשים עליך מלך אשר יבחר יהוה אלהיך בו מקרב אחיך תשים עליך מלך לא תוכל לתת עליך איש זכרי אשר לא אחיך הוא
you shall be free to set a king over yourself, one chosen by your God יהוה. Be sure to set as king over yourself one
of your own people; you must not set a foreigner over you, one who is not your kin.

The Prophet

10. Devarim 18:14-19

כי הגוים האלה אשר אתה יורש אותם אל מענגים ואל קסמים ישמעו ואתה לא כן נתן לך יהוה אלהיך

Those nations that you are about to dispossess do indeed resort to soothsayers and augurs; to you, however, your
God יהוה has not assigned the like.

נביא מקרבך מאחריך כמני יקים לך יהוה אלהיך אליו תשמעון

From among your own people, your God יהוה will raise up for you a prophet like myself; that is whom you shall
heed.

ככל אשר שאלת מעם יהוה אלהיך בחרב ביום הקהל לאמר לא אסח לשמע את קול יהוה אלהי ואת האש הגדלה הזאת לא אראה
עוד ולא אמות

This is just what you asked of your God יהוה at Horeb, on the day of the Assembly, saying, “Let me not hear the
voice of my God יהוה any longer or see this wondrous fire any more, lest I die.”

ויאמר יהוה אלי היטיבו אשר דברו

Whereupon יהוה said to me, “They have done well in speaking thus.

נביא אקים להם מקרב אחיהם כמוך ונתתי דברי בפיו ודבר אליהם את כל אשר אצונו

I will raise up for them from among their own people a prophet like yourself, in whose mouth I will put My words
and who will speak to them all that I command;

והיה האיש אשר לא ישמע אל דברי אשר ידבר בשמי אנכי אדרש מעמו

and anybody who fails to heed the words [the prophet] speaks in My name, I Myself will call to account.

The Priest

11. Devarim 18:1-5

לא יהיה לכהנים כל שבת לוי חלק ונחלה עם ישראל אשי יהוה ונחלתו יאכלון

The levitical priests, the whole tribe of Levi, shall have no territorial portion with Israel. They shall live only off
יהוה's offerings by fire as their portion,

ונחלה לא יהיה לו בקרב אחיו יהוה הוא נחלתו כאשר דבר לו (ס)

and shall have no portion among their brother tribes: יהוה is their portion, as promised.

וזה יהיה משפט הכהנים מאת העם מאת זבחי הזבח אם שור אם שה ונתן לכהן הזרע והלחיים והקבה

This then shall be the priests' due from the people: Everyone who offers a sacrifice, whether an ox or a sheep,
must give the shoulder, the cheeks, and the stomach to the priest.

ראשית דגנך תירשך ויצהרך וראשית גא צאנך נתן לו

You shall also give him the first fruits of your new grain and wine and oil, and the first shearing of your sheep.

כי בו בחר יהוה אלהיך מכל שבטיך לעמד לשרת בשם יהוה הוא ובניו כל הימים (ס)

For your God יהוה has chosen him and his descendants, out of all your tribes, to be in attendance for service in the name of יהוה for all time.

12. "Three Crowns" - Covenant and Conversation, Sho'tim 5768, Rabbi Lord Jonathan Sacks

The priest teaches the word of God for all time; the prophet, the word of God for this time. Something like – though clearly not the same as – this idea is implicit in the threefold structure of king, priest and prophet. The king led the people in battle. He recruited an army, levied taxes, and was responsible for civic order. The priest mediated the relationship between the people and God. He served in the Temple, offered sacrifices, and ensured that the holy was at the heart of national life. The prophet brought the word of God to the people and the cause of the people to God.

Where does the Shofet belong?

13. Devarim 16:18

שֹׁפְטִים וְשֹׁטְרִים תִּתֵּן לָךְ בְּכָל שַׁעֲרֵיךָ אֲשֶׁר יְהוָה אֱלֹהֶיךָ נָתַן לָךְ לְשִׁבְטֶיךָ וְשֹׁפְטֵי אֶת הָעָם מִשְׁפַּטֵּי צֶדֶק

You shall appoint magistrates and officials for your tribes, in all the settlements that your God יהוה is giving you, and they shall govern the people with due justice.

14. "Three Crowns" - Covenant and Conversation, Sho'tim 5768, Rabbi Lord Jonathan Sacks

For the Torah, as John Locke put it, "Where there is no law there is no freedom." Indeed, the Judaic system might be best described as a nomocracy. In the famous saying, it represents "the government of laws, not of men."

15. Devarim 17:8-10

כִּי יִפְלֵא מִמֶּךָ דָּבָר לְמִשְׁפַּטֵּי בֵּין דָּם לְדָם בֵּין דִּין לְדִין וּבֵין נֹגֵעַ לְנֹגֵעַ דְּבָרֵי רִיבָת בַּשַּׁעֲרֵיךָ וּקְמַת וְעִלָּית אֶל הַמָּקוֹם אֲשֶׁר יִבְחַר יְהוָה אֱלֹהֶיךָ בּוֹ

If a case is too baffling for you to decide, be it a controversy over homicide, civil law, or assault—matters of dispute in your courts—you shall promptly repair to the place that your God יהוה will have chosen,

ובאת אל הכהנים הכוהנים ואל השופט אשר יהיה בימים ההם ודרשת והגידו לך את דבר המשפט
and appear before the levitical priests, or the magistrate in charge at the time, and present your problem. When they have announced to you the verdict in the case,

ועשית על פי הדבר אשר יגידו לך מן המקום ההוא אשר יבחר יהוה ושמרת לעשות ככל אשר יורוך
you shall carry out the verdict that is announced to you from that place that יהוה chose, observing scrupulously all their instructions to you.

16. Seder Olam Rabba 30

ועמר מלך גבור וגו' וכעמרו תשבר וגו' (שם יא ג), הוא אלכסנדרוס מקרון שמלך י"ב שנה, עד כאן היו הנביאים מתנבאים ברוח הקדש, מכאן ואילך, הט אונך ושמע דברי חכמים (משלי כב יז)

Breakdowns in the Separation of Power

17. Bereishis 49:10

לֹא יִסּוּר שִׁבְטֵי מִיְהוּדָה וּמִזְחָקֵק מִבֵּין רִגְלָיו עַד כִּי יִבֵּא שִׁילֹן [שִׁילֹן] וְלוֹ יִקְהֵת עַמִּים

The scepter shall not depart from Judah,
 Nor the ruler's staff from between his feet;
 So that tribute shall come to him
 And the homage of peoples be his.

18. Ramban, ad loc.

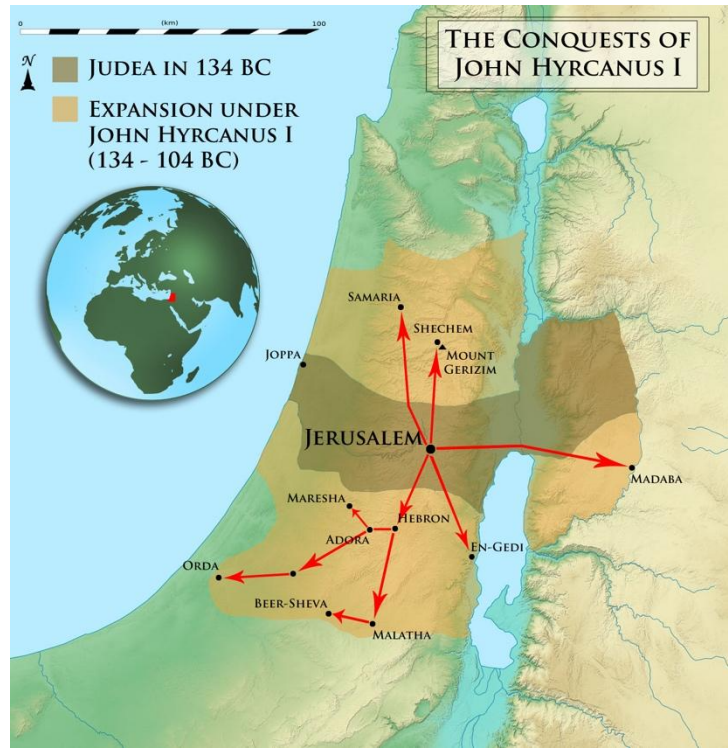
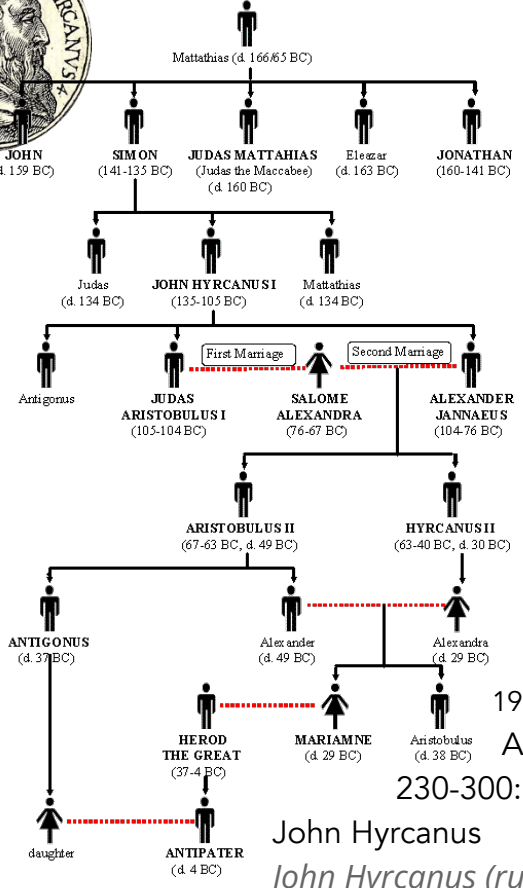
וזה היה עונש החשמונאים, שמלכו בבית שני, כי היו חסידי עליון, ואלמלא הם נשתכחו התורה והמצות מישראל, ואף על פי כן נענשו עונש גדול, כי ארבעת בני חשמונאי הזקן החסידים המולכים זה אחר זה, עם כל גבורתם והצלחתם, נפלו ביד אויביהם בחרב, והגיע העונש בסוף למה שאמרו רז"ל (בבא בתרא ג א): "כל מאן דאמר מבית חשמונאי קאתינא עבדא הוא", שנכרתו כלם בעון הזה. ואף על פי שהיה בזרע שמעון עונש מן הצדוקים, אבל כל זרע מתתיה חשמונאי הצדיק לא עברו אלא בעבור זה שמלכו ולא היו מזרע יהודה ומבית דוד, והסירו השבט והמחוקק לגמרי, והיה עונשם מדה כנגד מדה, שהמשיל הקדוש ברוך הוא עליהם את עבדיהם והם הכריתום. ואפשר גם כן שהיה עליהם הטא במלכותם מפני שהיו כהנים, ונצטוו (במדבר יח ז): "תשמרו את כהונתכם לכל דבר המזבח ולמבית לפרכת ועבדתם עבודת מתנה אתן את כהונתכם", ולא היה להם למלוך, רק לעבוד את עבודת ה'.

Yochanan Kohen Gadol (John Hyrcanus) **Born:** 164 BC **Died:** 104 BC

Background



The Hasmonean Dynasty
 The Maccabees' Family Tree



19. Josephus, Antiquities XIII, 230-300: The Reign of John Hyrcanus

John Hyrcanus (ruled 134-104

B.C.E.) established himself quickly as ruler and successfully negotiated his relationship with the Seleucids.

He also maintained close ties with Rome which was increasingly interested in Judea as a bridge to Syria.



ולא והא תנן אל תאמין בעצמך עד יום מותך שהרי יוחנן כ"ג שמש בכהונה גדולה שמנים שנה ולבסוף נעשה צדוקי

The Gemara asks: **And does he not become wicked? Didn't we learn in a mishna: Do not be sure of yourself until the day you die, as Yohanan the High Priest served in the High Priesthood for eighty years and ultimately became a Sadducee.** Even one who is outstanding in his righteousness can become a heretic.

21. TB Kiddushin 66a

ואמר אבאי מנא אמינא לה דתנאי מעשה בינאי המלך שהלך לכוהלית שבמדבר וכיבש שם ששים פרפים ובחזרתו הנה שמח שמחה גדולה וקרא לכל חכמי ישראל אמר להם אבותינו היו אוכלים מלוחים בזמן שהיו עסוקים בבנין בית המקדש אף אנו נאכל מלוחים זכר לאבותינו והעלו מלוחים על שולחנות של זהב ואכלו

And Abaye said: From where do I say this claim of mine? As it is taught in a baraita: An incident occurred with King Yannai, who went to the region of Kohalit in the desert and conquered sixty cities there. And upon his return he rejoiced with a great happiness over his victory. And he subsequently summoned all the Sages of the Jewish people and said to them: Our ancestors in their poverty would eat salty foods when they were busy with the building of the Temple; we too shall eat salty foods in memory of our ancestors. And they brought salty food on tables of gold, and ate.

והנה שם אחד איש לץ לב רע וגלעל ואלעזר בן פועירא שמו ויאמר אלעזר בן פועירא לינאי המלך ינאי המלך לבם של פרושים עליו ומה אעשה הקם להם בציץ שבינו עיניו הקים להם בציץ שבינו עיניו

And there was one person present, a scoffer, a man of an evil heart and a scoundrel called Elazar ben Po'ira. And Elazar ben Po'ira said to King Yannai: King Yannai, the hearts of the Pharisees, the Sages, are against you. In other words, they harbor secret resentment against you and do not like you. The king replied: **And what shall I do** to clarify this matter? Elazar responded: **Have them stand by wearing the frontplate between your eyes.** Since the frontplate bears the Divine Name, they should stand in its honor. Yannai, who was a member of the priestly Hasmonean family, also served as High Priest, who wears the frontplate. **He had the Pharisees stand by wearing the frontplate between his eyes.**

הנה שם זקן אחד ויהודה בן גדידיה שמו ויאמר יהודה בן גדידיה לינאי המלך ינאי המלך רב לך כתר מלכות הנח כתר פהוזה לזרעו של אהרן שהיו אמרים אמו נשפית במודיעים ויבוקש הדבר ולא נמצא ויבדלו חכמי ישראל בזעם

Now there was a certain elder present called Yehuda ben Gedidya, and Yehuda ben Gedidya said to King Yannai: **King Yannai, the crown of the monarchy suffices for you, i.e., you should be satisfied that you are king. Leave the crown of the priesthood for the descendants of Aaron.** The Gemara explains this last comment: **As they would say that Yannai's mother was taken captive in Modi'in, and she was therefore disqualified from marrying into the priesthood, which meant that Yannai was a *halal*. And the matter was investigated and was not discovered, i.e., they sought witnesses for that event but none were found. And the Sages of Israel were expelled in the king's rage, due to this rumor.**

ויאמר אלעזר בן פועירא לינאי המלך ינאי המלך הדיוט שבין ישראל כהן הוא דינו ואתה מלך וכהן גדול כהן הוא דינו ומה אעשה אם אתה שומע לעצתי רומסם ותורה מה תהא עליה הרי ברוכה ומונחת בקרן זווית כל הרוצה ללמוד יבוא וילמוד

And Elazar ben Po'ira said to King Yannai: King Yannai, such is the judgment of a common person in Israel. In other words, merely expelling a slanderer is appropriate if the subject of the slander is a commoner. **But you are a king and a High Priest. Is this your judgment as well?** Yannai replied: **And what should I do?** Elazar responded: **If you listen to my advice, crush them.** Yannai countered: **But what will become of the Torah?** He retorted: **Behold, it is wrapped and placed in the corner. Anyone who wishes to study can come and study.** We have no need for the Sages.

אמר רב נחמן בר יצחק מיד נזרקה בו מינות דהנה ליה למימר תינח תורה שבכתב תורה שבעל פה מאי מיד ותוצי הרעה על ידי אלעזר בן פועירא ויהרגו כל חכמי ישראל והנה העולם משתומם עד שבא שמעון בן שטח והתזיר את התורה ליושנה

The Gemara interjects: **Rav Nahman bar Yitzhak says: Immediately, heresy was injected into Yannai, as he should have said** to Elazar ben Po'ira: This works out well with regard to **the Written Torah**, as it can be studied by all on their own, but **what** will become of **the Oral Torah?** The Oral Torah is transmitted only

by the Sages. The *baraita* continues: **Immediately, the evil arose and caught fire through Elazar ben Po'ira, and all the Sages of the Jewish people were killed. And the world was desolate of Torah until Shimon ben Shatah came and restored the Torah to its former glory.** This completes the *baraita*.

22. Josephus, Antiquities XIII, 230-300: The Reign of John Hyrcanus

(288) However, this prosperous state of affairs moved the Jews to envy Hyrcanus. They who were the worst disposed to him were the Pharisees, who are one of the sects of the Jews, as we have informed you already. These have so great a power over the multitude that when they say anything against the king or against the high priest, they are immediately believed. (289) Now Hyrcanus was a disciple of theirs and greatly beloved by them. 33 When he once invited them to a feast and entertained them very kindly, and when he saw them in a good humor, he began to say to them that they knew he was desirous to be a righteous man and to do all things whereby he might please God, which was the profession of the Pharisees also. (290) However, he requested, that if they observed him offending in any point and straying from the right way, they should call him back and correct him. On that occasion they attested to his being entirely virtuous, and with this commendation he was very pleased. But there was one of his guests there whose name was Eleazar, (291) a man of evil nature, who delighted in seditious practices. This man said, "Since you desire to know the truth, if you are righteous in earnest, give up the high priesthood and content yourself with the civil government of the people." (292) And when he desired to know why he ought to give up the high priesthood, he replied, "We have heard it from the elders that your mother had been a captive during the reign of Antiochus Epiphanes." 34 This story was false, and Hyrcanus was furious with him, and all the Pharisees were very indignant against him.