



1. Wikipedia:

History

When the modern state of Israel was established in 1948, it inherited the British Mandate's legal code, with a few adjustments, and thus capital punishment remained on the books. During the Israeli War of Independence, the first execution took place after Meir Tobianski, an Israeli army officer, was falsely accused of espionage, subjected to a drumhead court martial and found guilty. He was executed by firing squad, but later posthumously exonerated.

The first death sentences imposed by an Israeli civil court, against two Arabs who had been found guilty of murder, were confirmed by an appeals court in November 1949, but the sentences were commuted to life imprisonment by President Chaim Weizmann, due to his opposition to the death penalty.[4]

The Israeli cabinet first considered abolishing the death penalty in July 1949.

In 1950, seven convicted murderers were on death row in Israel.[5] Their executions were stayed until the government made up its mind as to the ultimate fate of the death penalty. In 1951 the Israeli cabinet again proposed that the death penalty be abolished.[6][7] In 1952, the first death sentence for Nazi war crimes under the Nazi Collaborators' Law was imposed on Yechezkel Ingster, who was convicted of torturing and beating other Jews as a kapo, but the court also recommended that the death sentence be commuted.[8] The sentence was commuted to two years' imprisonment.

In 1954 the Knesset voted to abolish the death penalty for the crime of murder.[9] The death penalty was retained for war crimes, crimes against humanity, crimes against the Jewish people, treason and certain crimes under military law during wartime.

In 1962 the second execution—and the only civil execution—in Israel took place when Adolf Eichmann was hanged after being convicted in 1961 of participation in Nazi war crimes relating to the Holocaust.

Throughout the following decades, death sentences were occasionally handed down to those convicted of terrorist offenses, but these sentences were always commuted. In 1988 John Demjanjuk, a guard in a Nazi death camp during the war nicknamed "Ivan the Terrible" by inmates for his brutality, was sentenced to death after being convicted of war crimes, but his conviction was later overturned on appeal. In the mid-1990s the practice of seeking the death penalty for those facing terrorism charges ceased.[10]

In the aftermath of the Itamar attack in 2011, the issue of the death penalty briefly came up again. Israeli military prosecutors were expected to seek the death penalty for the perpetrators,[10] but in the end did not. Even so, the judges seriously considered imposing the death penalty when determining the sentence of one of the perpetrators, but decided not to, as the prosecution had not requested it.[11]

In the March 2015 election, the Yisrael Beiteinu party ran on a platform that included death sentences for terrorists; in July of the same year a bill was proposed, and sponsored by one of the party's members, to allow a majority of presiding judges to sentence a terrorist to death. By a vote of 94–6 the bill was rejected in its first reading.[12]

Calls for imposition of the death penalty

Israeli politicians have sometimes called for the imposition of the death penalty on specific criminals. In 2010 Member of the Knesset Ayoub Kara called for the imposition of the death penalty on the perpetrator of the Tapuah Junction stabbing (2010).[13] In 2017 political figures including Prime Minister Binyamin Netanyahu called for the penalty to be imposed on the perpetrator of the 2017 Halamish stabbing attack.[14] Representatives in the government plans to introduce a bill, which would allow the death penalty for terrorism, to the Knesset.[15][16] In January 2018, 52 of 120 members of the Israeli parliament voted in favor, while 49 opposed, making easier for judges to hand down the death penalty[17].

1. Mishneh Torah, The Sanhedrin and the Penalties within their Jurisdiction 15:10-13

(י) כָּל הַנִּסְקָלִין שֶׁבְּתוֹרָה שְׁמוֹנֶה עָשָׂר ... (יא) כָּל הַנִּשְׂרָפִין עֶשְׂרֵה... (יב) הַנִּהָרְגִין שְׁנַיִם. הַרוֹצֵחַ וְהַנֶּדֶחַ... (יג) הַנֶּחֱנָקִין שֶׁשָּׁה וְאֵלֹהֵי הָ. הַבָּא עַל אִשָּׁת אִישׁ.... נִמְצְאוּ כָּל הָרוֹגֵי בֵּית דִּין שֶׁשָּׁה וְשִׁלְשִׁים:

The Torah mentions 18 people who are executed by stoning... There are 10 people who are executed by burning... There are two who are decapitated: a murderer, and the inhabitants of a city enticed to idolatry... There are six who are executed by strangulation... Thus, the court executes individuals for a totality of 36 prohibitions.

2. Makkot 7a:3

משנה: 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: גמ'. איבעיא להו אחת לשבעים שנה נקראת חבלנית או דלמא אורח ארעא היא תיקו: רבי טרפון ורבי עקיבא אומרים אילו היינו וכו': היכי הוה עבדי רבי יוחנן דאמרי תרוייהו ראיתם טריפה הרג שלם הרג אמר רב אשי אם תמצא לומר שלם הוה דלמא במקום סייף נקב הוה

Mishna:... 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.

Gemara: Rabbi Elazar ben Azarya says: This categorization applies to a Sanhedrin that executes once in seventy years. **A dilemma was raised before the Sages:** Is Rabbi Elazar ben Azarya saying that a Sanhedrin that executes once in seventy, rather than seven, years is characterized as a destructive tribunal? Or perhaps he is saying that standard conduct is for a Sanhedrin to execute once in seventy years, and only if it executes more than one person during that period is it characterized as destructive? The Gemara concludes: The dilemma shall stand unresolved. 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 Yohanan 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. **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. ...

3. Gerald Blidstein:

Why this radical and total disclaimer of a recognized judicial procedure?

Three possibilities suggest themselves. First, the very device sketched above may embody the germ of their opposition. R. Akiba and R. Tarfon feared human weakness, the inability of man ever to know an event in its accurate facticity. No witness can ever testify with an absolute knowledge, as their examination was designed to show. Execution then becomes no more than a judicial gamble—and the dice are always loaded when a man's life is the stake. The Sanhedrin, they held, must never arrogantly assume a certainty it cannot truly possess.

Yet this approach, though reasonable, is not totally satisfactory. In the Talmud the device of close interrogation answers the question, "What would they have done (to prevent execution)?" It is not adduced to explain the source of R. Akiba's and R. Tarfon's opposition to capital punishment. Furthermore, and most crucially, R. Simeon ben Gamliel's retort ("They, too, would multiply spillers of blood in Israel") is a non sequitur. For once the possible innocence of the man in the docket is admitted, one cannot have his head merely to insure public safety. A second approach would be that R. Akiba and R. Tarfon agreed that human observation of events could be accurate enough to establish the guilt of an individual but that a society that practiced capital punishment was bound to err, that this license would, by the very frailty of human judgment, be abused, leading to the execution of an innocent. Yet, once again, R. Gamliel's reply is not to the point: can society purchase health at the price of innocent lives? Perhaps, then, the opposition to capital punishment is rooted elsewhere; perhaps its source is not a fear of killing the innocent but a reluctance to kill the guilty. This reluctance to take the life of even a criminal could be translated into an effective legal restraint by the type of questioning outlined above—an interrogation on the unknowable. R. Gamliel's retort is now very much to the point: "You would not kill the guilty," he says, -because of your disdain to take the life of man; but you will in reality cause many more deaths than the one you now seek to avoid."

4. Mishnah Sanhedrin 4

(א) אחד דיני ממונות ואחד דיני נפשות, בדרשה ובחקירה, שנאמר (ויקרא כד) משפט אחד יהיה לכם. מה בין דיני ממונות לדיני נפשות. דיני ממונות בשלשה, ודיני נפשות בעשרים ושלשה. דיני ממונות פותחין בין לזכות בין לחובה, ודיני נפשות פותחין לזכות ואין פותחין לחובה. דיני ממונות מטין על פי אחד בין לזכות בין לחובה, ודיני נפשות מטין על פי שנים לחובה. דיני ממונות מחזירין בין לזכות בין לחובה, דיני נפשות מחזירין לזכות ואין מחזירין לחובה. דיני ממונות הכל מלמדין זכות וחובה, דיני נפשות הכל מלמדין זכות ואין הכל מלמדין חובה. דיני ממונות המלמד חובה מלמד זכות והמלמד זכות מלמד חובה, דיני נפשות המלמד חובה מלמד זכות, אבל

הַמִּלְמַד זְכוּת אֵין יָכוֹל לַחֲזֹר וּלְלַמֵּד חוֹבָה. דִּינֵי מַמוֹנוֹת דְּנִין בַּיּוֹם וְגוֹמְרִין בַּיּוֹם. דִּינֵי מַמוֹנוֹת גּוֹמְרִין בּוֹ בַּיּוֹם בֵּין לְזְכוּת בֵּין לְחוֹבָה, דִּינֵי נַפְשׁוֹת גּוֹמְרִין בּוֹ בַּיּוֹם לְזְכוּת וּבַיּוֹם שְׁלֹאֲחֵרִיו לְחוֹבָה, לְפִיכָךְ אֵין דִּין לֹא בְעֶרֶב שַׁבָּת וְלֹא בְעֶרֶב יוֹם טוֹב: (ב) דִּינֵי הַטְּמֵאוֹת וְהַטְּהוֹרוֹת מִתְחִילִין מִן הַגָּדוֹל, דִּינֵי נַפְשׁוֹת מִתְחִילִין מִן הַצָּד. הַכֹּל כְּשֶׁרִין לָדוֹן דִּינֵי מַמוֹנוֹת וְאֵין הַכֹּל כְּשֶׁרִין לָדוֹן דִּינֵי נַפְשׁוֹת, אֲלֹא כִּהְנִים, לוֹיִם, וְיִשְׂרָאֵלִים הַמְּשִׁיאִין לַכֹּהֲנָה: (ה) כִּיצַד מְאִימִין אֶת הָעֵדִים עַל עֲדֵי נַפְשׁוֹת, הֵיוּ מְכַנְיִסִין אוֹתָן וּמְאִימִין עֲלֵיהֶן. שְׁמָא תֹאמְרוּ מֵאֲמֵד, וּמִשְׁמוּעָה, עַד מִפִּי עַד וּמִפִּי אָדָם נֶאֱמָן שְׁמַעְנֵנוּ, אוֹ שְׁמָא אֵי אֲתָם יוֹדְעִין שְׁסוּפְנֵנוּ לְבִדָּק אֲתָכֶם בְּדִרְשָׁה וּבְחֻקֶּיהָ. הוּוּ יוֹדְעִין שְׁלֹא כְּדִינֵי מַמוֹנוֹת דִּינֵי נַפְשׁוֹת. דִּינֵי מַמוֹנוֹת, אָדָם נוֹתֵן מָמוֹן וּמִתְכַּפֵּר לוֹ. דִּינֵי נַפְשׁוֹת, דְּמוֹ וְדָם זִרְעִיּוֹתָיו תְּלוּיִין בּוֹ עַד סוֹף הָעוֹלָם, שְׁכֵן מְצִינוּ בְּקִין שְׁהָרַג אֶת אָחִיו, שְׁנֵאֲמַר (בְּרֵאשִׁית ד) דְּמִי אָחִיךְ צִעֲקִים, אֵינוֹ אוֹמֵר דָּם אָחִיךְ אֲלֹא דְּמִי אָחִיךְ, דְּמוֹ וְדָם זִרְעִיּוֹתָיו. דָּבָר אַחֵר, דְּמִי אָחִיךְ, שְׁהִיָּה דְּמוֹ מְשֻׁלָּךְ עַל הָעֵצִים וְעַל הָאֲבָנִים. לְפִיכָךְ נִבְרָא אָדָם יְחִידִי, לְלַמֵּד, שְׁכָל הַמַּאֲבָד נָפֶשׁ אַחַת מִיִּשְׂרָאֵל, מַעֲלָה עָלָיו הַכְּתוּב כְּאֵלּוֹ קִים עוֹלָם מְלֵא. וְכָל הַמְּקִיִּם נָפֶשׁ אַחַת מִיִּשְׂרָאֵל, מַעֲלָה עָלָיו הַכְּתוּב כְּאֵלּוֹ קִים עוֹלָם מְלֵא. וּמִפְּנֵי שְׁלוֹם הַבְּרִיּוֹת, שְׁלֹא יֹאמַר אָדָם לְחִבְרוֹ אֲבֵא גָדוֹל מֵאֲבִיךָ. וְשְׁלֹא יִהְיֶה מִיָּנִין אוֹמְרִים, הֲרֵבָה רְשָׁיוֹת בְּשָׂמִים. וְלִהְיִיד גְּדֻלָּתוֹ שֶׁל הַקָּדוֹשׁ בְּרוּךְ הוּא, שְׁאָדָם טוֹבֵעַ כְּמָה מְטַבְּעוֹת בְּחוֹתָם אֶחָד וְכָלֵן דּוֹמִין זֶה לָזֶה, וּמִלָּךְ מַלְכֵי הַמְּלָכִים הַקָּדוֹשׁ בְּרוּךְ הוּא טוֹבֵעַ כָּל אָדָם בְּחוֹתָמוֹ שֶׁל אָדָם הָרֵאשׁוֹן וְאֵין אֶחָד מֵהֶן דּוֹמֵה לְחִבְרוֹ. לְפִיכָךְ כָּל אֶחָד וְאֶחָד חֵיב לוֹמֵר, בְּשִׁבְלִי נִבְרָא הָעוֹלָם. וְשְׁמָא תֹאמְרוּ מַה לָּנוּ וְלַצִּירָה הַזֹּאת, וְהֵלֵא כָּבֵר נֶאֱמַר (וִיקְרָא ה) וְהוּא עַד אוֹ רָאָה אוֹ יָדַע אִם לּוֹא יִגִּיד וְגו'. וְשְׁמָא תֹאמְרוּ מַה לָּנוּ לְחוֹב בְּדָמוֹ שֶׁל זֶה, וְהֵלֵא כָּבֵר נֶאֱמַר (מִשְׁלִי יא) וּבִאֲבָד רְשָׁעִים רָנָה:

(1) Both monetary and capital cases have examination and inquiry, as it is written (Leviticus 24:22) "You shall have one justice." What is the difference between monetary cases and capital cases: monetary cases[are tried] with three [judges], and capital cases, with twenty-three. Monetary cases are opened either [with arguments] to acquit or to convict, and capital cases open [with arguments] to acquit but do not open [with arguments] to convict. Monetary cases are decided by one either to acquit or to convict; capital cases are decided by one to acquit or by two to convict. In monetary cases, [the verdict] can change between acquittal and conviction; in capital cases [the verdict] can change to acquittal but cannot change to conviction. In monetary cases, all can rule for acquittal or conviction; in capital cases, all can rule for acquittal but all cannot rule for conviction. In monetary cases, one who convicts can acquit and one who acquits can convict; in capital cases, one who convicts can acquit, but one who acquits cannot turn and convict. Monetary cases can be tried in the day and can finish in the night; capital cases are tried in the day and must finish in the day. Monetary cases finish on the same day for either acquittal or conviction; capital cases finish on the same day for acquittal and the next day for conviction, therefore there cannot be trials on Friday evening or the evening before a holiday.

(2) Cases of impurity and purity begin from the greatest [judge], cases of life begin from [the judges on] the side. All are acceptable to judge in cases of money, but none are acceptable to judge in cases of life except for priests, Levites, and Israelites whose daughters can marry priests.

(5) How do we press the witnesses in a capital case? We bring them in [to the court's chambers] and press them: "Perhaps what you say [isn't eyewitness testimony] is but your own assessment, or from rumors, or your witnessing an actual witness testify, or your reporting what a trustworthy said. Or perhaps you were unaware that by the end we'd interrogate you, with examination and inquiry. Know that capital cases are not like monetary ones. In monetary cases, [a false witness] can return the money and achieve atonement. But in capital cases, the blood of [the victim [and all his future offspring hang upon you until the end of time. For thus we find in regard to Cain, who killed his brother, "The bloods of your brother scream out!" (Genesis 4:10) - the verse does not say blood of your brother, but bloods of your brother, because it was his blood and also the blood of his future offspring [screaming out]! [Another explanation of the verse: for his blood was splattered over the trees and rocks [there was more than one pool of blood]. [The judges' speech continues] "It was for this reason that man was first created as one person [Adam], to teach you that anyone who destroys a life is considered by Scripture to have destroyed an entire world; and anyone who saves a life is as if he saved an entire world." And also, to promote peace among the creations, that no man would say to his friend, "My ancestors are greater than yours." And also, so that heretics will not say, "there are many rulers up in Heaven." And also, to express the grandeur of The Holy One [blessed be He]: For a man strikes many coins from the same die, and all the coins are alike. But the King, the King of Kings, The Holy One [blessed be He] strikes every man from the die of the First Man, and yet no man is quite like his friend. Therefore, every person must say, "For my sake the world was created." [The judges' speech continues:] "Maybe you [the witnesses] will now say, 'What do we need this, and all this anxiety for [let's not come forward even with true testimony]!' But Scripture has already spoken: "If he be a witness - having seen or known - if he does not express it, he shall bear his sin." (Lev. 5:1) Maybe you will now say, 'What do we need this, to be responsible for another man's death?' But Scripture has already spoken: "When the wicked are destroyed there is rejoicing." (Prov. 11:10)"

5. Exodus 20:13

(יג) לֹא תִרְצַח: (ס)

(13) You shall not murder.

6. Rashbam on Exodus 20:13:1

(א) לֹא תִרְצַח - כָּל רִצְיָחָה - הִרִיגָה בְּחַנֵּם הִיא בְּכָל מְקוֹם. מוֹת יוֹמֵת הָרוּצָה. הָרִצְחָתָה וְגַם יִרְשָׁתָה. צִדֵּק יִלִּין בָּהּ וְעֵתָה מִרְצָחִים. אֲבָל הִרִיגָה וּמִיתָה יֵשׁ בְּחַנֵּם כְּמוֹ: וְיִהְיֶה דִקְיָן. וְיֵשׁ בְּדִין כְּמוֹ: וְהִרְגָתָה אֶת הָאִשָּׁה. וְמָה שִׁכְתוּב: אֲשֶׁר יִרְצַח אֶת רֵעֵהוּ בְּבִלִי דַעַת, לְפִי שִׁמְדוֹר בְּעֵינֵי רֹצַח בְּמִזִּיד, לִכְךָ הוּא אוֹמֵר: וְאִם רִצְיָחָה זֶה בְּבִלִי דַעַת פְּטוּר. זֶה תְּשׁוּבָה שֶׁהִשְׁבַּתִּי לְאִפְיֻקְרוּסִים וְהוֹדוּ לִי. וְאִם עַל פִּי שִׁישׁ בְּסִפְרֵיהֶם אֲנִי אִמִּית

(1) **לא תרצח**. Wherever the term **רציחה** appears it refers to killing without adequate justification. A deliberate murderer is to be executed as we know from Numbers 35,16-16. Similar verses in Kings I 21,19 when King Achav had framed someone resulting in judicial murder is also included in this definition of **לא תרצח**, [though he could have claimed that Naval, the victim, could have been found innocent by the judges. Ed.] When the terms **הריגה**, or **מיתה** are used to describe killing this means that there was no excuse for the killer to commit his act. (compare Kayin slaying his brother in Genesis 4,8) On the other hand, in Leviticus 20,16 where the Torah decrees **והרגת את האשה**, this refers to judicial killing for cause. Concerning the use of the word **רוצח**, murderer, in Deuteronomy 4,42 as applicable to someone who killed inadvertently, the reason why the Torah used this term there was only because in the same context deliberate murder was also discussed. This is my answer to the heretics who have admitted to me that the Latin translation of the Bible describing **רציחה** “killing,” without distinction as to the reason for the killing, is sloppy, most inaccurate. They were so careless in spite of the fact that in their “own” books such as Deuteronomy 32,39 we have the line **ואחיה ואמית ואחיה**, “it is I Who kill and resurrect,” showing that the Torah uses different expressions describing different kinds of killing.

7. Numbers 35:30 [Following the analysis of Gerald Blidstein]

(ל) **כְּלִמְכָּה נָפֵשׁ לְפִי עֲדִים יִרְצַח אֶת־הָרֹצֵחַ וְעַד אֶחָד לֹא־יִעֲנֶה בְּנֶפֶשׁ לְמוֹת:**

(30) If anyone kills a person, the manslayer may be executed only on the evidence of witnesses; the testimony of a single witness against a person shall not suffice for a sentence of death.

8. Deuteronomy 19:13

(יג) **לֹא־תִתּוֹס עֵינְךָ עָלָיו וּבַעֲרַתְּ דַּם־הַנֶּקִּי מִיִּשְׂרָאֵל וְטוֹב לָךְ: (ס)**

(13) you must show him no pity. Thus you will purge Israel of the blood of the innocent, and it will go well with you.

9. Avodah Zarah 8b:11

מ' שנה עד לא חרב הבית גלתה סנהדרין וישבה לה בחנות

Forty years before the Temple was destroyed, the Sanhedrin was exiled from the Chamber of Hewn Stone and sat in the store near the Temple Mount.

10. Sanhedrin 46a:11-12

תניא ר"א בן יעקב אומר שמעתי שבית דין מכין ועונשין שלא מן התורה ולא לעבור על דברי תורה אלא כדי לעשות סייג לתורה ומעשה באחד שרכב על סוס בשבת בימי יונים והביאוהו לבית דין וסקלוהו לא מפני שראוי לכך אלא שהשעה צריכה לכך שוב מעשה באדם אחד שהטיח את אשתו תחת התאנה והביאוהו לבית דין והלקוהו לא מפני שראוי לכך אלא שהשעה צריכה לכך:

It is taught in a *baraita*: Rabbi Eliezer ben Ya'akov says: I heard that the court may administer lashes and capital punishment, even when not required by Torah law. And they may not administer these punishments with the intention of violating the statement of the Torah, i.e., to disregard the punishment stated in the Torah and administer another punishment; rather, they may administer these punishments to erect a fence around the Torah, so that people will fear sinning. And an incident occurred involving one who rode a horse on Shabbat during the days of the Greeks, and they brought him to court and stoned him, not because he deserved that punishment, as riding a horse on Shabbat is forbidden only by rabbinic decree, but because the hour required it, as people had become lax in their observance of Shabbat and therefore it became necessary to impose the severe punishment for a relatively minor offense. Another incident occurred involving a man who engaged in intercourse with his wife in public under a fig tree, and they brought him to court and flogged him, not because that punishment was fitting for him, as such conduct is not forbidden by the Torah, but because the hour required it. People had become remiss in matters of modesty; therefore, stringent measures had to be taken to rectify the situation.

11. Sanhedrin 81b:2

מתני' מי שלקה ושנה ב"ד מכניסין אותו לכיפה ומאכילין אותו שעורין עד שכריסו מתבקעת:

MISHNA: One who was flogged for violating a prohibition and then repeated the violation and was flogged again assumes the status of a forewarned transgressor. The court places him into the vaulted chamber [*lakippa*] and feeds him barley bread until his belly ruptures due to the low-quality food, and he dies.

12. Sanhedrin 81b:13

מתני' ההורג נפש שלא בעדים מכניסין אותו לכיפה ומאכילין אותו (ישעיהו ל, כ) לחם צר ומים לחץ:

MISHNA: With regard to one who kills a person not in the presence of witnesses and it is impossible to judge him in court, the court places him into a vaulted chamber and feeds him sparing bread and scant water (see Isaiah 30:20).

13. Mishneh Torah, Murderer and the Preservation of Life 4:9

(ט) ואין עושין דבר זה לשאור מחיבי מיתת בית דין אבל אם נתחייב מיתה ממיתין אותו ואם אינו חייב מיתה פוטרין אותו. שאף על פי שיש עונות חמורין משפיות דמים אין בהן השחתת ישובו של עולם כשפיות דמים. אפלו עבודה זרה ואין צריך לומר עריות או חלול שבת אינן כשפיות דמים. שאילו עונות הן מעברות שבין אדם למקום אבל שפיות דמים מעברות שבין לבין חברו. וכל מי שיש בידו עון זה הרי הוא רשע גמור ואין כל המצות שעשה כל ימיו שקולין כנגד עון זה ולא יצילוהו מן הדין שנאמר (משלי כח יז) "אדם עשק בדם נפש וגו' צא ולמד מאחאב עובד עבודה זרה שהרי נאמר בו (מלכים א כא כה) "רק לא היה כאחאב". וכשנסדורו עונותיו וזכויותיו לפני אלהי הרוחות לא נמצא עון שחיבו כליו ולא היה שם דבר אחר ששקול כנגדו אלא דמי נבות שנאמר (מלכים א כב כא) "ותצא הרוח ותעמד לפני ה'" זה רוח נבות ונאמר לו (מלכים א כב כב) "תפתה וגם תוכל". והרי הוא הרשע לא הרג בידו אלא סבב. קל וחומר להורג בידו:

(9) One does not do this matter in the remainder of instances where the death penalty can be imposed by the court, but if one is liable for execution, they should execute him and if one is not liable for execution they should free him. That even if there transgressions that are weightier than the spilling of blood, they are not as corrupting to society as the spilling of blood. Even idolatry and it does not need to be said, forbidden sexual relations or the desecration of the Sabbath are not like the spilling of blood. That these transgressions are offenses between a person and G-d, but the spilling of blood is an offense between people. And everyone who has in his hand this sin, see, he is completely evil and all the commandments that one has done in his lifetime cannot balance against this sin and will not save him from judgment. As it is said, "A person weighed down with the blood of a life, etc, (Proverbs 28:17)." Go and learn from the example of Ahab who performed acts of idolatry, that behold it is said concerning him, "There are none like Ahab (I Kings 21:25)." And when his merits and his sins were weighted before the Lord of Spirits, no sin was found that merited the death penalty that was not balanced by another matter except the blood of Navot. As it says, "And the spirit came out and stood before G-d (I Kings 22:21)." This is the spirit of Navot. And as it says concerning him, "You will entice and you will prevail (I Kings 22:22)." Behold, the evil one did not kill with his hands, rather brought it about, how much the more so if he had killed with his own hands.

14. Sifrei Devarim 187:7

(ז) לא תחוס עינך עליו ובערת דם הנקי. שמא תאמר הואיל ונהרג זה, למה אנו באים לחוב בדמו של זה? תלמוד לומר לא תחוס עינך עליו. (7) (*Ibid.* 13) "Let your eye not pity him, and remove the innocent blood from Israel": Lest you say: If one has already been killed, why should we be guilty of the blood of others? It is, therefore, written "Let your eye not pity him."

15. Yoma 22b:8-9

(שמואל א טו, ה) וירב בנחל אמר ר' מני על עסקי נחל בשעה שאמר לו הקב"ה לשאול (שמואל א טו, ג) לך והכית את עמלק אמר ומה נפש אחת אמרה תורה הבא עגלה ערופה כל הנפשות הללו על אחת כמה וכמה ואם אדם חטא בהמה מה חטאה ואם גדולים חטאו קטנים מה חטאו יצאה בת קול ואמרה לו (קהלת ז, טז) אל תהי צדיק הרבה ובשעה שאמר לו שאול לדואג (שמואל א כב, יח) סוב אתה ופגע בכהנים יצאה בת קול ואמרה לו (קהלת ז, יז) אל תרשע הרבה

§ Having mentioned the verse about Saul, the Gemara proceeds to interpret more of that passage: "And Saul came to the city of Amalek and he strove in the valley" (I Samuel 15:5). **Rabbi Mani said:** This means that Saul strove with G-d, as it were, concerning the matter of the valley. At the time when the Holy One, Blessed be He, said to Saul: "Now go and attack Amalek and proscribe all that belongs to him; do not pity him, but kill men and women alike, infants and sucklings alike, oxen and sheep alike, camel and donkey alike" (I Samuel 15:3), Saul countered and said: Now, if on account of one life that is taken, in a case where a slain person's body is found and the murderer is unknown, the Torah said to bring a heifer whose neck is broken to a barren valley, in the atonement ritual described in Deuteronomy 6:1–9, all the more so must I have pity and not take all these Amalekite lives. And he further reasoned: If the men have sinned, in what way have the animals sinned? Why, then, should the Amalekites' livestock be destroyed? And if the adults have sinned, in what way have the children sinned? A Divine Voice then came forth and said to him: "Do not be overly righteous" (Ecclesiastes 7:16). That is to say: Do not be more merciful than the Creator Himself, Who has commanded you to do this, for to do so would not be an indication of righteousness but of weakness. At a later time, when Saul said to Doeg: "Turn around and strike down the priests, and Doeg the Edomite turned around and struck down the priests, and he killed on that day eighty-five men who wore the linen ephod, and he struck Nob the city of priests by the sword, man and woman alike, infants and sucklings alike, oxen and donkeys and sheep, by the sword" (I Samuel 22:18–19), a Divine Voice came forth and said to him: "Do not be overly wicked" (Ecclesiastes 7:17).

16. Darashos HaRan 11:3-10

(ג) 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 שכתב 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' ייחד כל אחד מהענינים האלו לכת מיוחדת, וצוה שיתמנו השופטים לשפוט המשפט הצודק האמיתי, והוא אמרו ושפט 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. (ד) ונבאר עוד כשנניח צד אחד מהצדדים הרי שנינו בפרק היו בודקין (סנהדרין מ) תנו רבנן מכירים אתם אותו כו' התרתם בו וקבל התראה התיר עצמו למיתה וכו' המית בתוך כדי דבור וכו'. ואין ספק כי כל זה ראוי כפי משפט צדק, כי למה יומת איש אם לא שידע שהכניס עצמו בדבר שיש בו חוב מיתה ועבר עליו, ולזה יצטרך שיקבל עליו התראה וכל יתר הדברים השנויים באותה ברייתא, וזהו משפט צדק אמיתי בעצמו הנמסר לדיינים. אבל אם לא יענש העובר כי אם על זה הדרך יפסד הסדור המדיני לגמרי שיתרבו שופכי דמים ולא יגורו מן העונש, ולכן צוה הש"י לצורך ישובו של עולם במינוי המלך כמו שכתוב בפרשה זו וכי תבא אל הארץ וגו' שום תשים עליך מלך וגו' שהיא מצוה שנצטוו בה למנות עלינו מלך כמו שבא בקבלת רז"ל (סנהדרין כ) והמלך יכול לדון שלא בהתראה כפי מה שיראה שהוא צריך לקבוע המדיני, נמצא שמנוי המלך שוה בישראל וביתר אומות שצריכים סדור מדיני, ומנוי השופטים מיוחד וצריך יותר בישראל, וכמו שהזכיר עוד ואמר ושפטו את העם משפט צדק כלו' שמנוי השופטים ויכלתם הוא שישפטו העם במשפטים צודקים אמיתיים בעצמם: (ה) ואני מבאר עוד זה ואומר, שכמו שנתיחדה תורתנו מבין נמוסי אומות הקדמונים במצות וחקים אין ענינם תקון מדיני כלל אבל הנמשך מהם היה חול השפע האלהי באומתנו והדבקו עמנו... (ו) ולפיכך אני סובר וראוי שיאמן כמו שהחוקים שאין להם מבוא כלל בתקון בסדור המדיני הם סבה עצמית קרובה לחול השפע האלהי... (ז) ומפני זה היה ראש השופטים ומבחרם עומד במקום אשר היה נראה בו השפע האלהי, והוא ענין עמוד אנשי כנסת הגדולה בלשכת הגזית... (ח) ואל תקשה עלי מה שנינו בפרק נגמר הדין (דף מו) תניא ר' אליעזר אומר שמעתי שב"ד מכין ועונשין שלא מן התורה ולא לעבור על דברי תורה אלא לעשות סייג לתורה וכו', שנראה ממנו שמנוי הב"ד הוא לשפוט כפי תקון העת והזמן, ואינו כן, אבל בזמן שהיה בישראל סנהדרין ומלך, הסנהדרין לשפוט את העם במשפט צדק לבד לא לתקון ענינם ביותר מזה, אם לא שיתן המלך להם כחו אבל כאשר לא היה מלך בישראל, השופט יכלול שני הכחות, כח השופט וכח המלך, שהרי מצינו בפ' נגמר הדין (דף מט) א"ל עמשה אכין ורקין קא דריש אזיל אשכחינו לרבנן דפתיח להו במסכתא אמר כתיב כל אשר ימרה את פיק וגו' יכול אף לדברי תורה ת"ח רק חזק ואמץ, הנה שנתנו בכאן ליהושע כח מלכות אע"פ שלא היה מלך, וכן דרשו רז"ל ויהי בישראל מלך ירמוז למשה: (ט) ואפשר עוד לומר שכל מה שנמשך למצות התורה, בין שהוא כפי הפשט הצודק בין שהוא כפי צורך השעה נמסר לב"ד, כאמרו ושפטו את העם משפט צדק, אבל תקונם ביותר מזה נמסר למלך לא לשופט. ...

(3) 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.

(4) We shall explain this further in respect to one of the aforementioned considerations. We learned (Sanhedrin 40b): "The rabbis taught: 'The witnesses are to be cross-examined in the following manner: Do you recognize him [the defendant]? Did you warn him and did he acknowledge the warning? Did he commit the crime knowing it was punishable by death? Did he kill right after you had warned him?...' " Unquestionably, all of these are prerequisites for a "righteous judgment." For why should a man be killed for a transgression which he did not know to be punishable by death? This explains the necessity for his acknowledgment of the warning and for all of the other things mentioned in that baraita. This is the true, righteous judgment in itself, that was assigned to the judges. But if law-breakers were punished in this context alone, the structure of society would break down completely, for, in the absence of the fear of punishment, the number of murderers would dramatically increase. Therefore, for the well-being of society, the Blessed One mandated the appointment of a king, as stated in this parashah (Deuteronomy 17:14-15): "and when you come to the land... place a king over you...", this constituting a mitzvah to appoint a king, according to the tradition of our sages of blessed memory (Sifrei, Sanhedrin 20b). And the king can punish without prior warning as he deems fit for the good of the kingdom. We find, then, that the appointment of a king serves a common purpose for Israel and for the other peoples who require a societal structure, and that the appointment of judges serves a distinct purpose for Israel, as stated: "and let them judge the people a righteous judgment." That is, the purpose of the judges and the area of their jurisdiction is the administration of judgments that are righteous and true in themselves.

(5) Pursuing this further, in light of the fact that our Torah is distinguished from the ethical codes of the nations by mitzvot and chukim [statutes], it follows that these mitzvot and chukim have nothing whatsoever to do with societal structure at all, but that their sole purpose is to effect the investiture of the Divine Immanence within our nation and to cause it to cleave to us. ...

(6) 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. ...

(7) It is for this reason that the chief and most select of the judges would stand in the place where the Divine Immanence manifested itself, this being the idea behind the presiding of the Men of the Great Assembly in the chamber of hewn stone [lishkath hagazith].

(8) And do not challenge me with (Sanhedrin 40a): "It was taught: R. Eliezer ben Yaakov said: 'I have heard that beth din administers stripes not according to the Torah — not to transgress what is written in the Torah, but to make a fence for the Torah'" — which seems to imply that beth din is appointed to legislate in accordance with the exigencies of the times. It is not so. In those times when there were a Sanhedrin and a king in Israel, the Sanhedrin would judge the righteous judgment alone and would not institute anything beyond this unless they were empowered by the king to do so. But when there was no king in Israel, the judge embodied two functions, that of the judge and that of the king, as we find (Ibid 49a): "Amasa expounded 'but' ['ach'] and 'only' ['rak']; he went and found the rabbis studying Torah, and said: 'It is written (Joshua 1:18): 'Every man who rebels against you [Joshua]...' I would think [that Joshua had absolute power] even [in respect to nullifying] words of Torah. This is ruled out by (Ibid): 'Only ['rak'] — without extending this unlimited power to Torah] strengthen yourself and be courageous.'" This shows Joshua to have had the powers of a king even though he was not a king [but a judge]. And our sages of blessed memory, likewise, apply (Deuteronomy 33:5) "And there was a king in Israel" to Moses [although he was not a king].

(9) It is also possible that everything connected with the mitzvot of the Torah, whether in the category of righteous judgments or in that of temporary exigency was relegated to beth din, whereas in the realm of the relations between man and man, what involves righteous judgment alone was relegated to beth din (as written: "and let them judge the people a righteous judgment"), but anything beyond that was relegated to the king and not to the judge...

17. Deuteronomy 19:20 [Regarding False Witnesses – Eidim Zomemin]

(כ) וְהַנִּשְׁאָרִים יִשְׁמְעוּ וְיִרְאוּ וְלֹא־יִסְפוּ לַעֲשׂוֹת עוֹד כְּדָבָר הָרַע הַזֶּה בְּקִרְבְּךָ:

(20) others will hear and be afraid, and such evil things will not again be done in your midst.

18. Sefer HaChinukh 34

(א) שלא להרג נקי - שלא להרג נפש, שנאמר (שמות כ יג) לא תרצח.

(ב) שורש מצוה זו, ידוע ונגלה לכל רואי השמש, כי השם יתברך ברא העולם וצוונו לפרות ולרבות כדי לישבו לפניו, ומנענו שלא נחריבהו בידינו להרג ולאבד הבריות שהן המישרות העולם. ואולם הרשעים הגמורים כגון המינים והמלשינים אינן מושבי העולם, ועליהם אמר הכתוב (משלי יא י) באבד רשעים רנה. לפי שהם לא יושבו העולם, אלא יחריבוהו בכל כחם. וזהו מה שאמר חכם מחכמינו ז"ל באבוד הרשעים (בבא מציעא פג, ב) קוצים אני מכלה מן הכרם, כלומר באבדן אלה יתישב העולם יותר, כמו שפרות הכרם מתרבים וטובים יותר בסלוק הקוצים ממנו.

(1) **Not to kill the innocent:** Not to kill a soul, as it is stated (Exodus 20:13), "You shall not kill."

(2) The root of this commandment is well-known and revealed to all that see the sun. As G-d, may He be blessed, created the world and commanded us be fruitful and multiply, in order to settle it in front of Him. And [so] he prevented us, that we not destroy it with our hands, to kill and destroy the creatures which are the settlers of the world. However, the total evildoers - for example, the heretics and the talebearers - are not from the settlers of the world. And about them, the verse states (Proverbs 11:10), "with the destruction of the evildoers is there glee" - because they do not settle (civilize) the world, but rather destroy it with all their might. And this is what one sage from our Sages, may their memory be blessed, said about the destruction of the evildoers (Bava Metziah 83b), "I am ridding the thorns from the vineyard" - meaning to say that with the destruction of these, the world will be more settled, [just] like with the removal of thorns (weeds), the fruits of the vineyard multiply and are better.

19. Sanhedrin 71a:16

כמאן אזלא הא דתניא עיר הנדחת לא היתה ולא עתידה להיות ולמה נכתבה דרוש וקבל שכן

The Gemara raises a similar question: **In accordance with whose opinion is that which is taught in a *baraita*: There has never been an idolatrous city and there will never be one in the future**, as it is virtually impossible to fulfill all the requirements that must be met in order to apply this *halakha*. **And why**, then, **was** the passage relating to an idolatrous city **written** in the Torah? So that **you may expound** upon new understandings of the Torah **and receive reward** for your learning.

20. Pirkei Avot 2:1

(א) רבי אומר, איזוהי דרך ישרה שיביר לו האדם, כל שהיא תפארת לעושיה ותפארת לו מן האדם. והוי זהיר במצוה קלה כבחמורה, שאין אתה יודע מתן שכרן של מצוות.

(1) Rabbi [Yehuda haNasi] said... And be as careful with a light commandment as with a weighty one, for you do not know the reward given [for the fulfillment] of [the respective] commandments

21. Rambam on Pirkei Avot 2:1:1

ובאור זה הענין כאשר אומר והוא שהתורה כולה ממנה מצות עשה וממנה מצות לא תעשה. ואמנם מצות לא תעשה באר הכתוב העונש על כל אחת מהן מלבד המעט מהן וחייב על קצתם המיתות ועל קצתם הכרת ומיתה בידי שמים ומלקות וידענו מענשי מצות לא תעשה כלם מהם איסורם גדול ומה מהם למטה ממנו ... אבל מצות עשה לא התבאר שכר כל אחת מהן מה היא אצל הש"ת

And the elucidation of this matter is as I will say. And it is that the entire Torah has positive commandments and negative commandments. It is true that Scripture elucidated the punishment of each negative commandment except for a few of them. And one is obligated the death penalties for some of them and excision and death at the hand of the Heavens and lashes for some of them. And we know from all of the punishments of the negative commandments which of the prohibitions are great and which ones of them are below them. But what is the reward from G-d, may He be blessed, of each of the positive commandments is not elucidated.

22. Sanhedrin 37b:4

והאי בר נחש הוא והאמר רב יוסף וכן תני דבי חזקיה מיום שחרב בית המקדש אף על פי שבטלה סנהדרי ארבע מיתות לא בטלו לא בטלו והא בטלו אלא דין ארבע מיתות לא בטלו

The Gemara questions this account: **But was this murderer fit to die by being bitten by a snake? But doesn't Rav Yosef say, and so the school of Hizkiyya also taught: From the day that the Temple was destroyed, although the Sanhedrin ceased to be extant, the four types of court-imposed capital punishment have not ceased.** The Gemara asks: **Have they really not ceased? But they have ceased,** as court-imposed capital punishment is no longer given. **Rather,** the intention is that **the halakha of the four types of court-imposed capital punishment has not ceased** to be applicable.

23. Letter by Rabbi Aharon Solovechik to David Luchins:

Dear David:

I was very disturbed to hear from you that the union is planning to submit a statement in favor of capital punishment. If anyone is in favor of capital punishment, let him speak in his own name. But it is irresponsible and unfair to submit a statement in favor of capital punishment in the name of Orthodox Jewry.

In my humble opinion, from a Halakhic point of view, every Jew should be opposed to capital punishment. It is true indeed that the Torah recognizes capital punishment. However, the Torah delegates the authority to mete out capital punishment only to Sanhedrin, not anyone else. Even Sanhedrin are not able to mete out capital punishment if there is no Beis Hamikdash. Even capital punishment among Bnei Noach cannot be meted out when there is no [Kohen offering]. In addition, the Torah encompasses the execution of capital punishment, with numerous and multifarious requirements and prerequisites so that the realization of capital punishment is only theoretical. If a Sanhedrin carries out one execution in seven years it is characterized as a murderous Sanhedrin. Rabbi Akiva and Rabbi Tarfon say that if they had been in Sanhedrin, no person would have ever been executed because of the numerous restrictions and requirements in connection with the execution of capital punishment. Hoping that this clarifies my point of view on capital punishment, I remain, Respectfully Yours, Aaron Soloveichik

24. Makkot 9b:3

מכאן שבן נח נהרג שהיה לו ללמוד ולא למד:

The Gemara comments: **From here** it is derived **that a descendant of Noah**, i.e., a gentile, **is executed** for a capital offense even if he says that it is permitted, **as he should have learned** that it is prohibited **and he did not learn.**

25. Mishneh Torah, Kings and Wars 9:14

(יד) וכיצד מצוין הן על הדינין. חביבין להושיב דינין ושופטים בכל פלך ופלך לדון בשש מצות אלו. ולהזהיר את העם. וכן נח שעבר על אחת משבע מצות אלו יהרג בסיף. ומפני זה נתחייבו כל בעלי שכם הריגה. שהרי שכם גזל והם ראו וידעו ולא דנוהו. וכן נח נהרג בעד אחד ויבדלן אחד בלא התראא ועל פי קרובין. אבל לא בעדות אשה. ולא תדון אשה להם:

(14) What must they do to fulfill their requirement regarding the Law of Justice? They have to set up magistrates and judges in each district to judge the people with regard to these Six Commandments; and they must issue warnings (about them) to the people. A non-Jew who violates one of the Seven Commandments is executed by means of the sword.¹⁰¹ *This entire passage is absent in most versions.* How is this so? Anyone who worships idols or blasphemed or murdered or had sexual relations with one of those forbidden to him or stole even less than the value of a Prutah or ate any amount from a limb or the flesh of a live animal or saw someone else violate one of these and failed to judge and execute him, is himself executed by means of the sword. It was for this reason all residents of the City of Shechem deserved to be executed. For Shechem kidnapped¹⁰² *Dinah*, and they saw and knew and failed to judge him. A non-Jew is executed by the testimony of one, and with one judge, without forewarning, and by the testimony of relatives, but not by the testimony of a woman¹⁰³ *Other editions are missing the words, "but not by the testimony"*. A woman may not judge for them.

26. Rabbi Aharon Soloveitchik argued that this the death penalty is simply the outer limit of what can be given.

27. Iggerot Moshe, Choshen Mishpat 2:68

פורים תשמ"א. מעלת כבוד שר המדינה הנכבד והחביב עלינו מאד, יאריך השם יתברך ימיו ושנותיו וממשלתו בטוב ובנעימים. ראשית הנני להביע רגשותי באהבה וביראת הכבוד לשר המדינה בדבר רצונו לידע דעת התורה שניתנה מהשם יתברך על ידי משה רבנו בהבאור בתורה שבעל פה שנמסר מחכמי דור לדור עד שנכתבה בגמרא ובפוסקים הרמב"ם והשלחן ערוך ועוד שהיא דעה האמתית, וגם במה שיש לשר המדינה בטחון שאני יודע להשיב האמת והנכון לפי דיני התורה שעל זה יתברך מהשם יתברך בכל. ועתה אשיב בקצרה, כי בעצם נאמרו בתורה עונשי מיתה לעבירות החמורות מאד כרציחת נפש אדם, ומיני גניבת אדם, ומיני עריות, ועל אחד שעובד עבודה זרה שהוא לשמש ולירח ולעץ ולאבן וכדומה שאז הוא מופקר לעשות כל מה שבלבו ממיני נבלות ואכזריות שבעולם שיבדו הרשעים לטובת עצמם, אבל לא היה זה מצד שנאה לעושי דבר הרע ומצד יראה לקיום העולם דעל זה איתא בגמ' (ב"מ פ"ג ע"ב) 'יבא בעל הכרם ויכלה את קוציו והלכה כן כדפסק הרמב"ם (ה' חובל פ"ח ה"ט) וכל הפוסקים, אלא הוא שידעו האינשי חומר האיסורים אלו ולא יעברו על זה. ומצד שני, יש הדגשה על חשיבותו של כל נפש, ועוד חשבונות, ולכן נצטוונו שלדון דיני נפשות אינם כשרים אלא על פי סנהדרין שנשמכו לזה ואין סומכין לזה אלא לגדולים ביותר בחכמת התורה וגם גדולים בשאר חכמות, והיו עונים מאד ויראי השם יתברך ושונאי ממון ואוהבי האמת ואוהבים לבריות בזה שהם בעלי טובה ונפש שפלה וחברתן טובה ודבורן ומשאן בנחת עם הבריות ולא יהא שום גנאי ולא שם רע עליהם ורחמנים ביותר. ומטעם זה אין מעמידין זקן מופלג בשנים שכבר נשכח ממנו קצת צער גדול בנים ולא מי שאין לו בנים שאולי חסר לו קצת רחמנות ויכעוס על העוברים יותר מדי. ואנשים גדולים וטובים אלו אין יכולים לדון אלא כשהם עשרים ושלושה סנהדרין, ולבד זה צריכין להושיב לפניו שלש שורות גדולים בתורה מאד אך שעדיין לא הגיעו למדרגת הסנהדרין אבל קרובה להם שהוא שמירה גדולה כדי שלא יחייבו בטעות, דהא כשיהא נדמה לג' השורות שמזכין בטעות משתקין אותו ואין שומעין כלל את דבריו. וכן לא שייך לדון דיני נפשות לחייבו אף מאומדנא היותר גדולה שבעולם אלא דוקא על פי שני עדים כשרים שאינם בכלל נוגעים בדבר, ובטח לא ע"י עדים שמבטיחים לפוטרים מעונש אם יעידו על אחרים, אחרי שמזהירין אותם חומר האיסור דעדות שקר בכלל וחומר איסור רציחת נפש ואיום גדול ביותר, וגם צריך התראה וקבלת התראה וגם שיאמר בפירוש שאף שידוע כל זה הוא עובר, שלכן לא היה נאדע למי שיחייבוהו מיתה אלא אחד לכמה שנים, וגם לא אפשר לדון דיני נפשות אלא כשביהמ"ק = כשבית המקדש = היה קיים וישבו סנהדרין של ע"א שהם עוד יותר גדולים בלשכת הגזית בביהמ"ק, שלכן לא דנו דיני נפשות אף במדינות שהיה רשות מהמלכות שידונו היהודים לעצמן בדיני התורה, ומ"מ לא היה נמצא כמעט בכל הדורות רוצחים ביהודים מפני חומר האיסור ומפני מה שנתחנכו ע"י התורה וע"י עונשי התורה להבין חומר האיסור ולא סתם היו מתיראים מהעונש כענין של כל דאלים גבר. וכל זה הוא כשלא הופקר איסור הרציחה אלא שבשביל איזה תאוה גדולה או איזה מריבה על טענת ממון וכבוד עשה זה, אבל מי שהורג נפשות מחמת שהופקר אצלו איסור הרציחה והוא אכזרי ביותר, וכן כשנתרבו רוצחים ועושי רשעה היו דנין למיגדר מלתא למנוע מעשה רציחה שהוא הצלת המדינה.

והנני חותם בברכה לשר המדינה שינהל המדינה בצדק ובישר וגם במשפט הראוי כל ימיו ועוד יתגדל שמו בכל מדינתנו ארצות הברית. המברכו, משה פיינשטיין.

With Regard to the Death Penalty.

Purim 5741. To the honored governor of this state, who is very beloved to us. G-d should lengthen his days and years, and his rule with goodness and pleasantness.

First, I would like to express my feelings of love and reverence to the governor regarding his desire to know the position of the Torah given from G-d to Moshe Rabbeinu, with the Oral Law given from the sages of one generation to the sages of the next, until it was written in the Talmud, authorities, Rambam, Shulchan Aruch, and others, which is the true opinion. Also, for the governors trust that known how respond correctly and truthfully based on Torah law. For this, he should be blessed from G-d with all. he Torah reserves capital punishment for those sins which are very serious such as murder, kidnapping, sexually prohibited relations and idolatry. The perpetrator in these cases is unrestrained and is capable of doing whatever disgusting and cruel acts in the world that are in his heart that he thinks are for his benefit. However the death penalty is not administered out of hatred to evildoers or fear for the welfare of society because Bava Metzia (83b) tells us that G-d will punish transgressors. That in fact is the halacha as poskened by the Rambam (Hilchos Chovel u'Mazik 8:9) as well as all other poskim. So on the one hand the purpose of capital punishment is to let people know the severity of these prohibitions so that they will not transgress them. On the other hand the laws of capital punishment emphasize the importance of each soul and other concerns. Therefore we are commanded that only the Sanhedrin with proper semicha can judge these cases. Only the greatest people in Torah scholarship and other knowledge receives this semicha. In addition to their knowledge they also need to have perfected their character and be very humble as well as G-d fearing people. They also need to hate money and love the truth as well as wonderful people who are beloved by all... They don't have any imperfections or bad reputations and they are very merciful. That is why very old people are not appointed judges because they have forgotten the stress of raising children. Also people without children are not appointed because they lack mercy to some degree and they will be too angry at those who have committed sins.

Even these great and good people cannot judge unless they constitute a Sanhedrin of 23 people. However it is not enough there are 23 such people to make a Sanhedrin. They also need to have before them 3 rows of very great Torah scholars who are not yet great enough to be part of the Sanhedrin – but are almost great enough. This is to protect the Sanhedrin from making a mistake in judgment. That is because when these three rows of scholars think that the Sanhedrin is mistaken in their ruling of innocence they will protest and will not listen at all to their words. Another safeguard against making a mistake is that they do not convict based on circumstantial evidence – no matter how convincing. They only convict a person based on two valid witnesses who have not the slightest bias in the matter... Furthermore the witnesses are warned concerning the severity of the sin of false testimony as well as the seriousness of the sin of murder so that they are very afraid of mistakenly convicting or mistakenly declaring the suspected murderer innocent. Even with all of this the witnesses also have to warn the person against murder and the suspected murderer has to acknowledge the warning by saying that even though he is aware of the seriousness off the crime he is still doing it. As a consequence of all these safeguards, only once in many years would someone be convicted of murder. In addition it was impossible to judge capital cases unless the Temple existed and that the Sanhedrin of 71 of the greatest scholars was in session on the Temple Mount. In fact capital cases were not judged even in those countries where the king gave the Jews permission to judge their own people according to the law of the Torah.

As a consequence of these two factors there were almost no Jewish murderers because of the awareness of the severity of the prohibition of murder and because they were educated by means of the Torah and the punishments of the Torah to understand the seriousness of the crime. They were not simply afraid of punishment in the sense of getting caught but were afraid of the crime itself.

However this use of the Torah system to run society was only when the crime of murder was not common but was simply the result of someone's great lust or some quarrel concerning money or honor. But when people killed simply because it was viewed as an insignificant thing and the murderer was simply a callous and cruel person or similarly if there was a great deal of murders and wickedness – then a different system of law was utilized that was concerned with the pragmatic question of stopping killing and the goal became saving the society.

28. Because of many of these factors, many including Rabbis Herzog, Uziel, Wahrhaftig, Yitzchak Yosef, and others have opposed having a death penalty in Israel.
29. Israel has only carried out the death penalty once – for Eichmann.
30. Some have worried about misapplication, and use of it against Jews