

The Death Penalty

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1. 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:

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.

2. Mishnah Sanhedrin 4

(ה) כֵּיצֵד מְאַיְמִין אֶת הָעֵדִים עַל עֵדִי נְפָשׁוֹת... לְפִיכָךְ נִבְרָא אָדָם יְחִידִי, לְלֵמֶדְךְּ, שֶׁכָּל הַמְאַבֵּד נֶפֶשׁ אַחַת מִיִּשְׂרָאֵל, מַעֲלֶה עָלָיו הַכָּתוּב כְּאָלוּ קַיֵּם עוֹלָם מְלֵא. וִמְבְּנִי שְׁלוֹם הַבְּּרִיּוֹת, שֶׁלֹא יֹאמֵר אָדָם לַחֲבֵרוֹ אָבֶּד עוֹלָם מְלֵא. וִמְבְּנִי שְׁלוֹם הַבְּרִיּוֹת, שֶׁלֹא יֹאמֵר אָדָם לַחֲבֵרוֹ אָבָּד עוֹלָם מְלֵא. וִמְבְּנִי שְׁלוֹם הַבְּּרִיּוֹת, שֶׁלֹא יִאמָר אָדָם לַחֲבֵרוֹ אַבְּא נָדוֹל מֵאָבִיךְ. וְשֶׁלֹא יְהוּ מִינִין אוֹמְרִים, הַרְבָּה רָשֻׁיוֹת בַּשְּׁמִיִם. וּלְהַגִּיד גְּדֻלְתוֹ שֶׁל הָדְוֹשׁ בָּרוּךְ הוּא טָבַע כָּל אָדֶם בְּחוֹתָמוֹ שֶׁל אָדָם הָרִאשׁוֹן וְאֵין אֶחָד מַהֶּן דּוֹמֶה לַחֲברוֹ. לְפִיכָךְ אֶחָר חַיָּב לוֹמֵר, בִּשְׁבִריֹ נִבְרָא הָעוֹלְם. וְשֶׁמָּא תֹאמְרוּ מַה לָנוּ וְלַאָר הַלֹּא רָבָר הְשָׁלִים רְבָּבְּר הָשְׁלִים רְבָּב רְשְׁעִים רְנַה:

(5) How do we press the witnesses in a capital case? ... [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.", 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)"

3. Exodus 20:13

(יג) לָא תִּרְצָח: (ס)

(13) You shall not murder.

4. Rashbam on Exodus 20:13:1

(א) לא תרצח - כל רציחה - הריגה בחנם היא בכל מקום.

לא תרצח. Wherever the term רחיצה appears it refers to killing without adequate justification

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

(ל) כַּל־מַּכַּה־נַפַשׁ לְפִי עָדִים יִרְצַח אָת־הַרְצַחַ וְעָד אָחֶד לֹא־יַעָנַה בְנַפַשׁ לְמִוּת:

(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.

6. Deuteronomy 19:13

(יג) לֹא־תַחוֹס עֵינְךָּ עָלַיו וּבְעַרְתָּ דָם־הַנָּקִי מִיִּשְׂרָאֵל וְטִוֹב 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.

7. 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.

8. Sanhedrin 81b:2

מתני' מי שלקה ושנה ב"ד מכניסין אותו לכיפה ומאכילין אותו שעורין עד שכריסו מתבקעת: מתני' ההורג נפש שלא בעדים מכניסין אותו לכיפה ומאכילין אותו (ישעיהו ל, כ) לחם צר ומים לחץ:

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.

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).

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

(ט) וְאֵין עוֹשִׁין דָּבָר זֶה לְשְׁאָר מְחַיְּבֵי מִיתַת בֵּית דִּין אֲבָל אִם נִתְחַיֵּב מִיתָה מְמִיתִן אוֹתוֹ וְאָם אֵינוֹ חַיָּב מִיתָה פּוֹטְרִין אוֹתוֹ. שֶׁאַף עַל פִּי שֶׁיֵשׁ צְיֹנוֹת חֲמוּרִין מִשְׁפִיכוּת דָּמִים אֵין בָּהֶן הַשְּחָתַת יִשׁוּבוֹ שֶׁל עוֹלֶם כִּשְׁפִיכוּת דָּמִים. אֲפָלוּ עֲבוֹדָה זְרָה וְאֵין צְרִיךְּ לוֹמַר עֲרָיוֹת אוֹ חִלוּל שַׁבָּת אֵינָן כְּשְׁבִיינוּת הָּבְי שְׁבָּרוֹת שֶׁבֵּין אָדָם לַמְּקוֹם אֲבָל שְׁפִיכוּת דָּמִים מֵעֲבֵרוֹת שֶׁבֵּינוֹ לְבֵין חֲבֵרוֹ. וְכָל מִי שֶׁיָשׁ בְּיָדוֹ עָוֹן זֶה הְבִי הוֹא רְשָׁע נְּמוּר וְאֵין כָּל הַמִּצְוֹת שֶׁעָשָׁה כָּל יָמִיו שְׁקוּלִין כְּנֶגֶד עַוֹן זֶה וְלֹא יַצִּילוֹהוּ מֵן הַדִּין שֶׁנְשֻׁמָר (משלי כח יז) "אָדָם עָשֶׁק בְּדַם נְפֶשׁ" וְגוֹ'. צֵא וּלְמֵד מֵאַחְאָב עוֹבֵד עֲבוֹדָה זָרָה שֶׁהְרֵי נֶאֱמֵר בּוֹ (מלכים א כא כה) "רַק לֹא הָיָה שֶׁנְאֵשְׁר (מלכים א כא כא) "רַק לֹא הָיָה שְׁבָּר אַחַר שֶּשֶׁקּוּל כְּנְגְדוֹ אֶלֶא דְּמֵי נָבוֹת שֶׁנֶאֱמַר (מלכים א כב כא) "וַתַּצֵא הָרוֹחַ וַתַּעֲמֹד לִפְנֵי הֹ" זָה רוּחַ נְבִּית הְשָּׁבְּת וֹנָם תּוֹכָל". וְהָרִי הוֹא הָרָשֵׁע לֹא הָרָג בְּלֵּ חַבֶּב. קַל וְחֹמֵר לָהוֹרָג בְּיָדוֹ:

(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.

10. 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."

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

(כ) והַנְשָארִים יִשְמְעוּ וִירָאוּ וַלְאִ־יֹסְפוּ לְעֲשׁוֹת עוֹד כַּדְבַר הַרֵע הַזָה בְּקַרְבַּדְּ:

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

12. Sefer HaChinukh 34 re: Murder

ואולם הרשעים הגמורים כגון המינים והמלשינים אינן מישבי העולם, ועליהם אמר הכתוב (משלי יא י) באבד רשעים רנה. לפי שהם לא יושיבו העולם, אלא יחרבוהו 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.

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 Metzia 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.

13. Sanhedrin 71a:16

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

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 *balakha*. 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.

14. 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 מה מהם איסורם גדול ומה מהם למטה ממנו ... אבל מצות עשה לא התבאר שכר כל אחת מהן מה היא אצל השי"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.

15. 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 Ḥizkiyya 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.

16. Letter by Rabbi Aharon Solovechik to David Luchins:

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

17. 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.

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

19. Iggerot Moshe, Choshen Mishpat 2:68

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 .

With Regard to the Death Penalty.

...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.