

Unanimous Verdict



The issue of capital punishment excites much heated and vociferous discussion. One aspect of the debate concerns the fallibility of human judges and the element of uncertainty that accompanies their decisions. Can human judges be entrusted with the weighty responsibility of ruling on life and death matters? Another factor is whether capital punishment is right in itself. Does a society have the right to condemn its citizens to death? Does one injustice justify another?

What is the Torah's position on the death penalty? The Torah is adamant in its views on the sanctity of life. No one has the right to harm or destroy any aspect of life, even if it affects only the individual himself. The entire Torah may be suspended to preserve a life, indeed, a court that metes out the death penalty once in seventy years is labeled in Torah as a court of "executioners"! Yet, Torah allows for and advocates capital punishment in certain instances. So we have a self-contradictory situation, where the Torah permits the court to put someone to death, but when they do so legally, the Torah declares them 'executioners'! How does the Torah reconcile its view on the absolute value of human life with its condoning of capital punishment? How does the Torah ensure that the judges will not err and will be true?

In Jewish law, the court's primary responsibility is to find merit for the accused, and to seek to preserve his life. "The congregation will judge him and the congregation will preserve him"^[1]. The process of trying a capital case is overwhelmingly skewed towards the benefit of the defendant. No circumstantial evidence is accepted. The testimony of not one but two eyewitnesses is required, and both are carefully cross-examined for any discrepancies in their accounts. Furthermore, capital punishment is only meted out in a case where deliberate intent can be conclusively proved. Two witnesses must be produced who can testify to having warned the defendant in advance that his action was wrong, and of the consequences of that action. Another requirement of capital cases is the rule of "*halanat hadin*",^[2] that a guilty verdict must not be completed in one day, but must be deferred for another day in order to leave more opportunity to find credit.

In Maimonides' Laws of Sanhedrin^[3], the following law is cited: "If a Sanhedrin^[4] opens a capital case with a unanimous guilty verdict, he is exempt, until some merit is found to acquit him; then, those who convict will be in the majority, and then he will be put to death."

The source of Maimonides' ruling is in the Talmud Sanhedrin.^[5] The reason given for the exemption is that the court did not fulfill the condition of "*halanat hadin*", deferring judgment for the next day in order to find merit. Since they have all found him guilty, they will no longer find merit for him.

It is possible to interpret the meaning of the Talmudic passage in one of two ways. One is that the court's verdict is disqualified, due to the lack of "*halanat hadin*". Another way of viewing it is that by failing to find even one facet of

merit, the Sanhedrin has disqualified *itself* from judging the case.

From Maimonides' ruling it appears that he accepts neither interpretation. The condition of *halanat hadin* is not mentioned by Maimonides, indicating that this was not a primary factor in his ruling. Also, the ruling does not say "the court exempts him", but rather "*he* is exempt, until some merit will be found... then,... he will be put to death". In other words, the court's lack of finding merit places a *temporary* obstacle in the way of actually carrying out the verdict. The defendant is exempt, but the judgment is not vacated. We must therefore seek to understand Maimonides' position that the verdict is a valid one, but merit must be found in order to carry out the sentence.

According to Jewish thought, the purpose of punishment is for expiation of the sin. Indeed, it can even be said that 'punishment' is an inaccurate translation of the Hebrew 'onesh'. Punishment is not retribution, a Divine 'getting even.' It is a cleansing process, like a needle used to remove a splinter. Furthermore, reward and punishment in Torah is actually cause and effect. The Torah's prescription for various forms of behavior (be it positive or negative) is no more punishment than say, fire 'punishing' the hand that is placed into it.

This is stated explicitly regarding the punishment of lashes: "Once he has been flogged, he is as your brother."^[6] Carrying out a capital verdict expunges the sin and enables the condemned one to experience eternal life^[7]. Maimonides rules regarding all who incur death by the courts, or punishment by lashes, that "their death or lashes do not *atone for their sins* until they will do *teshuva* and confess their guilt."^[8] It is understood from Maimonides' wording that the intention of the sentence is to bring atonement to the soul of the judged, which is facilitated through *teshuva* and confession (confession being a form of repentance).

Since the death penalty is meant to serve as atonement, it can only be applied in a case where atonement can be achieved through death. Certain crimes, however, are considered so severe that no death penalty can be meted out for them. The crime is so horrific that the defendant, as it were, is not *worthy* of being put to death by the court and thereby attaining expiation for the crime. One example of this is if witnesses bring false testimony that results in the court putting to death an innocent person. If the defendant had not yet been executed, and the treachery is discovered, the false witnesses are punished in the same manner they had intended for the victim. But if the victim had already been put to death, the false witnesses are not punished.^[9]

The *Kesef Mishnah*^[10] explains the ruling thus:

"Their sin is too great to bear, and it is not fitting to give them the death penalty, as this would atone for them. It is more proper to leave them be, so that they will be judged after death with severe punishment."

Such might also apply in a situation where the case against the accused was so compelling, and his guilt so obvious, that not a single judge on the Sanhedrin could put forth any argument in his favor. He would be exempt from the death penalty not due to innocence on his part, but rather because his sin is too great to deserve expiation through this method.

However, Maimonides' ruling states that "he is exempt, until..." which indicates that the court's ruling stands, and he is only temporarily exempt, until some merit can be found for him. In other words, the court is not exempting him from punishment; rather, their judgment is valid, but merit must be found in order to carry out the sentence.

According to Maimonides, the explanation is that, in his essence, every Jew truly desires to fulfill G-d's will, to fulfill all mitzvot and distance himself from sin.^[11] However, with certain individuals this desire exists on a revealed level, and in others it may be completely concealed. Being, though, that all have a soul, the essential goodness must eventually be brought to the surface. Goodness is inherent to the nature of the soul; it is not superimposed onto the personality, but is an essential part of its identity. Therefore, every individual, even one convicted of a capital crime, must possess some merit, because his true will and essence is the goodness within him.

In a case where not a single member of Sanhedrin can find any favor for the accused, this indicates a situation where the goodness is so hidden that not even the Sanhedrin – who are trained to "infer one thing from another.^[12] and reveal hidden dimensions – can find it. Therefore, the verdict of the court cannot be carried out. This does not indicate a defect in the court's judgment; after all, a judge can only decide on what his eyes see.^[13] Nevertheless, the Torah states as fact that every Jew's essential desire is to do good. Therefore, the court cannot impose a verdict upon him until some merit is found for him.

As mentioned, the purpose of punishment in Jewish law is to allow the defendant to achieve *kapparah* – expiation of the sin. The punishment brings atonement through revealing the defendant's inner good. If the judges all see only guilt, they have not succeeded in fulfilling their purpose to 'preserve' the person by penetrating the soul's essence, and their punishment will not have the desired effect. Only once a merit is found, and the essential

goodness revealed, can the punishment be carried out, and the defendant then merits eternal life in the World to Come.

The above ruling teaches us a profound lesson regarding the sensitivity required in our attitudes to our peers. The job of the Sanhedrin is to “preserve” the defendant by finding merit for him. This applies even in a case where the crime was so horrific and the guilt so obvious that every member of the Sanhedrin came to an immediate guilty verdict. How much more so, then, does this apply to people in our spiritually starved generation, who may be in a state of slumber with regard to their G-dly nature, yet their heart – their inner being – is awake to G-d and His Torah.^[14] Our role, when dealing with others, is not to be vindictive, punitive or judgmental, but rather to assist each person in getting in touch with his or her spiritual essence.

This applies particularly in this month of Elul, known as the month of mercy, when G-d is “in the field”, and is open to receive anyone who so wishes, with a friendly and shining countenance.^[15] Now is a time when the goodness of every soul shines forth, and the inner desire of each person to “greet the king” is expressed. When we find merit in another person, we help unveil his spark of G-dliness, and bring out in him his essential desire to “be with the King”.

Through finding positive merit, every person can be aroused to complete *teshuva*, which will naturally lead to complete expiation and atonement for sins. There will be no need for further punishment or sentencing, and each person, as a healthy soul in a healthy body, will enjoy a good and sweet year, both in physical and material matters.

From an address of the Rebbe, Shabbat Parshat Ki Tissa, 5745^[16]

Adapted from the teachings of the Lubavitcher Rebbe by Chaya Shuchat.

^[1] Massei 35:24-25

^[2] Sanhedrin 32:1

^[3] Chapter 9

^[4] the Supreme Court of the Jewish people

^[5] Sanhedrin 17a

^[6] Ki Tetze 25:3

^[7] Sanhedrin 43b

^[8] Hilchot Teshuva

^[9] Maimonides; Hilchot Edut

^[10] Commentary on Hilchot Edut, 20:2

^[11] Hilchot Girushin. Maimonides cites this law in reference to divorce. One condition in Torah for divorce to be valid is that the husband must grant it willingly to his wife. If he refuses to grant a divorce, Maimonides rules that the court must compel him “until he says ‘I want’”. This appears self-contradictory, which is why Maimonides explains that the true and inner desire of every Jew is to live in compliance with the Torah.

^[12] Rashi Devarim 1:13

^[13] Sanhedrin 6a

^[14] Shir Hashirim 5:2

^[15] Likuttei Torah Re’eh 32a

^[16] Likuttei Sichot XXIX, pp. 113-121