

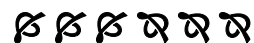


## Hierarchy of an Ideal Jewish Society: The Judiciary (Part 2)

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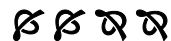
### LESSON OUTLINE

1. The *Sanhedrin* (Supreme Court): Preserving Unity in Torah society
    - A. Presenting a Case Before the *Sanhedrin*
    - B. Accepting the *Sanhedrin*'s Ruling
      - a. Divine Providence
      - b. Judicial Fallibility
    - C. The Rebellious Elder
- Addendum: The Judicial Structure*



### Introduction

Which cases are presented before the *Sanhedrin* (Supreme Court)? To what extent must we submit to the *Sanhedrin*'s rulings? Must we follow the *Sanhedrin* if we know that it has erred in its ruling? What is the Torah's structure for establishing a court system?



### Preserving Unity in a Torah Society

The Torah's instructions for how uncertainties in Jewish law are to be resolved, stresses the importance of having a central authority.

Torah Text (**Deuteronomy 17:8-13**):

<sup>8</sup> *If you are unable to reach a decision in a case involving capital punishment, litigation, leprous marks, [or any other case] where there is a dispute in your local courts, then you must set out and go up to the place that G-d your L-rd shall choose.*

<sup>9</sup> *You must approach the Levites [and] Priests, [and other members of] the Supreme Court that exists in your time. When you make inquiry, they will hand over to you a legal decision.*

<sup>10</sup> *Since this decision comes from the place that G-d shall choose, you must do as they tell you; you must carefully follow their every decision.*

<sup>11</sup> *[Besides this, in general,] you must keep the Torah as they interpret it for you, and follow the laws that they legislate for you. Do not stray, either to the right or to the left, from the word that they declare to you.*

<sup>12</sup> *If there is any man [who is qualified to be a member of the Sanhedrin (Supreme Court)] who rebels and refuses to listen to the priest or other judge who is in charge of serving G-d your L-rd there [as leader of the Supreme Court], then that man must be put to death, thereby ridding yourselves of evil in Israel.*

<sup>13</sup> *When all the people hear about it, they will fear and will not rebel again.*

This description raises a number of questions:

1. Which cases are presented to the *Sanhedrin* (v. 8-9)?
2. Why does the Torah stress the fact that the *Sanhedrin* meets on the Temple grounds (v. 8,10)?
3. When the Torah enjoins us to obey the *Sanhedrin*'s rulings, it uses the words, "*Do not stray either to the right or to the left.*" What does this phrase add to the Torah's expression of G-d's expectations (v. 11)?

4. Why does the Torah impose such a harsh punishment upon a judge who defies the *Sanhedrin*'s ruling (v. 12)?

### **Presenting the Case** (v. 8 – 9)

Maimonides (1135 – 1204, North Africa – Egypt) describes how uncertainties in Torah law were resolved throughout much of Jewish history.

Maimonides (**Book of Judges, Section 3, 1:4**):

During the time when a fully-empowered *Sanhedrin* convened on the Temple Mount, there were no unresolved disputes in Jewish law. Questions relating to Torah law were first submitted to local courts for a ruling. If a local court was unable to resolve a question, then both the court – or its representatives – and the one who made the query traveled to Jerusalem to seek an answer from the Temple courts. If these courts too were unable to resolve the issue, then they joined the others to approach the *Sanhedrin* for a final ruling on the matter. If the *Sanhedrin* could provide the answer, whether based on a direct oral tradition received from Sinai, or through applying one of the hermeneutic principles (principles of deriving conclusions from Torah texts<sup>1</sup>), they would resolve the case immediately. If no tradition existed on the matter, the members of the *Sanhedrin* would discuss the issue until they reached a verdict – either unanimous or by majority rule.

When the *Sanhedrin* ceased to rule with its full range of powers (approximately 30 CE, some forty years before the destruction of the Second Temple), unresolved disputes multiplied among the Sages.

Maimonides describes a hierarchy of judicial inquiry, progressing from the local courts to the *Sanhedrin*. The *Sanhedrin* is the final voice of authority in matters concerning the Oral Law, whether in knowledge of the straightforward, clearly transmitted Sinai traditions, or whether in application of existing Torah law to new cases.

Nachmanides (1195-1270, Spain – Israel) explains the need for a single, central judicial Torah authority.

Nachmanides (**to Deuteronomy 17:11**):

Establishing a central and final judicial authority is basic to the preservation of Torah law. Since the text of the Written Torah is so concise, questions regarding the correct interpretation of the Torah text are certain to arise, either in new cases that have no precedent, or in applications of laws, which had been forgotten over the years. If there were no dependable method for clarifying Torah law, innumerable unresolved disputes would ensue.

To establish a unified approach to the application of Torah law, the Torah requires us to follow the *Sanhedrin*'s interpretations of the Torah texts upon which those laws are based. Whether the *Sanhedrin*'s interpretation is based on an oral tradition that dates back to the Revelation at Sinai, or whether it is based on their understanding of the implications of the Torah text as derived through the hermeneutic principles, we are to accept it as definitive.

### **Accepting the Sanhedrin's Ruling** (v. 10 – 11)

Only when it is situated in the Temple grounds can the *Sanhedrin* function with full authority. The Torah's exhortations regarding the *Sanhedrin*'s rulings highlight the important role of location in determining the *Sanhedrin*'s authority (*from the place that G-d shall choose...*), and the absolute obedience that is expected of those affected by the ruling (*Do not stray, either to **the right** or to **the left**, from the word that they declare to you...*).

<sup>1</sup> At Sinai, a written presentation of the general principles of G-d's Law (Torah text) was handed down, while its details were transmitted orally (Oral law). At the same time, G-d taught Moses certain rules (the "hermeneutic principles") through which applications of the Torah's laws could be derived from the Torah text. These rules have a two-fold purpose:

1. To safeguard the Oral law – these rules can be used to examine, correct and restore any tradition that might have become vague or incomplete with the passage of time.
2. To serve as mnemonic techniques and logical procedures showing where the oral law is alluded to in the Torah text.

The Oral Law interprets the phrase “*the right or to the left*” in two ways:

***Divine Providence in the Judiciary (Interpretation #1, Midrash Sifrei):***

*Do not stray either to the right or to the left* – You are to heed their ruling, even if it *appears obvious to you* (i.e., to the one who came with the query) that the court has erred, ruling that *right is left*, and that *left is right*; follow *their* interpretation – not your own opinion – of *right* and *left*.

Nachmanides and Rabbi Abarbanel

Before directing us to heed the court’s verdict (v.11), the Torah *first* highlights the place where the court convenes, in the Temple grounds (*Since this decision comes from the place that G-d shall choose... [v.10]*). Consider that the primary purpose of the judiciary is to bring G-d’s Presence among the Jewish people; its location on the Temple grounds confirms that Divine assistance is an integral part of the judicial process. Therefore, do not be quick to conclude that the Supreme Court has erred in its decision. As King David states, *G-d loves [the performance of] justice. He will not leave his pious ones; He will protect them forever* (Psalms 37:28).

***Judicial Fallibility (Interpretation #2, Midrash Shir Hashirim):***

*Do not stray either to the right or to the left* – [You are to heed their ruling] even if the court has *actually* erred (as it later came to light), by ruling that *right is left* and that *left is right*; follow *their* interpretation – not your own opinion – of *right* and *left*.

Nachmanides and Rabbi Nissim

The Torah commands us to follow the *Sanhedrin*’s verdict even when we are certain that the court has erred. We are not to say, “How can I eat something that the *Sanhedrin* has permitted, when I know that it is nonkosher and therefore forbidden?” or, “How can I implement a death sentence that the *Sanhedrin* has imposed, when I know that the accused is innocent?”

Rather, our attitude must be, “G-d empowered the *Sanhedrin* as the authoritative body to interpret and legislate Jewish law – even in the unlikely instance that they err.

Nachmanides and Rabbi Nissim cite an example recorded in the Talmud, when such obedience to the *Sanhedrin*’s ruling was required of the head of the *Sanhedrin* himself.

*Introduction:* When the *Sanhedrin* is functioning in the land of Israel, the calculation of the Jewish (lunar) calendar is based on eyewitness testimony: two witnesses must testify before the *Sanhedrin* that they saw the crescent of the new moon at the beginning of the lunar month.

In approximately 84 CE, Rabbi Gamliel disputed Rabbi Joshua’s calculation of the beginning of the lunar month of Tishrei. The majority of the *Sanhedrin* sided with Rabbi Gamliel. The dispute resulted in a one-day difference between Rabbi Gamliel’s and Rabbi Joshua’s calculations as to when the new month would begin.

In order to demonstrate the vital necessity to adhere to the *Sanhedrin*’s verdict, Rabbi Gamliel ordered Rabbi Joshua to violate the day that, according to Rabbi Joshua’s own calculation, would have been the holiday of Yom Kippur. Rabbi Joshua was depressed over Rabbi Gamliel’s order that he violate blatantly the day he considered to be Yom Kippur.

Rabbi Akiva sought to comfort Rabbi Joshua: “Understand that it is G-d’s Will that Rabbi Gamliel’s and the court’s verdict be final in determining when the new month begins – even if they are mistaken.”

Rabbi Dosah, son of Hyrkanos, also comforted Rabbi Joshua: “If we were to question the authority of Rabbi Gamliel’s *Sanhedrin* to issue rulings, then we might call into question the authority of any *Sanhedrin*, that convened in every generation since the time of Moses. This cannot be; thus G-d wills that we accept the verdicts of the *Sanhedrin* of our generation.”

Accepting Rabbi Akiva’s and Rabbi Dosah’s compelling statements, Rabbi Joshua set out on the day that he had calculated was Yom Kippur, to travel to Rabbi Gamliel in the city of Yavneh. When Rabbi Joshua arrived in the courthouse, Rabbi Gamliel stood up in respect for him and kissed him on the head, saying:

“Come in peace my teacher and my student – my teacher in wisdom and my student in heeding my ruling.”

(Talmud, Tractate *Rosh Hashanah*)

While it is true that, being human, the members of the *Sanhedrin* can make a mistake, nevertheless we are obligated to follow their rulings. Rabbi Nissim raises a question about following a ruling that might be mistaken:

Rabbi Nissim (**Discourse 11**):

The Torah’s requirement that we follow the rulings of the *Sanhedrin*, regardless of what our own opinion may be, requires clarification. The Torah’s mitzvot leave a powerful impression on our souls. Observing the “positive mitzvot” brings us ever closer to a state of spiritual perfection, while observing the “negative mitzvot” protects our souls from damage (as, for example, the verse states, ...*Do not defile yourselves with them [i.e., by consuming nonkosher animals], because it will make you spiritually insensitive* [Leviticus 11:43]).

This can be compared to adhering to natural laws, which will benefit our physical wellbeing. When we act counter to the laws of nature, we can do ourselves great harm. The law of gravity is one example of this: The downward force that gravity exerts upon objects can benefit us greatly when we use that force properly and observe its limitations. If we do not use the force of gravity wisely, however, it can prove harmful: someone who does not watch where he is going can fall off a high surface and suffer great harm because of the force of gravity. In the same way, someone who does not function within the parameters of the Torah’s laws can harm himself spiritually, in subtle ways that can do great harm to his soul.

That being the case, why should we adhere to an incorrect ruling of the *Sanhedrin*? This seems comparable to ingesting an herb to which doctors mistakenly attributed medicinal powers. Of course, the doctors’ opinion alone would not suffice to confer medicinal properties on the herb! An herb can have a beneficial effect only if medicinal properties are part of its natural makeup.

Any action that the Torah prohibits is intrinsically harmful to our spiritual welfare. The fact that the *Sanhedrin* mistakenly permits it does not eliminate its harmful effect. Just as a doctor cannot make an herb heal if it cannot do so on its own, so the *Sanhedrin* cannot make a given action beneficial to our souls if that action is prohibited.

Rabbi Nissim answers:

Overall, natural laws benefit the world. Even though occasionally, natural laws can result in some measure of harm, G-d rarely interferes with the world’s pre-ordained natural course. The greater benefit that accrues from the regular functioning of nature’s laws far outweighs the relatively minor harm that occasionally occurs.

Both the sun’s rays and the human digestive system, to offer but two examples, provide the overall benefit of supporting life on earth. At times, however, each of these natural occurrences can have damaging effects – the sun’s rays can dry out vegetation, and the digestive system can digest poison that has been ingested; both can destroy life. Nevertheless, the benefits to life that both the sun and the digestive system provide far outweigh the occasional damage that they can cause.

We can compare the life-giving benefits and potential harm of natural phenomenon to those of the Torah’s laws: G-d established a central authority for determining Torah law, which would provide an overall benefit to the Jewish people: a Jewry unified through Torah-based guidance. Uncertainties in Jewish law will always arise. If such uncertainties were left to individuals or groups to interpret, they would result in innumerable “Torahs” – a “factional” Judaism, which would irreparably harm the Jewish nation. The risk that the *Sanhedrin*’s sages – which comprise the greatest Torah scholars of their generation – would rule incorrectly is a real, albeit a rare occurrence; yet this risk is outweighed by the far greater danger of a splintered Judaism.

## ***The Rebellious Elder* (v. 12 – 13)**

The Torah takes an extremely harsh stand against a sage who refuses to accept the *Sanhedrin*'s ruling. Maimonides and Nachmanides examine the Torah's approach:

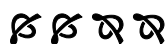
Maimonides (**Book of Judges, Section 3, 3:4-5**):

The “*man*” to whom the Torah refers is one who has mastered Torah law and who occupies a high judicial position – one who is worthy of being a member of the *Sanhedrin*. To incur the death penalty, his rebellion against the *Sanhedrin*'s ruling must occur after the *Sanhedrin* has issued its verdict, in the form of a conflicting ruling that the “*man*” has issued publicly. (Source: Talmud, Tractate *Sanhedrin*)

Maimonides explains that the Torah speaks of a person who has the wisdom and prestige to sway people from following the *Sanhedrin*'s rulings. Nachmanides considers this to be the main factor that warrants capital punishment in this case.

Nachmanides (**on Deuteronomy 21:18**):

The Torah's concluding statement (*When all the people hear about it, they will fear and will not rebel again* [17:13]) is the key to understanding the Torah's harsh punishment of the rebellious judge. Although it is a grave sin to issue a public ruling that contradicts the ruling of the *Sanhedrin*, this alone does not warrant capital punishment. The severity of this man's punishment is due to the *results* of his action: it can create a schism among the Jewish people, shattering their unity and the unity of Torah law.



## **Addendum: The Judicial Structure**

In his encyclopedic codification of Jewish law, Maimonides (1135-1204, North Africa – Egypt) outlines the structure of the judicial system:

Maimonides (**Laws of *Sanhedrin* [Supreme Court], Ch. 1,2**):

### **The Mitzvah: Judges & Police**

*Appoint yourselves judges and a police force in all your settlements that G-d your L-rd gives you, and see that they administer honest judgments for the people* (Deuteronomy 16:18).

The Torah mitzvah is to institute both a judiciary system and an agency to enforce its rules, in every city and district. Judges must be available to hear cases that are presented before them. Armed police enforce the court's rulings; their duties include inspecting weights and measures in the market places, adjusting the prices of merchandise [to conform to the Torah's standards of fair pricing], and bringing to court to face judgment those who violate Torah law or court decrees.

## **Judicial Hierarchy**

### ***Sanhedrin* (Supreme Court)**

*G-d said to Moses, “Assemble seventy of Israel's elders – those whom you know to be the people's elders and leaders. Bring them to the Tabernacle and let them stand there with you* (Numbers 11:16).

A *Sanhedrin* (Supreme Court) of seventy-one elders is formed, to meet on the inner-Temple grounds. One sage is the appointed head of the court (the very position Moses held as head of the seventy elders of the first *Sanhedrin*) and bears the title of *Nassi* (Prince). Another sage is appointed *Av Bet Din* (Chief Justice) and sits to the *Nassi*'s right. The other sixty-nine elders are assigned seats, each according to his level of wisdom.

**Jurisdiction:** The *Sanhedrin* is authorized to judge all cases on which lower courts can rule (see below). It also has sole authority to judge the monarch for any offense he may have committed, the High Priest (*Kohen Gadol*), if he committed a capital crime; and false prophets; it declares a non-defensive war; and it judges disputes and uncertainties in interpretation of Torah law which lower courts were unable to resolve.

### Temple Courts

Two courts of twenty-three members each sit in the outer-Temple grounds.

**Authority:** These courts are authorized to judge all cases on which city courts can rule (see below). Uncertainties or disputes that remained unresolved in the lower courts are first brought to these courts for a ruling. If these courts are unable to issue a final ruling, the case is referred to the *Sanhedrin* (Supreme Court).

### City Courts

Any city with a minimum population of 120 adult males must appoint a twenty-three man local court, to judge monetary issues (including fines and penalties) and corporeal and capital crimes. The minimum population of 120 corresponds to the number of adult males necessary to staff the court and its supporting services, as well as the occupations necessary in a Jewish community (i.e., a charity committee, physician, scribe, and teacher).

**Authority:** City courts are authorized to judge in all cases on which village courts can rule (see below), as well as in capital cases

### Village Courts

Villages with less than 120 adult male inhabitants must appoint a three-man court.

**Authority:** Village courts are authorized to rule in monetary cases (including fines and penalties), and in cases involving corporeal punishment.

## Qualifications

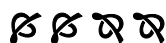
*Designate for yourselves men who are wise<sup>1</sup>, understanding<sup>2</sup>, and known to your tribes<sup>3</sup>, and I will appoint them as leaders (i.e., judges) (Deuteronomy 1:13).*

*You must seek out from among all the people strong-hearted<sup>4</sup>, G-d-fearing men<sup>5</sup> – men of truth<sup>6</sup>, who hate gain<sup>7</sup>... (Exodus 18:21).*

Torah Text	Oral Law Interpretation
<sup>1</sup> Wise	Having mastered existing Torah law
<sup>2</sup> Understanding	Able to apply Torah law to new circumstances that arise
<sup>3</sup> Known to your tribes	Respected by those who know them
<sup>4</sup> Strong-hearted	Those who excel in moral self-control and are unintimidated by people in positions of power
<sup>5</sup> G-d-fearing	Those who are aware of G-d's presence in their lives
<sup>6</sup> Men of truth	Those who pursue truth for its own sake and who will not tolerate falsehood and dishonesty
<sup>7</sup> Who hate gain	Those who are not preoccupied with wealth or with amassing wealth for themselves

## Appointments (Laws of Sanhedrin, 2:8):

The *Sanhedrin* (Supreme Court) oversees the appointment of all judges who serve the judicial system. It dispatches officers to examine potential candidates for judiciary positions. Individuals who qualify are appointed first as local judges; then, as positions open in the Temple courts and in the *Sanhedrin*, [qualified] judges are promoted to these higher courts.



## Questions

Address your correspondence to: [foundations@jewishstudies.org](mailto:foundations@jewishstudies.org)

1. How does the *Sanhedrin* (Supreme Court) contribute to the unity of the Jewish people?
2. Your Questions & comments: \_\_\_\_\_