



Building the Beloved Community Public Safety Project A Jewish Curriculum

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Overview

Thank you for your involvement in this initiative, designed to provide members of Minnesota's faith communities an opportunity to help formulate policies and legislative proposals to make public safety procedures more equitable and conducive to the wellbeing of individuals and communities throughout our state.

Stages of the Project

The following steps form the basis of this project:

Step 1: Commissioner of Public Safety John Harrington meets with participating clergy and presents a hypothetical moral dilemma that deals with a serious challenge likely to be faced by public safety officers. The dilemma is composed in such a way as to encourage reflection and discussion in the clergy members' congregations about very real and troubling quandaries that can arise in the course of maintaining public safety.

Step 2: Clergy present Commissioner Harrington's dilemma to their congregations. This can be done as part of a sermon, an education session, or in other ways suitable to the congregation. Presentation of the dilemma is followed by an initial discussion in which congregants reflect on the dilemma in light of their own experience and best judgment.

Step 3: The dilemma presented in Step 2 is reexamined and discussed in light of sources drawn from the congregation's religious tradition. This second discussion should take place after an intentional, intervening break from the initial discussion (Step 2 above), so that participants are given time to further reflect on the complexity of the dilemma before grappling with authoritative texts.

The traditional sources included in Section II of this Guide are provided for use during the second discussion (Step 3 above). These curricula have been composed for multiple faith traditions and are intended to enrich and extend discussion of the dilemma in light of the tenets and norms of the congregation's religious community. Which sources to use – whether chosen from those provided in the Guide or found elsewhere – is at the discretion of discussion leaders.

In planning for the dilemma discussions, the following points should be kept in mind:

- A. Discussions should include opportunities for participants to reconsider their initial approach to the dilemma. One way discussion leaders can encourage participants to do this is by helping them to view the dilemma from the viewpoint of each of the persons mentioned in the story, along with other implicit or otherwise pertinent perspectives. Asking participants to take up this challenge for one another, rather than relying on the leader to identify and describe perspectives, can prompt more active participation in the discussion, promote careful listening, and evoke relevant personal experiences to be pondered and shared with the group. In the process, the odds that participants will feel comfortable moving from a foregone conclusion to more careful reflection is likely to increase.
- B. Dilemmas present circumstances in which simply affirming a particular value or ideal may come up short if, having affirmed that value, further discussion suggests that it collides with another principle one would also choose to affirm, e.g., individual rights vs. social responsibility, abiding by the law vs. reaching out to someone who is suffering, responsibilities to those with whom one has a special relationship vs. duties toward all people, etc. Discussion leaders can help participants to see these potential conflicts, and to grapple with them. What-if variations of the dilemma can be helpful in this regard, e.g., what if you were related to person A in this story? What if you were related to person B?
- C. Three points should be kept in mind regarding the inclusion of sources from a congregation's sacred tradition in a discussion:
 1. Each of our congregations is heir to a long and rich tradition devoted to articulating the mission of the religious body of which the congregation is a part. Our project is situated in congregations in the hope that our reflections, discussions, and conclusions might help to extend this ongoing process, within us, and among us.
 2. Study of traditional sources can expand the range of perspectives represented in the group. In this respect, the intercultural dimension of this project begins, to some degree, *within* each tradition, in as much as traditional texts, when originating in circumstances different from those shared by the discussants, not only informs but expands the circle of voices heard in the discussion.
 3. Whichever sources a discussion leader may choose to introduce, their intended role isn't to end discussion, but to deepen it.

Step 4: After reexamination of the dilemma in light of the congregation's sacred tradition, congregants assist in composing a report to Commissioner Harrington on issues raised by and reflections on the dilemma. It is recommended that each congregation appoint a Learning Coordinator to ensure this step is completed; a short job description for this role can be found at <https://interfaithaction.org/wp-content/uploads/2021/12/IFA-Learning-Coordinator-Job-Desc-final.pdf>. A written summary is submitted to project evaluators Charmagne and Michael Patton.

Step 5: Steps 2-4 are repeated for each dilemma presented by the Commissioner. Reports are prepared following each cycle.

Step 6: Project evaluators Charmagne and Michael Patton integrate pertinent observations and recommendations in the reports from the congregations into a single, publicly available report for the Minnesota Department of Public Safety.

Goals of the Project

From principles to concrete applications

- *To move beyond abstract principles to actionable input that might prove of value to the DPS;*

An inclusive conversation

- *To involve hundreds, perhaps thousands of people in these exchanges statewide, with the potential for intercommunal conversations and ongoing dialogue with the DPS;*

Reasoning together

- *To provide a platform for diverse faith communities to engage in thoughtful reflection on how best to approach current issues in public safety in light of their own experience, their best judgment, and their particular faith tradition;*

Listening to our faith traditions as we listen to one another

- *To bring the faith communities' distinctive values and text-based input to the civic table shared by all Minnesotans;*

Faith communities and the common good

- *To further integrate the faith communities into the civic infrastructure of our state;*

Faith communities helping to build community

- *To build a habit of mind in the faith communities of bringing the full strength of their hearts and minds to bear on the most pressing issues in our civic life.*

Jewish Primary Sources

I. Tanakh

- A. Deut. 16:18-20
- B. Deut. 24:16
- C. Deut. 19:15
- D. Deut. 25:1-3

II. Early Rabbinic Sources

A. Mishnah

- 1. Sanhedrin 4:1
- 2. Sanhedrin 4:5
- 3. Avot 3:2

B. Midrash

- 1. Mekhilta on Ex. 22:1-2
- 2. Midrash Tanhuma on Deut. 16:1

C. Talmud (Bavli)

- 1. Sanhedrin 74a
- 2. Sanhedrin 82a
- 3. Pesachim 37a

III. Early non-rabbinic references

- A. Josephus on property crimes and restitution (Antiquities, 16:1)
- B. The Book of Acts 21:27-40

IV. Post-Talmudic Commentaries, Codes and Responsa

A. RaSHI

- 1. on Deut. 16 :1
- 2. on B. Sotah 38b

B. Maimonides, Mishneh Torah

- 1. Hilchot Sanhedrin 1:1
- 2. Hilkhhot Rotseah u-Sh'mirat Nefesh, 1:5-16
- 3. Hilkhhot G'nevah 9 :7-12

C. R. Shlomo ben Avraham ibn Adret (RaSHbA), Responsum

D. R. Yits'hak ben Sheshet, Responsum 236

E. Shulkhan Arukh, Orach Hayim 529:4

V. Jewish law and liberal principles

- A. From the חוק יסוד of the State of Israel
- B. Comments by Shulamit Aloni on Israel's Basic Law
- C. From a dictum of Israel Supreme Court Justice Menahem Alon

Suggested Secondary Sources

1. *Handbook for Jewish Communities Fighting Mass Incarceration* (T'ruah)
2. *Life in the Balance: Life and Death Decisions in the Light of Jewish Tradition* (Cytron, Schwartz)
3. מדינת ישראל כמדינה יהודית ודמוקרטית (רון מרגולין, עורך).
4. Jewish Encyclopedia, "Police Laws"

Introduction

Jewish life has long centered on a legal tradition constructed, for the most part, of duties incumbent upon individuals and the communities they form. In his book *Talmudic Law and the Modern State*, Moshe Silberg (Israel Supreme Court justice, 1950-1970) concluded that given these characteristics, “Jewish law generally, in its criminal as well as its civil aspects, is a system of law which turns primarily to the citizen and not to the judge. The Hoshen Mishpat¹ and Even HaEzer² are, in a certain sense, really Orah Hayim³, “a way of life”...It is not the “right” of the claimant the law has vindicated when it established the principle of obligation, but the duty of the person who is under obligation...”⁴

Absent political autonomy, and everywhere a minority among dominant populations, Jewish self-definition for the past two millenia has rested on this heritage of legal obligations, articulated by courts whose authority depended largely on the concurrence and commitment of community members. This structure, rooted in biblical sources, would come to be defined in rabbinic terms.

Biblical and rabbinic forms of Hebrew are rich in expressions for institutions and people responsible for the articulation and application of this law (שפטן, דיני, זקני, פסק, רב, חכם). By comparison, there are relatively few terms for those designated to effect compliance, or otherwise facilitate civil order, over and above the ad hoc efforts of community members. The most common of these terms comes from the root שטרן.⁵ In biblical Hebrew שטרן indicates a priestly or military functionary, while early rabbinic sources tend to use the term to indicate an agent of a court. Medieval sources, building on this usage, employed the term to describe persons authorized by courts to use force to compel compliance with rulings and public standards. This definition has led in turn to the use of שטרן in contemporary Hebrew for “police officer,” coinciding with the adoption of the prevalent modern understanding of policing as more akin to firefighting than to combat.

And so the question: Given this historical background, how might classical Jewish sources inform current discussions regarding public order, safety, and law enforcement? The following texts are intended as resources for discussion leaders as they explore this question with members of their congregations. The categories of sources are roughly in chronological order, but within each category texts are organized by literary type. So, for example, “early rabbinic sources” precede “post-talmudic sources,” with the early rabbinic category divided into mishnaic, midrashic, and talmudic texts.

I. Sources from Tanakh

Overview of Sources from Tanakh

Tanakh texts having to do with crime and legal procedures are strikingly distinct from many other ancient legal documents in crucial respects.⁶ Among these differences:

1. Rejection of transferable culpability from a person who committed a crime to other members of the person's family.
2. The duty to protect rather than betray slaves who have fled their master.
3. disassociation of punishment from the social class of a perpetrator, or victim.
4. Limiting of punishment for property crimes to compensation plus monetary/material penalty.
5. Public sanctuary for individuals convicted of accidental homicide, when threatened with blood vengeance.
6. no references to incarceration as punishment for a crime.

Another distinctive characteristic of Torah law is its independence from an explicit political authority structure.⁷ While the balance of the Tanakh offers little evidence that these premises, standards and procedures played a significant role in civil governance under the biblical monarchies, in the past two millenia they have proven crucial in shaping viable institutions in diaspora communities. The biblical model of covenantal law, with its emphasis on individual responsibility, leading to the building of community on a foundation of shared responsibilities, would help diaspora communities to meet the challenge of maintaining civil order. The following texts reflect these distinctive characteristics.

Sources

1. Deut. 16:18

שִׁפְטִים וְשֹׁטְרִים תִּמְנֹן לְךָ בְּכָל־שְׁעָרֵיךָ אֲשֶׁר ה' אֱלֹהֶיךָ נָתַן לְךָ לְשֹׁבְטֶיךָ וְשִׁפְטוּ אֶת־הָעָם מִשְׁפָּט־צֶדֶק: לֹא־תִטֶּה מִשְׁפָּט לֹא תִפְיֹר פָּנִים וְלֹא־תִקַּח שֹׁחַד כִּי הַשֹּׁחַד יַעֲוֹל עֵינֵי חֲכָמִים וְיִסְלַף דְּבָרֵי צְדִיקִים: צֶדֶק צֶדֶק תִּרְדֹּף לִמְעַן תִּחְיֶה וְיִרְשַׁת אֶת־הָאָרֶץ אֲשֶׁר־יְהוָה אֱלֹהֶיךָ נָתַן לְךָ:

Appoint judges and officers in all the settlements that ה' your God is giving you, for your tribes. And they will justly judge the people. Don't warp the judgment, don't favor one party over another, and don't take a bribe, because a bribe blinds even the wise, and corrupts the words of the wise. Pursue justice! Justice! Thus you will live on and inherit the land that ה' your God is giving you.

2. Deut. 24:16

לֹא־יָמוּתוּ אָבוֹת עַל־בְּנֵים וּבָנִים לֹא־יָמוּתוּ עַל־אָבוֹת אִישׁ בְּחַטָּאוֹ יוֹמָתוּ:

Parents must not die in place of children, nor children die in place of parents: one dies for one's own crime.

3. Deut. 19:15

לֹא־יָקוּם עַד אֶחָד בְּאִישׁ לְקַל־עוֹן וּלְקַל־חַטָּאת בְּכָל־חַטָּא אֲשֶׁר יִחַטָּא עַל־פִּי שְׁנֵי עֵדִים אוֹ עַל־פִּי שְׁלֹשָׁה־עֵדִים יָקוּם דְּבָר: One cannot bring about a conviction for a crime or offense, whatever the offense of the person may be, if there is a single witness. The testimony of two witnesses or three witnesses can bring a conviction.

4. Deut. 25:1

כִּי־הָיָה רִיב בֵּין אַנְשִׁים וְנָגְשׂוּ אֶל־הַמִּשְׁפָּט וְשִׁפְטוּם וְהִצְדִּיקוּ אֶת־הַצְדִּיק וְהַרְשִׁיעוּ אֶת־הַרָשָׁע: וְהָיָה אִם־כֶּן הָיוּ הַכּוֹת הַרָשָׁע וְהַפִּילוּ הַשֹּׁפֵט וְהִקְהוּ לְפָנָיו כְּגִי רִשְׁעוֹתָיו בְּמִסְפָּר: אַרְבָּעִים יִכּוּ לֹא יִסְרֹף פְּרִי־יָסִיף לְהַכְתּוֹ עַל־אֵלֶּה מִכָּה רַבָּה וְנִקְלָה אֲחִידָה לְעֵינָיִךְ:

When there is a dispute between people and they seek a judgment, and a judgment is given, declaring that person who is right in the right, and the guilty party guilty – if the guilty party is to be flogged, the judge makes the person lie down, and the person is struck in [the judge’s] presence as many times as the person’s guilt warrants. The person may be struck forty times, but no more, lest by continuing the lashes many times, your kin is humiliated while you watch.

II. Early Rabbinic Sources

Overview of Early Rabbinic Sources

The Tanakh significantly shaped the development of post-biblical Jewish systems of criminal law, but substantive differences can nonetheless be observed between biblical and rabbinic legal texts. One such difference is the disappearance of blood avenging in rabbinic sources. In its place rabbinic sources insist on juridical authority in all criminal matters. In emergencies, violent self-defense was sanctioned, though the sources presume that it was within the purview of criminal courts to review such cases. Two other distinctive features of rabbinic criminal law should also be noted:

1. The biblical rule that criminal convictions require the testimony of two eye witnesses, in combination with the rabbinic positing of the duty to care for oneself, formed the basis of the rabbinic principle that not only was a person accused of a crime innocent until proven guilty, self-incrimination was *not allowed* or accepted. As noted in a source included in “Post Talmudic Sources” below, this principle also precluded inviting physical punishment of any sort for a violation one had not committed.

2. Unlike the felonization of certain property-related offenses in the United States, rabbinic sources, once again building on biblical precedent, draw a clear distinction between “property” and “life” law. If an offence posed an immediate, violent threat to a person, violence could be used to prevent it. However, if it could be reasonably assumed that an act would only result in lost or damaged property, the offender could not be placed in mortal danger to prevent the offense, and legal remedies were likewise limited to restoration plus monetary penalties.

Following biblical precedent, rabbinic sources do not prescribe incarceration as a form of punishment. Sources do sanction detention of those accused of a “life crime,” pending trial. The Mishnah also references the extra-legal practice of induced death by incarceration for those who elude conviction of a “life crime” through a legal technicality (e.g., Mishnah Sanhedrin 9:5) though there is no evidence that this practice, so grotesquely at odds with core principles of emerging rabbinic law, was ever employed by rabbinic courts. Nevertheless, its inclusion in the Mishnah, along with Talmudic accounts of crude abuses of authority, are sobering indications of the power of such notions of “justice” to penetrate legal traditions.

The Mishnah also references what appear to be approved examples of vigilantes (“קנאים”), in one case evidently drawing on the precedent of Numbers 25:1-15. However, the G’mara that follows includes a vigorous rejection of such actions, going on to affirm the duty of a person

threatened by קנאים to defend him/herself. This dissent is all the more significant given that the central character in the passage from Numbers was a senior *kohein*, i.e., a figure of considerable authority. Efforts in the rabbinic movement to establish a non-*kohein*-dominated judiciary, sheared of the military associations of biblical שוטרים and שופטים, would prove an effective response to these earlier tendencies.

The biblical endorsement of lashes for some violations also passed into rabbinic law.

Sources

1. Mishnah Sanhedrin 4:1

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 אהד בין לזכות בין לחובה, ודיני נפשות מטין על פי שנים ועל פי אהד לזכות ועל פי שנים לחובה. דיני ממונות מקזירין בין לזכות בין לחובה, דיני נפשות מקזירין לזכות ואין מקזירין לחובה. דיני ממונות הפל מלמד זכות ואין הפל מלמד חובה. דיני ממונות המלמד חובה מלמד זכות, ואין המלמד זכות אלא המלמד חובה. דיני ממונות דנין ביום וגומרין ביום, דיני נפשות דנין ביום וגומרין ביום. דיני ממונות גומרין בו ביום בין לזכות בין לחובה, דיני נפשות גומרין בו ביום לזכות וביום שלאחריו לחובה, לפיכך אין דנין לא בערב שבת ולא בערב יום טוב.

...What are the differences between property trials and life trials? Property trials are judged by three, life trials are judged by twenty-three. Property trials can begin with arguments to exonerate or for culpability, and life trials begin with arguments to exonerate, and not for culpability. Property trials are decided by a majority of one, whether it is to exonerate or for culpability, and life trials are decided by a majority of one if it is to exonerate, and a majority of two if it is for culpability. Property trials can be reconvened, whether to exonerate or to make culpable. Life trials can be reconvened to exonerate, but not for culpability. In property trials, all [members of the court] can advocate to exonerate or to find culpable. In life trials, all can advocate to exonerate, but not all can advocate for culpability. In property trials, one who advocates for culpability can advocate to exonerate, and one who advocates to exonerate can advocate for culpability. In life trials, one who advocates for culpability can advocate to exonerate, but one who advocates to exonerate cannot go back and advocate for culpability. Property trials are held during the day and concluded by that night. Life trials are held during the day, and concluded during the day. Whether the decision is to exonerate or hold culpable, property trials are concluded during the day. Life trials conclude during the day if the decision is to exonerate, and the next day if the person is found culpable, and so trials are not held on the day before Shabbat or the day before a festival...

2. Mishnah Sanhedrin 4:5

כיצד מאמיין את העדים על עדי נפשות, היו מכניסין אותן ומאמיין עליהן. ושם תאמרו מאמד, ומשמועה, עד מפי עד ומפי אדם נאמן שמענו, או שמה אי אתם יודעין שסופנו לבדק אתכם בדרישה ובחקירה. הו יודעין שלא כדיני ממונות דיני נפשות. דיני ממונות, אדם נותן ממון ומתכפר לו. דיני נפשות, דמו נדם ורעיותיו תלויין בו עד סוף העולם, שכן מצינו בקון שחרג את אחיו, שצאמר (בראשית ד) דמי אחיך צעקים, אינו אומר דם אחיך אלא דמי אחיך, דמו נדם ורעיותיו. דבר אחר, דמי אחיך, שיהיה דמו משלה על העצים ועל האבנים. לפיכך נברא אדם יחידי, ללמדו, שכל המאבד נפש אחת, מעלה עליו הכתוב כאלו אבד עולם מלא. וכל המקביל נפש אחת, מעלה עליו הכתוב כאלו אבד עולם מלא. ומפני שלום הבריות, שלא יאמר אדם לחברו אבא גדול מאביך. ושלא יהו מינין אומרים, הרבה רשיות בשמים. ולהגיד גדלתו של הקדוש ברוך הוא, שאדם טובע כמה מטבעות בחותם אהד וכלן דומין זה לזה, ומלך מלכי המלכים הקדוש ברוך הוא טבע כל אדם בחותמו של אדם הראשון ואין אהד מהן דומה לחברו. לפיכך כל אהד ואהד חייב לומר, בשבילי נברא העולם. ושם תאמרו מה לנו ולצרה הזאת, והלא כבר נאמר (ויקרא ה) והוא עד או ראה או ידע אם לוא יגיד וגו'. ושם תאמרו מה לנו לחוב בדמו של זה, והלא כבר נאמר (משלי יא) ובאבד רשעים רנה:

How do you forewarn the witnesses regarding testimony in a life trial? They would bring them in and warn them: Maybe you're going to say what you suspect, or what you've heard one

witness tell another, and that “We heard it from a trustworthy person.” Or maybe you don’t know that eventually we are going to put you through a rigorous examination. You need to know that property trials are not like life trials. In a property trial, a person pays up and is thereby cleared. In a life trial, a person’s blood and the blood of their descendants hang in the balance, forever. [Thus, “The bloods of your brother are screaming” (Gen. 4) It doesn’t say “blood of your brother,” but “bloods of your brother” – his blood and the blood of his descendants... So it was that a lone human being was created, to teach you that one who causes the loss of a single life is considered by the biblical text as if one had caused the loss of a whole world. And one who sustains a single life is considered by the biblical text as if one had sustained a whole world. And for the sake of peace among people, so that one person won’t say to another, “My dad is greater than your father”... And if perhaps you then say, “What do we need all of this trouble for?!” hasn’t it already been said, “And if one *has* witnessed or *seen*, or *knows*, and doesn’t testify...(Lev. 5)” And if perhaps you then say, “Why would we choose to bear the burden of this one’s blood?!” hasn’t it already been said, “When the wicked pass away there’s a shout of joy!” (Prov. 11)

3. Mishnah Sanhedrin 3:2

רבי חנינא סגן הכהנים אומר: הוי מתפלל בשלומה של מלכות שאלמלא מוראה איש את רעהו חיים בלענו.
Rabi Hanina the deputy of the Cohanim says: Pray for the well-being of sovereign authority, for without it, we [alt. “people”] would have swallowed each other alive.

4. Midrash Tanhuma on Deut. 16:1

שפטים ושטרם:
רבי אלעזר אומר: שופטים. אלו הדיינים. שוטרים. אלו הפרנסים שמנהיגין את העדה.
אם אין שוטר אין שופט. כיצד? כיון שנתחייב אדם בבית דין לחברו, אם אין שוטר שיוציא ממנו, כיון שפורש מן הדיין, אין ספיקה ביד הדיין לעשות לו כלום, אלא אם כן מוסרו ביד השוטר, והשוטר מוציא ממנו.

שפטים – these are the judges. שטרם – these are the supervisors who direct the community.
Rabi Eliezer says, “If there’s no שוטר, there’s no judge. How so? When a court places a person in debt to another, if there is no שוטר to extract it from the person, once they have left the judge, the judge has no power to do anything to the person – unless it is turned over to a שוטר, and the שוטר extracts it from the person.

5. Mekhilta d’Rabi Yishmael on Ex. 22:1-2

אם במחזרת ימצא הגנב (ומה) זה ספק שבא לגנוב ספק שבא להרוג...
אם זרחה השמש עליו [ר' ישמעאל אומר], וכי השמש עליו בלבד זרחה והלא על כל העולם כולו זרחה. אלא מה שמש שלום בעולם אף זה אם ידוע הוא שבשלום עמו והרגו הרי זה חייב... מה כאן אם קדמו והרגו פטור, אף להלן אם קדמה והרגתו פטורה. ומה להלן היו לה מושיעין הימנו והרגתו חייבת, אף כאן היו לו מושיעין הימנו והרגו חייב.

“If a thief who is caught in the act of breaking in is struck and dies, there is no culpability for the death” (Ex. 22:1) - In this case it is unclear whether the person has come to steal or to kill...

“But if the dawn has come for him” (Ex. 22:2) – but does the sun dawn over this person alone? Doesn’t it dawn over the whole world? Rather, just as the sun is a harbinger of peace for the world, if it can be discerned that the intruder does not intend to attack the person and the person nevertheless kills the intruder, the person is culpable...

...Just as in this case, if he acts first and kills the person, he is not culpable, so too, if she [a woman threatened with rape] acts first and kills him, she is not culpable. And just as in that case, if there were people who could have saved her, but she killed him, she is culpable, so too in this case, if there are people who could have saved him, but he killed him, he is culpable.

6. Sanhedrin 74a

רבי יונתן בן שאול אומר רודף שהיה רודף אחר חבירו להורגו ויכול להצילו באחד מאבריו ולא הציל נהרג עליו

Rabbi Yonatan ben Shaul says: If a pursuer was pursuing another to kill that person, and it is possible to save the person [by taking] one of the [pursuer's] limbs, but he did not save the person this way [but by killing the person], one is culpable for the killing.

7. Sanhedrin 82a

...אמר רבה בר בר חנה אמר רבי יוחנן: הבא לימלך אין מורין לו, ולא עוד אלא שאם פירש זמרי והרגו פנחס, נהרג עליו. נהפך זמרי והרגו לפנחס, אין נהרג עליו, שהרי רודף הוא.

...Rabbah the son of the Son of Hanah said that Rabi Yohanan said: ...if Zimri (Numbers 25:1-9) was no longer engaged in the act and Pinhas kills him, Pinhas *is* liable for the killing. Zimri turns around and kills Pinhas? He *is not* liable for the killing, because that one [Pinhas] was a violent pursuer.

8. Pesahim 37a

...אמר אבא שאול בן בטנית משום אבא יוסף בן חנין: אוי לי מבית בייתוס - אוי לי מאלקתן, אוי לי מבית חנין - אוי לי מלחישתן, אוי לי מבית קתרוס - אוי לי מקולמוסן, אוי לי מבית ישמעאל בן פיאכי - אוי לי מאגרוסן. שקהם פנהגים גדולים, ויבניהן גיזבריו, וסתניהם אמרכליו, ועבדיהן חובטין את העם במקלות

...Abba Shaul ben Batnit said in the name of Abba Yosef ben Hanin: Oh no! - the [priestly] house of Baitos; Oh no! - their clubs. Oh, no! - the house of Hanin; their whispers. Oh, no! - the house of Katros; Oh, no! - their pens. Oh, no! - the house of Yishmael ben Piakhi; Oh, no! - their fists. They were high priests, and their sons were Temple treasury officers, and their sons-in-law were Temple supervisory officers, and their servants beat the people with clubs.

III. Early Non-Rabbinic Sources

Overview of Early Non-Rabbinic Sources

As it happens, some of the more detailed descriptions of arrests of Jews in the early rabbinic period are found in the New Testament. While descriptions of the arrest of Jesus are fragmentary, the description in the Book Acts of the arrest of Paul upon his return to Jerusalem includes details of particular interest, e.g., uses of *στρατιωτας*/soldier and *χλιαρχος*/commander to describe arresting officers, terms that would indicate a military-like apparatus. It is also noteworthy that the text repeatedly describes Paul as employing devices by which he could narrow the social gap between himself and those detaining him, e.g., speaking Greek to a Roman officer and referencing his Roman citizenship, described in the text as having an immediate mitigating effect on the officer (and then speaking Hebrew, or Aramaic, to an assembled crowd). This passage from Acts, along with a selection from Josephus's *Antiquities* regarding a legal enactment by Herod that Josephus denounces, reflect legal systems to which Jews were subject in the late second temple period that were quite removed from, and often directly contradictory to biblical law and the rabbinic system that would subsequently shape Jewish life.

Sources

1. Josephus, *Antiquities*. 16:1

In his administration of the state the king [Herod] in calculated effort to put a stop to the successive acts of injustice committed both in the city and in the country made a law in no way

resembling earlier ones, and he enforced it himself. It provided that housebreakers should be sold (into slavery) and be deported from the kingdom—a punishment that not only weighed heavily upon those who suffered it but also involved a violation of the laws of the country. For to be enslaved to foreigners and to those who did not have the same manner of life and to be compelled to do whatever such men might command was an offense against religion rather than a punishment of those who were caught, especially as the following kind of penalty was anciently observed. The Torah ordered that a thief was to pay a fourfold fine, and, if he were unable to do so, he was to be sold, but in any case not to foreigners nor was he to suffer lifelong slavery, for he was to be released after six years. But for the punishment to be made severe and unlawful, as was then determined, seemed the part of arrogance, and his decision to impose this penalty was not the act of a king but of a tyrant and of one who thought little of sustaining the honor of the people.

2. The Book of Acts 21:27-40 (New Testament); the arrest of Paul of Tarsus upon his return to Jerusalem

...the Jews from Asia, who had seen him in the temple, stirred up the whole crowd. They seized him, shouting, "Fellow Israelites, help! This is the man who is teaching everyone everywhere against our people, our law, and this place; more than that, he has actually brought Greeks into the temple and has defiled this holy place." For they had previously seen Trophimus the Ephesian with him in the city, and they supposed that Paul had brought him into the temple. Then all the city was aroused, and the people rushed together. They seized Paul and dragged him out of the temple, and immediately the doors were shut. While they were trying to kill him, word came to the tribune of the cohort that all Jerusalem was in an uproar. Immediately he took soldiers and centurions and ran down to them. When they saw the tribune and the soldiers, they stopped beating Paul. Then the tribune came, arrested him, and ordered him to be bound with two chains; he inquired who he was and what he had done. Some in the crowd shouted one thing, some another; and as he could not learn the facts because of the uproar, he ordered him to be brought into the barracks. ³⁵ When Paul^[1] came to the steps, the violence of the mob was so great that he had to be carried by the soldiers. The crowd that followed kept shouting, "Away with him!" Just as Paul was about to be brought into the barracks, he said to the tribune, "May I say something to you?" The tribune replied, "Do you know Greek? Then you are not the Egyptian who recently stirred up a revolt and led the four thousand assassins out into the wilderness?" Paul replied, "I am a Jew, from Tarsus in Cilicia, a citizen of an important city; I beg you, let me speak to the people." When he had given him permission, Paul stood on the steps and motioned to the people for silence; and when there was a great hush, he addressed them in Hebrew...

IV. Post Talmudic Sources

Overview of Post-Talmudic Sources

As vestiges of Jewish autonomy waned and the expanse of the diaspora grew, Post-Talmud sources indicate five predominant methods for maintaining public order and law enforcement, methods that reflected the limited options available to politically disempowered diaspora communities:

1. personal intervention by agents of a court (official and ad hoc)
2. fines
3. lashes
4. court-ordered shunning or banishment of an offender.
5. intervention by non-jewish authorities

Given the limited authority of Jewish courts in diaspora settings, it is important to consider what might be learned from the fairly effective use of such methods. On the other hand, there is also no doubt something to be learned from sources that indicate recourse to forms of punishment that grossly violated Jewish legal precedent, e.g., mutilation, authorized by courts terrified of the possible ramifications of offences deemed to have jeopardized the reputation or safety of the local Jewish community.⁸

It is worth noting in this regard that court-ordered shunning or banishment was a relatively frequent sentence for serious offenders. Given that from late antiquity through early modernity most Jews saw themselves, and were seen by others, as members of a marginalized and demeaned minority, it is perhaps not surprising that such methods would be employed by Jewish courts. The message was clear: *You are hereby “freed” of the onus of living in our community; freed of its sacred bonds and bounds; freed to face the contempt in which you may now be held by others.*

Rashi’s assertion, included in this section, that communal negligence may well constitute complicity in a crime, a possibility already noted in Talmud, is yet another striking confirmation of the power of a legal system rooted, as Martin Buber put it, in the “audacity of responsibility.”⁹

The development of Jewish law following the decline of Gaonic authority would be shaped by increasingly successful efforts at codification. Initially, halakhic codes would be criticized as encumbering judges with inflexible approximations of actual circumstances, at the expense of a more personalized legal process. The continued exchange of written consultative messages, “*responsa*” (שאולות ותשובות), though the middle ages and into modern times, offset to some degree this inflexibility, but by the end of the sixteenth century, The *Shulkhan Arukh* and other codes would come to be seen as authoritative.

Sources

1. Rashi on Deut. 16:1

ושטרים: הרודין את העם אחר מצותן שמכין וכופתין במקל וברצועה עד שיקבל עליו דין השופט.
And *shotrim*: Those who restrain the people as they have been directed, striking and applying force with club and lash, until a person accepts a ruling of the judge.

2. Rashi on B. Sotah 38b, in reference to Deut. 21 :1-9, regarding the discovery of a body for which no cause of death is known.

דברים כא:ז

וענו ואמרו ידנו לא שפכו (ו) את הדם הזה ועינינו לא ראו.

סוטה לב:ב

וכי על לבינו עלתה שזקני בית דין שופכי דמים הם אלא לא בא לידינו ופטרנוהו ולא ראינוהו והנחנוהו לא בא לידינו ופטרנוהו בלא מזונות ...

רש"י, סוטה לב:ב

‘ופטרנוהו בלא מזונות’: כלומר למזונות הוצרך ולא היה לו וראה אחד נושא מזונות ובה לחושפם ממנו לאונס רעבו ועמד זה עליו והרגו.

Deut. 21:7:

They respond by saying, “Our hands didn’t shed this blood, and our eyes didn’t see it.”

from Sotah 38b:

Can we even imagine the elders of a court having caused the bloodshed? Rather, it means: the person didn’t come under our jurisdiction and we sent away, and not that

we saw him and ignored him; didn't come under our jurisdiction and we then sent away without food..."

Rashi:

'...and sent him away without food...' This is to say, the person was in need of food but didn't have any, and saw someone else carrying food and set on the person to grab it away to suppress the hunger, and that one put up a fight and killed the person.

3. Maimonides, *Mishneh Torah San. 1:1*

שוטרים אלו בעלי מקל ורצועה והם עומדים לפני הדיינים המסבין בשוקים וברחובות ועל הסגירות לתמן השפירים והמדות ולהכות כל מענת וכל מעשיהם על פי הדיינים וכל שיראו בו עוות דבר מביאין אותו לבית דין ודנין אותו כפי רשעו:

"Shotrim": They are equipped with a club and a lash. They attend court. They circulate in the markets and streets and stores to correct the weights and measures and correct every violation. Their actions are all determined by the judges, and whenever they see a violation, they bring the person to court, to be judged for their misdeed.

4. Maimonides, *Mishneh Torah, G'nevah 9:10-11*

היה הדבר ברור לבעל הבית שזה הגנב הפך עליו אינו הורגו ולא בא אלא על עסקי ממון אסור להרגו ואם הרגו הרי זה הורג נפש..

... וכן הגנב שגנב ונצא. או שלא גנב ומצאו יוצא מן המחוקת הואיל ופנה ערף ואינו רודף יש לו דמים. וכן אם הקיפוהו בגני אדם או עדים אף על פי שעדין הוא ברשות זה שפא עליו אינו נהרג. ואין צריך לומר אם בא לבית דין שאינו נהרג :

If it is clear to a householder that this particular thief who the householder has encountered is not going to kill him, and is only there for material gain, it is forbidden to kill the person. And if [the householder] kills the person, this constitutes criminal homicide. Likewise, a thief who has come and gone, or is discovered entering, before having stolen anything, and turns and runs away, does not constitute a violent pursuer and is to be spared. And if surrounded by people or witnesses, even if still on the [householder's] property, they are not to be killed. Needless to add, if they come to court, they are not to be killed.

5. Maimonides, *Mishneh Torah, Rotseah u-Sh'mirat Nefesh 1:9,13,14*

כל היכול להציל באיבר מאיבריו ולא טרח בכך אלא הציל בנפשו של רודף והרגו הרי זה שופך דמים וחיב מיתה אכל אין בית דין ממתין אותו :

כל היכול להציל ולא הציל עובר על (ויקרא יט טז) " לא תעמד על דם רעה". וכן הרואה את חברו טובע בים. או לסטים באים עליו. או חיה רעה באה עליו. ויכול להצילו הוא בעצמו. או שישכר אחרים להצילו ולא הציל. או שישמע עובדי פוכבים או מוסרים מחשבים עליו רעה או טומנין לו פח ולא גלה און חברו והודיעו. או שינדע בעכו"ם או באונס שהוא בא על חברו ויכול לפיסו בגלל חברו להסיר מה שבלבו ולא פיסו. וכל כיוצא בדברים אלו. העושה אותם עובר על לא תעמד על דם רעה:

Anyone who is able to save [someone from assault] and doesn't do it violates (Lev. 19:16) "Do not simply stand there while the next person's blood is shed." Similarly, if a person sees a community member drowning in the sea, or a person encountering a gang, or encountering a violent animal, and that person can save them, or can hire someone to save them, and doesn't do it, or hears of idolators or informers planning to do another harm, or that they are setting a trap for that person, and doesn't tell the person about it; or knows that an idolator or assailant is coming for the person, and is able to calm them on the person's behalf, so that they change their mind, and yet doesn't calm them - along with anything similar to these cases - whoever does these things violates "Do not stand simply stand there while the next person's blood is shed."

6. From the conclusion to a responsum attributed to Shlomo ben Avraham ibn Adret (RaSHbA, 13th- early 14 century) dealing with a man who had abandoned his wife to marry his slave; prescribes intervention by a court-ordered delegation of community member

Now how can your holy community...abet something like this, sending boys out to sin, and thereby teaching the many to treat the daughters of Abraham lightly?! It is appropriate for you to assemble a group of pious and wise people, along with others who would understand the matter as they do, and compel the man to take back his first wife, and thus "build a fence" in this regard.

7. Responsum #236 of Isaac bar Sheshet (14th century)

שאלה: אם יש רשות לב"ד להוציא את שמעון המסור מבית האסורין בערבים בטוחים בסך נורא ובקנסות שיהיו הערבים חייבים בכל מה שיהיה המסור חייב אם יתברר הדבר וענין המסירות : תשובה: אין ספק שכל שיש בעובר העברה חשש חיוב עונש שב"ד חייבי' לחבשו ולאסרו בבית האסורים עד שיתברר להם שאין בדבר חיוב עונש רק חיוב ממון לבד ואין נותנין אותו בערבים שהרי העובר אם יראה שיתחייב בדין מידו ברוח יברה ומה יעשו ב"ד לערבים ומה יועילו כי יפגעו בהם והם לא עשו עברה טוביה חטא וזיגוד מינגיד (פסחים קי"ג:) ואם מפני שנתחייבו ונשתעבדו לכך אין אדם יכול לשעבד עצמו במה שאינו מחוייב אלא בדבר שבממון אבל לא בחיוב נפש ועוד שהעובר ילך לו בלי שום עונש ולא מצינן לקיומי ביה ובערת הרע מקרבך ועוד שמי שעבר עברה שיש בה חשש חיוב עונש אין ראוי שילך ויטייל בשוק בעוד שבית דין מעיינין ונושאיין ונותנין בדינו וזהו ששנינו במכילתא (סדר משפטים פ"ו) ונקה המכה יכול יתן ערבים ויטייל בשוק תלמוד לומר אם יקום והתהלך בחוץ מגיד שחובשים אותו עד שיתרפא ולכן אם ראו בית דין שיש ממש בדברי התובע ושם יתברר הדבר שיהיה העובר חייב עונש בגופו אין נותנין אותו בערבים:

Question: Does a court have the power to release inmate Simeon from jail in return for terribly high guaranteed bail and fines, leaving the guarantors subject to all that the "informer against the community" would have been subject to, if the charge were sustained (it is a case of "informing").

Answer: Without a doubt in the case of a person who has committed a transgression for which there is reason to believe a punishment is required, the court is obligated to arrest and hold the person in jail until it is clear to them that it is not a matter involving a punishment, but only a monetary matter. And the person is not let out on bail, in as much as the violator, seeing that it is leading to punishment, will flee like the wind. And then, what would the court do with the bail, and of what value would it be, as it would be an insult to *them*, though they themselves hadn't violated a law - "Tuviah sins and Zigod gets the lashes!" And even if they obligate and commit themselves to this, a person may only acquiesce to undeserved punishment if it is monetary, but not punishment of one's person. And then, if a violator did walk away without any penalty, you would not have met the responsibility to "burn away the evil from your midst." In addition, if someone is suspected of having committed a violation that calls for punishment, it isn't right that the person could walk and stroll about the marketplace while the court was still investigating and deliberating the person's case. That is what is intended by the Mekhilta: "and is cleared," i.e., the assailant can *then* post bail and walk about the marketplace, the text specifying (Ex. 21:19): "If he can get up and walk around outside" – this means that the person is kept under arrest until the other person has healed. Therefore, if the court sees substance in the claimant's case, and if it is then determined that the violator is going to be sentenced to a physical penalty, that person is not allowed to post bail.

8. Shulhan Arukh, Orah Hayim 529:4

חייבים ב"ד להעמיד שוטרים ברגלים שיהיו משוטטים ומחפשים בגנות ופרדסים ועל הנהרות שלא יתקבצו שם לאכול ולשתות אנשים ונשים ויבואו לידי עבירה וכן יזהירו בדבר זה לכל העם שלא יתערבו אנשים ונשים בבתיהם בשמחה ולא ימשכו ביין שמא יבואו לידי עבירה אלא יהיו כולם קדושים :

The court must appoint officers who will patrol on the festivals gardens, orchards, and rivers, so that men and women will not gather there to eat and drink and end up sinning. They

should similarly warn the whole nation about this - that men and women should not joyously mix in their houses and overindulge in wine, lest they come to sin. Rather, all should be holy.

V. Jewish Law, Modernity, and Liberal Principles

Overview of Jewish Law, Modernity, and Liberal Principles

Various standards can be used to mark the beginning of the 'modern era' of Jewish life, but in regard to public order, safety, and law enforcement, the decisive factor has been the liberalization of dominant societies, allowing Jews of all classes to move into the mainstream of surrounding populations. The "social contract" allowing for this change required the disempowering of residual Jewish civil autonomy, compensated for by inclusion of Jews, as free individuals, in the larger civil society, with equal status in all moral and legal respects.

The radicalness of this transformation is evident in the fate of banishment (חרם, נדוי) as a form of punishment. Imprisonment, the most common punishment for serious crimes in the United States, denies a person the liberty necessary to exercise one's *rights* as an American citizen, while banishment denied a person the opportunity to fully exercise their *responsibilities* as a Jew. To be banished was to be placed *outside* the bounds and bonds of Jewish life. Moses Mendelssohn's famous insistence that retaining banishment as a Jewish self-regulatory device was incompatible with the requirement to not impair "civil happiness" marks this ever-widening turn in Jewish history.¹⁰

The great exception to this process has been the Zionist movement and the State of Israel, but here too, liberal principles have proven a challenge. The question, "What is the relationship between Jewish peoplehood and liberal democracy" continues to prove challenging in Israel as well, along with persistent questions about the proper relationship between public order, safety, and law enforcement.

Throughout the development of Jewish legal tradition, beginning with biblical sources, two value concepts have repeatedly shaped the sources: *sh'mirat nefesh*/protecting persons, and *k'vod ha-adam*/human dignity, principles that are implicit in the understanding of policing as a *civil* function. Their continued influence on contemporary Jewish thought is reflected in the sources referenced in this concluding section as well.

Sources

1. From the Basic Law of the State of Israel: on Human Dignity and Liberty (1992)

זכויות היסוד של האדם בישראל מושגות על ההכרה בערך האדם, בקדושת חייו ובהיותו בן-חורין, והן יכובדו ברוח העקרונות שבהכרזה על הקמת מדינת ישראל.

חוק-יסוד זה, מטרתו להגן על כבוד האדם וחירותו, כדי לעגן בחוק-יסוד את ערכיה של מדינת ישראל כמדינה יהודית ודמוקרטית.

אין פוגעים בחייו, בגופו, או בכבודו של אדם באשר הוא אדם.
אין פוגעים בקנינו של אדם.

כל אדם זכאי להגנה על חייו, על גופו ועל כבודו.

אין נוטלים ואין מגבילים את חירותו של אדם במאסר, במעצר, בהסגרה או בכל דרך אחרת.
כל אדם חופשי לצאת מישראל.

כל אזרח ישראלי הנמצא בחוץ לארץ זכאי להיכנס לישראל.

כל אדם זכאי לפרטיות ולצנעת חייו.

אין נכנסים לרשות היחיד של אדם שלא בהסכמתו.

אין עורכים חיפוש ברשות היחיד של אדם, על גופו, בגופו או בכליו.

אין פוגעים בסוד שיחו של אדם, בכתביו או ברשומותיו

אין פוגעים בזכויות שלפי חוק־יסוד זה אלא בחוק ההולם את ערכיה של מדינת ישראל, שנועד לתכלית ראויה, ובמידה שאינה עולה על הנדרש או לפי חוק כאמור מכוח הסמכה מפורשת בו.
אין מגבילים זכויות שלפי חוק־יסוד זה של המשרתים בצבא־הגנה לישראל, במשטרת ישראל, בשירות בתי הסוהר ובארגוני הבטחון האחרים של המדינה, ואין מתנים על זכויות אלה, אלא לפי חוק ובמידה שאינה עולה על הנדרש ממהותו ומאופיו של השירות.

אין בחוק־יסוד זה כדי לפגוע בתקפו של דין שהיה קיים ערב תחילתו של חוק־היסוד.
כל רשות מרשויות השלטון חייבת לכבד את הזכויות שלפי חוק־יסוד זה.

אין בכוהן של תקנות שעת חירום לשנות חוק־יסוד זה, להפקיע זמנית את תקפו או לקבוע בו תנאים; ואולם בשעה מותר, שקיים במדינה מצב של חירום בתוקף הכרזה לפי סעיף 9 לפקודת סדרי השלטון והמשפט, התש"ח-1948 שיהא בהן כדי לשלול או להגביל זכויות לפי חוק־יסוד זה, ובלבד להתקין תקנות שעת חירום מכוח הסעיף האמור שהשלילה או ההגבלה יהיו לתכלית ראויה ולתקופה ובמידה שלא יעלו על הנדרש.

1. The purpose of this Basic Law is to protect human dignity and liberty, in order to establish in a Basic Law the values of the State of Israel as a Jewish and democratic state.
2. There shall be no violation of the life, body or dignity of any person as such.
3. There shall be no violation of the property of a person.
4. All persons are entitled to protection of their life, body and dignity.
5. There shall be no deprivation or restriction of the liberty of a person by imprisonment, arrest, extradition or otherwise.
6. (a) All persons are free to leave Israel.
(b) Every Israel national has the right of entry into Israel from abroad.
7. (a) All persons have the right to privacy and to intimacy.
(b) There shall be no entry into the private premises of a person who has not consented thereto.
(c) No search shall be conducted on the private premises of a person, nor in the body or personal effects.
(d) There shall be no violation of the confidentiality of conversation, or of the writings or records of a person.
8. There shall be no violation of rights under this Basic Law except by a law befitting the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required.
9. There shall be no restriction of rights under this Basic Law held by persons serving in the Israel Defense Forces, the Israel Police, the Prisons Service and other security organizations of the State, nor shall such rights be subject to conditions, except by virtue of a law, or by regulation enacted by virtue of a law, and to an extent no greater than is required by the nature and character of the service.
10. This Basic Law shall not affect the validity of any law (*din*) in force prior to the commencement of the Basic Law.
11. All governmental authorities are bound to respect the rights under this Basic Law.
12. This Basic Law cannot be varied, suspended or made subject to conditions by emergency regulations; notwithstanding, when a state of emergency exists, by virtue of a declaration under section 9 of the Law and Administration Ordinance, 5708-1948, emergency regulations may be enacted by virtue of said section to deny or restrict rights under this Basic Law, provided the denial or restriction shall be for a proper purpose and for a period and extent no greater than is required.

2. From comments by Shulamit Aloni at a public colloquium on the Human Dignity and Liberty portion of the State of Israel's Basic Law (1997)¹¹

I have a question for the Chief Justice, Prof. Aharon Barak. He knows that I wasn't in agreement with the text of "[the] Jewish and democratic [civil rights basic law]" especially since there wasn't in this law the element of equality. My question to you, Prof. Barak – and you've said that you are speaking here as a professor and not a judge, though you sit on a court, and so I am concerned, as to why you spoke of "Jewish" as a halakhic concept, not a concept of Jewish criminal and civil jurisprudence [*mishpat ivri*], and not a concept of Jewish thought, and not a concept of Jewish culture, and you didn't relate it to what has occurred in the development of the Hebrew language and the rhythms of life being formed here. In the past two hundred years, Jewish life has flowered well beyond halakhah.

3. From comments by Israel Supreme Court Justice Menahem Alon on a court decision regarding an invasive body search for drugs in a public location (1992)¹²

Protecting a person's dignity and forbidding humiliating a person pertains not only to the innocent, but also when speaking of a person suspected of having committed an offense. When it says in the Jerusalem Talmud that when it is suspected that 'this person killed someone' (i.e., that people are saying that this person killed someone), that is sufficient to detain a person until the case is resolved. Rabi Yosi expressed astonishment at this: "You just grab the person in the marketplace and humiliate the person?..." Nonetheless – if someone killed a person and there are witnesses that this one killed the person, the person is seized pending the appearance of the witnesses" – that is to say, until evidence is produced regarding the commission of the crime by the suspect-accused. Seizing a person in the marketplace involves a measure of humiliation, and this is not allowed unless the person is suspected of a serious crime, such as the crime of murder, because in that case there is a danger to the community if the person 'strolls about in the marketplace'...

...We have explored in detail the position of Jewish law on the major theme of principles related to a person's dignity – human dignity – and individual modesty, as it relates to performing a body search on a person, and the need to balance these principles with other values, but when we are speaking of finding a balance between them and an offense continuing a little longer, if the offense is a matter of rabbinic law, everyone agrees that the person's dignity supersedes the offense, and for a little longer the offense is not to be stopped, if doing so were to compromise the person's dignity. And according to some halakhic scholars, even when we are speaking of the temporary violation of Torah law, the principle of human dignity supersedes the offense, and one must not cause a person to be humiliated by instructing the person to undress, even partially, in the marketplace, in public. From this you learn how far the doctrine of balance between two fundamental principles extends – not allowing commission of an offense that is a matter between the person and God on the one hand, [i.e., poses no immediate danger to other people], and protection of the person's dignity on the other – in the world of Jewish law...

The ultimate basis of the aforementioned principle of human dignity is that the human was created as a reflection/image of God, and on the strength of this worldview, it is also a commandment to protect this dignity, in as much as insulting this dignity is insulting the reflection/image of God, and this commandment is addressed to all people, even in regard to one who would humiliate oneself. The principle is, in the aforementioned words of ben Azzai: "Know who you are humiliating – someone made in the image of God." It doesn't matter whether one humiliates the image in another person, or humiliates the image of God in oneself.

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- ¹ Lit., “the Breastplate [armor] of judgment.” It is the title of the portion of the *Shulkhan Arukh* (a late 16th century code of Jewish law) that deals with courts, legal procedure, civil and criminal law.
- ² Lit., “the Rock of Help,” alluding to Genesis 2:18. It is the title of the portion of the *Shulkhan Arukh* that deals with family law.
- ³ Lit., “Way of Life.” It is the title of the portion of the *Shulkhan Arukh* that deals with daily personal expressions of devotion, e.g., worship.
- ⁴ Silber, M., *Talmudic Law and the Modern State* (New York: Burning Bush, 1973), p. 92.
- ⁵ In biblical Hebrew, “שפט” and “שטר” appear to have overlapping connotations. Cf. Numbers 25:5.
- ⁶ E.g., the clear convergence of form, alongside stark divergences of practice in biblical legal texts as compared to the Code of Hammurabi.
- ⁷ A number of Torah texts do describe application of the law as a function of the priesthood.
- ⁸ See *The Jews in Spain*, A. Neuman (Philadelphia: JPS, 1942), chapter 7.
- ⁹ The expression in Hebrew is ‘ההעזה של אחריות’. See:
מ. בובר, דרכו של מקרא (ירושלים: מ. ביאליק, תשל”ח) ע’ 46.
- ¹⁰ See “On the Curtailment of Jewish Juridical Autonomy” (Moses Mendelssohn) in *The Jew in the Modern World: A Documentary History*, P. Mendes-Flohr and J. Reinharz, eds. (New York: Oxford, 1995), p. 87-90.
- ¹¹ . 68 . מדינת ישראל כמדינה יהודית ודמוקרטית, 68 .
- ¹² .258, 261, 263, מדינת ישראל כמדינה יהודית ודמוקרטית,