

Biblical Foundations of Jewish Jurisprudence in the Time of Jesus*

Tibor Ruff**

Abstract

God's kingship is based on two important spiritual realities: the justice and legality. The Jewish legal practice in Jesus' day rested on the Mosaic Law and its rabbinic interpretation. The Torah established a powerful court-system, which interweaved through the whole of society in ancient Israel; and at a later stage, the high priest and the president of the court surrounded themselves with a seventy-strong advisory council, which partly consisted of priests, partly of judges with the highest authority nationwide, and partly of the wise. This Supreme Court (which later called Sanhedrin) was the court of appeal of highest authority, which made decisions in cases not settled by the courts on lower grades. This paper, in addition to the above judicial bodies, also examines the basic rules of investigating the cases, the presence or absence of wilfulness, as well as the Rabbinic regulations concerning testimonies of witnesses.

Keywords: Old Testament Law; Halakhah; Jewish judiciary system; rabbinic law; Sanhedrin.

1. Research questions and methodology

"Righteousness and justice are the foundation of your throne," declares the third wisest man of Solomon's generation, the Ezrahite Ethan, in his only psalm.¹ This seemingly obvious statement formulates an important truth-claim: God's kingship is eternal and unconquerable because two spiritual realities are the foundation of his throne; namely, righteousness and justice. All other empires have fallen in time, and all will fall in time. The reason is that they are not based on justice and right, they more or less allow injustice and lawlessness in order to build and maintain their power – thus encoding into themselves, with these cracks in their system, their inevitable fall. God does not allow this either for himself or for the architects of his kingdom, because then he would not be able to assert his eternal rule. According to the rabbis, God's presence

left Israel because of unjust judgement.² This is confirmed by one of its victims, Jesus himself, in the Gospel of Matthew: "See, your house is left to you, desolate. For I tell you, you will not see me again until you say, 'Blessed is the one who comes in the name of the Lord.'"³ In the church, too, it is desirable that disputes or conflicts between believers, as well as sins, be resolved in a just and fair way, because unjust or unprofessional judgments can cause great individual and communal difficulties. The instructive history of revelation and the chosen people can offer assistance to do so.

Jewish jurisprudence in Jesus' day was based on the Mosaic Law and its rabbinic interpretation.⁴ Throughout the following summary, I will try to separate these two; that is, divine revelation from human interpretation. I also indicate separately where the New Testament explicitly adopts Torah or rabbinic practice.⁵

* The study was conducted in 2021 in the framework OTKA thematic research project „The Legal Relevance of the Vetus et Novum Testamentum. Parallels between the Jewish-Christian and Roman Law Roots of our Legal Culture” (No. 138899).

** Tibor Ruff, PhD, research fellow, Dezső Márkus Research Group for Comparative Legal History, Department for Legal History, University of Pécs, Hungary; college professor, Saint Paul's Academy, Hungary; email: truff@hetek.hu / ORCID ID: 0009-0009-3238-1331.

¹ Ps 89:14. On the wisdom of Ethan, see: 1Kgs 4:31. Pfeiffer states that Ethan may have been of Edomite origin. Following the rabbinical interpretation most plausible to me, I believe he may have been a Levite worship leader at the time of David and Solomon. See: PFEIFFER, R. H., Edomitic Wisdom. In: *Zeitschrift für die alttestamentliche Wissenschaft*, No. 1, 1926, p. 13–25.

² Among others: bSotah 47b. On the exercise of power according to the principles of Mosaic law and the role of the judiciary in this, see: MÉSZÁROS, I. L., Elements Establishing the Principle of the Rule of Law in the Vetus Testamentum and the Novum Testamentum. In: *Journal on European History of Law*, Vol. 15, No. 1, 2024, p. 93–103.

³ Mt 23:38–39.

⁴ For literature on the jurisprudence of Jesus' day, see: RABELLO, A., Jewish and Roman jurisdiction. In: HECHT, N. S. et al (ed.), *An Introduction to the History and Sources of Jewish Law*. Oxford, 1996; HAMMER-KOSSOY, M., *Divine Justice in Rabbinic Hands: Talmudic Reconstitution of the Penal System*, Ph.D. diss., New York, 2005; HARRIES, J., Courts and the judicial system. In: HEZSER, C. (ed.): *The Oxford Handbook of Jewish Daily Life in Roman Palestine*. Oxford, 2012, p. 85–101.

⁵ RUFF, T., A Misna Szanhedrin traktátusa: Bevezetés, fordítás és kommentár [The Sanhedrin Tractate of the Mishnah: Introduction, Translation and Commentary]. In: *Studia Biblica* No. 2, 2021, p. 121–155.

2. Development of the court system

2.1 The framework of the Jewish court system in the Old Testament

The Torah established a powerful judicial system pervading the whole of society, expressing a high demand for the lawfulness of communal life.⁶ In the Torah, the first occurrence indicating this was Jethro's advice to Moses,⁷ that there should be one officially ordained judge for every ten men.⁸ In addition to that, for every fifty men (and five judges) there was a form of appellate court, a second-tier judge; for every hundred men (and ten first-tier judges with two second-tier judges) there was a third-tier judge; for every thousand men (and one hundred first-tier judges with two hundred second-tier judges with ten third-tier judges) there was a fourth-tier judge, and all the people (and over all the first-tier, second-tier, third-tier and fourth-tier judges) was overseen by a man of God (who was then Moses, and later Deuteronomy 17:8–13 assigns this supreme judicial authority to the joint decision of the high priest and the greatest charismatic leader of the time as chief judge).

At the time of the exodus from Egypt, the nation of about 600,000 adult males, thus had a total of about 78,600 + 1 officially appointed judges, some 250 of whom later rebelled against Moses in the rebellion led by Korah and Dathan.⁹ Not only did this system appoint a judge over every ten men, but it also created a five-tier system of appeals, which provided a high degree of redress, although some of the details of the appeals system were not the same as today, as it was not the litigants who took their cases to the higher courts, but the judges who were unsure of their decisions.¹⁰ Thus, 13 per cent of Jewish society was made up of people with judicial powers. (For the sake of comparison, in today's Hungary there is one judge for every 3,000 people, or about 0.3 per cent of society, which is why cases drag on indefinitely and legal redress often fails. By the time compensation is awarded, the victim is sometimes irreversibly ruined.)¹¹

From the outset, judges were always formally appointed and ordained by the laying on of hands.¹² The criteria for their selection, as already laid down by Jethro's advice, were the following: they had to (1) have a good character (be strong personalities); (2) be godly; (3) be righteous; (4) depise profiteering (to refuse bribery). Later, Deuteronomy 16:18–20 adds: they should not (5) distort (lit. “bend”) judgment; (6) engage in favouritism; (7) take gifts (for bribery). The ordination of judges was carried out by the previously ordained supreme judges at the highest tier. The archaic institution of leadership by elders (gerontocracy), typical of all ancient peoples, which also Judaism followed in earlier times, gradually became integrated with the Mosaic system of judges, so that “elder” and “judge” became virtually synonymous terms in the Old Testament.¹³ In the selection of judges, the Levites were preferred, for two main reasons: 1. they knew the Scriptures best; 2. not having their own landed estates, they lived on tithes, and thus had time on their hands to teach, interpret, advise and judge.¹⁴ It is important to note, however, that not all Levites became judges, and many judges did not come from the ranks of the Levites.

It may also be important to note that being filled with the Holy Spirit was not a requirement for the selection of judges, since in the Old Testament only the king (when there was one), the high priest and the prophet were anointed with the Holy Spirit.¹⁵ Therefore, the Holy Spirit was only involved in the highest, tier-five judgments, whereas from the first to the tier-four courts only human judgments were made (and that was regarded to be the standard). All the ‘protagonist’ judges in the Book of Judges (Deborah, Gideon, Ehud, Othniel, Samson, etc. and finally the prophet Samuel) were charismatic individuals, anointed by the Holy Spirit, who, in the judicial system described above, fulfilled the role of supreme (tier-five) judge, sitting in judgment with the high priest until the establishment of the institution of the kingdom (which was a deviation from God's perfect will).¹⁶

⁶ For the administration of justice in Old Testament Israel, see: WOLFF, H. W., *Law and the Administration of Justice in the Old Testament and Ancient East*. Minneapolis, 1980.

⁷ Ex 18:13–26.

⁸ The adherence to this principle in the time of Jesus and even afterwards can be demonstrated, as is its increasingly stricter application. Indeed, mSanhedrin 1:6 states that towns of 120 or more male inhabitants had to have a so-called Minor Sanhedrin of twenty-three members, one and a half times the number of judges given in the Torah (for 120 people, this would be only fifteen judges).

⁹ Num 16:1–35.

¹⁰ On the authority of the judges, see: KNIERIM, R. P., Customs, judges, and legislators in ancient Israel. In: EVANS, C. A. – STINESPRING, W. F. (eds.), *Early Jewish and Christian Exegesis. Studies in Memory of William Hugh Brownlee*. Atlanta, 1987, p. 3–17; on the number of judges, see also: HENSHKE, D., The number of judges in ancient Israel. In: *Jewish Law Annual*, No. 17, 2017, p. 27–61.

¹¹ WILSON, R. R., Israel's Judicial System in the Preexilic Period. In: *Jewish Quarterly Review*, No. 2, 1983, p. 229–248.

¹² On ordination, see: FERGUSON, E., Jewish and Christian ordination. In: *Harvard Theological Review*, No. 1, 1963, p. 13–19; and MANTEL, H., Ordination and Appointment in the Period of the Temple. In: *Harvard Theological Review*, No. 4, 1964, p. 325–346.

¹³ For the synonymous usage of the terms for ‘elder’ and ‘judge,’ see: MCKENZIE, J. L., The elders in the Old Testament. In: *Biblica*, No. 2, 1959, p. 522–540. The Sanhedrin was also called the Gerousia (‘council of elders’) in Hellenistic and Roman Jewish literature; see: HOENIG, S. B., *The Great Sanhedrin*. Philadelphia, 1953, p. 166–167.

¹⁴ On the Levitical priesthood in general, see several papers in: LEUCHTER, M. – HUTTON, J. M. (eds.): *Levites and Priests in Biblical History and Tradition* (Society of Biblical Literature 9). Atlanta, 2011; on the Second Temple period, see: WERMAN, C., Levi and Levites in the Second Temple Period. In: *Dead Sea Discoveries*, No. 2, 1997, p. 211–225.

¹⁵ On getting filled with the Holy Spirit from a Jewish perspective, see: LEVISON, J. R., *Filled with the Spirit*. Grand Rapids, 2009; for a response to this book from a charismatic Christian perspective, see: TURNER, M., Levison's Filled with the Spirit: A Brief Appreciation and Response. In: *Journal of Pentecostal Theology*, 2, 2011, p. 193–200; and most recently: LEVISON, J. R., *The Holy Spirit Before Christianity*. Waco, 2019.

¹⁶ On judges as charismatic leaders, see: MALAMAT, A., *Charismatic Leadership in the Book of Judges*. New York, 1976; and WEISMAN, Z., Charismatic Leaders in the Era of the Judges. In: *Zeitschrift für die alttestamentliche Wissenschaft*, No. 3, 1977, p. 399–411. Only in this way can it be understood why, for most of them – including Samson, who is not known for this activity – the Scriptures record these words: “and he judged Israel for x years.”

2.2 Municipal courts and the supreme court after the conquest of Canaan

Deuteronomy 16:18-20 orders that a court (of a size corresponding to the number of people in the settlement, in compliance with the above quotas) be set up in each settlement to deal with all matters of a legal nature at the gate of the city/village.¹⁷ In addition to adjudicating on all kinds of litigation, this also meant drawing up local ordinances (like a ‘municipal council’), certifying marriages (like a ‘registrar general,’ see Ruth 4:1-13), certifying property sales (like a ‘land registry office,’ see *ibidem*), as well as various ‘notarial’ functions and even deciding questions of community life of faith (like a ‘theological academy’).¹⁸

Deuteronomy 17:8-13 sets up the institution of a supreme (tier-five) court, to be run after Moses’ death, whose criteria are the following: (1) it had to meet on the site of the Tabernacle, and later, of course, on the Temple Mount in Jerusalem;¹⁹ (2) it consisted essentially of two people: the High Priest and the

Supreme Judge;²⁰ (3) disobedience to its decisions was a mortal sin (as it entailed capital punishment); (4) it could decide on “unfathomable” matters for which the Bible had not given clear guidance, and in these matters its decisions were – according to the Torah itself (!) – equal to the authority of the Torah.²¹

In later years, the high priest and the supreme judge, surrounded themselves with a seventy-strong advisory body, consisting partly of priests and partly of the most authoritative judges and sages in the country.²² This custom was not prescribed in the Torah, so it was not statutory, but was modelled on Moses’ request to God that he should not bear all those burdens alone, and God then poured out his Holy Spirit on seventy elders so that Moses could share the work of leadership with them.²³ We do not know exactly when this Great Sanhedrin of seventy plus one was formed – it may have taken place after the Babylonian captivity, but it may have been as early as the generations after Moses (even though its number of participants is not expressly mentioned in the Old Testament).²⁴ This Pentateuchal supreme

¹⁷ The most sensational archaeological discovery in the first decade of the twenty-first century was at the fortified city of Khirbet Qeiyafa (the biblical Sha’araim) in Judea, built in the era of the unified kingdom. Archaeologists have unearthed the place of judges in the gates (GARFINKEL, Y. – GANOR, S. – HASEL, M. G., *In the Footsteps of King David. Revelations from an Ancient Biblical City*. London, 2018, p. 74–77), and the text of an ostrakon found here, as deciphered by Gershon Galil, is also related to the judges (GARFINKEL – GANOR – HASEL, *In the Footsteps of King David*, p. 115–123; GALIL, G., The Hebrew Inscription from Khirbet Qeiyafa/Neta’im: script, language, literature and history. In: *Ugarit-Forschungen*, Vol. 41, 2009, p. 193–242). For the first-century BC inscription containing the term *[z]qym* (“elders”), found at the southern wall of the Temple Mount near the Hulda gates; together with another inscription referring to courts, see: *Corpus Inscriptionum Iudaeae/Palaestinae*. Berlin – New York, 2010, vol. I, part 1, p. 57–59.

¹⁸ On the legal aspects of the Book of Ruth, see: BEATTIE, D. R. G., The book of Ruth as evidence for Israelite legal practice. In: *Vetus Testamentum*, No. 3, 1974, p. 251–267. For details of the activities of the judges at the gate, see also: Job 29:7–25. See also: EVANS, G., ‘Gates’ and ‘Streets’: Urban Institutions in Old Testament Times. In: *Journal of Religious History*, No. 1, 1962, p. 1–12; and MAY, N. N., Gates and their functions in Mesopotamia and Ancient Israel. In: MAY, N. N. – STEINERT, U. (eds.), *The Fabric of Cities. Aspects of urbanism, urban topography and society in Mesopotamia, Greece, and Rome*. Leiden, 2014, p. 77–121.

¹⁹ Its permanent seat in the Temple district was in the Hall of Hewn Stones (*lishkat ha-gazit*) (bSanhedrin 88 b), which, not coincidentally, was an upstairs room above the north gate of the Temple Court (*‘azarah*), but it could also meet elsewhere, for example in the Xystus in Jerusalem, which Flavius Josephus also calls *Buleterion*. (Its location has not yet been identified with certainty by archaeologists.) The location was crucial to the great Sanhedrin’s Pentateuchal legitimation, as the sacred text puts it: “If a judicial decision is too difficult for you to make between one kind of bloodshed and another, one kind of legal right and another, or one kind of assault and another—any such matters of dispute in your towns – then you shall immediately go up to the place that the Lord your God will choose, where you shall consult with the Levitical priests and the judge who is in office in those days; they shall announce to you the decision in the case. Carry out exactly the decision that they announce to you from the place that the Lord will choose, diligently observing everything they instruct you. You must carry out fully the law [Torah!] that they interpret for you or the ruling that they announce to you; do not turn aside from the decision that they announce to you, either to the right or to the left. As for anyone who presumes to disobey the priest appointed to minister there to the Lord your God, or the judge, that person shall die.” (Deut 17:8-12, *emphasis added*.) It is for this reason that Sifrei Dt 17:10, § 154 (105a) (quoted in STRACK, H. L. – BILLERBECK, P., *Kommentar zum Neuen Testament aus Talmud und Midrasch*, vols. I-VI. München, 1961, vol. I, p. 910) makes it clear that the Great Sanhedrin, sitting anywhere other than at the gates of the Temple, no longer has the authority to make a Torah ruling: “One commits a mortal sin by [ignoring] a decision of the Jerusalem court, but one does not commit a mortal sin by [ignoring] a decision of the Yabne court.”

²⁰ In the Second Temple period, the high priest (*kohen gadol*) and the president of the court (*‘ab beyt-din, nasi*) were the heads of the Sanhedrin, see: LANGBERT, M. – FRIEDMAN, H. H., Perspectives on transformational leadership in the Sanhedrin of ancient Judaism. In: *Management Decision*, No. 2, 2003, p. 199–207.

²¹ “You must carry out fully the law [Torah!] that they interpret for you” (Deut 17:11). This biblical fact is denied in the Christian tradition, which denies this authority to any kind of rabbinical court (a kind of Sadducee-Karaite position), but the Torah indisputably grants the Great Sanhedrin this authority. It is important to note here that this does not imply the infallibility of the Great Sanhedrin (“If the whole congregation of Israel errs unintentionally” – Leviticus 4:13, cf. mHorayot 1:1), but his possible error can only be corrected by a subsequent Great Sanhedrin of equal authority and number, to guarantee that legal certainty is maintained (such correction of judicial errors is dealt with in an entire tractate in the Mishnah, titled *Horayot*). Since the destruction of the Temple, such correction has become impossible, for without it, no Great Sanhedrin of Pentateuchal authority can be established. The Great Sanhedrin of Jerusalem also clarified whether it regarded a decision to be of Pentateuchal authority (*de-‘orayta*) or only a “commendation” of the rabbis (*de-rabbanan*), an eloquent beautiful example of which is found in Acts 5:27–40 where, upon the advice of Rabban Gamaliel – then the secular president of the Sanhedrin, the *Nasi* – they themselves, on account of their insecurity, downgraded their decision to prohibit the proclamation of the name of Jesus from *de-‘orayta* to *de-rabbanan*, the violation of which no longer entailed the death penalty. For a clear rabbinical legal background to this case, see: LE-CORNU, H. – SHULAM, J., *A Commentary on the Jewish Roots of Acts*. Jerusalem, 2003, p. 215–247).

²² PIOSKE, D. D., The ‘High Court’ of ancient Israel’s past: archaeology, texts, and the question of priority. In: *Journal of Hebrew Scriptures*, Vol. 19, 2019, p. 1–26.

²³ Num 11:16–17.

²⁴ On the Sanhedrin, see: HOENIG, The Great Sanhedrin, p. 166–167, MANTEL, Studies in the History of the Sanhedrin; KEE, H. C., Central Authority in Second-Temple Judaism and Subsequently: From Synedrin to Sanhedrin. In: *Review of Rabbinic Judaism*, No. 1, 1999, p. 51–63.

court (later called the Great Sanhedrin) decided all cases that had not been settled to everyone's satisfaction by the four lower levels of adjudication; it also had legislative powers equal to those of Moses on all matters not covered by the Torah itself (e.g. the method of balancing the solar and lunar year in order to celebrate the festivals; the determination of the canon of Scripture; etc.). This is why Jesus says to his Jewish audience, even about the utterly corrupt Great Sanhedrin,²⁵ *"The scribes and the Pharisees sit on Moses' seat; therefore, do whatever they teach you and follow it; but do not do as they do, for they do not practice what they teach."*²⁶

3. The principles governing the administration of justice

3.1 Principles for judging

In addition to the above principles concerning the character of the judges, the Torah also prescribes the following for the process of judging: (1) no ruling should be given because of pressure from the majority/masses (i.e., judges should dare to take the minority position if that is the truth);²⁷ (2) a poor person should not be judged more favorably because of his financial situation;²⁸ (3) but neither should he be judged less favorably;²⁹ (4) foreigners/immigrants (non-Jews) should be judged in the same way as fellow countrymen;³⁰ (5) the person in authority or power should not be favoured;³¹ (6) two or three witnesses are needed to prove any claim, as nothing can be proved by the word of a single witness;³² etc. In addition to all these, almost all the books of the Old Testament are full of passages warning, rebuking, instructing and teaching the judges of their

duties.³³ Honest judges were often under fire from the prophets for judging against the majority, the powerful, the leaders or the wealthy.³⁴ The Bible also regularly warns judges that God will punish them if they make false, wrong or unfounded judgments.³⁵ The rabbinic understanding is that the *Shechinah*, the divine Presence, left Israel because of the falsehood of the judges and will return to Israel as a result of righteous judgement.³⁶

3.2 Basic rules for the investigation of cases

In this regard, the most basic Pentateuchal rule is that nothing can be proved on a single testimony: two or three testimonies are required for proof.³⁷ This requirement is also confirmed and adopted in the New Testament for church matters.³⁸ Perjury is forbidden by the Ten Commandments themselves,³⁹ and a false witness was punished with the sentence that would have been imposed on the person he accused if his testimony had been true (which could even be capital punishment).⁴⁰ The original Hebrew text of Deuteronomy 19:15 also stipulates that each statement of fact must be proved separately by two or three witnesses, and that any statement for which there is only one witness (i.e., if the witnesses' testimony on that particular point does not agree) must be rejected. This principle was affirmed by Jesus himself,⁴¹ and is therefore authoritative in New Testament ecclesiastical judgments (incidentally, this principle was the reason why Jesus himself could not be condemned to death until he himself had made his statement).⁴² Any other handling of the case was considered slander and was severely punished.⁴³ Lastly, the execution of the sentence was always to begin with the witnesses,⁴⁴ in order to increase the weight of their re-

²⁵ This is uniformly attested to in all ancient records, even in rabbinic literature (e.g., bSanhedrin 88 b; bSotah 47a-b; bPesachim 57a; Debarim Rabbah 2:19; mHorayot 1:1), not to mention Qumran documents (E.g., the Isaiah Commentary 4Q162, 2:6-10; the Damascus Document 4:19 and 1:14-18), the New Testament (E.g., Mt 23) and Josephus (E.g., Antiquities, 20:8:8; War, 7:8).

²⁶ Mt 23:2-3. A similar principle is also found in rabbinic literature on this matter: *"Even if [...] they point to the left when it is to the right, or to the right when it is to the left, listen to them."* (Sifre Dt 17:10 § 154 (105a), quoted in STRACK – BILLERBECK, Kommentar, vol. I, p. 910). On the status of Judaism, Christianity and religious freedom in the Roman Empire, see: SÁRY, P., The Emergence of the Idea of Religious Freedom in Ancient Rome. In: *Journal on European History of Law*, Vol. 13, No. 2, 2022, p. 107–113; GRÜLL, T., „Civilis, non tyrannica dominatio” (Tert. Apol. 2. 14.) Miért nem álltak ellen a keresztények a római hatalom üldözéseinek? [“Civilis, non tyrannica dominatio” (Tert. Apol. 2. 14.) Why Christians Did not Resist the Persecutions of the Roman Power?]. In: *Diké*, No. 1, 2023, p. 153–171.

²⁷ Ex 23:2.

²⁸ Ex 23:3.

²⁹ Ex 23:3, 6.

³⁰ Ex 23:9.

³¹ Deut 16:19 in the Hebrew original; Lev 19:15; Deut 1:17.

³² Deut 19:15–21.

³³ See: 2Chron 19:4–11; Prov 22:22–23.

³⁴ E.g., Isa 29:21; Am 5:10–15.

³⁵ E.g., Ps 82 (where the rabbis interpret the word *'elohim* – correctly – as judge).

³⁶ This view is based on strictly biblical passages; see, e.g., 2Chron 19–20. On the departure of the Holy Spirit, see: LEVISON, J. R.: Did the Spirit Withdraw from Israel? An evaluation of the earliest Jewish data. In: *New Testament Studies*, No. 1, 1997, p. 35–57.

³⁷ Deut 19:15. This is also the standard practice in the US Supreme Court's procedure; see: FINKELSTEIN, S. M., A Tale of Two Witnesses: The Constitution's Two Witness Rule and the Talmud Sanhedrin. In: *Litigation*, No. 4, 2009, p. 13–17.

³⁸ Mt 18:16, 2Cor 13:1.

³⁹ Ex 20:16.

⁴⁰ Deut 19:18–21.

⁴¹ Mt 18:16.

⁴² Mk 14:55–59. The literature on the trial of Jesus is almost immense, a good summary in English is given in: SÁRY, P., *Bűnvádi eljárások az Újszövetségben* [Criminal prosecutions in the New Testament]. Budapest, 2000; and FAZEKAS, I., *Amicus Caesaris. Jézus perének zsidó és római jogi jellemzői* [Amicus Caesaris. Jewish and Roman legal characteristics of Jesus' trial]. Budapest, 2016.

⁴³ E.g., mSanhedrin 3:7.

⁴⁴ Deut 17:7.

sponsibility (for if they were false witnesses in a case involving capital punishment, they committed wilful manslaughter).⁴⁵ It follows that there was no 'witness protection,' no secret testimony: witnesses had to testify face to face (otherwise they were considered as slanderers).

3.3 Consideration of intentionality/wilfulness

The Mosaic Law makes an emphatic distinction between a sin committed knowingly (while being aware of the law, wilfully) and a sin committed out of ignorance (ignorance or misinterpretation of the law). In the case of a sin committed knowingly, the Torah itself never authorises the presentation of an atoning sacrifice,⁴⁶ but requires the execution of a just sentence, even if the sinner has expressed his intention to repent.

Thus, for example, if it was proven beyond reasonable doubt that the accused committed a mortal sin, even though he was aware of the law and the sanction, the death sentence was carried out (in compliance with the Pentateuchal principle) even if the offender expressed his intention to repent during the proceedings. In Jesus' time, there was a rabbinical rule that the offender had to be led into a confession (penitential prayer) immediately before his stoning, and if he recited the prayer, he was assured that he would be saved, and then executed as humanely (quickly) as possible.⁴⁷ In the case of a sin committed in ignorance, however, the sentence was not carried out (whatever the sin, whether murder, adultery, idolatry, etc.). but the accused was required to offer a sacrifice for his sin, and was warned (caning was usually part of the warning, as was the offering) and taught the law (so that in the case of a later relapse, awareness would be proven and the sentence would be carried out). It was not for the accused to prove that he was not aware of the relevant commandment, but for the witnesses to prove that he was (i.e. two or three persons had to testify that the offender had been warned of the commandment in their presence). In the absence of such proof, the sin or crime was automatically considered to have been committed in ignorance.

3.4 Further rabbinic rulings on testimony

Given that human fate – even life and death – could depend on the verdict, and that judges were warned in Scripture that

God would punish judges for any wrongful judgment, additional precautionary rules beyond the Torah's commandments were developed and handed down over centuries of judicial practice.

The most important of these are the following: (1) Only an actual eyewitness was accepted as a witness (i.e., the person had to have seen the act he witnessed – his testimony could not come from second-hand information, hearsay or even his logical inference).⁴⁸ A rabbinic example of this is the story of a man who saw two people enter a house. One of them had a sword in his hand. After a few minutes that person came out, with blood on the sword he was holding. The witness then went into the house and found the other man dead, stabbed with a sword. In this case, the murder was not proven because the witness did not see the murder himself, he only inferred that it had happened. In fact, anything else could have happened inside the house (e.g. suicide or accident), and if there is even a remote possibility that the accused is not guilty, he cannot be convicted.⁴⁹ This is implicit in the New Testament: in connection with Mary's pregnancy, Joseph does not raise the possibility of the death penalty, only of public shaming.⁵⁰ In fact, in the rabbinical jurisprudence of the time, Mary would not have been condemned because no one had caught her on adultery to testify to it. Since the rabbinical legal procedure takes into account the possibility of a miracle (as opposed to today's materialistic jurisprudence), so if Mary had defended herself by claiming that she had gotten pregnant by the Holy Spirit, no one could have proved the sin had occurred, and Mary would have been acquitted (but would have been exposed to public suspicion and shame).⁵¹ (2) No person who could be accused of bias (a close relative, for example) was ever accepted as a witness.⁵² (3) The criterion of two or three witnesses was interpreted to mean that only three witnesses were accepted to prove cases that carried the death penalty, instead of just two. (4) Witnesses also had to prove consciousness (the criterion of intent), which was rather difficult, so its absence led to acquittals in many cases. (5) The accused could not be a witness in his own trial; i.e. a confession was not accepted as testimony, and if there were not two or three witnesses – independent of the accused –, the charge was dropped. This may seem nonsensical on the surface, but it is entirely faithful to the letter of divine Law, for the Torah

⁴⁵ On this responsibility of the witnesses, see mSanhedrin 4:5. Jesus used the weight of this responsibility when he thwarted the stoning of the adulterous woman (Jn 8:7).

⁴⁶ Num 15:22-31, cf. Heb 10:26-28.

⁴⁷ mSanhedrin 6:2. Four methods of execution were allowed for the Sanhedrin: stoning, strangulation, beheading and burning (mSanhedrin 7:1); see HOENIG, *The Great Sanhedrin*, p. 207. To ease the pain, the condemned man was given wine mixed with frankincense to drink before the execution, which dulled his senses – this was also offered to Jesus (bSanhedrin 43a, cf. Mt 27:34).

⁴⁸ mSanhedrin 4:5.

⁴⁹ Taking for a moment the terminology of the philosophy of science, we might say that lawfulness does not allow the application of Occam's razor, i.e. the fact of a causal chain between two events unknown to us cannot be asserted as certain knowledge, by taking the theoretically simplest and most real causal chain as a *fait accompli* (it should therefore be considered that this cannot lead to absolutely certain knowledge in natural and historical science either, so that we should treat it with much greater scepticism there too).

⁵⁰ Mt 1:19. For a legal overview of the circumstances of Jesus' concept, see: COTTON, H. M. P., *The Conception of Jesus*. In: NEHMÉ, L. – AL-JALLAD, A. (eds.), *To the Madbar and Back Again. Studies in the Languages, Archaeology, and Cultures of Arabia Dedicated to Michael C. A. Macdonald*. (Semitic Languages and Linguistics 92). Leiden, 2017, p. 581-598.

⁵¹ On rabbinic jurisprudence, see DOHRMANN, N. B.: *The Boundaries of the Law and the Problem of Jurisdiction in an Early Palestinian Midrash*. In: HEZSER, C. (ed.), *Rabbinic Law in its Roman and Near Eastern Context*. Tübingen, 2003, p. 83-103.

⁵² The only exception to this is for the most serious sin, the violation of the first commandment of the Ten Commandments, the propagation of the worship of another god (Deut 13:6-11). It is also the only case in which rabbinic law permits the use of an *agent provocateur*.

does indeed speak of witnesses, and their number, whereas it says nothing about the value of a confession, and it does not suggest that the accused could be a witness against himself, and therefore this possibility is completely forbidden by rabbinic rule as inhuman.⁵³

The real intention behind all these troubling principles was (1) not to inadvertently pass a judgment of conviction in a case if it was not 100 percent proven in the spirit of the Torah (because in that case the judges would be under judgment from God); (2) to kill as few of the chosen people (the “brethren”) as possible. In other words: it is better for a guilty man to live for lack of proof than for an innocent man to be executed (which would make the court itself a murderer). Witnesses were warned before the trial of their responsibility related to the death penalty,⁵⁴ as the following passage from Mishnah confirms:

How does [the court] intimidate the witnesses in giving testimony for cases of capital law? They would bring them in and intimidate them by saying: “Perhaps what you say is based on conjecture, or a rumor; perhaps it is testimony based on hearsay, or based on the statement of a trusted person. Perhaps you do not know that ultimately we examine you with inquiry and interrogation, You should know that cases of capital law are not like cases of monetary law. In monetary law, a person [who testifies falsely] can give the money [to the proper owner] and his sin is atoned for. In capital law, however, the blood of [the accused] and the blood of his offspring [that he did not merit to produce] are ascribed to [the witness’s testimony] until eternity. As we found with Cain, who killed his brother, as it is stated concerning him: ‘Your brother’s bloods cry [out to Me from the ground].’ The verse does not state: ‘Your brother’s blood,’ but rather: ‘Your brother’s bloods,’ since his brother’s blood and the blood of his brother’s offspring [are ascribed to Cain].” (In an alternative interpretation, ‘your brother’s bloods’ [teaches] that that his blood was splattered on the trees and on the stones.)

The court tells the witnesses: “Therefore, Adam was created alone to teach you that with regard to anyone who destroys one soul from the Jewish people, the verse ascribes him blame as if he destroyed an entire world; and anyone who sustains one soul from the Jewish people, the verse ascribes him credit as if he sustained an entire world.”

And this was done [that is, Adam the first man was created alone] in order to maintain peace among people, so that one person will not say to another: “My father is greater than your father;” so that the heretics will not say: “There are many authorities in Heaven.” So the [reason] is to proclaim the greatness of the Holy One, Blessed be He.

As when a person stamps several coins with one seal, they are all similar to each other. But the supreme King of kings, the Holy One, Blessed be He, stamped all people with the seal of Adam the first man, [as all of them are his offspring,] and not one of them is similar to another. Therefore, each and every person is obligated to say: The world was created for me.

And perhaps you will say: “Why would we want this trouble [to testify]?” However, it has been stated: “And he being a witness, whether he has seen or known, if he does not utter it...” [Thus, it is a transgression not to testify when one can do so.] And perhaps you will say: “Why would we want to be responsible for the blood of someone?” However, it has been stated: “When the wicked perish, there is rejoicing.”⁵⁵

By this tightening of the evidentiary process (and other methods, see below), it was made very rare for the death sentence to be actually carried out.⁵⁶ The Torah also speaks of the fact that God would “cut out” (*karet*) from among the people those who were not convicted for lack of evidence, but were actually guilty anyway, and it was therefore considered better to acquit the accused if the evidence was not absolutely concordant, because if he was guilty he would die young anyway (“his punishment is in the hand of heaven”).⁵⁷ According to some verses, it was generally understood that early death (“halfway through life,” between the ages of 30 and 60) was always due to such hidden (secret) mortal sins.⁵⁸

3.5 Additional rabbinic provisions on the functioning of the courts

According to the rabbinical rules already established by the time of Jesus, no body of ordained judges is required to hear out “lesser” cases (mainly, for example, all disputes of a material or financial nature).⁵⁹ Such cases should be referred to an *ad hoc* court of three lay judges.⁶⁰ This custom is confirmed in the New Testament in Matthew 18:16 and 1Corinthians 6:4–5,

⁵³ Nor was the ‘fatal reply’ (*responsio mortifera*) of the defendant against himself accepted in Roman law. In modern Western law, for the same reason, a confession may be withdrawn; moreover, its absence or the defendant’s lying in self-defence may not be an aggravating factor in sentencing, on the basis of the biblical, rabbinical and universal ethical-legal-philosophical principle that the defence of one’s own life exempts everyone from the crime of lying. Undoubtedly, rabbinic law is the strictest in this respect, because while it allows the defendant to plead, it completely prohibits judges to take into account the defendant’s confession.

⁵⁴ For the warning of the witnesses in defamation cases, see: RUFF, T., A rágalmazás „tényállása” az Ószövevényben és a rabbinikus jogtudományban [The “Facts” of Defamation in the Old Testament and Rabbinic Jurisprudence]. In: *Díké*, No. 2, 2023, p. 251–260.

⁵⁵ mSanhedrin 4:5.

⁵⁶ Executions were indeed rare in the Second Temple period: according to Rabbi Tarphon, a Sanhedrin that passed a death sentence in seventy years was called „the murderous Sanhedrin” (*Sanhedrin rotzeach*) (jMakkot 1:10), cf. HOENIG, The Great Sanhedrin, p. 207.

⁵⁷ On divine justice, see: BERLEJUNG, Sin and Punishment: The Ethics of Divine Justice and Retribution in Ancient Near Eastern and Old Testament Texts. In: *Interpretation*, No. 3, 2015, p. 272–287.

⁵⁸ This was also the case with Jesus, as predicted in Isa 53:4 b. See also: DAVIES, E. W., Trial Procedure, Jurisdiction, Evidence, Testimony. In: BARMASH, P. (ed.), *The Oxford Handbook of Biblical Law*. Oxford, 2019, p. 45–58.

⁵⁹ On Jewish justice in Jesus’ day, see RABELLO, Jewish and Roman; HARRIES, Courts, p. 89–90.

⁶⁰ We know of the functioning of such *ad hoc* courts from, e.g., En-Gedi before the Bar Kochba revolt; see: COTTON, H. M., Courtyard(s) in Ein-gedi: P. Yadin 11, 19 and 20 of the Babatha Archive. In: *Zeitschrift für Papyrologie und Epigraphik*, Vol. 112, 1996, p. 197–201.

and is carried over into church practice. (This custom is still in use in Judaism: disputes of this nature are often settled before the local lay court before the morning prayer service, so that the prayer can take place after the judgement has settled the conflict.) If, nonetheless, a case of a material nature (*dina' mamona'*) is brought before an ordained judge, then a single judge or a Levite is sufficient to pass judgment on the accused. For somewhat more important cases, which also affect the life of the community, a panel of three, five or seven ordained judges is required (the odd number is important to avoid a tie vote).

However, only the so-called Minor Sanhedrins, consisting of twenty-three ordained judges, or the seventy-one-strong Great Sanhedrin, could pass a death sentence.⁶¹ The number of twenty-three was deduced from certain Torah passages by multiple inferences,⁶² which intimated that the accused must be defended by a "congregation" (in Hebrew *'edah*, a minimum of ten) as lawyers, and the prosecution must also be represented by a "congregation" of ten acting as a body prosecutors, presided by three judges. A death sentence could only be passed by a two-man majority, but an acquittal could be passed by a one-

man majority. Should all twenty-three (or seventy-one) convict the defendant, he is automatically acquitted because there is a likelihood of a show trial,⁶³ and the procedure cannot be repeated. In the most serious cases (the trial of a false prophet or false teacher, the condemnation of an entire city or tribe, etc.), only the Great Sanhedrin of seventy-one members could judge, on the same principles. Jesus also acknowledges the existence of smaller courts and Sanhedrins, and even confirms that there will be Sanhedrins in the Messianic Kingdom.⁶⁴ Finally, it is also extremely important that the New Testament approvingly recalls that both rabbinic⁶⁵ and Roman law⁶⁶ gave the accused the opportunity to defend himself against the charges labelled against him, face to face with the witnesses, in court.⁶⁷

Given, that a significant part of these principles is reiterated – or at least, not invalidated – in the New Testament,⁶⁸ they fertilized not only early and medieval canon law, but also the Protestant church laws that emerged from the 16th century onwards, even if there are differences in the depth and intensity of the impact.

⁶¹ The Minor Sanhedrin. In Jerusalem, the so-called Sanhedrin Tomb was discovered as early as the sixteenth century, with sixty-three niches cut into the rock (JOTHAM-ROTHSCHILD, J., The tombs of Sanhedria. In: *Palestine Exploration Quarterly*, No. 1, 1952, p. 23–38.); while in the so-called Minor Sanhedrin Tomb, twenty-six niches were discovered in the nineteenth century; see: KLONER, A. – ZISSU, B., The 'Caves of Simeon the Just' and 'The Minor Sanhedrin.' Two Burial Complexes from the Second Temple Period in Jerusalem. In: RUTGERS, L. V. (ed.), *What Athens Has to Do with Jerusalem: Essays on Classical, Jewish, and Early Christian Art and Archaeology in Honor of Gideon Foerster*. Leuven, 2002, p. 125–149.

⁶² Based on Numbers 35:24–25. For details, see: mSanhedrin 1:6.

⁶³ It is interesting to speculate whether the judgment of the Great Sanhedrin condemning Jesus could thus only have been enacted because one – or perhaps two – of its members voted against him, cf. Lk 23:50–51; Jn 19:38–40.

⁶⁴ This is clear from the Greek text of Mt 5:22.

⁶⁵ Cf. Jn 7:51.

⁶⁶ Cf. Acts 25:16.

⁶⁷ Acts 24:19.

⁶⁸ See: RUFF, T., *Az Újszövetség és a Tóra* [The New Testament and the Torah]. Budapest, 2009.