

Introduction to Tractate Makkot

The penalties other than capital punishment covering perjury (with variable penalties), banishment, and flogging are set forth in tractate *Makkot*. The penalties for perjury are specified in Deu. 19:15–21, and for flogging in Deu. 25: 1–3.

- I. Penalties for perjury
- II. The penalty of exile (banishment)
 - A. The conduct of the flogging
 - B. Those who are sent into exile
 - C. The cities of exile
- III. The penalty of flogging
 - A. Those who are flogged
 - B. The conduct of the flogging

Continuing the exposition of *Sanhedrin*, the tractate *Makkot* concerns itself with the judicial sanctions of flogging and banishment, with particular interest in matching the crime (or sin) to the penalty.

Sanhedrin and *Makkot* form a protracted statement. Within Israel's social order the law addresses the profound questions of social justice: What shall we make of the Israelite sinner or criminal? Does the sin or crime, which has estranged him from God, close the door to life eternal? If it does, then justice is implacable and perfect. If it does not, then God shows his mercy, but what of justice?

We can understand the answer only if we keep in mind that the law takes for granted the resurrection of the dead, the final judgment, and the life of the world to come beyond the grave. From the perspective of eternal life, physical death becomes an event in life but not the end of life. It must follow, therefore, that the death penalty does not mark the utter annihilation of the person of the sinner or criminal. On the contrary, because he has paid for his crime or sin in this life, he is situated with all of the rest of "supernatural" or "spiritual" Israel, ready for the final judgment. Having been judged, he will "stand in judgment," meaning, having been judged and punished in his material life he will find his way to the life of the world to come along with everyone else. Within the dialectics formed by those two facts (of belief)—punishment now and eternal life later on—we can identify as the two critical passages in the law, Mishnah tractate *Sanhedrin* 6:2 where Achan pays the supreme penalty but secures his place in the world to come, and Mishnah tractate *Sanhedrin* 10:1. In the latter text, all Israel, explicitly including all manner of criminals and sinners with only a few exceptions, is going to stand in judgment and enter the world to come.

That is what defines the stakes in this critical component of the sages' understanding of God's abode in Israel. What the law wishes to explore is how the Israelite sinner or criminal may be rehabilitated through the criminal justice system, so as to rejoin Israel in eternity. The answer is that the criminal or sinner remains Israelite no matter what he does, even if he experiences the death penalty exacted by the earthly court.

The law of *Sanhedrin-Makkot* embodies three religious principles. First, Israel endures for ever and encompasses (nearly) all Israelites. Second, sinners or criminals are able to retain their position within that eternal Israel by reason of the penalties paid before earthly courts—penalties that expiate the specific sins or crimes spelled out by the law. Third, an act of merciful justice is done when the sinner or criminal is put to death, for at that point by this punishment he is assured of eternity along with everyone else. God's justice comes to full expression in the penalty, which is both instrumental and contingent. God's mercy endures forever in the forgiveness that follows the expiation of guilt through the imposition of the death penalty.