

**The** \_\_\_\_\_  
**challenge:** The Sages seem to endorse and embrace improper activities.

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**The** \_\_\_\_\_  
**response:** \_\_\_\_\_

On the balance of things, this objection should never be voiced. The thorough righteousness and justice of so much of what *Chazal* write speaks persuasively. When we encounter a small number of difficult passages, we ought to realize that we cannot take them at face value. We understand that the fault must lie in our own limited comprehension, not in their deep thought. We ought to exert ourselves to uncover what is initially hidden, and discover the full, rich significance of their instruction.

Portions of *Chazal's* wisdom seem strange or incomprehensible to us because of differences in the way we comprehend things. *Chazal's* methods are based upon a tradition of wisdom received from G-d Himself. These approaches can remain opaque to those of us who must rely on natural means and make do with human reasoning.

## I. False Witnesses, the Power of Thought, and the Limitation of Justice

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If [the witnesses who testified falsely] have not [yet] killed [their victim with their false testimony], they are executed [when they are proven to be *zomemim*]; once they have killed [i.e. the court has executed the accused on the basis of their testimony], they are not executed.<sup>[1]</sup>

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1. *Makkos* 5b.

This irritates the skeptics. Why should we deal more harshly with those who only planned evil than with those who have carried it out?

It would be appropriate not to bother with this criticism. The rules of the Torah do not have to conform with our sense of “reasonableness” or “propriety.” The Torah’s mitzvos are Divine, and grow out of a G-dly perspective, radically different from our own. We have these laws because of an unbroken tradition from Sinai, not because of some growth and seasoning of Man’s reasoning. The law that we here consider is no different from any other mitzvah of the Torah, whose ultimate reason and purpose is essentially hidden from Man! Nonetheless, I will not hide the truth. I will provide a bit of insight into their thinking, so that all will know how much greater are the thoughts of our early Sages than the ruminations of ordinary people.

*Ramban* already provided a defense of this law in his commentary to the Torah;<sup>[2]</sup> I will add some other important points. The truth of the Torah will become apparent and clear!

## ☞§ The Torah Only Punishes Some Murderers

First you must know how strict the Torah is in capital cases. Halachah stipulates that we question witnesses with seven types of inquiry and investigation. Individual judges, each according to his own wisdom, can pose additional questions to test the credibility of the testimony.<sup>[3]</sup> This demonstrates the exceptional gravity that the Torah attaches to taking a human life.

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2. *Deuteronomy* 19:19. *Ramban* explains that once the accused is executed, he can be presumed to have been deserving of death. Hashem would not have allowed an innocent person to die through the activity of the Court. G-d retains the ultimate responsibility for meting out justice. When we assume some of the burden, Divine Providence rushes to our side to assist us. If the death penalty were inappropriate, Hashem would have guided the judges to a different conclusion.

3. *Sanhedrin* 40a; *Rambam, Eidus*, 1:4-6. Seven basic questions must be answered satisfactorily by the two witnesses, who are examined separately, each outside the presence of the other. These concern the place and time of the alleged crime. The reports of the witnesses must coincide as well regarding the main parameters of the criminal act. The court also questions them about details of lesser import, in an

You might object that these strict procedures, and many others like them, actually encourage the spilling of blood, as murderers take advantage of legal loopholes to avoid justice. It is important that you realize that this is not true. The strict, technical requirements for a conviction are only used when our nation, for the most part, acts righteously, and an isolated murder does not invite imitators. In times of loose moral standards, when a murderer who evades punishment might encourage sinners, a different standard is used. The Gemara provides the license for this: “The court may punish and put to death, beyond the letter of the law,”<sup>[4]</sup> according to the exigencies of the time and the situation.

At times, however, society is strong enough that unpunished murder will not necessarily lead to a cheapening of human life. In such a generation, we can safely make use of the pure righteousness and fairness of Torah law.

Surely, you will object, it is righteous and just that the guilty pay for their crimes! While this reaction is justified, it disregards other features of human jurisprudence. Is this the only insufficiency of justice that you observe? Who will punish the murderer who went unobserved? What about the perpetrator of an act of immorality or theft, who succeeds in concealing his evil? What recourse does any court have when it cannot muster the basic evidence or testimony it needs to proceed? Where is justice then?

All our attempts in dispensing justice are miserably incomplete without sharing the labor with a Partner. The One Who knows all, to Whom the hidden is all revealed — He is Witness and Judge! Righting the wrongs of this world is ultimately not our responsibility, but His!

Moreover, we usually confuse the identities of the greater and lesser partners in the quest for justice. We tend to see ourselves in the more prominent role, invoking Hashem merely to fill in certain gaps. The truth is precisely the opposite. Only G-d is the Guarantor of justice. At

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attempt to get the witnesses to contradict each other. If the court discovers contradictions or inconsistencies in the two reports, it invalidates their testimony. (However, simple inability to answer a question of this type — i.e. the witness claims he simply does not remember — does not compromise the testimony.) The court is urged to put as many of these questions to the witnesses as possible.

4. *Yevamos* 90b.

times, He asks us to participate in the process. Effectively, He deputizes us to act as His surrogates, only where He has seen fit.

He calls for our intervention in a limited subset of all issues that arise. It is only upon much rarer occasions, however, that He assigns mortal, fallible humans a critical role in capital cases. Infrequently we rise to His standard of Justice to the point that He instructs our own hands to take the life of the accused.

## ✎ Thought Becomes the Equivalent of Deed

We will now consider why the paradigm of the plotting witnesses is such an anomaly, even within the limited sphere of human involvement with justice. You will quickly realize that plotting witnesses are not punished for anything they “do.” In the halachic sense, they never “do” anything.<sup>5</sup> Any unhappy deed that follows from their testimony is actually carried out by the court itself. If the only parameter that we valued or examined were action, they would escape legal consequences, claiming that they were inactive causes for the action of the court.

But the mandate of the Jewish court is not to punish *evildoers*. Rather, the Torah instructs: “You shall destroy the *evil* from your

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5. In many different ways, Jewish thought puts a premium on direct action. Halachah differentiates between activity, speech and thought, often (but not always) regarding activity as the most serious. Mere thoughts of crimes, for example, are rarely punishable, even by G-d Himself. (A rare exception is accepting the divinity of some idolatrous being. *Kiddushin* 40a teaches that in this arena, G-d exacts retribution for what is really a crime of thought, not deed or speech.) Damage to another party inflicted by speech will rarely lead to a court judgment. (Defaming a woman by claiming her promiscuity — *Deuteronomy* 22:13-19 — is an exception.)

Furthermore, halachah makes distinctions within the realm of activity itself. Consequential damage is rarely treated as seriously as direct damage. This is true even where there is no question that a particular action set into motion a cascade of consequences, without which the final consequence never would have occurred. Halachah still differentiates between “doing” and “causing.” Although the false witnesses can be said to have *caused* the death of the victim, halachah rarely treats causation with the same severity as deed. (See *Sanhedrin* 77a, regarding murderers who are not subject to execution by the court, because their method of killing was not sufficiently direct.) Causing (without directly doing) does carry moral responsibility, however, including the need to make amends. See *Bava Kamma* 55b.

midst.”<sup>6</sup> Arguably, there is evil in the plotting and planning of a malevolent heart as surely as there is in the transgression itself.

Typically, the evil of a crime endures beyond its commission. An act of murder changes the world. The killer leaves tracks; the impression of his misdeed is not washed away by time. There should be no statute of limitation. The ugly act remains a festering sore, and it is appropriate for the court to address it at any time.

The plotting witnesses, however, are never punished for an actual deed. It is the court itself that actually takes the life of the hapless victim, and they, of course, are completely innocent of any malicious intent or negligence. So the “crime,” in the conventional sense of an offensive activity, cannot be punished. Those who committed it are innocent for lack of intention; those who brought it about should escape punishment, it would seem, for not having acted directly enough.

Instead, the Torah obligates us to execute them for a parallel evil — the evil of their *thought*. Thoughts themselves do not usually leave impressions and marks. Once the thought is translated into testimony and the case closed no blatant evil remains. In order to execute the witness for an evil thought (for reasons that we shall soon explain), that thought must be fresh, potent and functional. Thought occupies the main ring of judicial focus only when captured in full blossom, in flagrant display of its diabolical potential. This is so only while the witnesses are caught in the midst of their plotting, but never later.

## ✎ The Power of Thought

You must know that *Chazal* here reveal to us the startling power inherent in human thought. Even if we were to accept our explanation above, it still strikes us as strange that the plotting witnesses should be punished for a crime of thought alone. The very unusual punishment of *zomemim* owes to the unseen potency of the human mind. When we ponder how crucial thought is to human experience, and just how wonderful a gift it is, we will

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6. *Deuteronomy* 17:7.

perhaps begin to understand why Hashem endowed it with so much power.<sup>[7]</sup>

If Man is important (and we are taught that he is the ultimate purpose for Creation), thought trumps all competitors for his choicest asset. Inventory all the props available to him, and you will find nothing as important. As long as body and soul are united in this world, nothing in Man's experience is as personal and profound as the fruit of his conscious mind. His thoughts define him, and they mediate how he responds to the challenges that G-d throws at him. In a sense, then, the entire "success" of Hashem's Man-centered plan for Creation rests on the quality of Man's thought. If a bit more Divine empowerment attaches itself to thought than we would have imagined, we should not be surprised.

Thoughts, we are taught here, have a life of their own.<sup>[8]</sup> They seek completion and resolution through action. When they are not translated into activity, they turn back against those who crafted them. Think of throwing a ball at some surface. If the target is suitable, say something soft and cushiony, it absorbs and dissipates the ball's energy. The potential energy in the projectile seems to disappear as the ball stops in its tracks.<sup>[9]</sup> When this cannot happen, when the ball strikes something firm and unyielding like a wall, it rebounds in the direction of the thrower. Its energy is redirected back at its source!

The evil plotting of the witnesses must be understood in the same way. When their plans to take a human life bear bitter fruit, and the victim is executed, the potency of their thoughts expires. They are not punished with death (at least by the hands of the human court), because they did not kill directly. If their plot is uncovered before the execution, however, the energy that they create with their plotting must be resolved. Their thoughts generate a homicidal force that will be satisfied and completed only when someone is actually killed. The Torah teaches us that the natural targets of this force are those who

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7. Maharal offers no explanation here of just why human thought is more potent and powerful than we would have imagined. He merely states the point. I have supplied my own conjecture.

8. For more on this theme, see *Michtav MeEliyahu*, vol. 3 pp. 96-97.

9. Actually, the energy is converted to the mechanical energy of the vibration of several surfaces, and to heat energy.

unleashed it. Thus, they are executed; in effect, they are killed by the power of their own evil design.

You will find mirror images of this principle expressed elsewhere. Achashverosh ordered the execution of the figure who merely plotted the destruction of the Jewish people, but who failed to translate his evil thought into action. "[Haman's] wicked scheme, which he had *thought* about the Jews, should *recoil on his own head*."<sup>[10]</sup>

In another example, *Chazal* caution: "Whoever [unjustly] suspects innocent people [of misdeed] will be afflicted bodily."<sup>[11]</sup>

Simply alleging a wrongdoing carries consequences. When those consequences find no home with the innocent accused, their force is redirected to the accuser. The person who energized the spurious accusations, who created this pool of negativity, must absorb their fury.

## ☞ Two Systems of Justice

You may still find our law unsettling. It seems unfair that the plotting witnesses who are not exposed until after the execution literally seem to "get away with murder." I have already told you, though, that there are two different systems of justice. Law, as it is given to human hands, oversees one of these. It is crucial, according to the Torah, that the human contribution to law abides by a clear standard, defensible through reason. Only a person whose hands directly take the life of another fully deserves to die. The Torah accepts nothing less as grounds for execution. Complicity never suffices: not through false testimony (where it is the court that actually kills the victim), nor through contracting the services of a hired killer.

Where the guilt of the criminal falls short of law's requirement — even a bit — the court has no option. No one has yet invented a partial execution. At this point, law must give way to the other available system of justice — the judgment of Hashem. G-d and only G-d can respond to wrongdoing with hairbreadth precision. He can choose from an infinite array of methods and strategies; He can punish as appropriate, neither too much nor too little.

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10. *Esther* 9:25.

11. *Shabbos* 97a.

The sinner therefore “gets away” with nothing, although G-d is often in no hurry to settle all scores. The human observer may not be able to detect the link between the evildoer and G-d’s response to him. At times, human society cannot adjust to G-d’s timetable. When people are unworthy, and acts of murder and near murder can precipitate further erosion in the value of human life, *Beis Din* can execute whomever they think necessary, as we explained earlier. Operating not under the cloak of the law but beyond its margins, they can invoke emergency, extralegal powers to protect the community.

Sometimes, though, they never have to make use of these powers. When a particular generation is righteous enough, Hashem’s Presence dwells close to His people, and He solves the problem for us.

*Chazal* illustrate this:<sup>[12]</sup> Two people kill, one intentionally, and one unintentionally. No one witnessed either act, so each criminal escapes his prescribed punishment. What does Hashem do? He “arranges” that the two killers should meet in one place. The unintentional killer climbs a ladder, and falls off, killing the intentional killer who just “happens” to be sitting below. This time, there are witnesses, and so the one who killed without premeditation is sent to one of the Torah-mandated cities of refuge,<sup>[13]</sup> where he deserved to be exiled for his previous crime.

Where human justice remains hopelessly incomplete, G-d’s Providence completes the job. He efficiently removes sinners from the midst of the nation, and restores the sin-tarnished luster to His people’s moral stature.

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12. *Makkos* 10b.

13. *Numbers* 35:11.