

THE SANHEDRIN WAY - SOURCE SHEET

The Theoretical Guidelines for 'Constructive Controversy' in the Ancient Sanhedrin

Guideline #1

Text 1

Mishnah Sanhedrin 4:3

The Sanhedrin was (organized) like half a round granary, so that each (judge) could see each (judge).

משנה סנהדרין ד:ג

סְנֵהֲדְרִין הָיְתָה כְּחֻצֵי גֶרֶן עֲגֻלָּה, כְּדֵי שְׂיִהוּ רוֹאִין זֶה אֶת זֶה.

Why did the Sanhedrin sit in a semicircle? How may this be a guideline for encouraging disagreement?

Guideline #2

Text 2

Mishnah Sanhedrin 4:2

Capital cases begin from [the judges on] the side.

משנה סנהדרין ד:ב

דִּינֵי נַפְשׁוֹת מִתְחִילִין מִן הַצֵּד.

Who should express their opinion first in capital cases? Why? How may this be a guideline for encouraging disagreement?

MAHLOKET MATTERS: HOW TO DISAGREE CONSTRUCTIVELY



The 9Adar Project
Jewish Week of Constructive Conflict
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Guideline #3

Text 3

Babylonian Talmud, Sanhedrin 17a

Rav Kahana said: If the Sanhedrin unanimously finds [the accused] guilty, he is acquitted.

תלמוד בבלי, סנהדרין יז ע"א

אמר רב כהנא: סנהדרין שראו כולן לחובה - פוטרין אותו.

What should happen when all are of one opinion? Why? How may this be a guideline for encouraging disagreement?

Guideline #4

Text 4

Babylonian Talmud, Sanhedrin 17a

Rav Yehudah said in the name of Rav: None is to be given a seat on the Sanhedrin unless he is able to prove the cleanness of a reptile from Biblical texts.

תלמוד בבלי, סנהדרין יז ע"א

אמר רב יהודה אמר רב: אין מושיבין בסנהדרין אלא מי שיודע לטהר את השרץ מן התורה.

What does it mean to “prove the cleanness of the reptile”? Why should this be a qualification to sit on the Sanhedrin? How may this be a guideline for encouraging disagreement?



Supplementary Sources

Guideline #1

Text 1.1

Rabbi Jacob ibn Habib, 'Ein Ya'akov, Chulin 5a (1460–1516, Spain/Thessaloniki)

“Like a granary”- They would sit in affection and friendship and as one community, as a Sanhedrin within which no one was suspicious of the other. “That they should see one another” – this is so that they each should be able to hear the words of the other, and so they can argue with one another until the proper ruling should come out.

ר' יעקב אבן חביב, חולין ה ע"א

“כי גורן”- היו יושבים בחיבה ובריעות ובאגודה אחת כסנהדרין שאין חושדין זה את זה.

“שיהיו רואין זה את זה”- להיות שומעין איש דבר חברו ומתוכח זה עם זה עד שתצא הוראה כהלכה.

Text 1.2

Eliezer Schnall, Michael J. Greenberg, “Groupthink and the Sanhedrin: An analysis of the ancient court of Israel through the lens of modern social psychology” in Journal of Management History, vol. 18, issue 3, 2012, p.290.

In order to avoid groupthink... each member of a decision-making group (should) be independently charged as a critical evaluator, thus encouraging members to air doubts and objections. The Sanhedrin, in fact, took practical steps to enforce the notion of such individual member responsibility.... The semi-circle configuration in which the judges sat (Talmud, Tractate Sanhedrin, 36b) may have emphasized that, despite differences in seniority and eminence, no individual's opinion was more important than another's.

Text 1.3

Jerusalem Talmud, Sanhedrin 1:6 (19c)

The Sanhedrin was (organized like) half a round granary, and the Nasi would sit in the middle in order that all will be able to see him and hear his voice.

תלמוד ירושלמי, סנהדרין א:ו (יט:ג)

סנהדרין היתה כחצי גורן עגולה והנשיא היה יושב באמצע כדי שיהו רואין אותו ושומעין קולו.

Guideline #2

Text 2.1

Tosefta Sanhedrin 7:2 (3rd century, Land of Israel)

Monetary cases begin from the greatest [judge], capital cases begin from [the judges on] the side in order that one should not base his opinion upon his teacher/master.

תוספתא סנהדרין ז:ב

בדיני ממונות מתחילין מן הגדול בדיני נפשות מתחילין מן הצד שלא יהא לבו סמוך על דברי רבו.

Text 2.2

Rambam, Laws of the Sanhedrin 10:6 (Rabbi Moses b. Maimon, 1138–1204, Egypt)

According to the Oral Tradition, we learned that with regard to cases involving capital punishment, we do not ask the judge of the highest stature to render judgment first, lest the remainder rely on his opinion and not see themselves as worthy to argue against him. Instead, every judge must state what appears to him, according to his own opinion.

רמב"ם, הלכות סנהדרין יו:

ומפי השמועה למדו, שאין מתחילין בדיני נפשות מן הגדול--שמה יסמכו השאר על דעתו, ולא יראו עצמן כדאי לחלק עליו: אלא יאמר כל אחד דבר הנראה לו בדעתו.

Text 2.3

Eliezer Schnall, Michael J. Greenberg, "Groupthink and the Sanhedrin: An analysis of the ancient court of Israel through the lens of modern social psychology" in Journal of Management History, vol. 18, issue 3, 2012, p.290.

During capital cases junior members of the Sanhedrin always spoke before their seniors (Talmud, Tractate Sanhedrin 32a), preventing undue influence on the formers' opinions. In fact, Maimonides, writes that in capital cases it is a sin to simply base one's ruling on the reasoning of a colleague, rather than carefully considering the evidence oneself. In sum, not only were the members not pressured to vote in accord with leaders' or senior members' positions, they were actively encouraged in their independence.

Guideline #3

Text 3.1

Rambam, Laws of Sanhedrin 9:1
(Rabbi Moses b. Maimon, 1138–1204, Egypt)

When all the judges of a Sanhedrin begin their judgment of a case involving capital punishment and say that the defendant is liable, he is exonerated. There must be some who seek to exonerate him and argue on his behalf, but yet the majority hold him liable. Only then he is executed.

רמב"ם, הלכות סנהדרין ט:א

סנהדרין שפתחו כלם בדיני נפשות תחלה ואמרו כלם: חייב- הרי זה פטור, עד שיהיו שם מקצת מזכין שיהכפו בזכותו וירבו המחיבין ואחר כך יהרג.

Text 3.2

Rabbi Dov Barish b. Jacob Gottlieb, Yad Ketana, Hilchot Deot, chapter 10, Madah
(Wadowice, Poland, 1740–1796)

It is already known that the matter of debate is very necessary for attaining the truth of the matter. For through debate of opposite sides using reasoning and in-depth study, through this the matter will come to light and will be revealed and the truth clarified. However, without the debate arising around areas of doubt, comments, challenges from any wisdom of the world, the matter will not come to light and the truth clarified. Therefore our rabbis said regarding matters of capital cases that if everyone finds the accused guilty – he is ruled as innocent (Sanhedrin 17a)... For when not even one person arises to oppose the matter with comments and challenging questions and investigation, it is already not possible that the matter will come out and the truth be clarified. For capital punishment is so severe... we are concerned that in such a case perhaps everyone fell to the same mistaken conception, and therefore he is not killed.

יד קטנה, הלכות דעות פ"י מדע

(נא) וכבר ידוע שענין הויכוח הוא הכרחי מאוד להשגת הדבר על אמיתתה. כי עיי הויכוח מן הצדדים ההפכים בסברות ובהעיון. עיי זה יצא הדבר לאור ויתגלה ויתברר האמת. אבל מבלי שיתעורר ויכוח בספקות והערות וקושיות באיזה חכמה מעולם לא יצא הדבר לאור ולא יתברר האמיתי. ולפיכך אמרו חכמינו בדיני נפשות שאם כולם מחיבין הוא זכאי (בי סנהדרין יז ע"א)... כי כשאין מתעורר שום אחד להתנגד בדבר בהערות וקושיות ובאיזה חקירה, כבר אי אפשר שיצא ויתברר הדבר לאמיתו. ולפי שענין נפשות חמור מאוד ... חוששין בדבר אפשר שכולם נפלו בסברה אחת מוטעת ולכן אין הורגין אותו.

For an in-depth study on this source, see Howard Kaminsky, *Fundamentals of Jewish Conflict Resolution: Traditional Jewish Perspectives on Resolving Interpersonal Conflicts*, Academic Studies Press, 2017, Chapter 3, "Rabbinic Perspectives on Constructive Conflict: A 'Dispute for the Sake of Heaven,'" pp. 88–89.

Text 3.3

Eliezer Schnall, Michael J. Greenberg, “Groupthink and the Sanhedrin: An analysis of the ancient court of Israel through the lens of modern social psychology” in *Journal of Management History*, vol. 18, issue 3, 2012, p.291.

Unlike in contemporary US law, where capital cases require a unanimous jury decision the Sanhedrin would automatically acquit a defendant if all members argued to convict in such a case (Talmud Sanhedrin 17a). While such a practice could seem counterintuitive, it may have been established as a last-ditch measure to prevent groupthink-like outcomes. If all 70 members’ vote unanimously, without any discussion at all, then there is reason to fear that groupthink conformity pressures may be to blame.

Text 3.4

Yad Rama, Sanhedrin 17a
(R. Meir HaLevi Abulafia, 1170 – 1244, Spain)

In this case, since not even one of them has seen any merit in his favor, they will not find any more merit and it is not beneficial to postpone the execution of the law (that he is guilty).

יד רמ"ה, סנהדרין יז ע"א

והני כיון דהשתא לא חזי ליה חד מינייהו
זכותא תו לא חזי ליה ולא מהני למעבד
ליה הלנת דין.

Guideline #4

Text 4.1

Midrash Psalms 12 (900CE)

Rabbi Abahu said in the name of Rabbi Johanan: Rabbi Akiva had a student and Rabbi Meir was his name, and he would prove the purity of a reptile from the Bible with forty-nine reasons, and would prove its impurity with forty-nine reasons...

Rabbi Yanai said: The Torah was not given in a clear cut manner, rather on every statement G-d said to Moses, He would say forty-nine reasons the matter could be pure, and forty-nine reasons why the matter could be impure.

מדרש תהלים (שוחר טוב) יב

רבי אבהו בשם רבי יוחנן אמר: תלמיד
היה לו לרבי עקיבא ורבי מאיר שמו. והיה
מטהר את השרץ מן התורה במי"ט פנים,
והיה מטמאו במי"ט פנים...

אמר רבי ינאי לא ניתנו דברי תורה חתוכים
אלא על כל דיבור שהיה הקביה למשה
היה אומר מי"ט פנים טהור ומי"ט פנים
טמא. אמר לפניו: רבונו של עולם, עד מתי
נעמוד על בירורו של דבר? אמר לו: אחרי
רבים להטות. רבו המטמאין טמא, רבו
המטהרין טהור.

Text 4.1 continues overleaf.

MAHLOKET MATTERS: HOW TO DISAGREE CONSTRUCTIVELY

Text 4.1 cont

He (Moses) said to Him, 'Master of the Universe, when will we know the truth of the matter?' He said to him (Moses): 'Go according to the majority' (Exodus 23:2): if the majority rules it is impure – it is impure, if the majority rules it is pure – it is pure.

Rabbi Yehoshua ben Levi said: Young students in the times of Saul, David and Samuel knew how to study the Torah with forty-nine reasons to rule a matter impure and forty-nine reasons to rule that the same matter was pure.

ר' יהושע בן לוי אמר תינוקות שהיו בימי שאול ודוד ובימי שמואל, היו יודעין לדרוש את התורה במ"ט פנים טמא, ובמ"ט פנים טהור.

Text 4.2

Babylonian Talmud, Eruvin 13b

R. Aha b. Hanina said: It is revealed and known before Him who spoke and the world came into existence, that in the generation of R. Meir, there was no one equal to him; then why was not the halakha fixed in agreement with his views? Because his colleagues could not fathom the depths of his mind, for he would declare the ritually impure to be pure and supply plausible proof, and the ritually pure to be impure and also supply plausible proof.

תלמוד בבלי, עירובין יג ע"ב

אמר רבי אחא בר חנינא גלוי וידוע לפני מי שאמר והיה העולם שאין בדורו של רבי מאיר כמותו, ומפני מה לא קבעו הלכה כמותו - שלא יכלו חבריו לעמוד על סוף דעתו. שהוא אומר על טמא טהור ומראה לו פנים על טהור טמא ומראה לו פנים.

Text 4.3

Rashi, Eruvin 13b

'depths of his mind' – they were not able to understand which of his words were correct and which of his words were not correct, for he would give a reasonable and logical argument on what was not the law just as he did on what was the law.

רש"י, עירובין יג ע"ב

על סוף דעתו - לא יכלו להבין באיזה דבריו נכונים ובאיזה אין דבריו נכונים, שהיה נותן דעת מיושב והגון על אין הלכה כהלכה.