# Reporting and Prosecuting Jewish Criminals: Halakhic Concerns

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This article by Rabbi J. Simcha Cohen appears in issue 3 of Conversations, the journal of the Institute for Jewish Ideas and Ideals.

Question: Does Jewish Law impose a responsibility to prevent criminal action? Does Halakha sanction reporting Jewish criminals to secular authorities? May an Orthodox Jew prosecute Jewish criminals?

Response: The Rambam rules, "whoever is able to save another and does not endeavor to do so, violates [the prohibition of the biblical verse which states] Lo Ta'amod (do not stand idly) over the blood of your neighbor" (Leviticus 19:16); therefore, one who witnesses his friend drowning in the sea or brigands attacking him and he [the witness] has the ability to save him, or he heard that people seek harm to him...and he does not contact his friend to reveal this, he is in violation of the biblical prohibition of "do not stand idly over the blood of your neighbor" (Maimonides, Hilkhot Rotseah, 1:14, also, Shulhan Arukh, Hoshen Mishpat 426:1). This obligation to prevent crime is not limited to life-threatening situations or even to acts of physical violence, but applies as well to pecuniary matters.

Indeed, the rabbis rule that it is even morally incumbent upon one to rectify an erroneous legal decision. This is noted in Shevuot 31a where it states: "How do we know that a disciple sitting before his master, who sees that the poor man is right and the wealthy man wrong, should not remain silent? Because it is said: ‘From a false matter keep far'" (Exodus 23:7). This case teaches us that silence itself may be a form of falsehood. In a circumstance where silence would result in an erroneous legal decision, it is obligatory to speak out and rectify the wrong. Even though a case is being judged by a master rather than a disciple, and normally it would be considered audacious to contradict one's teacher, still the biblical injunction requires one to reveal the truth. Personal qualms about ruffling the dignity of the master by contradicting his sagacity or ruling have no bearing on the issue.

Yet, not all efforts to report or prevent a crime are lauded. Indeed, there is a fascinating citation relating to this concept in Pesahim 113b. The Talmud reports that a man named Tuvia sinned. He committed adultery. A man called Zigud was aware of this sin and by himself, without another witness, he came to Bet Din, the rabbinical court, to testify against Tuvia proclaiming that Tuvia was an adulterer. Rav Papa, the senior Rav of the Bet Din, punished Zigud for testifying. Zigud was appalled. He called out in protest, "Tuvia sinned and Zigud is punished?" In other words, the Bet Din did not punish Tuvia for the alleged sin of adultery, so why was Zigud punished? The Talmud notes that Zigud was punished for he was guilty of the crime of lashon hara (tale bearing or being slanderous about another).

In Jewish law, testimony relating to adultery require a minimum of two qualified witnesses. Thus, Zigud should have known that he had no standing in court by himself without a second witness and that the Bet din would not act upon his testimony; yet he persisted in testifying. Zigud, therefore, was in effect merely spreading gossip about Tuvia. The fact that the allegation may have been true was of no concern. Zigud was punished for informing others of slanderous material. He should have kept knowledge of the immoral act to himself.

Of major concern is the concept of mesira (the prohibition against one Jew informing the secular courts and/or police of the crime of another Jew). Jewish law deems the act of informing against Jews to Gentiles to be such a negative, reprehensible crime, that the codes overtly note that anyone who violates this prohibition "loses his share in the world to come" (Shulhan Arukh, Hoshen Mishpat 388:9). The need for the codes to detail the religious punishment for this crime emphasizes the moral communal repulsion. This concept places major obstacles on the previously articulated mandate to avert crime. Based upon the strictures of the mesira prohibition, a Jew should be withheld from testifying against another Jew in a secular court. Indeed, it would appear that one may even be prohibited to provide evidence of a Jewish person's crime to the secular authorities. Also at issue is whether the mesira rule may be used by Jewish criminals to intimidate witnesses against them. This means that a potential witness may possibly be told that should he testify against another Jew, the entire Jewish community will ostracize him for he will be classified as an informer.

The Rama rules that a person being physically abused by another may inform the secular government about the attacker (Hoshen Mishpat 388:7). The halakhic commentator, the Shakh, notes that the laws of mesira simply do not apply when a victim seeks to extricate himself from an abusive situation (388:45). One may not inform about a Jew to punish him for acts of the past. However, to cease abuse, it is permissible.

Based upon this decision of the Shakh, the Tzitz Eliezer (vol. 19:52), ruled that one certainly may inform the government in cases of child abuse. Thus, even without life-threatening conditions, it is deemed meritorious to report a parent who may be abusing his child. The Tzitz Eliezer cites two additional sources to support his ruling.

Firstly, the Arukh HaShulhan (Hoshen Mishpat) 388:7) comments that the original laws of mesira related to such governments where the rule of law was not operational. Accordingly, the concept of mesira was set up to protect Jews from inequitable governments. It was not applicable, he contends, to a government like Great Britain. Based on this theory, one may report cases of abused children because the law of mesira is not in effect in a democratic society ruled by an equitable set of laws.

The second supportive case cited by the Tzitz Eliezer also has contemporary ramifications. The Mabit in a responsum gives the impression that a Jewish court, a Bet Din, may refer a case to the secular courts in the event that they lack the authority or power to enforce a decision. For example, he deals with a case where Bet Din actually referred a problem to the secular government for enforcement (part 1:Siman 22). Thus, in child abuse situations, if Bet Din is made aware of a situation that cannot be properly handled by the rabbinical court, the rabbis would grant permission to seek out the protection of the secular courts and the police. The practical implication of this concept is the recommendation to consult a rabbinical Bet Din as to the propriety of reporting a crime or testifying against another Jew in the secular court system. Once Bet Din permits the utilization of the police or the secular courts, the individual reporting a crime should have no qualms about his actions. In this situation, the odious reputation applied to a person who informs upon another Jew to the secular police or courts would not apply.

In addition, the Shulhan Arukh rules that to prevent a public crime, or a number of individuals from becoming victims of a crime, it is also permissible to seek out the protection of the secular government (388:12). Thus, to put a stop to abuse or to prevent a crime that would be committed against a large number of people, the laws of mesira would not be operational.

This indicates that, unless one held the position of the Arukh HaShulhan, that the concept of mesira was not applicable in democratic societies, there does not appear to be any halakhic permission to report to the police and the secular government a crime that already took place, even if the crime has impacted negatively a number of people.

Though halakhah, as noted, does specify conditions in which it is permissible to report criminal action to secular authorities, clarification is yet necessary to determine the general halakhic guidelines for reporting Jewish criminals; also whether an Orthodox Jew is permitted to serve as a prosecutor. Perhaps a Jew should not be the person representing the secular, non-Jewish legal system. Indeed, Rav Moshe Feinstein rules that it is wrong to turn in to the police a thief who robbed a Sefer Torah. He argues that a prison sentence is generally accepted as punishment by the American courts for robbery. This punishment of imprisonment for robbery is not noted in Jewish legal sources. As such, the secular governmental court system will give the criminal a greater punishment than that ordained by Jewish law. This, he ruled, cannot be permitted by halakha. The source for this is the talmudic citation (Moed Katan 17a) that relates a case where Raish Lakish was in charge of guarding a garden of fig trees. A person without permission ate a number of figs. This person even disregarded all warnings to desist. Raish Lakish, therefore, placed this man in excommunication. The person complained that Raish Lakish was unfair in his treatment of the crime. His argument was that his sin generated a financial loss to the owner that he was

willing to repay. At no time, contended this man, did he deserve the punishment of excommunication. Raish Lakish sought the counsel of the sages and was told that the excommunication he rendered was excessive and, therefore, invalid. Based upon this citation, Rav Moshe rules that turning a thief over to the police would generate a punishment in excess of that which Jewish law would set up and, therefore, was not permissible (Iggrot Moshe, vol. VIII: Orakh Hayyim part 5: Siman 9:11). This ruling would prevent a prosecutor from seeking any punishment beyond that outlined by Jewish law.

This decision of Rav Moshe appears to be challenged by a number of sources. First, the previously mentioned responsum of the Mabit deals with a case in which the Bet Din referred a Jew to the secular government who placed the Jew in jail. The general rule derived from this situation is that when the Jewish court system cannot handle a problem case, it may be turned over to the secular government for enforcement, even though a punishment may be exacted that is more arduous or excessive than Jewish law would establish. Raish Lakish's case may simply have been one in which his reaction was deemed excessive. Perhaps, though, in cases where Jewish enforcement is not practical, governmental action may be the only recourse.

The Talmud in Bava Metzia (83b-84a) clearly portrays Jews turning in Jewish criminals to a Gentile power who punished such offenders above and beyond the standards or Jewish law.

Rabbi Eliezer ben Rabbi Shimon met a Jewish policeman and queried him concerning his job: "Perhaps you take the innocent and leave behind the guilty?" The response was that he had no choice but to detect and report criminals contending, "It is the king's command." Rabbi Eliezer then gave him sound advice to help him detect criminals. When the government heard of this incident, Rabbi Eliezer himself was given the job of turning criminals over to the authorities and he performed his task with success. This disturbed other rabbis. In fact, Rabbi Yehoshua ben Korhah sent a message to him saying, "Vinegar, son of wine, how long will you deliver the people of our G-d for slaughter?" Rabbi Yehoshua disparaged Rabbi Eliezer. "Your father was like wine, you are vinegar. Vinegar is wine that is spoiled. Rabbi Eliezer, the traits of your holy father did not pass on to his son. You are guilty of informing on Jews and you should cease and desist." Rabbi Eliezer responded, "I am not turning over good or innocent people. They are offenders who should be punished." In response, Rabbi Yehoshua claimed, "Let the owner of the vineyard eliminate the thorns." In other words, it is not for you to do. Let others do it." There is no indication that Rabbi Eliezer changed his position or view. The Talmud further states that a similar situation happened to Rabbi Yishmael ben Rabbi Yosi. Eliyahu the prophet rebuked him for turning in Jewish criminals to governmental authorities. Rabbi Yishmael responded that he had no choice for "it is the royal command." Eliyahu directed him to flee to another area where he would not be commanded to turn in Jewish criminals.

Thus, an ancient debate about this issue exists. Of importance is that the Bet Yosef, in his commentary on the Tur Shulhan Arukh, discusses this Talmudic citation. He notes that secular law does not follow concepts of Jewish law. Secular law will punish offenders based upon the testimony of relatives, a situation not accepted by halakha. Such punishment will be ordained even without proper warning as stipulated by Jewish law. Yet, the laws of secular governments are necessary. Otherwise, society will be overcome by people who do not tell the truth. (The implication is the fact that the rabbis cannot enforce ethical or moral behavior.) The Talmud, indeed, relates that great rabbis detected and turned in criminals to secular authorities. Though they were rebuked by Rabbi Yehoshua and Eliyahu the prophet, it should not be viewed that such rabbis were fundamentally in error about the permissibility of their actions. It was, rather, due to the great piety of such rabbis that they should have personally refrained from being the ones who helped Jews to be punished. In other words, people known for great sanctity and piety should not be involved in any way with the punishment of Jews. As a son of a noted pious rabbi, Rabbi Eliezer was called "son of wine." He, too, should conduct himself with the highest level of piety. Under no circumstances were Rabbi Eliezer or Rabbi Yishmael in violation of Jewish law. Indeed, in the event that such rabbis violated Jewish law, this violation should have been explicitly noted. Also, Rabbi Yishmael tells Eliyahu that he had a job to do. If the process was wrong, if they were in violation of halakha, then having a job to perform from the government would not be an excuse. Eliyahu should have responded by saying, "Who said your blood is redder than anothers?" (Pesachim 25b) That statement is utilized to prevent a person from killing another to save his own life. It should have been directed against Rabbi Yishmael. If Rabbi Yishmael was implying that he was in a life-threatening situation should he refuse to do the bidding of the king to apprehend criminals, then Jewish law would have ruled that one may not save one's life by killing another. The fact that the rabbis were not simply informed that their course of action was in violation of Jewish law teaches that there is nothing wrong with serving in a professional capacity to help the government eliminate criminals (Bet Yosef, citing the Responsum of the Rashba, Hoshen Mishpat 388)

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What is surprising is that Rav Moshe cites this Bet Yosef in the previously noted responsum. He remarks that the case of Rabbi Yishmael does not contradict his ruling that one may not hand over a criminal to the police in a situation where the

punishment will be greater than by Jewish authorities, for a person appointed by the government is in a different category. In other words, Rav Moshe admits that the Bava Metzia case deals with punishments more onerous than by Jewish law. The actions were deemed permissible solely because the rabbis were agents of the authorities. Yet the rationale that one is an agent of the secular authorities relates only to Rabbi Yishmael. Rabbi Eliezar does not utilize this excuse. He felt that he was providing a proper, moral course of action by eliminating criminals from society. What was his rationale? How did he harmonize his position with the laws of mesira? Though this case, together with the Bet Yosef's analysis, seems to allow a prosecutor to continue in his profession, it is not clear as to why his role pragmatically does away with the entire concept of mesira. If an action is a violation of Jewish law, then it should be morally wrong to be involved in such action whether or not one had a job to perform.

I suggest that there is a concept of Judaism that is so important and so vital that it alters the very nature of the concept of mesira itself. The Rambam rules that the worst sin of the Jew is the crime of hilul hashem (the profanation of the holy name of G-d). As such, should this sin take place, atonement is not granted until the sinner repents, prays on Yom Kippur for forgiveness, is afflicted with pain, and finally dies. Death is the final atonement. (Hilkhot Teshuva 1:4). It would appear that a vital goal of the Jew is to prevent the public shame or embarrassment of the holy name of G-d. In a country known for its commitment to the rule of law, it is a form of public shame for a member of the Jewish community to violate the laws of the land. A Jewish criminal is a shame to the Jewish religion. A religious Jewish criminal is a form of hilul hashem, Judaism is an ethical, ritual code of law. Jewish criminals make a mockery of our ethical standards. They send the message to the general society that Jews care not for the rule of law. The more visibly Jewish the offender, the more it generates a degree of hilul hashem. This, I believe, was Rabbi Eliezer's rationale for detecting and turning in Jewish criminals. He was eliminating thorns. He felt that his role was the most pious and sacred function of a rabbi. He was keeping the reputation of the Jewish community high and dignified in the eyes of the world. His symbolic message was that Jews are moral. Jewish criminals would not be tolerated by the leaders of the Jewish community. Accordingly, to uproot criminals may be viewed from this perspective as a sacred profession. Even those who disagreed did not believe that reporting criminals to authorities was a violation of Jewish law. Their position was one of sensitivity. They felt that sages should not be personally responsible for the punishment of Jews.

Thus, a person may utilize the principle of preventing hilul hashem as an understandable rationale for informing the government about another Jew. Just as it is permitted, as a means of preventing damage to the Jewish community, to turn over to the police someone who is attempting to bring about a public crime or perform criminal acts to many people, so, too, should it be permitted to forestall a public shame or embarrassment to the Jewish community at large. It could be designated as "religious damage control."

Indeed, there is a precedent for the utilization of such a concept. It is known that in cases dealing with an attempt to extract funds from another, Jewish law requires the presence of two witnesses, while secular law relies upon the testimony of a single witness. In the event that a Jew, by himself without any other witness, has testimony regarding extracting funds from another Jew for the benefit of a Gentile, Jewish law would not deem it proper to testify against the Jew in a secular court. The reason is that the testimony of a single witness would cause a Jew to lose funds via a procedure not acceptable by Jewish law. Should, however, the Gentile have relied upon the Jew to testify, then, even though funds would be extracted through a procedure not recognized by Jewish law, the Jew would be required to testify because his silence would be a form of hilul hashem (Rosh, Bava Kama, ch. 10, Siman 14, Shulhan Arukh Hoshen Mishpat 28:3). Thus, the sin of hilul hashem overrides the injunction against testifying.

It may be opined that the above obligation to report and/or prosecute even observant Jewish criminals to obviate charges of Hilul HaShem may relate to crimes that are well known. In a case where the crimes are not publicly known, perhaps the concept of Mesira should outweigh other concerns and silence should be the preferred mode of reaction.

This position may not be defended. Chaucer once wrote, "truth will out". Sooner or later crimes become public. In the event such does occur and it becomes known that religious Jews were aware of the criminal action but refused to report the crime to authorities, the Jews who practiced silence will definitely generate a public desecration of G-d's Holy Name. It would be said that Jews tolerate Jewish criminal activity. The key to any action or silence of a Jew is whether an action or inaction brings glory to our religion or shame. As stated, in the beginning of this article, silence in the face of injustice is deemed sinful.(Shevuot 31a) A silence that may question the Jewish community's commitment to law is surely a Hilul HaShem. Jews should opt for potential sanctification of G-d's name and not condone practices that could lead to a possible desecration of our religion.

The above analysis manifests that reporting Jewish violators of law is not necessarily a violation of Jewish Law, but, rather, a means of openly demonstrating that Orthodox Jewry will not tolerate criminal action. As such, it is a form of Kiddush HaShem, sanctifying G-d's name and accordingly permitted and even to be extolled.