

POLICING AND RACIAL INJUSTICE

Police in Jewish Law: A Brief Overview

Based on sources compiled by Rabbi Jill Jacobs

Police play an integral role in society. That much is clear, going back as far as the Torah: “You shall appoint *shoftim* and *shotrim* for your tribes, in all the settlements that the Lord your God is giving you, and they shall govern the people with due justice.” (Deuteronomy 16:18) *Shoftim* are judges; the meaning of *shotrim* (singular: *shoter*) is less clear from context, but in modern Hebrew it is used to mean police. Of course, for much of history, Jews were in no position to have their own police forces, so most of the rabbinic interpretation of this verse is more theoretical than practical. Still, with the establishment of the State of Israel, there is such a thing in the world as a Jewish police force, and it has led modern rabbis to consider the functions of police—and the limitations society should place on them.

The rabbis seem to understand *shotrim* as a sort of executive branch, corresponding to the more clear-cut role of the judiciary. We can tease out five distinct, though perhaps overlapping, roles:

1. Police maintain public order and morality. “The court is obligated to appoint *shotrim* on the festivals to rove around and search in the gardens, in the orchards, and by the rivers to make sure that men and women are not gathering there to eat and drink, and to enter into sin.” (*Shulchan Aruch, Orach Chayim* 529:4; 16th century) We can think of this as the cop on the beat, who by his or her presence reminds people to obey the law.

2. *Shotrim* rove the marketplace inspecting weights, measures, and prices to ensure they are **fair and comply with local ordinances**. (Maimonides, Laws of Theft 8:20; Laws of the Sanhedrin 1:1; 12th century) This is analogous to our government’s various inspectors—OSHA, EPA, food safety, and so on.

3. When a crime has been committed, police *initiate the process of judgment that will end in a courtroom*, by arresting suspects and bringing them in for interrogation. (Rabbi Hayyim David Halevi, *Aseh L’kha Rav* 3:48⁴⁸⁵, 20th century)

4. When a judge has rendered a decision, the ***shotrim* enforce it**. (Rashi [11th century], commenting on Deut. 16:18, writes that they do so by physical force; *Midrash Tanhuma, Shoftim* 2:17 [Medieval], is more elliptical and

writes, “When a person is obligated by the court to pay another...the *shoter* extracts it from him.”)

5. *Shotrim* are the **“leaders of the community.”** This language is initially used by *Midrash Tanhuma* (see above) and is picked up and amplified by Rabbi HaLevi, writing in 20th century Israel: “That is to say that the job of police officers is not restricted just to carrying a baton and a belt and to the punishment of criminals, rather they are the leaders of the generation. For a leader and a judge are sources of authority, and fields which border upon each other, sometimes they call him judge, and sometimes leader.” (*D’var HaMishpat Hilkhot Sanhedrin* Section 7)



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While earlier sources seem to have no qualms or doubts about justice and wisdom of police, contemporary sources express concerns about the abuse of power and take pains to set limits on police. Rabbi HaLevi emphasizes the following limitations:

- **Innocent until proven guilty:** “One who makes an arrest is dealing with a person who, according to the law, is still innocent—this is before the person has stood in judgment, and before his guilt has been proven. For this reason, the arrest is a violation of the freedom of a person, who is presumed innocent. But in order to allow for the interrogation of the suspect, and for bringing him to court, we have to permit his arrest.” (*Aseh L’kha Rav* 3:48)
- **High burden of evidence for arrest:** “How is it possible to prevent distress and pain to those who are innocent, on whom suspicion falls, in cases in which it eventually becomes clear that there was no basis for this suspicion?... The requirement of police personnel of a stronger base for their suspicion is very just—it is exceedingly clear that this is something that depends on very careful consideration, and also on legal knowledge.” (*Aseh L’kha Rav* 3:48)
- **Bail/habeas corpus:** “But there are boundaries on this allowance [to arrest], both in regard to the nature of the arrest, and in regard to the amount of time that a person may be held without trial. And above all, the obligation to release the person until trial [in non-capital cases].”⁴⁸⁶ (*Aseh L’kha Rav* 3:48)

• **General exhortation to morality:** “The personality of Jewish police officers must be of the highest ethical order, so that they themselves will serve as a good example of following law and living a pure ethical life. And they will merit to see a society based on the foundations of purity and divine sanctity as promised in the Torah: ‘God commanded us to follow all of these laws and to fear God for our good always, that God might keep us alive, as is the case today.’ (Deut. 6:24) (*D’var HaMishpat Hilkhhot Sanhedrin* Section 7)

As we formulate a Jewish approach to police and policing, we would also do well to remember centuries of being the target of police violence—and not just in Czarist Russia or under the Crusades but in the United States as well. As recently as 1902 on New York’s Lower East Side, police attacked the funeral procession of a prominent rabbi.⁴⁸⁷ According to one newspaper account, “Men were flung down, women were dragged out by arms and shoulders and pushed headlong down the street”; another reported, “[The words] ‘Lynch them! Those animals! Those dogs!’ [could be] heard from all sides.” We have experienced both sides of the coin, and our memory should shape our attitude towards present and future police practices.

⁴⁸⁶ For a discussion of capital vs. non-capital cases, see “Incarceration in Jewish Law: A Brief Overview.”

⁴⁸⁷ As recounted by Rabbi Mike Rothbaum in his 2014 Rosh Hashanah sermon, “Ferguson/Fargesn”: <http://rabbicreditor.blogspot.com/2014/10/rabbi-michael-rothbaum-fergusonfargesn.html>