Primary Sources:

1. Deuteronomy, 21, especially verses 10-23
2. Sifre Deuteronomy, Piskot 211-219
3. Mishnah Sanhedrin, Ch. 8
4. Tosefta Sanhedrin, 11:6
5. Talmud (Babylonian), Sanhedrin, 68b-69a
6. Maimonides (Rabbi Moshe ben Maimon -- The Rambam), Mishneh Torah, Rebels, Ch. 7
7. General Laws and Liberties of the Massachusetts Colony (1672), reprinted from Juvenile Offenders for a Thousand Years (ed. Wiley B. Sanders)
I. Deuteronomy 21:10–23 (Parashat Ki Titzay) (translation based on Fox; mistakes are mine)

10 When you go out to war against your enemies and ADONAI your God gives him into your hand, and you take captive his captives, 11 and you see in the captives a woman fair of form and you desire her and you take her to yourself as a wife, 12 you shall bring her into your house and she shall shave her head and do her fingernails, 13 and she shall remove her captivity-dress from her and she shall sit in your house and cry for her father and mother for a month’s time. And after that you may come to her and be her husband and she shall be a wife to you.

14 And if it happens (later) that you no longer want her, you shall send her off free, and you absolutely may not sell her for money. You are not to deal treacherously with her, because you have humbled her.

15 If a man has two wives, one beloved and the other hated, and they give him children, the beloved and the hated, and the firstborn is the son of the hated, 16 then, on the day when he wills to his sons his property (that which he will give him), he may not treat as firstborn the son of the beloved instead of the son of the hated.

17 For he must recognize the firstborn, the son of the hated, to give him a double share of all that he owns, for he is the beginning of his strength and his is the judgment of the firstborn.
18 If a man has a ben sorar u moreh (stubborn and rebellious son) who does not listen to the voice of his father and the voice of his mother and when they discipline him he does not listen to them, then his father and his mother shall seize him and bring him out to the elders of the city and to the gate of his place.

20 And they shall say to the elders of the city, this son of ours is stubborn and rebellious, he does not listen to our voice, a glutton and a drunkard.

21 Then, all the people of the city shall pelt him with stones until he dies, and you shall burn' out the evil in your midst, and all Israel will hear and fear.

1. The translation varies. לָדוֹן Sorr means stubborn, rebellious, perhaps ill-humored. מֵאוֹר Moreh means rebellious, disobedient (as in the laws of the “rebellious elders”). Moreh sounds quite similar to two other common Biblical words, which though etymologically independent, may be influencing the usage here: מַרְחַח marah (bitter) and מְדוֹרִים m Dummy (awesome, fearful – one of the common attributes of God).

2. יִשְׁרֵי Ysr–from a root יִרְשָׁי y.s.r. meaning chasten, admonish, discipline, perhaps related to פְּקַד asr, advise. A similar sounding word (from a different root), יִרְשָׁי sar, is an prince, governmental minister or army general. The text is clearly making a pun between יִשְׁרֵי ysr (they discipline) and לָדוֹן sorar (stubborn), so there might be an implication here that the "stubbornness" of the son is that he is disciplining or advising, acting like a commanding officer, instead of letting his parents do that to him.

3. In legal texts from the post-Biblical period, the "elders of the city" is normally understood to refer to a duly constituted court, or Sanhedrin.

4. בֵּין Be’ar– the word is also used in the blessing for burning hametz (unleavened bread) at Pesah (Passover). The parallel language suggests that the rituals are parallel: this is a kind of purification from symbolic evil, or removal of a symbol (like hametz–of excess, materialism, oppression, injustice, slavery, riches based on another’s poverty) in order to teach a lesson (at Pesah, about the importance of freedom, independence, law, ending slavery, not oppressing strangers – what is the parallel here?)

II. Orientation to the Commentators

Reading Torah commentary is often like playing Jeopardy: the texts give you answers and you have to figure out what the questions were.

As beginners, we are going to start in the opposite direction. Here are some of the questions that the text raises, many of them inspired by the answers of the early commentators in the Midrash
and the Mishnah. Try to answer them by yourself. Then read the following passages and try to understand the answers offered by the texts. Then return to the questions to see if the commentaries have enriched your understanding, led you to rethink your answers, or suggested new questions I haven’t raised here.

Do the commentators’ answers make sense? Are they contradictory or consistent? Do they reflect the same or differing understandings of how God, the world, morality or Jewish law work? Can you identify the underlying differences in world-view? With respect to each one, you can ask whether it is based in the Biblical text, in oral tradition handed down from Moses, in rational analysis or something else? Or is it simply mistaken? Or have you not worked hard enough to understand its logic?

**Some Questions:**

1. Does God command immoral actions? If God does, how should we respond?

2. Is being “stubborn and rebellious” a capital crime? Why or why not? What law is being broken?

3. How do you read a text that claims that God wants you to do something wrong? Do we have any Biblical precedents for how to react to acts of Heaven that seem wrong?

4. If you were a parent of a stubborn and rebellious son, would you go to the elders? Does the text say whether you should? What would you think of someone who did? [Can you relate this to the sin of Sodom?]

5. Can anyone be criminally executed without being criminally responsible?

6. Is a minor responsible for violations of the commandments? What is the age of responsibility?

7. Why does the text use the word “man” instead of the more common word “adam” to specify if a “man has a son”? Indeed, why discuss the “man” at all? Can a son exist without being the son of a man?

8. Why does the text specify a “son,” instead of “child” or a “person,” or, as it usually does, address itself directly to “you”?

9. Why does the text specify that both his father and his mother must take him to the elders? Wouldn’t one be enough?
10. Why does the text specify that his father and his mother must “seize” him? Wouldn’t it be more usual to just complain?

11. Do parents “yshru” – admonish, command, discipline – their grown children, and if so are grown-ups expected to listen to their parents when they order them around like that? How do we tell when a child becomes a grown-up?

12. Why does the text twice specify that the ben sorere u moreh doesn’t “listen” to his mother and father? Wouldn’t “honor” or “obey” be more appropriate?

13. Why does the text specify that “his father and his mother” must “say” their complaint? Isn’t writing more usual?

14. How does the oral complaint differ from the original description of the ben sorere u moreh, and why?

15. What is a “glutton and a drunkard”?

16. If the purpose of the rule is to enforce the commandment to “honor thy father and mother”, what if the accused is doing what he is doing for some other reason?

17. The most frequently repeated commandment in the entire Torah is “do not oppress the stranger (or weak, or poor, or widow), because you were strangers in Egypt.” In light of this fundamental part of the Torah world-view, how should parents relate to their children? Children to their parents? What does that suggest about this passage?

18. Is it permissible to execute someone without a court decision? What are the requirements for a court to sentence someone to death? What kind of court is required? What kind of a trial is required? What kind of evidence is required? What kind of verdict is required? What if the court makes a mistake?

19. Why does the passage about the ben sorere u moreh immediately follow the passages about unhappy bigamous marriages, intra-familial strife over favorite sons, and marrying and divorcing captives? Are those passages protecting the weak or keeping them in their place, given the context in which they were written? Does this teach anything about bigamous marriage or marrying captives? Does it teach anything about the ben sorere u moreh?

20. Does failure to honor your parents really merit death? Torah often leaves out details, qualifiers and context, giving only the broad outlines of a law or only the parts of it that vary from the usual background rules. What would the ben sorere u moreh have to have done that could possibly merit the death penalty?
21. If you were a member of the court, how would you react to parents who wanted to have you order the execution of their child for being a *ben sorer u moreh*?

22. Has this law ever been applied? Can you imagine it ever being applied? What is the purpose of a law that is never enforced?

23. What was the law with respect to children and parents in the surrounding cultures? For example, do you know the Roman rule about the rights of the pater familias? The Canaanite or Greek practices? Was the Biblical rule originally intended to make that background rule more or less harsh or fair? Is it possible that it made a reform in the right direction but didn’t make it all the way to justice? Does Biblical law reflect the human circumstances in which it was made? Is it permissible to consider it “perfect” and if so, what does that mean?

24. Has the law changed? Can the law of God change? Can any law exist unchanged while the world around it changes?

25. What do we do when our inherited law, which we are told comes from Moses and God and can never be changed, is wrong or inapplicable to our time? If the Biblical law was meant to reform and improve the law of the surrounding countries, but now we live in a legal system that is more just, or even just more functional in our own circumstances, than the Biblical system, what should we do with Biblical law?

26. American Constitutional law does not claim to come from God, but it is based on a text that is almost as impossible to change as the Bible, and like Biblical law, was written in a world very different from our own – a small seaboard society in which slavery was a central institution, very few people voted and virtually no voters worked as employees, in which modern technology did not exist, cities were tiny, farming the major industry and land transportation expensive and slow, the major military threat was from displaced Native Americans, nearly everyone belonged to (or had left) one of a very small number of Christian religious or their secularized equivalents, German was the second most widely spoken language, most people died of infectious disease or childbirth and fundamental modern institutions–including corporations, stock markets, credit cards, insurance, pensions, mortgages, hospitals, scientific research labs, public schools, universal adult voting, publicly funded highways, the draft and so on–either hadn’t yet been invented or existed only in quite different forms. Do the interpretive issues we’ve discussed here have any relevance to understanding how to apply the US Constitution to issues of legislative apportionment, corporate advertising, restrictions on semi-automatic weapons, abortion or the right to a jury trial?

27. How did the 1672 Massachusetts Colony understand the Biblical text? How does their understanding and use of the text differ from the Rabbis’?
Piske 211

When thou goest forth to battle—Scripture speaks of non-obligatory wars—upon thine enemies—against your enemies—and the Lord thy God delivereth them into thy hands—if you do all that is indicated in this matter, the result will be that the Lord your God will deliver them into your hands—and thou carriest them away captive (21:10)—including any Canaanites that are there. And so among the captives—at the time of her capture—a woman—even if she is a married woman—of goodly form—I conclude that this refers only to an attractive woman; whence do we learn that this includes also an unattractive one? From the following, and thou hast a desire unto her—even though she is not attractive—and wouldst take her to thee to wife (21:11)—so that you may not say, "This one is for my father," or "This one is for my brother."

Piske 212

Then thou shalt bring her home to thy house—and not to any other house—and she shall shave her head, and do her nails (21:12): R. Eliezer says, cut them; R. Akiba says, grow them. Rejoined R. Eliezer: Doing is stated in regard to her head, and doing is stated in regard to her nails; just as the doing in regard to her head means trimming (of hair), so must the doing in regard to her nails mean trimming (of them). R. Akiba objected: Doing is stated in regard to her head, and doing is stated in regard to her nails; just as the doing in regard to her head means disfigurement, so the doing in regard to her nails must disfigurement. Support for R. Eliezer's interpretation may be found in the verse, And Mebhiboth the son of Saul came down to meet the king, and he had neither dressed his feet, nor trimmed his beard (2 Sam. 19:25).  

Piske 213

And she shall put the raiment of her captivity from off her—this indicates that the captor must divest her of her attractive raiment and clothe her in widow's weeds, for these accursed nations make their daughters adorn themselves in time of war in order to cause their foes to go mourning after them—and shall remain in thy house—in a house that the captor habitually uses, so that he will chance upon her when he goes in and when he goes out; if she looks like a pumpkin-shell, he will see her in all her unattractiveness—and bewail her father and her mother a full month (21:13): Her actual father and mother, so taught R. Eliezer. R. Akiba says: Her father and her mother refers to none other than her idols, as it is said, Who say to a stock: "Thou art my father;" (and to a stone: "Thou hast brought us forth") (Jer. 2:17). A full month—thirty days. [Another interpretation: A month—one month; full—two months, totaling three months, in order that her beautiful and precious garments might wear out], and in its order that it may be established whether the child that she may subsequently be delivered of is the seed of her previous (heathen) husband or the seed of her second (Israelite) husband; so taught R. Akiba. R. Eliezer says: A full month—literally. And what is the reason for this all this (procedure)? So that an Israelite woman would rejoice while the captive one is in tears; the Israelite woman would wear her adornments while this one is stripped of them.

And after that thou mayest go in unto her, and be her husband, (and she shall be thy wife) (21:13): This indicates that if he does not do for her all the aforementioned things, and goes in unto her, it is an act of illicit intercourse.  

And after that thou mayest go in unto her, and be her husband—the only (remaining) commandment incumbent upon you is to go in unto her—and she shall be thy wife—she shall be entitled to her food, her raiment, and her conjugal rights, shall be not diminish (Exod. 21:10).

Piske 214

And it shall be, if thou have no delight in her—Scripture is informing you that you will come to hate her—then thou shalt let her go whither she will, but not to a place of idolatry—(then thou shalt let her go with a bill of divorcement), as R. Jonathan taught; if she is ill, he shall wait until she recovers; all the more is this the case concerning Israelite women who are holy and pure—but thou shalt not sell her at all for money (21:14): I conclude from this only that he may not sell her for money; whence do we learn that he may not give her away as a gift or as a favor? From the following, but thou shalt not sell her at all for money; thou shalt not deal with her as a slave (21:14)—meaning that
you may not make use of her. [Another interpretation: Thou shalt not deal with her as a slave; as R. Jonathan taught.] Another interpretation: This is a warning for the court.

Because thou hast humbled her (21:14)—even if only one act of intercourse has been performed.

Pisga 215

(If a man have two wives, (the one beloved, and the other hated) (21:15): Whose (marital) status is legal, thus excluding a female slave and a Gentile woman, whose status is not legal. It would follow that since we exclude these, we should also exclude the widowed sister-in-law subject to levirate marriage and the betrothed woman, since they too do not yet have legal marital status; (therefore the verse states, two wives).)

R. Ishmael says: Scripture speaks here of the normal course of events, and tells us that in the end he will come to hate her and love another woman.

And they have borne him children, (both the beloved and the hated) (21:15): Thus excluding a child of doubtful parentage, namely a nine-months child of the former husband or a seven-months child by the current husband. I conclude that this refers only to a normal birth; whence do we learn that this refers also to a Caesarean birth? From the phrase, borne him—in any manner whatsoever.

Another interpretation: If a man have two wives (21:15): I conclude that this refers only to two wives; whence do we learn that it refers also to more than two? From the (plural) wives. I still conclude that this refers only to several wives, some of whom are beloved and some of whom are hated; whence do we learn that this applies even when all of them are beloved or all of them are hated? From the repetition of beloved and the beloved, hated and the hated, thus extending the meaning. I again conclude that this applies only to several wives, all beloved or all hated; whence do we learn that it applies even when there are only two? From the words, two wives. Once more I conclude that this refers only to the case of two wives, one beloved and the other hated; whence do we learn that this applies even if there is only one wife, either beloved or hated? From the repetition, beloved and beloved, hated and hated, thus extending the meaning. What is meant by beloved? Is it possible that beloved means beloved before God and hated means hated before God? Perhaps I should conclude that this refers only to a woman who was raped or seduced, since his relationship to them is not like that to other women; whence do we learn that this applies also to such (undesirable) marriages as that of a widow to a high priest, or a divorcée, or a widowed sister-in-law rejected by her levir, to a common priest? From the repetition hated and hated, thus including marriages banned by a negative commandment. I still might not include those forbidden marriages for which one is liable to excision at the hand of heaven; therefore the verse repeats hated and hated, thus including forbidden marriages punishable by excision at the hand of heaven. Again I might not include those forbidden marriages for which one is liable to death at the hand of the court; therefore the verse repeats hated and hated, thus including the latter. One might think that this includes a female slave and a Gentile woman; therefore the verse states, If a man have (tish’uva), meaning a woman with whom he is involved in lawful marriage (kawuyah), thus excluding those who do not have legal (marital) status.

And they have borne him children (21:15): Children means that they are his, thus excluding those that are not his. Another interpretation: And they have borne him children: Male children are implied here, not female children. Since we find that female children may receive their hereditary portions through their brothers, dividing them equally, one might think that the law of the first-born would apply to them as well, therefore the verse states, And they have borne him children, showing that the sons are included here, but not the daughters.

And if the first-born son—not a tunim,1 a hermaephaladite, or one whose primogeniture is in doubt—heh beret that was hated (21:15)—Scripture announces to you that the first-born will be the child of the hated wife.

Pisga 216

Then it shall be, in the day that he causeth his sons to inherit—inheritances must be distributed in daytime, not at night1—that which be hath—showing that the son is to receive that which will accrue in the future as well as that which is now in his father’s possession—that he may not make (the son of the beloved) the first-born (21:16): showing that he may not make the other child the first-born. One
might think that while he is not permitted to make the other child the first-born, once he has done so, the child becomes the first-born; therefore the verse states, "that he may not make... the first-born." Hence even if he has declared him first-born, he is not first-born. The son of the beloved—once the head and most of the body (of the first-born) has emerged alive, the child born after him is released from the obligations of the first-born. ¹

Before the son of the hated (21:10): Even though the first-born is the son of the hated wife.

Pisha 217

But he shall acknowledge the first-born, the son of the hated (21:17): He shall acknowledge it to others; hence we learn that a man is to be believed when he declares, "This is my first-born son." R. Judah says: Just as a man is to be believed when he declares, "This is my first-born son," so is he to be believed when he declares, "This is the son of a divorced woman," or "This is the son of a widow's sister-in-law rejected by her levir." The Sages, however, say: He is not to be believed. ¹

By giving him a double portion (21:17): Twice as much as any one else receives, or two-thirds of the entire estate? You may reason as follows: since he may be the coheir with as few as one or with as many as five, just as he receives twice the amount of his coheir when there is only one, so should he receive twice the amount of any one of the five. ¹ Or you may reason otherwise: since he may be the coheir with as few as one or with as many as five, just as he receives two-thirds of the entire estate when there is only one, so should he receive two-thirds of the entire estate when there are five. ¹ Therefore the preceding verse states, Then it shall be, on the day that he causeth his son to inherit (21:16). Thus Scripture expressly adds mention of the portion of the other brothers, in the light of which fact you cannot but conclude that the first alternative was correct, ¹ namely that since he may be coheir with as few as one or with as many as five, just as he receives twice the amount of his coheir when there is only one, so should he receive twice the amount of any one of the five. Similarly Scripture says, I have given thee one portion above thy brethren (Gen. 48:22). And the sons of Roshen the first-born of Israel—for he was the first-born. ¹ R. Judah prevailed above

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his brethren, and of him came he that is the prince; but the birthright was Joseph’s (1 Chron. 5:1–2). Since we find that primogeniture is mentioned in connection with Joseph and in connection with future generations, ¹ just as the primogeniture mentioned in connection with Joseph involves twice the amount of any one else, so the birthright mentioned in connection with future generations must involve twice the amount of any one else.

Of all that be hath—showing that the first-born may not receive a double portion of that which will accrue in the future, as he does of that which is now in his father’s possession—for he is the first fruits of his strength—but not the first fruits of the mother’s strength—the right of the first-born is his (21:17)—showing that the right of primogeniture may be enforced by the judges. ¹

Pisha 219

If a man have a (stubborn and rebellious) son (21:18): But not if a woman have such a son. A son, but not a daughter, nor an adult son. A minor is exempt, since he has not yet come under the rule of the commandments. Stubborn—twice—and rebellious—a fool. ¹ Another interpretation: Stubborn—an apostate who teaches himself a different way. ¹ Another interpretation: Just because he has squandered his father’s money, do you say that a stubborn and rebellious son should die? ¹ Rather he is judged according to what he is bound to come to in the end: it is better that he should die innocent than die guilty. His father must have fallen in love with a comely captive woman and thus introduced a disturber into his house, so that the son became stubborn and rebellious, and will in the end cause his father to die an unnatural death. And if a man have committed a sin worthy of death and he be put to death (21:22)—but not on the Sabbath or on festivals. ¹

Another interpretation: Stubborn—against the words of his father—and rebellious—against the words of his mother; stubborn—and against: the teachings of the Torah; and rebellious—against the teachings of the prophets; stubborn—against the testimony of witnesses—and rebellious—against the rulings of the judges. ¹

R. Josiah said, Ze’era told me three rulings on the authority of the scholars of Jerusalem: If a husband wishes to forgive his wife whom he has suspected of adultery, he may do so; if a father and
mother wish to forgive a stubborn and rebellious son, they may do so; if the members of a court wish to forgive an elder who has rebelled against their verdict, they may do so. When I came and recited these rulings before R. Judah ben Beterah, he agreed with two of them but disagreed with one, he agreed with the rulings about the wayward wife and the stubborn and rebellious son, and he disagreed with the ruling concerning the elder who rebels against the verdict of the court, since he would cause controversy in Israel."

That will not hearken in the voice of his father, or the voice of his mother (21:8): Even if his father and mother tell him to kindle a light and he does not do so? (No.,) and that is why Scripture repeats that will not hearken twice, in order to draw an analogy: just as that will not hearken there applies only to one who is a glutton and a drunkard (21:20), so that will not hearken here refers to one who is a glutton and a drunkard. Just as that will not hearken there does not apply until he steals from his father and mother, so that will not hearken here does not apply until he steals from his father and mother.

And though they chasten him, will not hearken unto them (21:18): Showing that he is to be flogged in the presence of three (judges)."

Pisga 219

Then shall his father and his mother lay hold on him (21:19): This shows that he is not liable unless he has a father and a mother, so taught R. Meir. R. Judah says: If his mother was not fit for his father, he cannot be declared a stubborn and rebellious son.

And bring him out unto the elders of his city, and unto the gate of his place (21:19): This is a positive commandment specifying the elders of his city and the gate of his place.

And they shall say unto the elders of his city: This our son (is stubborn and rebellious) (21:20): This is the one who was (previously) flogged in your presence. Hence we learn that if one of the judges has since died, the son may not be stoned. If one (of the parents) is an amputee, lame, mute, blind, or deaf, the son may not be declared stubborn and rebellious, since Scripture says, Lay hold on him—therefore they may not be amputees—and bring him out (21:19)—therefore they may not be lame—and they shall say—therefore they may not be mute—this our son—therefore they may not be blind—doth not hearken to our voice (21:20)—therefore they may not be deaf. He should then be admonished in the presence of three (judges) and flogged. If he misbehaves again, he must be judged before a court of twenty-three (judges), but may not be stoned unless the original three judges are present, since it is said, This our son—this is the one who was flogged in your presence.

He is a glutton, and a drunkard (21:20): A glutton in eating meat and a drunkard in drinking wine. There is a reference to this (rule), though not a proof (for it), in the verse, Be not among winebibbers, among gluttonous eaters of flesh, for the drunkard and the glutton shall come to poverty, and drunkenness shall clothe a man with rags (Prov. 23:20–21).
TOSEFTA SANHEDRIN

11:6 A. There has never been, and there never will be, a rebellious and incorrigible son.

B. So why has the passage been written? To tell you, "Expound and receive a reward."

C. R. Simeon b. Eleazar says, "A daughter and not a son [should be specified]. But it is a decree of the King: a rebellious and incorrigible son" [M. San. 8:1E].

D. A rebellious and incorrigible son, even if he put on his table a meal like one of Solomon in his day, may not be declared a rebellious and incorrigible son.

E. unless he actually puts in his mouth the requisite measure of food.

F. or until he will eat in an association [a public meal] a similar amount
8. 1. 'A stubborn and rebellious son'—when can he be condemned as a stubborn and rebellious son? From the time that he can produce two hairs until he grows a beard (the lower one and not the upper one is meant); howbeit the Sages spoke in modest language, for it is written, If a man have a son;—a son and not a daughter, a son and not a man; a minor is exempt since he has not yet come within the scope of the commandments.

2. When is he culpable? After he has eaten a titrim (Italian wine). R. Jose says: A mina of flesh and a log of wine. If he consumed it at a gathering that was a religious duty, or at the intercalation of the month, or if he consumed it as second tithe in Jerusalem, or if he ate carrion or flesh that was tereyah or forbidden beasts or creeping things, if by consuming it he had fulfilled a command or had committed a transgression, if he ate any foodstuff but did not eat flesh, or drank any liquid but did not drink wine, he cannot be condemned as a stubborn and rebellious son; but only if he eats flesh and drinks wine, for it is written, A glutton and a drunkard. And though there is no proof for this, there is an indication, for it is written, Be not among the gluttonous eaters of flesh.

3. If he stole it from his father and ate it in his father's domain, or from others and ate it in the others' domain, or from others and ate it in his father's domain, he cannot be condemned as a stubborn and rebellious son; but only if he steals from his father and eats it in the others' domain.

R. Jose the son of R. Judah says: Only if he steals from his father and from his mother.

4. If his father was willing [to accuse him] but his mother was not willing, or if his father was not willing but his mother was willing, he cannot be condemned as a stubborn and rebellious son; but only if they both were willing. R. Judah says: If his mother was not willing, he cannot be condemned as a stubborn and rebellious son. If either of them was maimed in the hand, or lame or dumb or blind or deaf, he cannot be condemned as a stubborn and rebellious son, for it is written, Then shall his father and his mother lay hold on him—so they were not maimed in the hand; and bring him out—so they were not lame; and they shall say—so they were not dumb; this our son—so they were not blind; he will not obey our voice—so they were not deaf. They must warn him, and scourge him before three judges. If he again behaved evilly he must be tried before three and twenty judges; and he may only be stoned if the first three are there, for it is written, This our son, to wit, this is he that was beaten before you. If he ran away before sentence was passed on him and afterward grew the lower beard, he is exempt; but if he ran away after sentence was passed on him and afterward grew the lower beard, he is still liable.

5. A stubborn and rebellious son is condemned because of what he may become in the end; the Law has said. Let him die innocent and let him not die guilty; for the death of the ungodly is a benefit to them and a blessing to the world, but the death of the righteous is a misfortune to them and a misfortune to the world. The wine and sleep of the ungodly are a blessing to them and a blessing to the world, but the wine and sleep of the righteous are a misfortune to them and a misfortune to the world. The dispersion of the ungodly is a benefit to them and a benefit to the world, but the dispersion of the righteous is a misfortune to them and a misfortune to the world. The gathering together of the ungodly is a misfortune to them and a misfortune to the world, but the gathering together of the righteous is a benefit to them and a benefit to the world. Peacefulness for the ungodly is a misfortune to them and a misfortune to the world, but peacefulness for the righteous is a benefit to them and a benefit to the world.
Rab Judah said in Rab's name: Scripture saith, *If a man have a son [that is stubborn and rebellious],* implying, a son near to the strength of manhood.

R. Hisdai said: If a minor begot a son, the latter does not come within the category of a stubborn and rebellious son, for it is written, *If a man have a son, but not if a son [i.e., one who has not reached manhood] have a son.* But is not that verse needed for the deduction made by Rab Judah in Rab's name?—If so, the verse should read, *If there be a son to a man, why state, If a man have a son?*—To teach R. Hisdai's dictum.

Then let us say that the entire verse teaches this?—If so, Scripture should have said, *If there be the son of a man who [sc. the son] is stubborn,* etc.: why state, *If a man have a son etc.?* Hence both are deduced.

Now, R. Hisdai's statement conflicts with Rabbah's. For Rabbah said: A minor cannot beget children, for it is written, *But if the man hath no kinsman [to recompense the trespass unto],* now, is there any man in Israel that has no kinsman? Hence the Writ must refer to the robbery of a proselyte, and the Divine Law states, *But if the man etc.,* teaching that only in the case of a 'man' must thou seek whether he has kinsmen or not, but not in the case of a minor, for it is obvious that he can have none.

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**Mishnah.** If his father desire [to have him punished], but not his mother; or the reverse, he is not treated as a 'stubborn and rebellious son,' unless they both desire it. R. Judah said: If his mother is not fit for his father, he does not become a 'stubborn and rebellious son.'

**Gemara.** What is meant by 'not fit'? Shall we say that she is forbidden to him under penalty of extinction or capital punishment at the hand of Beth din: but after all, his father is his father, and his mother is his mother?—But he means not physically like his father. It has been taught likewise: R. Judah said: If his mother is not like his father in voice, appearance and stature, he does not become a rebellious son. Why so?—The Writ saith, *he will not obey your voice,* and since they must be alike in voice, they must be also in appearance and stature. With whom does the following Baraita agree: There never has been a 'stubborn and rebellious son,' and never will be. Why then was the law written? That you may study it and receive reward.—This agrees with R. Judah. Alternatively, you may say it will agree with R. Simeon. For it has been taught: R. Simeon said: Because one eats a tartemar of meat and drinks half a log of Italian wine, shall his father and mother have him stoned? But it never happened and never will happen. Why then was this law written?—That you may study it and receive reward. R. Jonathan said: 'I saw him [saying] and sat on his grave.'
1. The penalty incurred by the stubborn and rebellious son spoken of in Scripture, is stated to be death by stoning. But the Bible does not pronounce punishment without having expressed a warning. Where does the warning occur? It is said: *Ye shall not eat with the blood* (Lev. 19:26); i.e., do not indulge in eating which will eventuate in bloodshed. It refers to the way in which the stubborn and rebellious son gorges. He is executed for the loathsome manner in which he gratifies his appetite, as it is said: *He is a glutton and a drunkard* (Deut. 21:20). The traditional definition of these words is: a glutton is one who eats meat voraciously; a drunkard is one who drinks wine immoderately.

2. The death penalty for the self-indulgence of the stubborn and rebellious son is hedged about with many limitations—all of which have been transmitted to us by tradition. He is not condemned to be stoned, unless he steals (money) from his father, buys meat and wine cheaply, consumes them outside his father’s premises, in a company consisting wholly of worthless men, eats the meat partially raw and partially cooked, the way thieves eat their meat, and drinks the wine [partially] diluted, in the manner of drunkards. He is not liable, moreover, unless he gobbles down fifty denar weight of meat in one mouthful and gulps down half a log of wine in one draught. But if he steals (money) from his father and consumes the food in his father’s premises, or if he steals it from others and stuffs himself in the above-described loathsome fashion, either in the premises of his father or those of others, he is not liable.

So too, if he steals from his father and indulges his voraciousness in the premises of others on an occasion when partaking of food involves the infraction of a command, even if the command be only of rabbinical origin, he is not liable. For it is said: *He doth not hearken to our voice* (Deut. 21:20); that is to say, only he is culpable who by his gluttony disobeys his parents, excluding one who thereby transgresses the words of the Torah.

Likewise, if he indulges in gluttony in connection with a religious command, he is not liable. Thus if he gratifies his craving in bad company gathered to celebrate a religious festivity or to eat the second tithe in Jerusalem or even to partake of the meal of comfort for mourners—which is based only on a rabbinical command—he is not liable. So too, if he eats flesh of an animal not slaughtered correctly or of an animal suffering from an incurable disease or eats abominable or creeping things, or even if he gormandizes on a fast day ordained by the Rabbis, he is not condemned to death.
JUVENILE OFFENDERS
FOR A THOUSAND YEARS

Selected Readings
from Anglo-Saxon Times to 1500

Edited by WILEY B. SANDERS

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CAPITAL LAWS

13. If any child, or children, above sixteen years old, and of sufficient understanding, shall curse or rail at their natural father, or mother, he or they shall be put to death: unless it can be sufficiently testified that the Parents have been very unchristianely negligent in the education of such children; or so provoked them by extremity, and cruel correction, that they have been forced therunto to preserve themselves from death or maiming. Exod. 21. 17. Levit. 20. 9. Exod. 21. 15.

14. If a man have a stubborn or rebellious son, of sufficient years and understanding, viz. sixteen years of age, which will not obey the voice of his Father, or the voice of his Mother, and that when they have chastened him will not hearken unto them: then shall his Father & Mother being his natural parents, lay hold on him, & bring him to the Magistrates assembled in Court & testify unto them, that their son is stubborn & rebellious & will not obey their voice and chastisement, but lives in sundry notorious crimes, such a son shall be put to death. Deut. 21. 20. 21.

CHILDREN

[The selectmen of every town are required to keep a vigilant eye on the inhabitants to the end that the fathers shall teach their children knowledge of the English tongue and of the capital laws, and knowledge of the catechism, and shall instruct them in some honest lawful calling, labor or employment. If parents do not do this, the children shall be taken away and placed (boys until twenty-one, girls until eighteen) with masters who will so teach and instruct them.]

[The Code of 1650, Being a Compilation of the Earliest Laws and Orders of the General Court of Connecticut... (Harford, 1822), pp. 26-27 (Bell Mus.).]

CAPITAL LAWS

[The first twelve of the capital laws under the Connecticut Code of 1650, supported by Biblical references, were idolatry, witchcraft, blasphemy, wilful murder, slaying through guile as by poisoning, bestiality, sodomy, adultery, rape, man-slaughtering, giving false witness to take away a man's life; and conspiracy or rebellion against the commonwealth.]

13. If any Child or Children above sixteen years old and of sufficient understanding, shall curse or rail at their natural father or mother, he or they shall be put to death, unless it can be sufficiently testified that the parents have been very unchristianely negligent in the education of such children, or so provoked them by extremity and cruel correction that they have been forced therunto to preserve themselves from death, maiming—Exod. 21. 17. Levit. 20. 9. Exod. 21. 15.

14. If any man have a stubborn and rebellious son of sufficient years and understanding, viz. sixteen years of age, which will not obey the voice of his father or the voice of his mother, and that when they have chastened him will not hearken unto them; then may his father and mother, being his natural parents, lay hold on him and bring him to the Magistrates assembled in Court and testify unto them, that their son is stubborn and rebellious and will not obey their voice and Chastisement, but lives in sundry notorious crimes, such a son shall be put to death. Deut. 21. 20. 21.

It is also ordered by this Court, and authority thereof, That whatsoever Child or servant within these Liberties, shall be convicted of any stubborn, or rebellious carriage against their parents or governors, which is a ternor of the aforesaid evils, the Governor or any two Magistrates have liberty, and power from this Court, to commit such person or persons to the House of Correction, and there to remain under hard labour, and severe punishment so long as the Court, or the major part of the Magistrates, shall judge meetes.

a. C. W. Quinby In The Colliers, The Prison, and the Poor-House (pp. 89-91) makes the following comment on this law:

An English lady of much repute who visited New England not long previous to the war of '76, 1829, in her diary of said March, 1829, that a maid of nineteen years of age was put upon her own life, in Connecticut, by the complaint of her parents, both of whom were present and swore against her—saying that she was stubborn and had violated their commands.

"The diary states that at first the mother testified strongly against her child; but when she had spoken a few words, the daughter cried out in great agony of grief, 'Oh! I shall be destroyed in my youth by the words of my own mother! Oh! I shall be destroyed in my youth by the words of my own mother!' On which the woman did so soften her testimony, that the court being in doubt upon the matter, had a consultation with the ministers present, as to whether the accused girl had made herself justly liable to the punishment prescribed for stubborn and rebellious children in Deuteronomy, 21:18.

"When it was decided that this law applied only to a rebellious son, and that a daughter could not be put to death under its sanction, to which the court did assent, and the girl, after being admonished, was set at liberty. Therefore the ran afflicting into the arms of her mother, who did resolve over her as soon released from the dead; and moreover did nightly blame herself for putting her child in so great peril, by complaining of disobedience."

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