

## **Punishment in Jewish Law – Kane Street Beit Midrash**

Daniel Greenwood (1/8/13)

1. Biblical texts (translations in quotes are mine, in italics are from Fox). Pay attention to the punishment, who may impose it and the necessary process:
  - a. Exodus 21:12. “Hitter of a man and he dies, die! he shall be made dead [mot yumat].” (*He that strikes a man, so that he dies, is to be put-to-death, yes, death*)
  - b. Exodus 21:15 *He that strikes his father or his mother, is to be put-to-death, yes, death*
  - c. Exodus 21:29-30 *But if the Ox was (known as) a gorer from yesterday and the day-before, and it was so designated to its owner, and he did not guard it, and it causes the death of a man or a woman, the ox is to be stoned, and its owner as well is to be put-to-death. If a ransom is established for him, he is to give it as a redemption for his life, all that is imposed for him.*
  - d. Exodus 22:17 *A sorceress you are not to let live!* [lo t’hayeh (do not give her life?)]
  - e. Exodus 22:18 “Sacrificer to elohim (God/gods/judges) shall be banned, saving only to Adonai alone.” (*Anyone who lies with a beast is to be put-to-death, yes, death. He that slaughters (offerings) to gods is to be devoted to destruction.*)
  - f. Leviticus 20:10-16 *A man who adulterers with the wife of (another)man, who adulterers with the wife of his neighbor, is to be put-to-death, yes, death, the adulterer and the adulteress. A man who lies with the wife of his father – the nakedness of his father he has exposed, the two of them are to be put-to-death, yes death, their bloodguilt is upon them. A man who lies with his daughter-in-law – the two of them are to be put-to-death, yes death, they have done perversion, their bloodguilt is upon them. A man who lies with a male as one lies with a woman—abomination have the two of them done, they are to be put-to-death, yes death, their bloodguilt is upon them. A man who takes-in-marriage a woman and her mother, it is insidiousness, in fire they are to be burned, he and they, that there be no such insidiousness in your midst. A man who gives his emission to an animal is to be put-to-death, yes death, and the animal you are to kill. A woman who comes-near any animal to mate with it – you are to kill the woman and the animal, they are to be put-to-death, yes death, their bloodguilt is upon them.*

- g. Deut. 17:2-6 *When there is found among you, within one of your gates that A- your God is giving you, a man or a woman that does what is ill in the eyes of A- your God, to cross his covenant, going and serving other gods and prostrating oneself to them – to the sun or to the moon or to any of the forces of heaven that I have not commanded, and it is told to you, you are to hear and you are to inquire well, and if here: true and correct is the matter – this abomination was done in Israel – then you are to take out that man or that woman who did this evil thing, out to your gates, the man or the woman; you are to stone them with stones, so that they die.*
- h. Deut. 17:6-7 *On the statement of two witnesses or three witnesses shall the one worth-of-death be put-to-death; he shall not be put-to-death on the statement of one witness. The hand of the witnesses is to be against him, at the beginning, and the hand of the entire people afterward, so shall you burn out the evil from your midst.*
- i. Deut. 17: 8-9 *When any legal matter is too extraordinary for you, in justice, between blood and blood, between judgment and judgment, between stroke and stroke, in matters of quarreling within your gates, you are to arise and go up to the place that A- your God chooses, you are to come to the Levitical priests and to the judge that there is in those days, you are to inquire and they are to tell you the word of judgment.*
- j. Deut. 21:18-21 *When a man has a son, a stubborn-one and a rebel .... To seize him and are to bring him out to the elders of his town, to the gate of his place, then they are to say ... then all the men of the town are to pelt him with stones, so that he dies. So shall you burn out the evil from your midst, and all Israel will hear and be-awed.*
- k. Deut. 21:22 *Now when a man has sin-guilt, a sentence of death, and put-to-death, and you hang him up on a wooden stake, you are not to leave his carcass overnight on the stake ...*
- l. Deut. 22:21 *... if this matter was true – there were not found signs of virginity on the girl – they are to bring out the girl to the entrance of her father's house and are to stone her, the men of her town, with stones so that she dies.*
- m. 22:23 *When there is found a man lying with a woman espoused to a spouse, they are to die, the two-of-them, the man who lies with the woman and the woman, so shall you burn out the evil from Israel.*
- n. 22:24 *When there is a girl, a virgin, spoken-for to a man, and a man finds her in the town and lies with her, you are to take out both of them to the gate of that*

*town and are to stone them with stones so that they die ...*

2. Maimonides, Mishneh Torah, Sanhedrin 15:10 (listing 18 crimes punishable by stoning); 15:11 (listing 10 crimes punishable by burning); 15:12 (listing 2 crimes punished by decapitation); 15:13 (listing 6 crimes punishable by strangulation).
3. Babylonian Talmud, Sanhedrin 17a (qualifications for Sanhedrin)

We only place on the Sanhedrin one who is able prove that an impure creature is pure, by use of the Torah.

4. Babylonian Talmud, Avodah Zarah 8b, Sanhedrin 52b (Sanhedrin's jurisdiction dependent on Temple)

It is taught, "You will appear before the Priests, Levites, and the judge (shofet) in charge at the time." (Deut. 17.9) Thus, when there is a priest, there can be a death sentence (mishpat); when there is not a priest, there cannot be a death sentence (mishpat).

5. Babylonian Talmud, Sanhedrin 37b (barring circumstantial evidence)

Perhaps this is what you saw: that one was running after his fellow into a ruin, you ran after him and found him sword in hand and blood dripping, while the murdered man was writhing. If this is what you saw, you saw nothing.

6. From my essay, [Restorative Justice & The Jewish Question](#), 2003 Utah Law Review 533-562 (2003) (invited essay, Utah Restorative Justice Conference)

“The Bible states that no one is to be convicted except upon the testimony of two witnesses. [FN21] The Talmud demonstrates that the ordinary background rules require that those witnesses be eyewitnesses, [FN22] that they be reliable (even after testing, they must not contradict themselves in any way), [FN23] and God-fearing (on something like Dostoyevsky's rationale), so they must be Sabbath observant, kosher keeping, adult males. As eyewitnesses they must be able to testify not only to the physical action but the motive--not every homicide, after all, is a murder--and so they must be able to swear that they themselves warned the criminal that what he was about to do was a capital crime and that he responded that he was aware of that and intended to commit the crime precisely because it was a crime.

Similarly, confessions were inadmissible (and a fortiori, I suppose, plea bargaining, which involves even more suspect confessions): perhaps the confessor wished to commit suicide or was mentally disturbed. [FN25] Now, for a human court to consciously decide to kill a human is perilously close to murder. Accordingly, the text restricts the courts that may impose the death penalty. Only a great Sanhedrin, sitting in the Chamber of Hewn Stone at the Temple, [FN26] composed of twenty-three or seventy-one [FN27] ordained [FN28] judges, each of whom spoke seventy languages, had children to teach them sympathy, and was a fine enough lawyer to be able to prove that a seemingly straightforward biblical text enacts a law opposite of what it is known to mean, [FN29] could impose such a penalty.

Moreover, so as to assure that each judge considered the case fully (and perhaps to limit the effects of incompetent lawyering), each judge was required to state his view of the case in turn, starting with the junior-most so as to avoid intimidation or fear of contradicting more senior colleagues. A judge who spoke in favor of the defendant was barred from recanting, however persuasive later speakers were, but anyone who spoke against the defendant and was later persuaded by the arguments of others would so state. Any judge who spoke against the defendant was required to consider the arguments to the contrary overnight before voting. On the next day, a vote was taken, again in reverse order of seniority; conviction required a vote of at least one judge more than a majority. [FN30] As if that were not enough, there was an extra rule that a unanimous vote for conviction resulted in acquittal: seventy-one humans do not agree on anything except when they have not thought hard enough. [FN31]"

#### 7. Mishna, Makkot 1.11 (bloody Sanhedrin)

The Sanhedrin is followed both in the Land of Israel and outside the Land of Israel. A Sanhedrin that condemns a person to death once a week is called "reckless." R. Eleazar ben Azariah says, "once in seventy years." R. Tarfon and R. Akiva say, "if we had been on the Sanhedrin, there would never have been a person sentenced to death." R. Shimon ben Gamliel says, "they would have increased murders in Israel."

#### 8. Babylonian Talmud, Baba Metzia 83b (thorns from the vineyard controversy)

Rav Eleazar son of R. Shimon met an officer who was arresting thieves. He said to him, How can you [detect] them? . . . Maybe you take the righteous and leave behind the evil? He said, and what can I do? It is the king's command.

He said to him, Come, I will teach you. Go to a tavern at the fourth hour of the day. If you see a man drinking wine, holding a cup in his hand and napping, ask about him. If he is a scholar and is napping, [it is because] he rose early to study; if he is a laborer, he rose early to do his work; if his work is at night he may have been stretching wires. If not, he is a thief: arrest him.

A report was heard in the House of the King. They said, let the reader of the letter be the messenger.

They brought R. Eleazar son of R. Shimon, and he began arresting thieves.

R. Joshua ben Karhah sent to him: Vinegar son of wine! How long will you send (*moser*) the people of our God for execution? [R. Eleazar] sent him the answer: I am destroying thorns from the vineyard. [R. Joshua] sent to him: Let the Owner of the vineyard come and destroy His thorns.

#### 9. Elie Wiesel, Souls on Fire 51

To his coachman, [Rebbe Wolfe of Zbaraj] said 'Please throw away your whip. Even if a horse does deserve punishment, what makes you think it is up to you to inflict it?'

#### 10. Babylonian Talmud, Sanhedrin 37b

R. Shimon Ben Shetah said, "May I never see comfort, if I did not see one who ran after his comrade into a ruin, and I ran after him, and I saw a sword in his hand and the blood was dripping and the killed man was writhing. And I said to him, Evil one, who killed him? It was either you I! But what can I do--your blood is not given into my hands, for the Torah says, 'By the testimony of two witnesses . . .' May He Who knows thoughts take vengeance on this person who has killed his comrade." They say that they hadn't moved from there when a snake came and bit him and he died.

But was he deserving of a snake[bite]? R. Yosef said, and the Academy of Hizkiyah taught also, that from the day that the Temple was destroyed, even though the Sanhedrin ceased, the four methods of capital punishment didn't cease. They didn't cease? Surely they did cease.

Rather, punishment by the four methods of execution did not cease. One who is liable to stoning either falls from the roof, or is trampled by a wild animal. One who is liable to burning, either falls into a fire or a snake bites him. One who is liable to decapitation, either is handed over to the malchut [foreign government] or bandits come on him. One who is liable to strangulation, either drowns in the river or dies of diphtheria [thought of as a disease of strangulation].

#### 11. Mishnah, Avot 3:2

Rabbi Hanina, assistant High Priest, would say, 'Pray for the health/peace (shalom) of the government [the word for "government" (*malchut*) is the one usually used to refer to the illegitimate Roman occupying power] for without it, people would swallow each other alive.