SHOF’TIM

First Portion in the Triennial Cycle of Torah Readings

Deuteronomy/Devarim 16:8 - 18:5

Eitz Hayim 1088-1094; Plaut 1456-1459; Hertz 820-823

Parashat Shoftim has enough content to make a course of studies. Among other things, capital punishment is discussed in Shof’tim and that is the focus of my dvar. I gave a talk on this same topic a year or two ago. However, this is not the same d’var. Before getting started, I must clarify that I am not talking about God sending down fire or a plague, nor am I starting from Genesis 9:6: "Whoever sheds the blood of man, by man shall his blood be shed" (also Shm 21:12). Today, I am talking about Biblically authorized capital punishment based on judicial proceedings that result in the execution of some Israelite as a result of his or her actions. My use of his or her is not just modern non-sexism; the text repeatedly says man or woman to indicate that justice is not biased by gender (for example, 17:2 and 17:5).

When I last gave this talk, I divided my dvar into two parts: principles and practice. The principles define the nature and occurrence of capital punishment as found mainly in the Hebrew Bible. The practice of applying laws of capital punishment is mainly found in the Talmud and other post-Biblical writing. This d’var deals only with principles.

My first point is that there are exceptions to the rule that principles appear in the Torah and practices in the Talmud. Notably, in Shof’tim one finds the rule that a person cannot be executed on the testimony of a single witness; it requires a minimum of two witnesses (Dvr 17:6—elaborated in Mishnah Makkot 1:10). That Biblical ruling saved the life of Susanna in her story in *The Apocrypha*, which was published before the Talmud was written. Briefly, Susanna was taking a bath in her courtyard when two elders surprised her and demanded sex. When she refused, they ran outside claiming that they had found her with a lover, which was a capital offense for a married woman. Happily, a man named Daniel pointed out that the two had to give evidence independently and, when their stories differed, it was the two men rather than Susanna who were executed.

The second point is that capital punishment is clearly part of the judicial system in Biblical Israel. There are 36 specific acts in the Hebrew Bible for which death is the prescribed punishment. (My list of the 36 is attached to this d’var, but if you want a copy, email me after Shabbat.) Indeed, there are many more that are implied but not explicit. Should someone be gored to death because you allowed an ox that was known to gore human beings to run free, or should someone fall to his or her death because you neglected to provide a parapet around the roof of your building, you could be charged with murder. Someone has died because of what you did or did not do.

Third, starting from some ideas that they derived from the text itself, the rabbis inferred that the law of capital punishment involved four and only four forms of execution.

* **Stoning** applies to 17 of the 36 crimes, about half of them sexual, and most of the rest involving some form of sorcery, plus a few such as cursing parents and violating the Sabbath. There is some confusion about how stoning was imposed; one view says that the victim was taken to a cliff about eight metres high, and dropped head first. The other view says that it was carried out much as one thinks and, as seems specified in Shof’tim (17:7), the first stones are thrown by the two witnesses. This approach that has the secondary effect that, should their testimony later be shown to be incorrect, they themselves would be guilty of murder.
* **Burning**, the second most common form of execution in the Bible is specified for 11 transgressions, all of them sexual. Jewish execution by burning does not use a stake and fire, but involves pouring molten lead down the victims throat, something that sounds and no doubt was awful but apparently resulted in instant death. No Biblical source indicates that execution by burning was ever carried out.
* **Strangulation** is specified for six infractions that are a mixture of sexual and ritual infractions plus kidnapping. It was accomplished by having the convict stand in mud up to his or her knees, after which a pair of scarves were wound around the neck and then pulled in opposite directions by the two witnesses (some texts say two priests).
* **Decapitation** is associated with only two crimes, murder and living in a city which formerly worshipped God but now worships some non-god. It is commonly referred to as dying by the sword, and is the only one of the four forms of execution that means exactly what one thinks of by the name.

I looked for but never found any rationale for why certain crimes are punished with specific forms of execution nor why some forms of incest are punished by stoning and others by burning. Hanging is mentioned in the Bible but as something done after execution. For example, after Joshua kills the King of Ai, the king is hung out so that people could see it or hear about it (Josh. 8:29). Impaling is also mentioned in the Bible (Bmd 25:4), but here too it seems to occur only after death (Dvr 21:22; later confirmed in the Talmud Sanh. 75b). However, Biblical law prescribes that the body must be taken down the same day and buried before nightfall, "for an impaled body is an affront to God" (Dvr 21:23). Exhibition of the dead body suggests strongly that one of the rationales for capital punishment is to frighten other people from committing the same crime.

Fourth, capital punishment is reserved for only the most serious crimes, at least from a Biblical perspective. A majority of those crimes involve some form of idolatry, or reflect Judaism’s horror of incest. Capital punishment is never used for property crimes.

Further, though it strays across the line into practices, integrity of the individual is preserved and mutilation of the human body is forbidden (Sanh. 52a; Sifra 7:9). There- fore, forms of execution used in surrounding civilizations, as with burning at a stake or crucifixion, were never used for Jewish executions. Rabbi Hertz summarizes the principle in a few words: “Judaism requires that human personality be respected in every human being . . . even in the criminal condemned to death (Hertz 1936; 821).[[1]](#footnote-1)

Fifth, two principles of capital punishment were, if not unique to the Jews, at least rare elsewhere in the Middle East. One was the ruling (Dvr 24:16) that a parent cannot be executed for the actions or sins of a child, nor, conversely, a child cannot be executed for the actions or sins of a parent—a principle that was later extended to all members of the family. Another unique principle was that animals as well as human beings could be sentenced to death (Shm 25:28-29). Goring is the most common example. Bestiality is also cited, though it is hard for me to understand why the animal is in any way at fault.

Before concluding my d’var on the principles of capital punishment as put forward in the Hebrew Bible, I want to caution against making any conclusion without exploring the practice as put forward in later Jewish writing. Here is a single example, the case of *Zaken Mamreh*, a rebellious elder, who is sentenced to death as a matter of principle (Dvr 17:12). However, that sentence is heavily qualified in practice. The guilty man must be an ordained Torah scholar who has explicitly refused to accept a Sanhedrin decision and who continues to rule on the basis of his own views. However, teaching his view of the law is not sufficient to incur capital punishment. In short, Talmudic rulings generally “constrained the court’s ability to convict those accused of capital crimes,”[[2]](#footnote-2) and reflected a broad (but not unanimous) aversion to capital punishment itself.[[3]](#footnote-3)

To conclude, I have explored the unpleasant subject of capital punishment in Biblical Judaism to show that it is not so harsh as first appears. That perspective persists in modern Israel, where capital punishment is only permitted for individuals linked to the Holocaust and for treason at times of warfare. After being confronted with some brutal terrorist acts, a military court stated that, though the death penalty might be appropriate, they were bound "to uphold principles of the State of Israel, the moral concepts of Jewish tradition, in which a Sanhedrin that passed a death sentence was considered to be a “bloody Sanhedrin.”[[4]](#footnote-4)  There could not be a better indication of the general premise that in, Jewish law, the death penalty is more principle than practice.  Shabbat shalom!

**Annex: Which forms of Capital Punishment go with which crimes**

According to Maimonides in his *Mishneh Torah* (Hilchoth Sanhedrin Chapter 15)

***Punishment by Sekila (stoning)***

Intercourse between a man and his mother.

Intercourse between a man and his father's wife (not necessarily his mother).

Intercourse between a man and his daughter in law.

Intercourse with another man's wife from the first stage of marriage.

Intercourse between two men.

Bestiality.

Cursing the name of God in God's name.

Idol Worship.

Giving one's progeny to Molech (child sacrifice).

Necromantic Sorcery.

Pythonic Sorcery.

Attempting to convince another to worship idols.

Instigating a community to worship idols.

Witchcraft.

Violating the Sabbath.

Cursing one's own parent.

A stubborn and rebellious son.

***Punishment by Serefah (burning)***

The daughter of a priest who completed the second stage of marriage commits adultery.

Intercourse between a man and his daughter.

Intercourse between a man and his daughter's daughter.

Intercourse between a man and his son's daughter.

Intercourse between a man and his wife's daughter (not necessarily his own daughter).

Intercourse between a man and his wife's daughter's daughter.

Intercourse between a man and his wife's son's daughter.

Intercourse between a man and his mother in law.

Intercourse between a man and his mother in law's mother.

Intercourse between a man and his father in law's mother.

***Punishment by Chenek (strangulation)***

Committing adultery with another man's wife, where it doesn't fall under above criteria.

Wounding one's own parent.

Kidnapping another member of Israel.

Prophesizing falsely.

Prophesizing in the name of other deities.

A sage who is guilty of insubordination in front of the grand court in the Chamber of Hewn Stone.

***Punishment by Hereg (beheading)***

Unlawful premeditated murder.

Being a member of a city that has gone astray

1. Rabbi J. H. Hertz (1936). *The Pentatuch and Haftorahs*, 2nd edition. London: Sonciono Press. [↑](#footnote-ref-1)
2. Geoffey Wigoder (1989), *The Encyclopedia of Judaism.* Jerusalem: Jerusalem Publishing House, p. 154. [↑](#footnote-ref-2)
3. Mishnah Makkot 1:10. [↑](#footnote-ref-3)
4. Jewish Virtual Library; the specific case cited is: Ram 3009/89 Army Pros. v. Ahmed Gibril Ottrrzan Takrzrru. [↑](#footnote-ref-4)