

The JEWISH Spin on Current Events

SPARING CAPITAL PUNISHMENT

When should "Love" take the place of "Justice"?

∞ OVERVIEW ∞

1. IS IMPRISONMENT A TORAH IDEAL?
2. WHAT TYPE OF BEHAVIORS WARRANT CAPITAL PUNISHMENT?
3. WHAT IS THE PURPOSE WITH CAPITAL PUNISHMENT?
4. IS DELAYING CAPITAL PUNISHMENT A GOOD IDEA?
5. HOW ARE BIBLICAL CAPITAL OFFENSES EXECUTED IN TODAY'S TIME?

**Prepared and delivered by: Rabbi Levi Osdoba
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BELLE HARBOR TORAH INSTITUTE
211 Beach 140 Street, Belle Harbor, NY 11694 · 718-474-2613
www.belleharbortorah.com ? rabbi@belleharbortorah.com

☞ SOURCES ☞

1. Is imprisonment a Torah ideal?

☞ 1A ☞

LEVITICUS 24:10-14

The son of an Israelite women went out – and he was the son of an Egyptian man – among the Children of Israel; they fought in the camp, the son of the Israelite women and an Israelite man. The son of the Israelite women pronounced the Name and blasphemed – so they brought him to Moses; the name of his mother was Shelomis daughter of Divri, of the tribe of Dan. They placed him under guard to clarify for themselves through Hashem. Hashem spoke to Moses, saying: Remove the blasphemer to the outside of the camp, and all those who heard shall lean their hands upon his head: The entire assembly shall stone him...

☞ 1B ☞

NUMBERS 15:32-35

The Children of Israel were in the Wilderness and they found a man gathering wood on the Sabbath day. Those who found him gathering wood brought him to Moses and Aaron, and to the entire assembly. They placed him in custody, for it had not been clarified what should be done to him.

Hashem said to Moses: “The man shall be put to death; the entire assembly shall pelt him with stones outside of the camp.”

☞ 1C ☞

NUMBERS 35:9-12

Hashem spoke to Moses, saying: Speak to the Children of Israel and say to them: When you cross the Jordan to the land of Canaan, you shall designate cities for yourselves, cities of refuge shall they be for you, and a killer shall flee there – on who takes a life unintentionally. The cities shall be for you a refuge from the avenger, so that the killer will not die until he stands before the assembly for judgment.

☞ 1D ☞

TALMUD, KESUBOS 33B

...“If he [the victim] gets up and goes about outside under his own strength, the assailant shall be absolved”. Now, would it enter your mind to say that this one [the victim] is walking about in the street and this one [the assailant] is executed?! Rather, this teaches that we imprison him [until the fate of the victim is determined]: And if he eventually dies, we execute [the assailant].

2. What type of behaviors warrant capital punishment?

☞ 2A ☞

TALMUD, SANHEDRIN 9B

A man does not depict himself as evil.

☞ 2B ☞

TALMUD, SANHEDRIN 37B

Our Rabbis taught: What is meant by [not convicting on the basis of] circumstantial evidence? The judge says to the witnesses, "perhaps you saw the defendant running after the other fellow into a ruin, you pursued him, and found him with sword in hand and blood dripping from it, while the victim was twitching. If that is what you saw, you saw nothing.

☞ 2B ☞

DEUTERONOMY 17:6

By the testimony of two witnesses or three witnesses shall the condemned person be put to death; he shall not be put to death by the testimony of a single witness.

3. What is the purpose with capital punishment?

☞ 3A ☞

DEUTERONOMY 19:20

And those who remain shall hearken and fear; and they shall not continue again to do such an evil thing in your midst.

☞ 3B ☞

DEUTERONOMY 13-6 & 17:7

...And you shall destroy the evil from your midst.

☞ 3C ☞

MAIMONIDES, LAW OF REPENTANT, CHAPTER 1:1

All of the commandments in the Torah, both the positive commandments and the negative commandments, if one should violate one of them, whether willingly or inadvertently, when one repents, and changes his ways, he is obligated to confess before G-d, blessed be He... And so too, those who are obligated to bring *chatos* or *asham* offerings [in order to achieve atonement, as required by the Torah] for the inadvertent or intentional sins, they are not atoned until they repent and they confess... And so too, all those that are condemned to be executed by *beis din*, or to receive lashes, they are not atoned for with their death or lashes, unless they repent and they confess. And so too, one

who injures his friend, or destroys ones property, even if he properly compensated the person for his damages, he is not atoned for until he confesses and repent from doing so again...

4. Is delaying capital punishment a good idea?

§ 4A ¶

TALMUD, SANHEDRIN 42B

Once a verdict has been reached [and the defendant is pronounced guilty], they take him out to stone him... [In the meantime], one man stands at the courthouse door with flags in his hand, and another sits astride a horse at a distance from him, within his sight. If someone says: I have grounds to argue for his acquittal, [the flagman] waves the flags, and the horse races [to the executioner and the condemned] and halts them. And even if [the condemned] says, "I have grounds for my own acquittal," they return him, even four or five times, as long as there is substance to his words.

§ 4B ¶

TALMUD, KESUBOS 33A-B

...on the basis of what do you assume that the death penalty is the more severe penalty [than lashes]? Perhaps lashes is the more severe penalty! For Rav said: "Had they whipped Chananyah, Mishael and Azaryah, they would have worshiped the statue."

§ 4C ¶

TALMUD, KESUBOS 37B

...why do I need the verse, "And you shall purge the [spillers of] innocent blood from your midst [which appears in the Torah after delineating the laws of the *eglah arufah*, decapitated calf]? We need it for that law which was taught in a Baraisa: From where do we know with regard to those who are executed by the court with a sword that their death is effected from the neck? The Torah states "And you shall purge the [spillers of] innocent blood from your midst". All spillers of blood are exegetically linked to the decapitated calf. Just as there [the death of the calf] is effected from the neck, here too the death of spillers of blood is effected from the neck.

But if so, why don't we say that just as there the calf is killed with an ax and from the back of the neck, here too [murderers should be executed] with an ax and from the back of the neck? Rav Nachman said in the name of Rabbah bar Avuha: The verse states "And you shall love your fellow as yourself", choose for him a favorable death.

5. How are Biblical capital offenses punished in today's time

☞ 5A ☞

TALMUD, MAKKOS, 10B

R' Shimon ben Lakish opened his lecture on this portion from here. "But if he did not lie in wait, but G-d caused it to come to his hand etc." "As the proverb of the Ancient One says, 'From the wicked comes forth wickedness etc.' " What is the verse talking about? About two people [each of] whom killed a person. One killed inadvertently and one killed intentionally. This one has no witnesses, and this one has no witnesses. The Holy One, Blessed is He, summons them to the same inn, this one, who killed intentionally, sit under a ladder, while this one, who killed inadvertently, descends the ladder. And [the one who killed inadvertently] falls upon [the murderer] and kills him [in the presence of witnesses]. This one, who had killed intentionally, is killed, while this one, who had [previously] killed inadvertently, is exiled.

☞ 5B ☞

TALMUD, SANHEDRIN 37B

It has been taught: Rabbi Shimeon ben Shetach said, "May I never live to see [the] comfort [of the ultimate redemption] if I did not once see a man pursuing his fellow into a ruin, and when I ran after him and saw him, sword in hand with blood ripping from it, and the murdered man twitching, I exclaimed to him: 'Wicked man, who murdered this man? It is either you or I. But what can I do, since your blood does not rest in my hands, for it is written in the Torah, "A person shall be put to death only on the testimony of two or three witnesses" (Deuteronomy 17:6). May He who knows a person's thoughts exact vengeance from this one who murdered his fellow!" It is said that before they moved from the place, a serpent came and bit the man so that he died.

[The Talmud questions]: Now was this murderer deserving of being bitten by a snake? But Rav Yosef said, and so, too, did R' Chiya teach a Baraisa: From the day that the Temple was destroyed, even though the Sanhedrin has ceased [to function in its traditional place in the Temple], the four types of executions have not ceased. [The Talmud asks]: [Executions] have not ceased? But surely they have ceased? Rather, the [equivalent] punishment of the four executions has not ceased. One who deserves death by stoning, either falls from a roof or is trampled by a wild beast. And one who deserves death by burning, either falls into a fire or is bitten by a snake. And one who deserves death by beheading is either handed over to the authorities or attacked by bandits. And one who deserves death by strangulation, either drowns in a river or dies of choking?

[The Talmud answers]: That person had committed another sin [which was subject to death by burning, as he was punished], for the master said, one who is liable to two forms of court-imposed executions is subjected to the more severe form.