

**Bethel AME Church**  
**Insights from the Rabbis 2**  
**Class Notes 4/11/21**

We have been looking at background material for the story of the woman taken in adultery, where Jesus does not insist on punishing the woman at all for her crime, let alone executing her. We started with the whole issue of capital punishment, and saw that there is no evidence that Jews in Jesus' day were regularly executing adulterers, even though this is the punishment Torah establishes. By the time the Talmud was written several centuries later the general consensus of the rabbis seems to be a desire to limit as much as possible the use of capital punishment. They establish a lot of rules that makes a conviction in a capital case very difficult.

Their overall attitude is made clear in one of the discussions in the Mishnah, which comes from about 200 AD. "*A Sanhedrin that executes someone once in seven years is characterized as destructive. Rabbi Elazar ben Azarya says: Once in seventy years. Rabbi Tarfon and Rabbi Akiva say: If we had been in the Sanhedrin, no person would have ever been executed*" (*m. Makkot* 1.10). This is an astonishing statement by two of the most important of the ancient sages. Most of the time modern authors quote this passage as suggesting that the rabbis would have done away with capital punishment completely if it hadn't been present in Torah. And that is clearly the view of many of the rabbis, who work hard to put up serious barriers to someone being executed.

I have seen this quote from the Mishnah many times in things that I have read, but until I recently went and looked at the source, I had never seen what follows. Immediately after the statement by Rabbis Tarfon and Akiva, the Mishnah records a response, "*Rabban Shimon ben Gamliel says: They too increase the number of murderers in Israel.*" In other words, if you abolish the death penalty, crime will increase. As we have seen, the Talmud is an anthology of discussion and debate, and so even here it includes a dissenting opinion. The other lengthy discussions of the death penalty in the Talmud make it clear that there is no unanimous opinion on the matter. There is extensive debate about various forms of execution (stoning, beheading, strangulation, burning) with some rabbis insisting that the method used should create the least disfigurement of the body, since we are all created in God's image. And there is a discussion of the necessity for the execution to be carried out in as quick and humane manner as possible, based on the commandment to love your neighbor as yourself (*Sanhedrin* 45a, 52b)! The convicted murderer is still your neighbor, your brother.

In a related discussion about the law prohibiting leaving an executed criminal's body hanging overnight out in the open (Deut. 21:23), the Mishnah plays on the meaning of the word for curse: "When a human being suffers what does the Shekinah (the Divine Presence) say? My head is distressed, my arm is distressed. If God suffers over the blood of the wicked that is shed, how much more so over the blood of the righteous" (*m. Sanhedrin* 6.5). It is painful for God when any of His children suffer, even a criminal who is punished for his crime.

So although both Torah and the Talmud allow for capital punishment, in general Jewish courts have been very cautious about using it even where they had the power to do so. The modern state of Israel has only executed two people in its history: a questionable case of treason by an Israeli army officer in 1948 that was posthumously overturned, and the famous case of Adolf Eichmann, the Nazi architect of the Holocaust, in 1962. In 1954 the Knesset (Israel's parliament) abolished the death penalty for murder, but kept it for certain other crimes. Surprisingly, Israel has never executed anyone for terrorism, even though there are small political factions that call for it. My (non-expert) sense of things is that in general Jewish tradition has been reluctant to use the death penalty for at least two reasons: a greater concern about the danger of executing an innocent person than about letting a guilty one go free, and a strong commitment to the hope for repentance. We will see that for some rabbis, that hope continues even after death.

The differing opinions in the Mishnah about capital punishment as a deterrent to crime are not unique to Judaism, of course. The debate, both religious and secular, continues into modern times. In the passage about the rebellious son, one of the purposes of the execution is to instill fear in the Israelites. A similar purpose is found with a couple of other capital offenses (Deut. 13:12, 17:13). In non-Jewish nations, public executions, from crucifixion in the Roman Empire to hangings in 20<sup>th</sup> century America (last one in 1936), have been used as strong warnings to its citizens. It is not clear how effective this was since more often than not the public seems to have viewed them primarily as a source of entertainment.

The internet is kind of like the Talmud: it is full of all sorts of different opinions. There you can find modern secular rabbis confidently declaring that capital punishment has been clearly demonstrated to be completely ineffective in preventing serious crimes, and you can find others declaring that it has been scientifically proven within a margin of error of plus or minus two that each execution prevents 17 deaths. Many people find capital punishment to be barbaric, but I also wonder how humane it is to consign someone to a lifetime of imprisonment. Neither the Bible nor social science provides clear answers to these questions, but the unjust execution of Jesus should at least give Christians second thoughts about embracing the practice. We need to hear both sides of the argument.

### 3. An Eye for an Eye

A 2014 Gallup poll reported that the most frequent reason Americans gave for their support of the death penalty was the biblical principle of “an eye for an eye.” Paradoxically, people who think of themselves as evangelical Christians usually cite this phrase as both support for the death penalty and also as the example of the harsh OT legalistic judgmentalism that was replaced by the NT ethic of love and forgiveness. So I want to look a little closer at this often misunderstood concept and its relationship to crime and punishment.

#### a. In Torah

Torah has three passages that contain variations on the same basic formula. While by itself, the “eye for an eye” principle sounds like some sort of clear legal standard, I want to look at the contexts in which it is found to see what it means and how it is used.

The first is a specific case in Exodus 21:22-25, where as the side result of a brawl between two men, a pregnant woman is injured. If it causes a miscarriage, her husband is to be given monetary recompense in accordance with his demands. If she is harmed in other ways, “you shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, bruise for bruise.” As Robert Alter points out, this is a somewhat far-fetched situation. Any injury to the woman would be accidental and so even if she were to die, it would not be a capital offense. So the “life for life” statement fits here somewhat awkwardly. And the initial mention of a seemingly unlimited financial settlement for the miscarriage stands in contrast to the more restrictive sense of “an eye for an eye.”

The second is Leviticus 24:18-20: “Anyone who takes the life of someone’s animal must make restitution—life for life. Anyone who injures their neighbor, as they have done so shall it be done to them—fracture for fracture, eye for eye, tooth for tooth. As they have injured a human being, so they shall be injured.” Notice that here, “life for life” cannot mean that if I kill someone’s animal, they will take the life of my animal. Again, it refers to making restitution, either a monetary payment of the value of the animal or replacing the animal. So although the larger context of this passage makes clear that death is the penalty for murder, we see here that “life for life” isn’t always meant literally. It may in fact point to recompense and restitution rather than punishment. This is parallel to the passage in Exodus 21, which also begins with financial reparation for the life of the unborn child. “An eye for an eye” in these passages is not always a literal statement.

The third instance is perhaps the most interesting. Deuteronomy 19:16-21 treats the case of a witness at a trial, who if he is found to be lying is to be subject to the same punishment he intended for the defendant. The passage concludes: “Show no pity: life for life, eye for eye, tooth for tooth, hand for hand, foot for foot.” This is clearly meant as a strong warning to anyone considering bearing false witness. Essentially, their lie is taken as an assault on the defendant, and even though the physical injury did not occur, it is to be treated as if it did. Here the idea more clearly refers to punishment, but in a very specific situation.

All three of these situations are quite specific and limited. The general phrase “eye for an eye” fits somewhat awkwardly into the specific situations in which it is cited, and is never applied across the board to all types of crimes in general. It sounds like more of a guiding recommendation rather than a list of specific penalties.

I want to bring up several important considerations here. First, the idea of “an eye for an eye” did not originate in Torah. The famous law code of the ancient Babylonian King Hammurabi (ca. 1800 BC) has laws with similar wording, including the statement, “If a man put out the eye of another man, his eye shall be put out. If he break another man’s bone, his bone shall be broken” (Laws #196-197). So the passages in Torah that contain this type of statement are echoing a commonly known principle, and Torah has tacked on this legal boilerplate to several specific situations where it may or may not literally apply.

It is inserted into the text to make a point about how to think about situations like the one described, as a general principle rather than a specific set of procedures to be followed.

Second, although “an eye for an eye” has been routinely quoted as an example of the Old Testament’s harshly vengeful attitude, in fact it is more nearly the opposite. Other ancient cultures had horrific punishments for many less serious crimes like theft, including flogging, bodily mutilation and amputation. Up until 1832, theft was also capital crime in England, along with counterfeiting and forgery. Indeed, 18<sup>th</sup> century England had hundreds of capital offenses, including using a disguise while committing a crime and “being in the company of Gypsies for one month.” Capital crimes in colonial America, in addition to biblical offenses like adultery and rebellious children, included witchcraft, stealing horses, killing chickens, trading with Indians, counterfeiting, even stealing grapes. In contrast to this, for the biblical sense of justice, “an eye for an eye” means “only an eye for an eye.” In other words, the punishment must fit the crime. It is meant to curb the human instinct to overreact and seek revenge rather than justice. And it establishes limits to the amount of compensation a victim and their family might expect from an injury. (I think this is clearly implied by the law in Exodus 21.) The principle is meant to restrain harsh and vengeful actions and restrict what punishment could be meted out.

Torah indicates that such a propensity for over-the-top vengeance developed very quickly in the human race. Early on we hear of Lamech, who boasts, “*I have killed a man for wounding me, a boy for injuring me. If Cain is avenged seven times, then Lamech seventy-seven times*” (Gen. 4:23-24). He has killed someone for merely injuring him because he prides himself on retaliating with excessive and unrestrained force. Soon human violence has increased so much that God decides to destroy humanity and start over again (Gen. 6:13). So one of the purposes of “an eye for an eye” was to limit revenge, to counteract the attitude expressed by Lamech, and keep in check the human inclination to violence.

Third, such proportional punishment must be applied fairly to all people, regardless of social status or nationality. This is made explicit in the passage from Leviticus 24, which ends, “*You shall have one law for the foreigner and the native born, because I am the Lord your God*” (v. 22), a principle that is repeated in other places (Lev. 19:34; Num. 15:15-16). Again, this is in stark contrast to other surrounding cultures. That same law code of Hammurabi makes careful distinctions among the various socio-economic levels, as well as between men and women. For example, if a patient dies while undergoing surgery, the doctor’s hands are cut off. But if the patient is a slave, the doctor merely pays financial restitution to the master. (One wonders if this law were meant literally why anyone would bother applying to medical school.) More to our point, if a man knocked out the teeth of his social equal, his teeth were to be knocked out. But if he injured a member of a lower class, he only paid a fine. Husbands were able to have affairs with female servants and slaves but a wife who did this was tied up with her lover and thrown into the Euphrates. In contrast to this kind of social stratification that existed in most ancient law codes, Torah mandates that punishment is to be in proportion to the crime and to be applied equally to all. “An eye for an eye” is not about revenge; it is about justice.