

The Death Penalty according to the Torah

In this weeks reading from [Parsahat Ki Tetze](#) (*Devarim / Deuteronomy 21:10-25:19*), Moshe lists 21 Mitzvot spanning a number of topics for the people when they enter into the Promised Land. The List is as follows, (i) Laws relating to prisoners of war (*21:10-15*), (ii) Inheritance for the first born (*21:15-17*), (iii) what to do with rebellious children (*21:18-21*), (iv) Capital punishment by hanging on a tree (*21:22-23*), (v) Not damaging your neighbor's property (*22:1-4*), (vi) Prevent personal injury (*22:8*), (vii) Planting seed (*22:9*), (viii) Don't work two different animals side by side (*22:10*), (ix) Wearing multi-threaded clothing (*22:11*), (x) Tzitzit (*12:12*), (xi) Divorce (*22:13-21; 24:1-4*), (xii) Adultery (*22:22*), (xiii) Fornication (*22:23-29*), (xiv) Incest (*22:30*), (xv) being a eunuch (*23:1-3*), (xvi) Finances (Interest) (*23:20-21*), (xvii) Stealing from the Lord by neglecting a vow (*23:22*), (xviii) Stealing produce from your neighbor's field (*23:25-26*), (xix) Levirate marriage and prohibition on remarriage a divorced wife who had remarried (*24:4*), (xx) Punishment by flogging limited to 40 strokes (*25:2-3*), and (xxi) Correct and fair weights of measure for merchants (*25:14-16*). Moshe says that these things need to be observed for the reason that *"you are not to bring sin on the land which the Lord your God gives you as an inheritance"* (וְלֹא תַחַטִּיחַ אֶת-הָאָרֶץ אֲשֶׁר) (יהוה אֱלֹהֶיךָ נָתַן לְךָ נַחֲלָה) (*24:4*). Do you think these commands are important for us today as believers in Yeshua in the land that we dwell?

This week the Lord tells us that we are to care for our neighbors things as if they were our own, according to *Devarim / Deuteronomy 22:1-4*. The inherent property of this command is to love your neighbor as yourself. When thinking on these Scriptures, we also read about the stubborn son who will not obey his parents, that they are to take him before the elders of the city, and if he is found guilty of rebellion, gluttony, and drunkenness, he is to be stoned to death. Does this punishment seem harsh? Following these words, we read that if a man is found worthy of death he is to be hung upon a tree (crucifixion). We are also told that the one who is hung upon a tree is cursed of God. Do these death penalties seem harsh? For example, should a rebellious child really be put to death? Or in the case of crucifixion, isn't it enough to put someone to death for their sin, to add

the hanging upon a tree and being cursed of God? Do these Torah commands appear to be harsh? What is the purpose of the command to hang a man upon the tree and to be cursed of God? The standard for the people of God, based upon the Torah, is to live in justice, truth, and peace with all men on this earth. Do these commands stand in contradiction to that premise? (Note the parallel verse in *Vayikra / Leviticus 20:9*)

ספר דברים פרק כא Devarim / Deuteronomy 21:18-23

יה כי-יהיה לאיש בן סורר
 ומורה איננו שמע בקול אביו
 ובקול אמו ונסרו אתו ולא
 ישמע אליהם: יט ותפשו בו
 אביו ואמו והוציאו אתו אל-
 זקני עירו ואל-שער מקומו: כ
 ואמרו אל-זקני עירו בנגנו זה
 סורר ומרה איננו שמע בקולנו
 זולל וסבא: כא ורגמהו כל-
 אנשי עירו באבנים ומת ובערת
 הרע מקרבך וכל-ישראל ישמ-
 עו ויראו: ס [שני] כב וכי-
 יהיה באיש חטא משפט-מות
 והומת ותלית אתו על-עץ: כג
 לא-תלין נבלתו על-העץ כי-
 קבור תקברנו ביום ההוא כי-
 קללת אלהים תלוי ולא תטמא
 את-אדמתך אשר יהיה אלהיך
 נתן לך נחלה:

21:18 'If any man has a stubborn and rebellious son who will not obey his father or his mother, and when they chastise him, he will not even listen to them, 21:19 then his father and mother shall seize him, and bring him out to the elders of his city at the gateway of his home town. 21:20 'They shall say to the elders of his city, 'This son of ours is stubborn and rebellious, he will not obey us, he is a glutton and a drunkard.' 21:21 'Then all the men of his city shall stone him to death; so you shall remove the evil from your midst, and all Israel will hear of it and fear. 21:22 'If a man has committed a sin worthy of death and he is put to death, and you hang him on a tree, 21:23 his corpse shall not hang all night on the tree, but you shall surely bury him on the same day (for he who is hanged is accursed of God), so that you do not defile your land which the Lord your God gives you as an inheritance. (NASB)

Based upon the Scriptures, we know that we serve an infinite and loving God. Sometimes however it is difficult to get our heads around a few things mentioned in the Torah, like the death penalties for example to the children who curse their parents, and the one of crucifixion. One would think in the case of the rebellious child, exile would have been a more humane option, right? Let's have a look at what the rabbis have to

say concerning the command to put to death the rebellious child. The *Mishnah Sanhedrin 11:1* provides a discussion by the rabbis regarding the command to put to death the stubborn and rebellious child.

Mishnah Sanhedrin 11:1

These are [executed by] strangulation: one who strikes his father or mother; one who kidnaps a Jew; a zaken mamre [rebellious elder] [who rebels] against [a ruling of] the court; a false prophet; one who prophesies in the name of an idol; an adulterer; and [witnesses] who scheme against a priest's daughter and the one who sleeps with her. One who strikes his father or mother—[he] is not liable unless he wounds them. This [law] is more severe with respect to one who curses [his parents] than to one who strikes [his parents]: one who curses after [their] death is liable, while one who strikes after [their] death is exempt. One who kidnaps a Jew—[he] is not liable until [the kidnapper] enters [the kidnapped] into his domain. Rabbi Yehudah says, until [the kidnapper] enters him into his domain and puts him to work [as a slave], as it says, (Deuteronomy 24:7) “and he deal with him as a slave, and sell him.” One who kidnaps his [own] son, Rabbi Yishmael, the son of Rabbi Yochanan ben Beroka, maintains that he is liable; and the Sages maintain that he is exempt. One who kidnaps one who is half-slave and half-free, Rabbi Yehudah maintains that he is liable, and the Sages maintain that he is exempt. אלו הן

הנחנקין, המכה אביו ואמו, והגונב נפש מישראל, וזקן ממרא על פי בית דין, ונביא השקר, והמתנבא בשם עבודה זרה, והבא על אשת איש, וזוממי בת כהן ובוועלה. המכה אביו ואמו אינו חייב עד שיעשה בהן חבורה. זה חמר במקלל מבמכה, שהמקלל לאחר מיתה חייב, והמכה לאחר מיתה פטור. הגונב נפש מישראל אינו חייב עד שיכניסנו לרשותו. רבי יהודה אומר, עד שיכניסנו לרשותו וישתמש בו, שנאמר (דברים כד, ז) והתעמר בו ומכרו. הגונב את בנו, רבי ישמעאל בנו של רבי יוחנן בן ברוקה מחייב, וחכמים פוטרין. גנב מי שחציו עבד וחציו בן חרין, רבי יהודה מחייב, וחכמים פוטרין.

It is interesting to note how the Mishnah interprets *Devarim / Deuteronomy 21:18-21* as one having struck his father and mother. The Torah does not mention “*striking*” one’s mother or father. The mishnah describes the one who strikes his mother and father to cause harm (injury) is liable to this command as opposed to verbal accusations only. The form of execution is to be performed by strangulation for the one who strikes his father or mother. The rabbis group the rebellion and striking of father and mother together with kidnapping, rebelling against the ruling of the courts, prophesying in the name of an idol god, an adulterer, and one who schemes against the priests daughter with the one who sleeps with her. On the one hand the penalty of death for being verbally abusive to ones parents seems harsh by contemporary standards, as compared to the intent to cause harm or even death to one’s parents through physical abuse. In addition, little evidence is given historically, that these penalties were ever enforced. Also, based upon the Torah command of the two witnesses, the rule of evidence, and other safeguards the Torah provides to protect the accused, the Law of God makes it almost impossible to actually invoke the penalty of putting to death the rebellious child. We also have the case in which a loving parent is also willing to do almost anything for their children. In addition, the Torah also contains concepts of justice, mercy, concern for the poor, and equality before the Law which were unprecedented in their own time. Taken together, the Torah commands to be merciful, and to love our neighbor, appear to stand in contrast to the commands to put someone to death for their sin. The tension that is formed between these commands appears to have a specific design that allows one to show mercy (“*opportunities of grace*”) towards one another, especially in the case of the death penalty.

The Jewish commentaries Daat Zkenim and Sforno on *Devarim / Deuteronomy 21:18* have the following to say.

Daat Zkenim on Deuteronomy 21:18

כי יהיה לאיש בן סורר ומורה, “*if a man has a wayward son, etc.*” *the death penalty decreed here for what must appear to the reader as a relatively minor sin by a teenager, is understood as the Torah’s way to save this son from losing his share in the world to come, if he were allowed to continue in his lifestyle. This is how Rashi explains it. If you were to*

ask that at least he should not have to face a harsher death penalty than that administered for armed robbery, which is death by the sword, not death by stoning, the Torah wrote that he ignored both father and mother, a euphemism for this son cursing father and mother, a crime which carries the penalty of death by stoning. (Compare Leviticus 20:9 where the wording of the Torah for cursing father or mother is: דמיו בו, "his blood will be upon him." Whenever this expression occurs it refers to death by stoning. כי יהיה לאיש בן סורר ומורה. על שם סופו הוא נהרג כדפרש"י ואי קשיא כיון שנהרג מפני שעתיד ללסטם את הבריות אין לחייבו במיתה חמורה מלסטים דאלו רוצח בסייף וזה בסקילה ונראה לומר מדכתיב איננו שומע בקול אביו ובקול אמו והוי כמו מקלל אביו ואמו שהוא בס' קילה שנא' אביו ואמו קלל דמיו בו:

Sforno on Leviticus 20:9

proof that I, G'd, am so insistent that your sanctity be manifest by your seed being genealogically pure is that the penalty for non observance is the execution of the person who curses his parents. The normal scenario which leads to a son or daughter cursing their parents has to do with legitimacy or otherwise of their offspring. When a son or daughter are the product of unions forbidden under the laws of incest, children of such unions have little reason to practice the commandment to honour their parents as it was from their parents that they learned to ignore Torah legislation. Solomon's well known instruction "heed the moral instruction of your father; and do not ignore the teachings of your mother" (Proverbs 1:8) are most difficult to honour when they know they have seen the light of day only because their parents chose to ignore this very instruction. כי איש איש אשר יקלל והאות על שאני מקפיד כל. כך שתהיה הקדושה בזרע שהרי ענשתי מיתת בית דין את המקלל הוריו שזה יקרה על הרוב בהיות פסול בזרע כי אז הוא בלתי מוכן אל מה שכתוב שמע בני מוסר אביך וכו'. ואיש כזה לא ישמור

חוקים ומשפטים כי לא יקבלם מאביו ומאמו כלל:

It is interesting how Daat Zkenim interprets the Scripture as being a “*minor sin*” within the context of the death penalty. Is this consistent with our contemporary opinions. The rabbinic understanding of this verse is that this is the Torah’s way of saving the son from losing his share in the Olam Haba, otherwise, if he were allowed to continue on in his lifestyle he would loose both his life and his soul. The idea here is that the son is ignoring both his father and mother, which is a euphemism for the son cursing father and mother which carries the penalty of death by stoning.

Sforno interprets the Scripture to be a reference to the Lord requiring man to sanctify the Tabernacle in his children, that his children be pure in their observance of God’s commands. The idea is the parents are actively teaching their children the ways of the Lord. The penalty of execution is for the one who curses his parents, as the commentary references the Moreh (מורה), the one who instructs the child in God’s ways. The child who curses his parents, is suggested to be synonymous with the child speaking of the illegitimacy of their relationship with one’s parents. It is through the parental instruction and family unit the child has access to the covenant of God. This is the context of Paul’s words to the believers in Corinth according to *1 Corinthians 7:14 For the unbelieving husband is sanctified through his wife, and the unbelieving wife is sanctified through her believing husband; for otherwise your children are unclean, but now they are holy. (NASB)* This may also be drawn into context of those people who take husbands or wives from the neighboring nations who serve false gods. Their children, their offspring, have no reason to obey the commands of God because their own parents do not heed the command to not take in marriage from the other nations. This speaks volumes regarding Paul’s words to not be unequally yoked.

1 Corinthians 6:14

6:14 Do not be bound together with unbelievers; for what partnership have righteousness and lawlessness, or what fellowship has light with darkness? (NASB)

The harshness of the death penalty indicates for us the seriousness of the crime. Jewish philosophers argue that the whole point of corporal punish-

ment was to serve as a reminder to the community of the severe nature of certain acts of unfaithfulness. This is most likely the reason why in the historical account of Israel (in the Tanach), the death penalty for the rebellious child was more of a principle than a practice. The numerous references to the death penalty in the Torah underscore the severity of the sin and the expectation of death, if not in this world, the expectation of what will happen in the World to Come. This difficulty to convict a person to death is bolstered by the standards of proof required for the application of the death penalty, which are extremely stringent (see the *Babylonian Talmud Makkoth 7b*). Because the standards of proof were so high, it was almost impossible to inflict the death penalty. As a result of this, the *Mishnah Makkoth 1:10* provides us with some insights into the views of several prominent first-century Rabbis on the subject:

Mishnah Makkot 1:10

If someone whose judgment was final [sentenced to death], and ran away but came back to the same Beit Din, we do not re-evaluate his old judgment. Any time that two witnesses came and say, "We testify that this person had a judgment passed against him in a certain court," so and so were the witnesses, we execute him [the defendant on this testimony]. A Sanhedrin that would execute somebody once in seven years would be considered destructive. Rabbi Elazar Ben Azariah says: "Once in seventy years." Rabbi Tarfon and Rabbi Akiva said: "If we were on the Sanhedrin, nobody would have ever been executed." Rabban Shim'on Ben Gamliel said: "They too would have increased violence in Israel."

מי שנגמר דינו וברח ובא לפני אותו בית דין, אין סותרים את דינו. כל מקום שיעמדו שנים ויאמרו, מעידין אנו באיש פלוני שנגמר דינו בבית דינו שלפלוני, ופלוני ופלוני עדיו, הרי זה יהרג. סנהדרין נוהגת בארץ ובחוצה לארץ. סנהדרין ההורגת אחד בשבוע נקראת חבלנית. רבי אלעזר בן עזריה אומר, אחד לשבעים שנה. רבי טרפון ורבי עקיבא אומרים, אלו היינו בסנהדרין לא נהרג אדם מעולם. רבן שמעון בן גמליאל אומר, אף הן מרבין שופכי דמים בישראל.

The rabbis' opinions on convicting one to death (execution) was very significant saying that the Sanhedrin is considered destructive if having convicted more than one person every 7 years. Rambam (Maimonides) stated that *"It is better and more satisfactory to acquit a thousand guilty persons than to put a single innocent one to death."* Maimonides argued that executing a defendant on anything less than absolute certainty would lead to a slippery slope of decreasing burdens of proof, until we would be convicting merely *"according to the judge's whim."* Maimonides was concerned about the need for the law to guard itself in public perceptions, to preserve its majesty and retain the people's respect. This was one of the objectives for God's commands according to Parashat Shoftim we studied last week. Do our courts today engender that kind of respect today?

The point of the Torah study for this week, is that Adultery, Insubordination, and Sabbath non-observance, to name a few commands, all seem to be commonplace misdeeds today. But according to the Torah, those and more than 30 other actions, including bestiality, homosexuality, and witchcraft, were punishable by death. Because the Torah prescribes death to those who commit these sins, should we take it upon ourselves to go out and do according to the strict interpretation of God's word? What is illustrated here in the Torah, in history, and the Mishnah and Talmud according to the rabbis, is that we are given a strong warning of what will happen for a land and a people who choose to disobey the Lord God in heaven. We also see how the Lord, who is merciful, long suffering, and forgiving, seeks to live in this way as well. It is by this interpretation that Yeshua taught to love our enemies, to be good to them, and to feed them (see *Matthew 5-7*), and how He taught that the one who has no sin to cast the first stone with the woman caught in adultery (*John 8:7*). Yeshua is not being inconsistent with the Torah's teaching on the adulterer being put to death. These Scriptures teach us that our lives will be judged according to the Word of God, according to His Torah. In the Apostolic Writings, Yeshua said *"My Words"* (ῥήματά μου), the *"Words that I have spoken"* (ὃν ἐλάλησα) *"shall judge him"* (κρινεῖ αὐτόν). (*John 12:48 'He who rejects Me and does not receive My sayings, has one who judges him; the word I spoke is what will judge him at the last day. NASB*) Interestingly, according to *Revelation 20:11-15*, the Word of God is the one who is set before us and our lives will be judged according to the sins that were committed.

Revelation 20:11-15

20:11 Then I saw a great white throne and Him who sat upon it, from whose presence earth and heaven fled away, and no place was found for them. 20:12 And I saw the dead, the great and the small, standing before the throne, and books were opened; and another book was opened, which is the book of life; and the dead were judged from the things which were written in the books, according to their deeds. 20:13 And the sea gave up the dead which were in it, and death and Hades gave up the dead which were in them; and they were judged, every one of them according to their deeds. 20:14 Then death and Hades were thrown into the lake of fire. This is the second death, the lake of fire. 20:15 And if anyone's name was not found written in the book of life, he was thrown into the lake of fire. (NASB)

Καὶ εἶδον θρόνον μέγαν λευκὸν καὶ τὸν καθήμενον ἐπ' αὐτόν, οὗ ἀπὸ τοῦ προσώπου ἔφυγεν ἡ γῆ καὶ ὁ οὐρανός, καὶ τόπος οὐχ εὐρέθη αὐτοῖς. καὶ εἶδον τοὺς νεκρούς, τοὺς μεγάλους καὶ τοὺς μικρούς, ἐστῶτας ἐνώπιον τοῦ θρόνου, καὶ βιβλία ἠνοιχθησαν: καὶ ἄλλο βιβλίον ἠνοιχθη, ὃ ἐστὶν τῆς ζωῆς: καὶ ἐκρίθησαν οἱ νεκροὶ ἐκ τῶν γεγραμμένων ἐν τοῖς βιβλίοις κατὰ τὰ ἔργα αὐτῶν. καὶ ἔδωκεν ἡ θάλασσα τοὺς νεκρούς τοὺς ἐν αὐτῇ, καὶ ὁ θάνατος καὶ ὁ ᾅδης ἔδωκαν τοὺς νεκρούς τοὺς ἐν αὐτοῖς, καὶ ἐκρίθησαν ἕκαστος κατὰ τὰ ἔργα αὐτῶν. καὶ ὁ θάνατος καὶ ὁ ᾅδης ἐβλήθησαν εἰς τὴν λίμνην τοῦ πυρός. οὗτος ὁ θάνατος ὁ δευτέρος ἐστὶν, ἡ λίμνη τοῦ πυρός. καὶ εἴ τις οὐχ εὐρέθη ἐν τῇ βίβλῳ τῆς ζωῆς γεγραμμένος ἐβλήθη εἰς τὴν λίμνην τοῦ πυρός.

In *Revelation 20:11*, the Apostle John says Καὶ εἶδον θρόνον μέγαν λευκὸν καὶ τὸν καθήμενον ἐπ' αὐτόν, οὗ ἀπὸ τοῦ προσώπου ἔφυγεν ἡ γῆ καὶ ὁ οὐρανός, καὶ τόπος οὐχ εὐρέθη αὐτοῖς “*Then I saw a great white throne and Him who sat upon it, from whose presence earth and heaven fled*

away, and no place was found for them.” This verse shows us that in the presence of the Lord God Almighty no one can stand, in fact, heaven and earth flee from His presence. The awesome might and power of the Lord God Almighty, even the solid nature of heaven and earth itself, nothing and no one can hide in His presence. John says καὶ εἶδον τοὺς νεκρούς, τοὺς μεγάλους καὶ τοὺς μικρούς, ἐστῶτας ἐνώπιον τοῦ θρόνου, καὶ βιβλία ἠνοιχθησαν: καὶ ἄλλο βιβλίον ἠνοιχθη, ὃ ἐστὶν τῆς ζωῆς: καὶ ἐκρίθησαν οἱ νεκροὶ ἐκ τῶν γεγραμμένων ἐν τοῖς βιβλίοις κατὰ τὰ ἔργα αὐτῶν which translates literally *“An I saw the dead, the great and the small, standing before the throne, and scrolls (βιβλία) were opened. And another scroll (βιβλίον) was opened, which is the one of life. And were judged the dead from out of the things being written in the scrolls (βιβλίοις) according to their works.”* Notice how the text is written; their works done in the body were judged according to what was written in the scrolls. The scrolls (βιβλία) that are opened up are the Scrolls of the Word of God (The Bible), the Torah, Neviim, Ketuvim, and the Apostolic Writings. This is why the earth should tremble in His presence and have the fear of the Lord.

This is also why it is very important to live our lives with mercy, forgiveness, and love towards others. The measure by which we mete out to others, will be meted out to us in the last day. I feel this is a very important concept to remember, when thinking upon the Torah commands regarding the death penalty.

