

Graduation Thesis of
Nathan Gordon.

Subject;
Capital Punishment in Bible and Talmud.

In the following pages, it has been my
aim to give merely the facts relative to
capital punishment as viewed in the Bible
and Talmud. Lack of time and various other
reasons did not permit me to develop the
data on a more extensive and elaborate scale,
since the material is abundant, and extremely
difficult problems must be studied, and
if possible, solved.

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Abbreviations. -

Benzeniger - B.
Jahn - J.
Kalisch - Kal.
Mendelssohn - Mend.
Michaelis - Mich.
Nowack - No.
Saalschütz - Saal.
Smith Encyc. - J. E.
Encyc. Britannica - E. B.
Hastings - H.
Manionides - Mani.
Stelchook - St.
Mac. - Maccort.
Macc. - Maccabees.

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Capital Punishment in the Bible.

Chapter I.

Objects.

The ancient Israelitish people were in the strictest sense of the phrase, *עַבְדֵי יְהוָה*, "the servants of the Lord". Their life was pervaded by His religion, their deeds were actuated and guided by His teachings and His will, and all the blessings and privileges which they enjoyed came from Him. They were entirely subservient to His commandments, each one of which *עֲצֻרָה* were sacred in their eyes, each one of which was calculated to ruffine them with comfort and trust in their protector and father, the God of Israel. God took a sort of personal interest in them as it were. He had chosen them from among the nations, and had given them His Torah to permeate their being with thoughts of Him and His path. In the narrow strip of Palestine, then, lived this people, their lives devoted to God, their only and holiest duty to be faithful to their religion of monotheism. But surrounding them on every side, lived divers Canaanitish tribes,

whose customs and habits smacked of the desert, whose notions were barbarous and crude in the extreme, whose mode of life was lascivious, and whose religion was the grossest form of idolatry. Their proximity to Israel could not but affect it very materially at times, and the Torah pronounces violent diatribes against imitating any of their ways and following in their footsteps. God was personally offended at the commission by His people of any of the atrocious crimes in vogue amongst them, - idolatry, witchcraft, divination. These and crimes such as blasphemy, adultery, murder, aroused God's wrath and only the complete annihilation, the death of the criminal could vindicate the defiled regal majesty of God, and of His law which had been broken most ruthlessly.

1. Lev. 18³, 20³.

2. Num. 35³³⁻³⁴, (11¹⁶⁻¹⁷) Dt. 19¹³, 21⁹. Kellog 422. From Lev. 27²⁹ we see that the death of the criminal was an absolute decree, and that he could not be redeemed. Money in compensation for murder was forbidden, Num. 35³⁴. Moses is silent as to pardoning. From II Sam. 14 it may appear that the king had power to pardon, but this is not certain.

1. The first and primary object, then, of the Mosaic legislation with regard to capital punishment is, satisfaction for the trespassing of God's word.
2. The second great motive for the infliction of death is to deter others from sinning. "And those who remain, shall hear and be afraid, and shall henceforth commit no more any such evil thing in the midst of thee." ³ The honor and righteousness of the people are to be kept inviolable. In order to be fit to live as God's holy people they must be shown the dire consequences that inevitably follow the commission of deeds forbidden by God, and hateful to Him and to humanity alike.
3. The third aim is the speedy destruction of the evil element in the nation, and the prevention of the poisonous influence of the crime from spreading in Israel. ⁴ The evil must be gotten out of the way, for it defiles a people. ⁵ Only by

3. ¹⁹ 20 (17 ³¹) 21 ²⁴. Hastings. Mich. 31404. Saal. 443. J. E. 'Crime'.
 4. ¹³ 17 ¹² 19 ¹⁹ 21 ²¹ 22 ^{21-22, 24} 24 ⁷. No. 335. J. E. 'Crime'.
 5. Lev. 18 ²⁴⁻²⁸. Saal. 443.

thus purging the land and themselves of evil, could they live in peace, and enjoy the favor of God.⁶

Individual Responsibility.

To maintain the status of Israel as God's chosen people, "kingdom of priests," to strengthen and perpetuate its purity and loyalty to Him, to enable it to live uncorrupted by the vile manners and practices of its neighbors, to prevent all crime of whatever nature, the Mosaic legislation was forced to assume an attitude of rigidity and severity. Yet it was just and considerate. A man could not be accused or condemned for merely having thought of committing a crime.⁷ Acts were necessary for conviction.⁸ All were to receive strict justice, bribery and partiality were abhorred and forbidden.⁹ Above all, each individual was responsible for his own deeds, and

6. Dt. 19¹³, 21⁹ No. 335. 7. There are instances, among ancient nations, where mere thoughts were punished capitally. Thus, when Mankyas dreamed that he had cut the throat of Dionysius, the latter put him to death, arguing that if he had not thought of it by day, he would never have dreamed of it by night. Mend. 26.

8. Lev. 4:13 has this to say only with reference to idolatry, but

according to his wickedness was punishment meted out to him. The statute that lays this down clearly and unequivocally is *Deut. 24¹⁶* - "Parents shall not die for their children, nor children for their parents, every man shall die for his own crime." This law abrogates an old and unnatural custom¹⁰, whereby the innocent suffered with the guilty, and vengeance fell on the children and relatives of the culprit. Traces of this are found in the Bible; e.g. "where Achan's

Lev. 438 extends this, quite correctly, to all capital punishment. *ex. Jos. Ant. XII, 9:1.*

9. *Ex. 23^{3,7,8}; Lev. 19^{15,35}*. 10. It seems that this is still the custom among the modern Beduins. *Benz. 333.*

11. I refrain from mentioning *Ex. 20:5* in this connection, since there is so much dispute about it. Some hold the meaning to be, that the children will suffer in they persevere in the sins of their fathers, - *ex. Targum Onkelos* which adds after *And the words, that I will put the sword upon you*, 'If the children continue to sin like their fathers'. Rashi accepts the explanation of the Talmud, *Sanh. 27b*, viz. *shen yashakho p'nei p'nei*. Ibn Ezra thinks, that God waits until the 3^d and 4th generations to see if the children of the sinner will reform, and if they do not, he chastises them. *Trinonides in Mosh. I 54 ob.*

children were put to death,¹² where the seven grandsons of Saul were killed by the Gibeonites,¹³ where the children of Naboth were slain,¹⁴ where the sons of Haman were hanged,¹⁵ and where the children and wives of those who had falsely accused Daniel were thrown into the lion's den.¹⁶ That there was at least a desire among Israelites to punish in this way is clear from Jer. 31²⁹ and Ez. 18². But with these few exceptions, the

serves that this applies only to idolatry, and ^{nothing} ~~more~~ else. Kalisch 348-351 accepts all of the above-mentioned explanations, adding one of his own, viz., "it is intended as a merciful act of gradual, almost imperceptible punishment during several generations, and it is clear in itself as to the natural consequences of many immoral actions." This latter view may be found in Driver 277, with a slight modification, however. Mich. 3:403 takes this passage to mean the punishment of leprosy, which propagates itself to the 3^d and 4th generations.

12. Josh. 7²⁵. Mich. 3:404 says that the family must have been accessories to Achan's crime, and therefore deserved death, since he could not have hidden the stolen articles without the privacy of his family. Saal. 447 and Kal. 349 have it that they were all killed according to the laws of war. It was, however, in all

law in Dt. 24:16 holding that each one must be recompensed according to his own deeds, that the individual alone shall suffer for his wickedness, is in keeping with the opinions expressed on this subject in numerous Biblical passages, "the most striking of which are, - II K 14⁵⁻⁶ where Amaziah slays the murderers of his father, but not their children,"⁸ according to that which is written in the book

probability a case such as I have pointed out above, contradictory to Dt. 24¹⁶ ex. J. E. "Crime."

13. II S. 21^{6, 9}. This was of course a violation of the Mosaic law, and the Israelites were not concerned in this, the murder being committed by the Gibeonites, who were of Canaanitish extraction and followed Canaanitish customs.

14. Kal. 350 regards this as an "atrocious murder committed by the idolatrous and impious people," for as we see the law later severely punished, I K. 21¹³, II K 9³³⁻³⁷, Mich. 3:402 infers that since in I K. 21¹³ we are not told that Naboth's children were stoned, it must have been so common an occurrence that the historian left it unmentioned.

II K 926 informs us that they were put to death, though this fact is not mentioned in I K 21.

15. Esther 9^{13M}.

16. Dan. 6²⁵.

of the law of Moses, — the fathers shall not be put to death for the children etc., etc. Jer. 31³⁰ "Everyone shall die for his own iniquity, every man that eateth sour grapes, his teeth shall be set on edge." Ez. 18⁴, "The soul which sinneth it shall die". Ez. 18²⁰ "The son shall not bear the iniquity of the father" etc. Thus we may see that individual responsibility was a firmly established principle.

Having made these few preliminary remarks, let us

17. Gen. 6¹²⁻¹³, 42². Ex. 22²³, 32³³. Jud. 1⁷, 9^{24, 56, 57}. II K. 8^{32, 39}. Is. 3¹⁰⁻¹¹, 65⁷. Jer. 17¹⁰, 32¹⁹. Ez. 18. 7^{3, 1, 9, 27}, 24¹⁴, 33²⁰, 36¹⁹. Hosea 4⁹, 12³. Joel 4⁷. Ob. 1¹⁵⁻¹⁶. Ps. 18²⁶⁻²⁸ 62¹³, 9¹⁶⁻¹⁷, 10^{2, 5-7}, 24⁴. Prov. 12¹⁴, 24¹², 26²⁷. Job 34¹¹, 11²⁰. Ecc. 10⁸, II Ch. 6^{23, 30}. There are many other passages expressing similar views, but these are the most typical. cf.

Leitem 12-19 where a full discussion of this may be found.

18. Here again Michaelis (3:402) concludes that the practice was common, "for where a historian finds it necessary to take notice of any such circumstance, it is fair to conclude, that it must have been something altogether extraordinary, and contrary to the usual practice of the times." In this instance the conclusion is more valid than in the case of habits. See note 14.

come to the consideration of the modes of capital punishment in the Bible.

Stoning.

It has been generally conceded that the only capital punishment as pronounced officially by a court of justice was stoning.¹⁹ It appears to have been the most popular mode of punishment, and the Israelites may have adopted it from other nations, perhaps from the Egyptians, among whom it was in vogue, as is clear from Ex. 8²². Most of the capital crimes were punished with stoning, and this is the only punishment for which the Mosaic code provides a fixed mode of procedure. One could not be condemned upon the testimony of one witness,²⁰ 2 or 3 were necessary for this.²¹ After the examination of the witnesses, and the deposition of their evidence, the sentence was pronounced, and if it was death, by stoning, the criminal was forthwith hurried to the place of execution²², which was outside of the city.²³ Here, the wit-

19. B. No. 378. E. B. 3, column 2722. H. 20. Num. 35²⁰. Ps. 17⁶, 19¹⁵.
 21. See passages in note 20. cp. I K. 21^{10, 13} where Jezebel procured 2 witnesses against Naboth. 22. cp. Josh. 7²², I S. 22¹⁸, I K. 2²⁴⁻²⁵.
 23. Lev. 24¹⁴, Num. 15³⁶, I K. 21¹⁰ ff.

witnesses threw the first stone, and then the people joined in and pelted the culprit with stones until life was extinct.²⁴

Sword.

This was not a capital punishment sanctioned by Moses.²⁵ We can not deduce the opposite from Dt. 13¹³⁻¹⁶, for when a city was hostilely attacked for the crime of idolatry, its inhabitants were naturally killed according to the laws of war and the instruments of war - sword or javelin. In like manner, the sword had to be used by the Levites against the worshippers of the golden calf, Ex. 32²⁷, since both parties must have come to a real battle and could only have fought with warlike weapons. These two instances certainly preclude all possibilities of our concluding that the sword was a capital punishment sanctioned in the Pentateuchal legislation. The case in Num. 25⁷⁻⁸ is very

24. Dt. 13^{10, 17}. cf. Ex. 17⁴, Lev. 24¹⁴, Num. 14¹⁰, whence it will appear that St. incorrectly concludes from Dt. 17⁷ that the bystanders hurled stones only when those thrown by the witnesses failed to produce death.

25. No. 329. E. B. J., col. 2722. B. Those who consider it a capital punishment are: Hück, 3:419 who deduces this from Dt. 13¹³⁻¹⁶ and the

Exceptional. The crime spoken of in this connection is adultery, cohabitation with foreign women, the penalty for which was death by stoning, as shall be proved later. The Hittite woman and her paramour, then, should have been legally stoned. But we must remember that the majority of Israelites had committed deeds similar to that of Zimri, and in consequence of this, there was much confusion in the camp because of the devastating plague sent by God upon them for their iniquity. It was a time when no legal prosecution of criminals could be instituted, and therefore, at the command of Moses, every one who had remained faithful to God's law, could slay any sinner in whatever way presented ^{itself} to him at the moment. We can readily imagine, then, that Phineas, upon seeing Zimri and Cozbi appear in impudent defiance of God's word, would in his righteous indignation seize that very moment to despatch them quickly, in the manner that was most convenient for him, viz.,

fact that the Lord used the sword, but fails in adducing convincing proofs. This view is also held by Stier 13, Jeru 31 p. J. E. "Pekah-
ing" thinks that the sword was known to the Israelites as a capital punishment at the time of Greek dominion in Palestine.

by thrusting them through with his spear or sword.

It was undoubtedly because of the convenience in using the sword, that the Israel utilized it in avenging the murder of his relative²⁶, for after careful deliberation it will be seen that he could not have used any other mode of slaying his victim. It furthermore appears that the sword was also used by kings who adjudged to death in cases where the verdict of the court was not given.²⁷

It must be stated however, that killing with the sword meant either hewing asunder and perhaps piercing the body, but never decapitation.²⁸ We know that de-

26. Gen. 34:20.

27. E.B. 3 col. 2722. No. 329, B. J. 8. 'Behadig'.

q. 48. 22¹⁰. II S. 1¹⁵, 4¹². I K. 2²⁵. II K. 10²⁵, Jer. 26²³.

Some cutting instrument was employed by Abimelech in murdering his brother's son, 9⁵, and Elijah used the sword in slaughtering the priests of Baal I K. 19¹.

28. Itiner 13. Mich. 3:419. No 329. John 3:17. St. In I S. 17⁵¹.

There is an instance of cutting off the head of a slain or disabled enemy for a trophy; this was also done by the Philistines I S. 31⁹. Soldiers sent to kill anyone, usually, brought his

capitation was a capital punishment among the Assyrians, Persians, Greeks, Romans, and others.²⁹ That it was common among the Egyptians is clear from Gen. 40¹⁹ where Pharaoh's chief baker was beheaded and the body subsequently hanged as an added reproach. Decapitation as a capital punishment does not occur in the legislation of Moses. Moreover, it could not have been a capital punishment, since in whatever manner it is performed, it always requires a regularly appointed executioner with a great deal of experience and dexterity. Moses does not provide for such an executioner. That decapitation was known to the Jews, however, may be inferred from such instances as Jud. 9⁵ where the 70 sons of Gideon may have been thus slain; II K 10⁶⁻⁸ where Ahab's 70 sons lost their heads by command of Jehu; II S. 4⁸ where the head of Ishbosheth was removed; II S. 20²¹⁻²² where Sheba was beheaded. In the passages in Jud. 8²¹, I S. 22¹⁶, II S. 1¹⁰

lead as proof of the faithful execution of their mission: cf. II K. 6³¹⁻³² II S. 16⁹, 20²¹⁻²². This was a sort of posthumous decapitation, cf. II S. 4⁸, but not a capital punishment.

29. H. Rawlinson, vol. 1, 278, "Ancient Monarchies."

I K. 2^{25, 29, 31, 34} decapitation is not implied. The word in these verses that has been taken to signify beheading is yay , which properly means in this connection, "assail", "fall upon", "rush upon". This is especially clear from the case³⁰ where Joab refused to go from the altar — which he would have been compelled to do if he were to have been decapitated — and Benaiash "fell upon him" and killed him with the first wounds he could give him, probably sword-thrusts.

Burning.

This was not a regularly appointed capital punishment among the Israelites. Moses specifies that only two crimes are to be punished by burning, viz., those in Lev. 20¹⁴, and 21⁹. From Gen. 38³⁴ it is clear that burning was at one time a capital punishment in Israel,³¹ and perhaps a reminiscence of this is to be noticed in Lev. 20¹⁴, 21⁹. At any rate, the law is there, and there is absolutely no warrant, on the part of some who have written on this subject, for considering burning a posthumous insult. Michaelis,

30. I K. 2²⁸⁻³⁴.

31. B. No. 329. E. B.

(3:423-424) comes to the conclusion that the lifeless corpse was burnt from Josh. 7²⁵. He finds a confirmation of his theory in Gen. 38²⁴ thus; the crime here mentioned is adultery, the penalty for which is stoning, hence Thamar was to be stoned and then burnt. On the basis of these two instances, he decides that aposthymous reproach must be understood by the "burning" stated in Lev. 20¹⁴ and 21⁹. Against this, the following may be said; the statement regarding Gen. 38²⁴ is entirely arbitrary, for if Thamar was to have been burnt after death by stoning, the author would have most likely said so. Then too, there is no reason to suppose that because burning is mentioned as a capital punishment but twice in Lev. it could not have been such, ergo Gen. 38²⁴ refers to an after-death disgrace. Josh. 7²⁵ can also not be taken in support of Michaelis' theory, for according to 7¹⁵ it was merely a punishment of st. 13⁷. Josh. 7²⁵ was moreover an exceptional case, and certainly does not come under the category of the two crimes punished in the Mosaic law with burning. The conclusions of Michaelis and others³² therefore are easily seen to be erroneous.

Instances of punishment by burning in the Bible are; Lev. 10¹⁻³, where we learn that fire from the Lord supernaturally slew Nadab and Abihu for having committed a deed which God had forbidden; Jud. 14¹⁹ burning alive practiced by the Philistines; Jer. 29²² The same practiced by the Babylonians and Chaldeans³³. There is an allusion to burning in Is. 43², while in Dan. 3 we see a custom of burning alive in a furnace, and perhaps in II S. 12³¹³⁴ and in Amos 2¹. In this connection it may be mentioned that legend has preserved the case of Abraham in Ur, who, when he had refused to worship the idols of his father, was put by Nimrod into a furnace of fire and was saved from death by God, for

32. Oppen 13, E. B. H. No. 329, B. 333, John 319, all come to the same conclusion as Michaelis by analogy with Josh. 7²⁵. They only mention this view, but give no arguments in its support. Saal. 460 does not accept this theory and leaves the question undecided, though he considers burning a punishment introduced from other nations.

33. cf. II Ind. 7⁵. Such cases as Jud. 14¹⁹, Jer. 29²², Dan. 3, Amos 2¹, were never Jewish, i.e. never done among the Jews.

his great trust and belief in Him.^{35.}

Posthumous Insults.

Hanging.^{36.}

Capital punishment was often made more severe by posthumous insults. One of these was the hanging of the lifeless body, Dt. 21²², and the person thus treated was accursed in the eyes of the Lord. This was calculated to communicate itself as lasting infamy to the memory of the one thus punished. A greater shame was placed upon the body by the fact that it could not be buried before sunset, but was to remain suspended all day, Dt. 21²³. This Mosaic law was kept by Joshua, 8²⁹ and 10²⁶⁻²⁷. In this manner did David show his disapproval of the slaughter of Ishboeth, by slaying and suspending the bodies of Rechab and Baanah. According to

34. cf. Josephus, Wars I 33, 4. 35. B. Targum to II Ch. 28³.

36. This act is represented in the Vulgate, strangely by the word "concupiscere", and so St. Paul according to the accepted exegesis of his time applied Dt. 21²³ to the ignominy of Jesus. This was of course wrong, concupiscence not being in vogue among the Jews. Cf. Dt. 21²³ cf. John 19³¹ ff. Galat. 3¹³. See St.

Josephus, Ant. VI 14, 8, the Philistines gibbeted the dead bodies of Saul and Jonathan on crosses, I S. 31¹⁰, II S. 21¹²⁻¹³. Hanging as execution on gallows is not sanctioned in the Mosaic code, and was not practiced among the Israelites.³⁷

37. A few traces of hanging alive are preserved in the Bible, but these are of non-Israelitish origin and practice. The hanging of a living person is mentioned in Ezra 6¹¹, which was certainly a Persian capital punishment, and did not become such among the Israelites before the time of Herod, (Epist. 13). According to Hastings this was a punishment, consisting of a stake being pointed at one end, the other placed firmly in the ground, and the criminal was put with the pit of his stomach upon the point and this entered the body just below the breastbone. cf. Rawlinson I 278, where this mode of execution is cited as an Assyrian custom. In II S. 21^{6, 9-11} the seven sons of Saul are said to have been hung by the Gibeonites, but with reference to this passage see note 13. The case in Lev. 40^{19, 22}, 41¹³, is to be taken as a case of decapitation and ultimate suspension of the body, cf. St. In I K. 20³⁴ a case of strangling or hanging seems to be vaguely hinted at.

Heaps of Stones.

As a mark of reproach, it was also the custom to raise great heaps of stones over the body or on the spot where it was buried.³⁸ This pile of stones gradually became larger through the contributions of all passers-by, who added to it as ~~an~~ piece of evidence to the effect that they abhorred the crime whose perpetrator had been so shamefully treated.

Belonging to Jewish, not to Mosaic, law, according to Michal's (3:430) was the custom of throwing carcasses of distinguished criminals by way of disgrace in the graves of very common people.³⁹

Under Persian rule there was resort to a "gallows" called Q^8 in Esther 2²³, which word is usually rendered "tree" in Gen. 40⁹ and Dt. 21²². The case in Num. 25⁴ is very obscure. Perhaps because of the statement of Hives in v.5 directly after God's command, it may mean slaying first and then suspension. In any event, some sort of hanging or impalement is here implied.

38. Josh. 7²⁵⁻²⁶, 8²⁹, II S. 18¹⁷.
 39. Jer. 26²³.

Punishments introduced from other nations.

Hanging and burning as punishments of non-Israelitish practice, have been discussed elsewhere.^{40.}

Lion's Den.^{41.}

In Dan. 6 we learn that Daniel was cast into the lions' den to be destroyed because he refused to worship the idol which the King had set up. This was, as it seems, a Babylonian custom.^{42.}

Dichotomy.

This custom of cutting asunder was prevalent among the Persians and Chaldeans. When this

40. See note 37, page 16 and note 33.

41. This is still customary in Persia and Morocco. Gen. 32.

42. Exposure to wild beasts and jaws of wild animals, by act of God, are to be punishment of Israel for unfaithfulness and idolatry, Lev. 26²², Dt. 32²⁴, II K. 17²⁶. The disobedient prophet Jaddan was killed by a lion sent by God, I K. 13²⁶. On the other hand, the upright have a "covenant with the beasts of the field" Hosea 2²⁰, and are "of piece with them" Job, 5²²⁻²³, and remain uninjured.

punishment was inflicted, the hands and the feet were cut off at the joints. Then probably the trunk of the body was hewn asunder, ⁴³ Dan. 5 ⁴³. Sometimes persons who had been put to death, had were mutilated in the most brutal and shameful way. ⁴⁴

Sawing Asunder.

From Heb. 11 ³⁷ this appears to have been an old custom, distinctly Persian, the sawing asunder being done lengthwise. According to Hastings this may have been nothing more nor less than a crushing under instruments of iron. David inflicted some such punishment on Rabshakeh Ammon, ⁴⁵ II S. 12 ³¹, I Ch. 20 ³, and though

43. cf. Luke 12 ⁴⁶, Matt. 24 ⁵⁷. See I S. 15 ³³.

44. II S. 4 ¹² and perhaps Ez. 16 ⁴⁰ and 23 ⁴⁷. In Rawlinson I 279 we learn that it was an Assyrian custom to mutilate prisoners of war, by cutting off the ears close to the head, or even the nose. Sometimes the tongue was plucked out by the roots.

45. These passages show us that it was also a custom to kill prisoners of war by drawing threshing-wagons over them. cf. Prov. 20 ²⁶.

it does not accord with our notion of David's
 humaneness, to contemplate what great severity
 he displayed, yet it is wiser to accept the literal
 interpretation of this verse, especially in view of the
 fact that it agrees with the usage of the times.⁴⁶ Accord-
 ing to Lamk. 4036 Isaiah was put to death by King
 Manasseh by being cut asunder lengthwise.

Precipitation.

In II Ch. 25¹² it is stated that 10,000 Edomites
 were cast from a rock by the children of Judah.⁴⁷ This
 was a practise among the Greeks and Romans. Sometimes
 they precipitated criminals into the sea or river.⁴⁸ In Rome
 state criminals were frequently executed by being thrown
 from the Tarpeian Rock.⁴⁹

Shattering of children to death on stones, was prac-
 tised at the capture of cities, II K 8¹², Ps. 136¹⁵,
 Hos. 10¹⁴, 14¹, Nah. 3¹⁰, ex. Ps. 137⁹. Synchronously with

46. See Driver's Hebrew Text of Samuel pp. 226.

47. ex. II Mac. 6¹⁰.

48. Galu. 321. ex. Matt. 18⁶, Mark 9⁴².

49. See P. V. N. Myers "Rome, its rise and fall." Boston 1900. pp. 103.

this, there sometimes took place the ripping of pregnant women, II K 8¹², 15¹⁶, Hos. 14¹, Amos 1⁶.

Kareit.

Kareit or extirpation is a punishment that is threatened in the Bible for the commission of various crime. Only in 8 instances, however, is it specified that this means death, and these are - Ex. 31⁴, 35²; while Lev. 18²⁴, 18²⁷⁻⁸, 18¹⁵, 18¹⁷, 18²⁰, 18²², 18²³ (these verses in Lev. 18 are all punished with extirpation according to 18²⁹) are seen to imply death from Lev. 20²⁻⁵, 20¹¹, 20¹², 20¹⁴, 20¹⁰, 20¹³, 20¹⁵⁻¹⁶ (cp. Ex. 22¹⁸) respectively. In the other verses in which Kareit is threatened, death is not meant.⁵⁰ For, 1. these verses do not expatiate on the crimes as minutely as those for which death is implied in the stipulation of Kareit, e.g. idolatry, incest, Sabbath-breaking,⁵¹ thus showing that some offenses were not considered to be so heinous as to deserve death, e.g.

50. Saal. 473. At. No. 333. Mich. 4: 430. But Jahn 318 says that Kareit whenever it occurs means death by stoning. His conclusion, however, is invalid because of the weakness and arbitrariness of

those mentioned in Ex. 30^{33, 35}, 12^{15, 19}, Lev. 7²⁵ from their very nature, could not have meant death. 2. In several passages,⁵² Karit is supplemented by the phrase "their sin shall they bear"; here too it is evident that death can not be implied, for the only one who can bear his sin is he who continues to live and suffer. The same expression occurs in Lev. 5-17¹⁸ where we are told that bearing one's sin may be waived aside by remorse, repentance and the offering of sacrifices. In Lev. 20²⁰ this phrase is used in connection with the words "they shall die childless", and here again it is clear that death is not referred to, since the threat about lack of children would be entirely superfluous, if the death penalty were to be put into immediate execution. 3.⁵³ Then too, Karit can not mean death in such cases, where it is threatened, where there is the possibility of the omission being

The proofs which he adduces.

51. Laal. 475. 52. Lev. 20¹⁷, 20¹⁹⁻²⁰, 19⁸, 17¹⁶, Num. 9¹³, 15³⁰⁻³¹. are the passages referred to.

53. Laal. 476. where a full and impartial discussion of this subject will be found.

remedied. e.g. Lev. 17¹⁴, Num. 9¹³. These are not even mentioned in Maccot 3:2 where cases of omission are enumerated.

Karet then seems to mean the threat of excommunication⁵⁴, where death is not specified. Sometimes it refers only to the deprivation of certain civil and social privileges, e.g. I S. 14³², II Ch. 26¹⁹⁻²⁰. At other times, God himself threatens to take the punishment into his own hands, and either kills immediately, Lev. 10¹² and Num. 16²⁸⁻²⁹, or will slay in the future, Lev. 17^{10, 14} (ex. 7²⁷) 23²⁹⁻³⁰, Num. 14²¹⁰, and finally the death of Moses and Aaron themselves, (Lev. 10¹²), Num. 20¹²⁰, Dt. 32⁴⁸⁰, ex. I K. 14¹⁰, 21²¹, II K. 9¹.

Mode of death not specified.

In various passages, the expression *u'mat* is found, but no particular mode of death is stated. ⁵⁵Deut.

54. This does not mean exile, for it was not in accordance with monotheism that an Israelite should be exiled, away from God's people and religion, ex. I S. 26¹⁹. It implies rather the state of being cut off from privileged membership of the tribe, ex. Ex. 12^{15, 19}.

ing to Talum⁵⁶ wherever $\text{m} \text{b} \text{m}$ stands alone it means strangling, but where it is accompanied by the expression $\text{p} \text{p} \text{m}$ or $\text{b} \text{m}$ stoning is meant. Michaelis⁵⁷ and Jahn⁵⁸ however, have rightly concluded that since strangling is not found in the Mosaic law or even in the Bible, stoning, being the most popular capital punishment, must be meant in every instance where $\text{m} \text{b} \text{m}$ is uncertain. This is perhaps corroborated by the fact that wherever $\text{m} \text{b} \text{m}$ is indefinite, and the definite mode for the same crime is given in a parallel passage in another chapter, the punishment is invariably stoning.⁵⁹

55. These passages are, - Ex. 21¹⁵; 21¹⁶ ex. Dt. 24⁷; Ex. 21¹⁷, 22¹⁸, Lev. 20¹⁵⁻¹⁶, 20¹¹⁻¹³, 20²⁷, Num. 3^{10, 38}, 18⁷.

56. Sant. 52b, 53b, 66a. See Chap. III notes 22, 23, and page 52, where it is shown that the Rabbis came to this conclusion by means of the *Lezerah Shawah*.

57. 3:420 and 317 respectively.

58. Dt. 18¹¹, 18²⁰, Lev. 20², 20¹⁰ ex. Ex. 16³⁸.

Chapter II.Capital Crimes.Adultery.

This means the carnal relation of a married or betrothed woman with any other man than her husband. The relation between the conjugal couple was considered an absolutely internal and sacred one, it follows therefore that its violation, deemed a terrible offense, "striking at the laws of inheritance and implicating suspicions against the husband," was punished with death. To constitute adultery, it was necessary that there should be not only denudation or any other such obscene procedure, but real carnal intercourse, cum emissione, or as it is stated in Num. 5¹²⁻¹³ וְגַם נִשְׁכַּח וְנִשְׁפָּח וְנִשְׁכַּח וְנִשְׁפָּח or in v. 19-20 נִשְׁכַּח וְנִשְׁפָּח וְנִשְׁכַּח וְנִשְׁפָּח. Adultery was forbidden in general terms in Ex. 20¹⁴. The capital punishment was stoning, as may be seen from Lev. 20¹⁰, Deut. 22²², Ex. 16¹⁷, 40, 23⁴⁰⁻⁴⁷ (ex. John 8⁵ and Gen. 26¹¹), from which we may furthermore gather that the adulterer was put to death as mercifully as the

adulteress. In the case of a betrothed maiden, if she was seduced forcibly and against her will, her betrayer is to be stoned, while both are to be stoned if she hearkened to her paramour and submitted herself to his wishes, Dt. 22²⁴⁻²⁵. If one has committed adultery with a betrothed bondmaid, both parties are to be scourged, while the adulterer must offer an atonement sacrifice in addition to this punishment, Lev. 19²⁰⁻²¹.

Prostitution².

This was considered a most heinous crime, and was not tolerated by the Sinaitic code.³ Its price could not be accepted in the sanctuary,⁴ and death by stoning was the penalty for a wife who had prostituted herself before marriage and had hidden the fact from her husband.⁵ When a priest's daughter

2. For mere whoredom, unaggravated by any circumstances of additional guilt, the adulterer was compelled to marry the girl he had outraged. Ex. 22¹⁵⁻¹⁶, Dt. 22²⁹.
 3. Jos. Ant. iv. 9, 8, Lev. 19²⁹, Dt. 23¹⁸.
 4. Dt. 23¹⁹, Mic. 1, 7.

committed whoredom, her disregard for the character and sacred office of her father was considered such an aggravation of her crime, that she was ordered to be burnt.⁶

Sodomy.

This crime is condemned and punished by stoning in Lev. 20¹³. It is disapproved as abominable in Lev. 18²², Dt. 23¹⁸, (ex. Gen. 19⁷, I K 14²⁴, 15¹², 22⁴⁶, II K. 23⁷, Job 36¹⁴, Hos. 4¹⁴). The name "sodomy" is probably derived from the awful crimes committed in Sodom and Gomorrah.⁷

Bestiality.

Carnal intercourse with beasts, which was common among the Egyptians and Canaanites,⁸ is forbidden by Moses, and is punished by stoning, Ex. 22¹⁸, Lev. 20^{15, 16}.

5. Dt. 22²⁰⁻²¹. Mich. 4:191 thinks she was punished not for whoredom, but for having deceived her husband.

6. Lev. 21⁹.

7. Gen. 19⁵. Mich. 4:116 discusses this subject and gives some valuable information regarding it.

8. H. Kal. 426. Mich. 4:117.

To excite more abhorrence for this crime, laws ordained that the beast with which the crime had been committed should also be put to death. This was a matter of prudence, to prevent the effects of temptation in other instances.

Incest.

This means marriage or extra-nuptial cohabitation with persons too closely related, or as defined in the Bible, "uncovering the nakedness of a near kinswoman". Incest is prohibited in Lev. 18 and 20. Incestuous connections punished capitally are - with father's wife Lev. 20¹⁰, with daughter-in-law 20¹², and with mother and her daughter 20¹⁴. In the first two cases stoning is the punishment, in the last, it is burning.

Blasphemy.

Speaking a blasphemy and pronouncing it of the holy name, the pl., was considered a capital crime and was punished with stoning, Lev. 24¹⁰⁻¹¹, 24¹⁵⁻¹⁶, 24^{14, 23}.

9. I refrain from mentioning Ex. 22^{27a} since there is so much dispute over its interpretation. Rashi; Ibn Ezra, Rash-bam, Targum, Nish. 4:63, Saal. 590 Take p. 56 to mean

nor was the circumstance of the blasphemer being a foreigner to alter the punishment, as may be seen from Lev. 24^{10, 16}.

Idolatry.

This was considered a crime against a basic law of the theocratic state, and was prohibited in general terms in Ex. 20³⁻⁵, Dt. 5⁷⁻⁹. The legislation against this crime, is, as a whole, very severe, particular and specific. It is directed against Sabaeism or worship of the celestial orbs Dt. 4¹⁹, against the massék stones Lev. 26¹, against making molten gods Ex. 34¹⁷, Dt. 27¹⁵, graven images Dt. 4²³ against worshipping the likeness of anything Dt. 4¹⁶⁻¹⁸

"judges". LXX reads θεοὶς, the Vulgate "diis"; Jos. Ant. IV 8, 10, Contra Apion II 33, Philo de Vita Mos. II p. 166 take it to mean "gods" also. Josephus may have shrewdly advanced this rendition in order to convince the Romans that even their deities were treated by the Jews with great respect. Willman, Die Bücher Ex. und Lev. p. 240, Kautzsch in his translation of the old testament p. 80, and No. 333 render p. 80 as "God".

or sacrificing unto any idol Ex. 22⁹. The idols of the Canaanites are to be destroyed Ex. 23²⁴, even their names are not to be mentioned Ex. 23¹³, their altars, sacred groves and statues are to be destroyed and burned Ex. 34¹³, Dt. 12²⁻³, the precious metal of which the idols were made could not be taken as a possession Dt. 7²⁵⁻²⁶, and the seven Canaanitish nations must be destroyed so that Israel may not be seduced to their worship Dt. 7¹⁻², they, as well as their cities Dt. 20¹⁶⁻¹⁸¹⁰. All connection with them must be cut off, inter-marriage with their children must not be permitted, Dt. 7³. It follows naturally therefore, that idolatry should be a capital crime, and anyone who is found to be an idolator is to be stoned, Dt. 17²⁻⁷. The same rigorous punishment falls upon those who try to entice others to idolatry Dt. 13^{6, 9-11}, and an "Israelitish city" which openly professed to serve other Gods must

10. cf. Dt. 2³⁴⁻³⁵, Josh. 10^{1, 28-40}, 11¹¹⁻²¹, I K. 9²¹

11. National idolatry was punished by God himself with war, famine, pestilence, destruction of the state, transportation of the people into other lands as abject slaves, Lev. 26, Dt. 28, 29, 31.

he fiercely attacked, its inhabitants slain with the sword, its contents burned together with the city itself, which was to remain a desolate spot forever, never to be rebuilt, Dt. 13¹³⁻¹⁸. Examples of the fearful punishment visited upon those who followed idolatrous practices are to be found in Ex. 32²⁶⁻²⁹, I K. 12²⁸. Many of the kings of Israel and Judah suffered ignominiously and died in shame because they followed the deeds of Jeroboam and caused the people to turn to idolatry, thus incurring the wrath of God.¹²

Human Sacrifices.

This was another one of the pernicious customs of the nations against which Israel had to be guarded. The phrase "passing through the fire" is used to designate the sacrificing of human beings in Dt. 12³¹, 18¹⁰, Lev. 18², II K. 23¹⁰, 16³, II Ch. 28³, 33⁶. The sacrifice was usually offered to the god Molech, an idol which was erected in the valley of Hinnom, on the south side of Jerusalem, and in that part of the

12. For confirmation of this statement, though it is well known, see the books of Kings, Chronicles and the various prophetic works.

valley called Poppeeth.¹³ Now, we are not to think that this custom meant merely passing through fire,¹⁴ it was actual burning to death, and the evidence for this may be gathered from the passages in the Bible where in speaking of the practice the verb *sal* is used instead of *not*, viz., Ez. 16²¹, Jer. 7³¹, 19⁵, Dt. 12³¹, Ps. 106³⁷⁻³⁸. The offering of human sacrifices must have been a common proceeding in ancient Canaan, if the abundance of passages dwelling on this matter in the Bible warrants such a conclusion. The punishment for this crime, according to the Mosaic code, was stoning on the spot where caught, without any judicial inquiry, Lev. 24². So outrageous did this custom appear, that Moses made the punishment for the commission of the crime severer by threatening the culprit with the personal chastisement

13. II K. 23¹⁰, Ps. 30³³, Jer. 7³¹⁻³², 19⁶⁻¹⁴, 32³⁵.

14. Driver contends (page 222) that this was a kind of ordeal in which an amen was derived from observing whether the victim passed through unscathed or not, or which was resorted to for the purpose of securing good fortune.

Law as well. Lev. 20⁴⁻⁵.

magic.

This was an art that pretended to produce supernatural effects, to sway those powers in the world supposedly controlled by spirits. Since the magician ascribed the efficacy of his conjurations to Gods, his art was a species of idolatry and was probably forbidden for this reason. The practice of magic was common in ancient Israel, and is mentioned as early as Mt. 18¹⁰⁻¹¹ where certain classes of diviners, conjurers and astrologers are mentioned, and their doings prohibited as idolatrous. No doubt is expressed as to the actual potency of magic, and the magician who may misuse it is feared and hated, Lev. 5¹⁷, Jer. 27¹. "The commonest form of magical production was the concoction of the love-charm, required for an illicit amant."¹⁵ This was practiced by women, so that magic and adultery are often spoken of side by side, II K. 9²², Nah. 3⁴. The law in Ex. 22¹⁷ permitting sorcery with stoning, speaks of the witch, but not of the wizard, so this has

been interpreted by the Rabbis, Sanh. 67a, to imply that magic was practiced mainly by women, and the context of passages in Exodus speaking of sorcery is a guarantee for the conclusion that it was associated with sexual and other unnatural vices.¹⁶

Necromancy.

The impostors who bore the name of necromancers, *shib, shibim*, pretended to be able by certain incantations to summon departed spirits from their abodes. Persons practicing necromancy were stoned when detected, Lev. 20²⁷, while the person who consulted a necromancer was punished by God himself, Lev. 20⁶.

False Prophets.

The prophet¹⁷ in ancient Israel was the "man of God", holding a position of eminence and sacredness, and the legislation regarding false prophecy

16. Blau, "Das altjüdische Zauberwesen", Strassburg 1898, pp. 17-18.

17. According to Driver, pp. 221, the prophet was merely a substitute for the heathen soothsayer. How ridiculous!

is very severe, and explicit, Dt. 13²⁻⁶, 18²⁰⁻²², stoning being the penalty for the crime. There were two instances in which one was held convicted of false prophecy, a, prophesying in the name of strange gods, whether the event foretold took place or not, 13²⁻⁶, 18¹⁰, b, prophesying in the name of the true God, that which He had not commanded 18²⁰. In the latter instance, the criterion for the unguerdleness of the prophecy was when the event foretold did not materialize, 18²². When we consider that these pretenders did their work with cunning and artifice,¹⁸ we may see that death was what they deserved. Speaking falsely in God's name was common in ancient Israel,¹⁹ and to judge from this conclusion it seems that it was mostly prompted by the desire for popularity.²⁰ The prophets whom Jeremiah opposed, preached "peace, when there was no peace" (6¹³⁶⁻¹⁴).

18. Prophets who were insane were merely imprisoned. Jer. 29²⁶.
 19. E. K. 22^{10, 23}, Jer. 14¹⁴⁻¹⁵, 23^{16, 21-27}, 30³³, 27^{9, 14-16}, 28¹⁵⁻¹⁷, 29^{8, 21-32}, 37¹⁹, Ez. 12²⁴, 13¹⁻²³, Lam. 2¹⁴.
 20. ex. especially Is. 30¹⁰, Mic. 2¹, 3¹. E. K. 22⁸.

and led the people on by slating them with false hopes of wealth, immunity from invasion, and speedy return from the exile.

Intubordination.

A. Intubordination to supreme authority. Dt. 17¹² decides definitely that he who will not hearken to the priest, but will act presumptuously, shall be stoned.

B. Intubordination to parental authority. The law in Dt. 21¹⁸⁻²¹ states, that if a son, despite the entreaties of his parents, hearkens not unto their voice and cultivates bad habits, as gluttony and drunkenness, he shall be stoned. In this connection, two facts may be considered; 1. Striking a parent was punished with stoning, Ex. 21¹⁵. 2. The parents were considered the earthly representatives of divine holiness, and as cursing God was punished with stoning, so was cursing a parent, ²¹Ex. 21¹⁷, Lev. 20⁹.

21. Marti 93, Lucus 67 decide from I K. 21¹⁰⁻¹³, I K. 2²⁶⁻⁹, II S. 16⁹, II S. 19²² that cursing the king was also on a level with cursing God and was punished with stoning. But

False evidence in capital cases.

When false testimony was given against an innocent man, the matter had to be brought before the highest tribunal, "as a species of wickedness altogether extraordinary", and investigated with the utmost strictness. After conviction, according to the law of retaliation, the false witness suffered the punishment which was attached to the crime ~~whereby~~ he had accused his innocent coreligionist, Dt. 19¹⁶⁻²¹.

Kidnapping.

Stealing a man²², and selling him as a slave was a capital crime, punished by stoning, Ex. 21¹⁶, Dt. 24⁷; from the latter passage it is evident that

perhaps this is jumping at conclusions, for while in Ex. 22^{24b} cursing the ruler is forbidden, no definite death is assigned for the offense, and no other passages in the Pentateuch deal with this matter.

22. This is the only case of stealing capital punishment. Jahn (313) concludes from Josh. 7 that stealing what was devoted was a capital crime. It appears to me that such a decision, based on only one instance, is arbitrary.

only kidnapping an Israelite is referred to.^{23.} The severity of this punishment can not appear surprising. All Israelites were held to be free citizens, with equal rights. He who stole an Israelite would rarely keep him, ^{but} could sell him to foreign merchants as a slave. Thus the poor unfortunate would not only be lost to the Israelitic community, but would gradually become estranged from his religion and lapse into idolatry because of continuous intercourse with heathens.^{24.}

Breaking the Sabbath.

The Sabbath was the most sacred day for the Israelites. Absolute rest, perfect tranquillity, both physical and mental, was enjoined on that day. He, therefore, who desecrated the Sabbath, was disobedient as

and hostile. Hought is said of this in the Pentateuch, with the exception of Dt. 13¹⁸ which remarks indefinitely, "Hought of the devoted things shall cleave unto thy hand, that the Lord may not turn the fierceness of his anger upon thee".
 23. Ex. 21¹⁶ thus interpreted by Targum Onkelos and LXX on the basis of Dt. 24?
 24. Kol. 398.

well as disrespectful to God and was punished with stoning by the whole people, Ex. 31¹⁴⁻¹⁵ 35², Num. 15³⁵⁻³⁶.
Murder.^{25.}

The following passages deal with this subject, Ex. 20¹³, 21¹²⁻¹⁴ 20-61, 28-29, Lev. 24^{17, 21}, Num. 35-9-34, Dt. 4⁴¹⁻⁴⁴, 19¹⁻¹⁴. The following constitutes murder; - a. when the killing proceeded from hatred or enmity, Num. 35-20, Dt. 19"; b, when the culprit lay in wait for his victim, Dt. 19"; c, when murder was committed premeditatively and with guile, Ex. 21¹⁴; d, when actual death followed in consequence of a mortal wound inflicted upon the victim in the assault, Dt. 19". Such deliberate murder,²⁶ was in every case punished with death,

25. Parricide and infanticide are not mentioned in the Mosaic code. Suicide was rare, only three cases being recorded, I S. 31⁴⁻⁵, II S. 17²³, I K. 16¹⁸.

26. H. makes a distinction between murder and assassination, saying that the latter is an aggravated form of murder, in which life is destroyed by purpose or unexpected assault and treacherous violence. He cites the following cases of "assassination" - Jud. 3²⁰⁻²², II S. 4⁵⁻⁶, I K. 15²⁷⁻²⁸, II K. 19³⁷ and

whether the murderer was an Israelite or not, no redemption money could be taken²⁷, Num. 35³¹, Lev. 27²⁹, the murderer was accused, even from the altar, which in ancient times was the asylum of criminals, was he to be taken and put to death, ²⁸Ex. 21¹⁴. God himself had forbidden murder, Gen. 9⁶, because in this sinage had he made man. Hence the land, upon which the murder had been committed, was considered desecrated and polluted, Num. 35³³⁻³⁴, and the voice of the blood that had been shed cries for vengeance, so to speak - until the murderer was punished, Gen. 4¹⁰. So great was the horror for bloodshed, that even animals, which had killed a person, were to be stoned, Ex. 21²⁸⁻³². If a corpse was found and the murderer ~~thereof~~ was unknown nor could he be discovered, the community had to exonerate itself by an elaborate and impressive ceremony, declaring its guiltlessness and ignorance of the crime, Dt. 21¹⁻⁹.

Ch. 32²¹, Lev. 41².

27. Ex. 21²⁹⁻³⁰ mentions the only instance where a murderer could pay a certain sum as ransom for his life.

28. Ex. 21²⁸⁻³², 20⁸⁻¹⁰, Dt. 21²⁸⁻³⁴.

Everyone who had killed a man had the privilege of fleeing to one of the so-called "cities of refuge" (Exo. 28 which Moses had appointed. These asylums were intended to harbor innocent persons only, and every fugitive was to be met at the gate of the city by its elders and judges, who were to hear, and conscientiously decide, his case. If they found that he had committed homicide unintentionally or accidentally, he was allowed to remain in the city of refuge until the death of the High Priest, when he could return to his possessions,²⁹ Num. 35:22-28. If on the other hand the man was found guilty of murder, deliberate and intentional, the murderer was to be delivered into the hands of the Goel (Exo. 21:1 "the avenger of blood") upon whom, as the nearest relative of the murdered one, the execution of the criminal devolved,³⁰ and who undoubtedly despatched his victim with a sword, as I have already

29. If before that event he left the city and was found by the Goel and killed, the latter "had no blood-guilt" upon his shoulders. Maimon. H. Rozeach 7:13 states that if the Goel killed the man after the demise of the High Priest, he was punished with death. E. B. says that in post-exilic times an amnesty was introduced for the man

explained.³¹ In difficult cases, the manslayer was sent back to the place where he had committed the murder, and where his case could be investigated. If he was found innocent of the charge of deliberate murder, he was safely returned to the city of refuge, Num. 35-25.

Ex. 21²²⁻²³ provides that great severity should be used in the punishment of such men, as killed a woman with child, though unintentionally, because thus two human lives would be destroyed. No definite mode of punishment is specified, however, the expression merely being *hgs nashg* *amyl*.

slayer at the death of the High Priest. For the former statement there is no warrant in the Bible; - for the latter, I can find no verification.

30. No blood-revenge could be taken upon one who had killed in war, - ex. II S. 2¹⁹⁻²², 3²⁶⁻³⁴, I K. 2⁵⁻⁶, ~~2-28-34~~ 2²⁸⁻³⁴.

31. Most likely for convenience; see page 12.

Capital Punishment in Palumbo.

Chapter III.

Responsibility in criminal law.^a

A. According to the Talmud¹; one is not held responsible for an act which he did not intend. Circumstances can not decide the intent, but it must be incontrovertibly established. Punishment is only meted out when the criminal intent is combined with the criminal act. When one attempts a criminal act, but, somehow or other, either fails in its accomplishment or accidentally commits some other criminal wrong, the evil intention can not be punished.²

a. Dt. 24¹⁶ does not hold in the Talmud as in the Bible. The idea of making fathers and sons suffer each others' guilt was so unusual and strange, that the Rabbis put an altogether different meaning on this verse - "fathers shall not be condemned on the testimony of their sons." Sanh. 28a.

1. Ker. 20^b אלגן מלכא מילא וכו'. A maxim in Roman law agrees with this, i.e. an act is not guilty, unless the intention is guilty, - actus non facit reum, nisi mens sit rea.

2. Sanh. 9². Maim. H. Rozech 4', H. Sabbat 1⁸.

B. One imagining as lawful that which is unlawful is almost considered as acting deliberately. Some held that such an act must be regarded as accidental.³ According to the first opinion, one is morally responsible for such act, since it was his duty to know the law.
Haikra'ah.⁵

No capital punishment could be inflicted unless the culprit had been warned immediately before committing the crime which was charged against him. This warning, called וְהוֹדִיעוּ, was based on the verdict that a person committing an offense either out of ignorance of fact or of ignorance of the law is not criminally responsible. If any time elapsed between the warning and the commission of the crime, the offender could not be sentenced to death, the supposition being, that he may not have heard it. The warning had to state the particular mode of death to which the would-be criminal might be liable. Further-

3. *Mae. ga.* 4. *ibid.* לְהוֹדִיעַ וְהוֹדִיעוּ
 5. *Sanh. 86. Maim. St. Sanh. 12².* Under Haikra'ah, the Talmud excludes the following crimes; - bearing false witness, *Mae. 46. M. St. Eduth 18⁴.* inciting to idolatry, *Sanh. 67^a.*

more, he must acknowledge the warning, he must signify his willingness to suffer for his intended offence by some such words as, "I know the law, but I don't care; I am going to act anyhow"⁶. Otherwise, he can not be punished. Only when the criminal knows the law, and commits his crime without heeding the consequences ~~not~~ the warning, is legal conviction possible?⁷

It is easy to see that this has made all conviction well-nigh impossible, and impracticable. We are justified then, in assuming that Rabbinical jurisprudence was theoretical, and rarely carried out.⁸ This conclusion will gain confirmation from the fact that the

M. H. Lant. 11⁵, H. Ab. Zara 8³, burglary, Lant. 72b, Ker. 34b, and crimes threatened in the Bible with Kareth, Mac. 13^b, Ker. 2a.

6. Lant. 40b. M. H. Lant. 12².

7. Lant. 8b. " " " " H. Ps. Biah 1³.

8. It is reported that for the simple sin of riding a mule on the Sabbath, the offender was sentenced to death by stoning, and 2 or 3 other cases I shall mention later; all are, however, doubtful and obscure.

right to administer capital punishment had been taken from the Sanhedrin decades before the fall of Jerusalem⁹ with the appearance of the Romans and the establishment of their rule and supremacy. In spite of this, the Rabbis developed their criminal laws, either with a view to their application in Messianic times¹⁰ or for the mere satisfaction of studying.¹¹ We can consequently detect laws which are only theoretical and were never put into practice.¹² It has been shown, moreover, that many of the laws "bear the stamp of great antiquity and are based on actual precedent or old traditional interpretation."¹³

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9. The Rabbis themselves acknowledge this, Sanh. 41a, and say *אין אנו יכולין לומר שיהיה כבודו של מלך רומא*. In Sanh. 37b and Ket. 30a we are told that though Israel has lost its freedom and its judges can no more wield the sword of justice, "the *אין אנו יכולין* have not ceased and one worthy of death by one of them will certainly die at the hands of God, i.e. he who deserves stoning will fall from a roof etc.
10. Sanh. 51b, *Shab. 45a* *היה כבודו של מלך רומא*.
11. *היה כבודו של מלך רומא*

The tendency of Rabbinical discussion on criminal law is to reduce capital punishment to a minimum, if not to abolish it altogether, and so their jurisprudence becomes so lenient, that this very leniency countenances its theoretical nature. Firstly, as to the humaneness of the Rabbis - They stigmatize a court which condemned one human being to death in the course of 7 years, as a murderous tribunal; R. Eleazar ben Azariah considers it such if it did so in 70 years;¹⁴ while Akiba and Tarphum declare that if they had been members of the Sanhedrin during ^{the period of} its judicial power, a sentence of death should never have been passed.¹⁵ Secondly, as

12. E.g. such as relate to the "rebellious son", or "communal apostasy". The discussions of the Rabbis on these and other subjects show plainly their theoretical nature, not only for the reasons I have mentioned above, but for this - if they had had the opportunity of carrying out their laws, they would not have been in a quandary as to matters of execution, or what constituted the various crimes. A glance at their proposed way of strangling or burning will show this.

to their leniency in the court - imbued with the maxim
 "Where occasions the destruction of a single life, is as
 great a sin as if he had destroyed the whole world,
 while he who brings about the preservation of a single
 life is as meritorious as if he had preserved the whole
 world," the Rabbis laid every possible obstacle in the way
 of conviction. They employed every legal mean to ar-
 rive at an acquittal of the prisoner and to save his
 life; e.g. the prisoner was acquitted by one voice, but two
 were needed for condemnation; the judge could proclaim

13. Jos. supplements his outlines of the "polity of Moses"
 Ant. IV 8:1-45 with traditions current in his day,
 many of which agree with views in Talmud em-
 bodied at a later date, for example, compare
 Ant. 12, 9' with Tos. Maccoth 5¹⁰, Sanh. 63b, Mac. 16a.
 Ant. 4, 8¹⁵ with Mac. 16, Lypri Dt. 190.
 Ant. 4, 8²³ with Mex. Niflatim 8, B. K. 42a, Sanh. 74a.
 Ant. 4, 8²⁷ with Mex. Niflatim 13, Sanh. 72a.
 Ant. 4, 8²¹ with Mac. 3¹⁰, 22b, Lypri Dt. 186.
 14. Mac. 7a, M. St. Sanh. 14¹⁰.
 15. Mac. 1, 7a, i.e. they would have always found some

his view only to acquit, not to condemn; if the prisoner was to be acquitted, the decision was given on the day of the trial, if he was to be condemned, the sentence was postponed until the next day; "one is not subjected to capital punishment unless all witnesses charge him with one and the same crime, their statements fully agreeing in the main circumstances, and they declaring that they saw one another while seeing him engaged in the criminal act." So remarkably humane and lenient are the Rabbis, that they believe that death under sentence of the law, provided the condemned man confessed his guilt, was full of atonement, and that the criminal would have his share in the world to come.^{19.}

The Rabbis do not allow punishment to be inflicted, where there is no authority in the Bible Biblical authority for it.^{20.} Such authority, however, may be established by *Gezerot Shavim*, i.e. by comparing analo-

gous cases whereby a sentence of death would have been disposable.

17. *Sant.* 4¹.

19. *Sant.* 6².

16. *Sant.* 4⁵, 37a. *B. K.* 11a.

18. *Mae.* 6b, *Sant.* 30a.

20. *Sant.* 82b. *cf.* *Syne Dt.* 15⁴.

gous verses, in one of which the meaning is clear and explicit.²¹ The Talmud discovers by means of the Gezeira Shawa the mode of death, where death is specified indefinitely in the Bible, e.g. in Lev. 20²⁷ the sentence of stoning is used in connection with the phrase *pr p'ayim*, consequently the general rule is, that whenever *mt'at* stands indefinitely but accompanied by *pr p'ayim* or *l'ayim*, the death implied is stoning.²² Where *mt'at* is not used in connection with this expression, death by strangulation is meant.²³ In Lev. 20¹⁵ the term *g'as* is used with reference to a beast, but since Dt. 13¹⁰ uses this same term which in v. 11 clearly means stoning, hence Lev. 20¹⁵ also implies stoning.²⁴ Again in Dt. 13⁶ the Rabbis infer, since the same expression occurs in 13⁹, "seek to thrust out of the way of the Lord," with reference to the *ni'as*, as to the *pr'as* in 13⁶, and since the penalty in v. 11 is stoning, ergo in v. 6 it is also stoning.²⁵ Finally, in Ex. 22¹⁷ the phrase

21. Ker. 5a. 22. *Med. Mishpatim* 17. *Lyra Kedoshim* 9, *Sant. 54b*, 66a. 23. *Sant. 52b* *וְהָיוּ כְּמֵת*
 24. *Sant. 54b*.

is used, "thou shalt not suffer her to live!" Now this expression is used in connection with stoning in 19¹³, hence stoning must be meant in 22¹⁷ 26.

Talmudic criminal law provides four modes of capital punishment, ²⁷ stoning, burning, sword, and strangulation. The Rabbis give this order according to the severity of the punishment, stoning being the very severest, strangulation the mildest. ²⁸ The following is an enumeration of the crimes for which these punishments were ordained:

Stoning.

1. Carnal intercourse with mother. Lev. 15:34, Ligeia Kedoshim 9¹².
2. " " " stepmother. " " " " " "
3. " " " daughter-in-law. " " " " " " 9¹³.

25. Ligeia Mt. 86. Lev. 89b.

26. Lev. 67a.

27. Those used in Athens were, decapitation; strangling; poisoning; casting from a rock or height; drowning; crucifixion; beating to death; throwing into a pit having sharp spikes at the bottom; stoning; burning. F. 18 sec. 115. In Rome; crucifixion; hanging; precipitation; fighting with wild beasts; throwing to wild animals for devouring; burning while criminal was wrapped in pitch. Ibid. sec. 264.

4. Pederasty. *Lev. 18:22. Sifra Kedoshim 9¹⁴.*
 5. Bestiality by man. " 54b. " " 9¹.
 6. " " woman. " " *Sifra Ked. 9³. Mek. Nishpatim 17.*
 7. Blasphemy. ^{29.} " 43a. *Sifra Emor 19.*
 8. Idolatry. ^{29.} " 60b. *Sifra Dt. 149.*
 9. Sacrificing to molech. ^{30.} " 64a. *Sifra Ked. 8¹⁰.*
 10. Necromancy. " 65a. *Sifra Ked. 11.*
 11. Pythonism. " 65a. " "
 12. Sabbath-breaking. " 74. *Sifra Num. 114.*
 13. Cursing a parent. " 66a. *Sifra Ked. 9⁷. Mek. Nish. 17.*
 14. Intercourse with betrothed. " 66b. *Sifra Dt. 242.*
 15. Enticing individuals to idolatry. *Lev. 67a. Sifra Dt. 90.*
 16. " communities. " " " " 86.

28. *Lev. 24:16. Maim. H. Lev. 14⁴. R. Simon disagrees with this order, and gives it thus, burning, stoning, strangling, sword.*
 29. Blasphemy and idolatry are considered outrageous crimes, because the culprit has "laid his hands", has violated the cardinal principles of Judaism, viz., disbelief and denying the power of God, *Lev. 24:16. 25:13. 26:19. 27:1. The heathen is warring against blasphemy. R. Meir thinks such an one should be put to death whether he uses the pl or a, 115 Lev. 24:16.*

17. Hitchcraft.

Lamb. 67a. Mex. Mishpatim 17.

18. Rebellious son. ^{31.}

" 68b. Lyrri Dt. 220.

Burning, ^{32.}

1. Intercourse with priest's daughter. ^{33.} Lamb. 76a Lyrri Enor 1'4.
2. " " daughter. " 75a Yeb. 3a.
3. " " " 's daughter. " 75a.
4. " " son's " " "
5. " " stepdaughter. " " Lyrri Ked. 9'6.
6. " " " 's daughter. " " "
7. ~~Lamb.~~ " stepson's " " "
8. ^{32.} " " mother-in-law " " 9'15.
9. " " " 's mother. " " 9'17. Yeb. 21a.
10. " " father-in-law's " ^{34.} " " " "

20. According to Abayi, this process consisted in a row of bricks being set down for passing, while on both sides fire was kindled. Raba maintains that there was no passing through, but jumping, as children jumped on Perim. Rashi explains that there was a pit in which fire was kindled, and people used to jump over it. Lamb. 64b.

31. Execution of such a person, or for communal apostasy could never have taken place, according to the Talmudists. Ex

5. Prophecying in name of heathen deities. *Lev. 89a, Lyr. St. 176.*
6. Intercourse with another man's wife. "*52b. Lyr. Red. 9.*"
7. False witnesses against priest's daughter. *Lev. 94b.*
8. He who has intercourse with her. *Lev. 90a.*

34. In the last nine cases of incest, the culprit is subject to punishment only if the crime is committed during the life of his legal wife. *Lev. 76b. Yeb. 95a. M. St. Ps. Birk 15.*

35. Punishing murder with sword is determined by *Sefer Chofam*, *Ches. Ex. 21²⁰* says with reference to a killing of a man, but *Lev. 26²⁵* uses this word in connection with a sword, "the avenging sword", hence avenging with a sword is implied in *Ex. 21²⁰*, *Lev. 52b*, *Mek. Mish. 4*, ~~*Paraphrase Ex. 21²⁰ adds*~~ It will be noticed that the Loel drops out of the Palamonic legislation and does not figure at all.

36. To the 3 capital punishments mentioned in the Bible, the Rabbis add strangling, which is the penalty for crimes where no mode of punishment is specified and where conclusions from *Sefer Chofam* cannot be made. The Rabbis argue that as no undefined death-sentence can be construed with severity, strangulation must be their penalty, since they considered the mildest of the 4 punishments. Further.

False Witnesses.

With regard to this matter, the Talmud has it that false witnesses must suffer the death to which the victim of their falsehood has been doomed.³⁸ They do not suffer the penalty unless their testimony is computed by other testimony, and unless others testify that the false witnesses were with them at another place at the very moment that the latter allege to have seen the commission of the crime. If the accused disproves the testimony of the false witnesses by an alibi or any other means, they are to ^{be} given stripes, in addition to the penalty resting upon them.³⁹

more, the Rabbis argue, since death by Heaven (which is spoken of in Bible, ex. Gen. 38^{7,10}; Lev. 24^{17,9}) leaves no outward marks, so should it be in the case of death by human hands, and this is only possible by strangling, ex. Lev. 24¹⁷, M. H. Sanhedrin 9¹, Ligeia Kedoshim 9¹.

37. The offender is not put to death unless he carries his victim home, enslaves him and sells, Lev. 24¹⁷. M. H. Sanhedrin 9². In Rome this was permitted ~~only~~ worse in mines. (Sanhedrin 98¹)

On the basis of Ex. 22² the Rabbis decide that several other cases of homicide are justified - where one pursues to kill, or where one pursues a male to commit sodomy, or a woman for rape.⁴⁰ In this connection it may be well to mention that in Sanh. 9⁵ it is said that when one is suspected of murder, and the judges are convinced of his guilt though the testimony is insufficient to convict him, he may be locked up on scanty diet. The disputants in the Gemara are not agreed on the point how insufficient the evidence might be, and the judges still be justified in laying him by starvation. Undoubtedly the cases of murder had been unheard-of for decades, otherwise the Rabbis would certainly not have discussed it as they did.

Sanh. 9⁶ recognizes the right of zealots⁴¹ to slay a man for the commission of 3 crimes, stealing any

38. Mac. 5a. Maim. St. Edm. 18'. 39. Mac. 5a.

40. Sanh. 73a, Maim. St. Rozech 16-17.

41. The right of zealots to kill is evidently permissible from the case of Phineas, in Num. 25-6-8.

of the holy vessels used in the service of the sanctuary, and cohabiting with an idolatress. If a priest has made use of any unclean thing, the priesthood must bring him forth and dash his brains out. If a stranger committed this offense, R. Asiba decides that he should be strangled, while the Rabbis leave his punishment to God himself.

When convicts condemned to different modes of punishment become intermixed and can not be identified, all suffer the easiest sentence.⁴² He who is guilty of two deaths is punished with the severest.⁴³

Execution.

The Talmud provides for the execution taking place before sunset,⁴⁴ on the day that the verdict is given.⁴⁵ The place of execution was outside of the city limits,⁴⁶ and at some distance from the court-house.⁴⁷ As the condemned man was brought forth, a herald marched in

42. Sanh. 9³, 80b. 43. Sanh. 9⁴, M. H. Sanh. 14⁴.
 44. Sanh. 34b, M. H. Sanh. 15⁷. 45. Sanh. 32a, 35a, and
 Midd. H. Sanh. 13¹.

front of the procession and proclaimed the name of the man, his crime, when and where committed, and the names of the witnesses, at the same time inviting anyone who knew reasons why he should not be executed to appear and state them, and if any favorable evidence was put forth, the condemned man was brought back to court, and again tried on the basis of this new testimony.⁴⁸ If the convict humbly said that he desired to make a statement in own behalf he had to be heard by the court, and the proceedings were temporarily stopped, and if no favorable result was attained, a repetition or several repetitions of his request had likewise to be heard.⁴⁹

When the place of execution was reached, the convicted man was asked to confess his sins, but not necessarily the one for which he had been condemned,⁵⁰ and if he were willing, he was to say, "may

46. A betrothed maiden and an idolater suffered the penalty in the city where they had done the crime, the former even in front of her father's house, if it was committed there.
 ex. Retz. 44b.

47. Paul. 42b. In. St. Lamb. 15³ T

my death be an expiation for all my sins". Thereupon, a mixture of wine and olibanum was given him, that he might become dazed and not experience the pain of the execution.⁵¹ and when he was near the fatal spot he was divested of nearly all his clothes and led on to the place of death.⁵² where he was pinioned, and the execution of the sentence was carried out. This was done in the following manner:

Stoning.

The convict was placed on a scabbard, and one of the witnesses⁵³ precipitated him therefrom. If death was not thus produced, the other witness hurled a large stone upon him, and this time if the man did not expire, the whole people threw stones until life was entirely extinct.⁵⁴

Burning.⁵⁵

The condemned was placed in a hole knee-high and the ground was packed tightly about him so that he

the distance at 600 paces. 48. Lamb. 43a.

49. Lamb. 42a. 50. Lamb. 42b.

51. Lamb. 43a.

52. Lamb. 45b, Sifra Emor 19. A woman was not deprived of clothes.

could not move. A cord wrapped in a soft cloth was next tightly drawn around his neck until his lower jaw dropped and his mouth opened, when molten lead was poured down his throat.^{56.}

Sword.

The convict having been fastened to a post, his head was cut off with a sword.^{57.}

Strangulation.

Here the convict was secured in a manner similar to that when burning was to take place. A cord in a soft cloth was then placed around his neck and each end was drawn tightly by one of the witnesses until death occurred.^{58.}

After the execution.

The bodies of executed criminals had to be buried

53. The Palamud provides for no official executioner. The witnesses prosecute and execute.

54. Lamb. 45a.

55. Lamb. 52b, M. H. Lamb. 15³

Posey. Lamb. 9".

56. In the cases of burning mentioned in Lamb. 52b, the Rabbis criticize the mode of execution, because it was not like the one they prescribed.

soon after the execution; but not in the Sepulchres
 of their families, for 2 cemeteries were appointed
 for this purpose, one for the Flayed and burned, and
 one for the beheaded and strangled. Here the executed
 must be buried until decomposition of the body had
 begun, when it was permissible to inter the bones in
 the Sepulchres of the fathers.⁵⁹ No sentence carried
 with it the least change in the status of the
 children of the man executed,⁶⁰ all his possessions
 lawfully descended to his heirs.⁶¹

57. Lamb. 526, Mann. St. Lamb. 154.

58. " " " " " 155.

59. Joseph Lamb. 98, Lamb. 46a.

60. Lamb. 276, Niddah 50a.

61. Joseph Lamb. 66, Lamb. 48b.

Conclusion.

The peculiar circumstances of the Israelitish people account for the extensive prescription of capital punishment by the Mosaic law. Let us remember, that they were a nation of newly-freed slaves, and were by nature perhaps more than ordinarily intractable, and if we are to judge from the laws enjoined upon them, it will not be far-fetched to conclude that they must have imbibed all the degenerating influences of slavery among heathens. Penal settlements and remedial punishments were impossible because of their wanderings and isolation, they were placed straightway under divine rule and surveillance, hence, wilful offenses evinced an incorrigibility, which rendered death the only way in which the community could rid itself of the culprit. The law in the Biblical code is, moreover, practical, and there is enough material at hand to prove that it was carried out. Finally, with all its severity the Mosaic legislation has an ethical tone to it that can hardly be rivalled. It stands for strict justice, equality and equity.

In considering the Talmudic criminal legislation, on the other hand, we forsake the territory of the practical, and are transported to the ethereal fields of the ideal. Even though this legislation be theoretical, it may still serve to impress us with the high and lofty notions which the Rabbis nurtured with reference to criminal jurisprudence. While they concerned themselves with the minutiae of a penal law which could never be carried out, yet they supplemented their dialectic discussions by sentiments remarkably humane, - a penal law and sentiments which would enforce civil order and secure the safety and peace of society by mildness and consideration, tempering justice with a love of humanity. Above all, that which pervades the Rabbinic code most vividly is its clemency, a clemency which can only be expression of lofty character, and which has never been voiced more strikingly than in the old maxim "Whoever compassions a human being obtains compassion from Heaven." (Labbat 15a).

The End.