

Jewish Contemporary Ethics Part 28: Ethical Issues in Tanach 6: Capital Punishment

by Rabbi Dr. Moshe Freedman, New West End Synagogue



The Torah mandates capital punishment for a variety of immoral acts, including murder (Bereishit 9:6); kidnapping (Shemot 21:16); adultery (Shemot 20:12); rape (Devarim 22:22-27); idolatry (Devarim 13:6) and

blasphemy (Vayikra 24:16). What might lie behind the Torah's prescription of capital punishment for such sins?

When God warned Adam and Chavah (Eve) about refraining from eating the fruit of the tree of knowledge of good and evil, He warned them that on the day they eat of it, "you shall surely die" (Bereishit 1:17). However, after both Adam and Chavah ate from the tree, they did not die immediately. So what did God mean? Rabbeinu Bachya ben Asher (d. 1340) explains that God never meant that Adam and Chavah would die immediately after eating from the tree, but rather that they would become mortal and cause death to come to the world. Before this grave error, they could have lived eternally in the paradise of the Garden of Eden; now they had to be expelled (Bereishit 3:22-24). According to this, mortality is the price that was paid for sin.

Moreover, the Rambam (Maimonides 1135-1202) writes that for some sins, death itself is part of the repentance process required. According to this view, capital punishment in Jewish law is therefore not so much about punishing the perpetrator, but rather about accelerating their journey towards atonement.

This explains another anomaly regarding capital crimes. The laws of accepting testimony for capital cases are extremely complex and the standards of proof so high, that it was rarely possible for a Jewish court of law to execute anyone. Although the Torah does record two such cases (see Bemidbar 15:32-36, Vayikra 24:10-12), the Mishnah (Makkot 1:10) indicates

that it was so rare for a Jewish court to carry out capital punishment that Rabbi Akiva described a court that did so once every 70 years as being 'bloodthirsty'. While the Torah prescribes capital punishment for particular crimes, it was rarely carried out and was seemingly discouraged. If so, why was capital punishment associated with the transgression in the first place, if practically it was nearly impossible to carry out?

The physicist and philosopher, Rabbi Aryeh Kaplan (1934-1983) noted that: "these punishments were almost never invoked, and existed mainly as a deterrent and to indicate the seriousness of the sins for which they were prescribed. The rules of evidence and other safeguards that the Torah provides to protect the accused made it all but impossible to actually invoke these penalties". He adds that: "the system of judicial punishments could become brutal and barbaric unless administered in an atmosphere of the highest morality and piety. When these standards declined among the Jewish people, the Sanhedrin... voluntarily abolished this system of penalties" (*Handbook of Jewish Thought*, Volume II, pp. 170-71). As such, the capital punishments of the Torah served primarily as a deterrent to teach us the severity of certain crimes.

The next article will examine the treatment of animals, especially relating to the requirement for animal offerings.

