



# Ohr Yerushalayim News

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## T NEWS ... LATEST NEWS ... LATEST

### Mailing

We will shortly be sending out the Purim/Pesach mailing. If you have moved home, please ensure you update us via email at office@ohryerushalayim.org.uk. Alternatively if you prefer to receive mailings via email, please advise us accordingly.

### Bas Mitzva Rosh Chodesh Group Special

A fantastic time was had by all at our Bas Mitzvah special. We had great food and great entertainment and enjoyed mixing and creating friendships with girls of our Shul.

Many thanks to Rebbetzen Cohen who enhanced the occasion with her presence and for judging our competition and presenting the girls with their books.

Thank you to Mrs Dansky for once again leading the games and the Chinese auction to which some of the bas mitzvah girls parents kindly donated.

## T NEWS ... LATEST NEWS ... LATEST

### Stoning In Glass Houses Dani Epstein

After the toppled dictatorships have faded in the rather damp squib that turned out to be the Arab spring, a new horror has swept the Middle East. Gory beheadings publicised on Youtube, female captives sold off in slave markets for a handful of dollars, a near anarchic, brutal and barbaric society which will stop at nothing and dub themselves ISIS. Even that lovely fellow Sheikh Nasrallah of Hezbollah fame has declared in a recent speech that ISIS have caused more harm to Islam than anyone in history. And he should know; he himself is a mass-murdering arch terrorist.

It's not as if ISIS have arisen from a total vacuum. In Saudi Arabia public hangings and head choppings are a source of weekend family entertainment, as are hand choppings, eye-gougings, flogging and stoning which feature amongst a menu of savage and brutal punishments. In 2011 a 13 year old schoolgirl was sentenced to 90 lashes in front of her classmates for abusing her teacher. It reminds of my school days.

Now I know what you are thinking: hang on, don't we have pretty similar punishment on our statute books? After all, what is the punishment for chilul Shabbos if not death? Don't we have lashes in the form of malkos, and how about hand-chopping in Devorim (25:12):

– וְקָצַתָּהּ אֶת כַּפֵּיהּ לֹא תַחֲסִים עִינֶיךָ – You shall cut off her hand; do not have pity?

That sounds pretty grim. Hardly different than all the other gory punishments inflicted in the Middle East that we find so repulsive and loathsome. This week's sedrah is replete with the phrase מוֹת – capital punishment.

Some might argue that we have been fed on a steady diet of democracy and liberalism, and that this has distorted our values.

Why should one have the remotest sympathy on common criminals, especially violent ones? Surely such horrific punishments will act as effective deterrents to such crimes? Yes, maybe the Saudis are a bunch of screaming loonies, but let's face it; people are less likely to murder if they know they might be killed for it.

On the other hand, one might point out that the evidence for such punishments being effective is a little thin on the ground. Surely were these punishments effective, execution rates would be dropping (excluding those of the screaming loonies who are ISIS), and this simply is not the case!

It is possible, of course, that they are on the increase because the various governments that are executing people (ISIS do not count – they cannot be described as having a government any more than one would call a pile of bricks a work of art) are repressive regimes who use every excuse to kill people, whether or not they have committed an actual crime. In the United States, for example, the only G7 country that still has execution on the statute books, executions and death sentences in general are on the decline. This appears to buttress the claim that the death sentence is both effective as a deterrent, and that repressive regimes are murdering their own people.

In the case of the US, however, many states have abolished the death penalty and this has helped the naysayers gain a lot of ground even in those states where capital punishment is still operational. This has indubitably affected sentencing, and therefore the deterrence argument cannot be applied here unequivocally.

Nu, I can hear you say, so what does this all have to do with us? It's not as if we can have a debate about capital punishment, since the Torah clearly says that the punishment for murder is death! End of discussion.

## The Week Ahead

פרשת משפטים	פרשת שקלים, מברכין אדר
Candle Lighting	4.59pm
Mincha & Kabbolas Shabbos	5.04pm
Seuder HaLimud	8.40am
Shacharis	9.00am
סוף זמן ק"ש	9.56am
1st Mincha	1.30pm
Rov's Hilchos Shabbos Shiur	4.17pm
2nd Mincha	4.47pm
Seuda Shlishis	following
Motzei Shabbos	6.07pm
Ovos uBonim	7.22pm
Sunday	7.15am / 8.20am
Monday	6.45am / 7.10am
Tuesday / Wednesday	6.45am / 7.20am
Thursday / Friday ראש חודש	6.30am / 7.00am
Mincha & Maariv	5.10pm
Late Maariv	8.00pm

Hmm, not quite. We really need to delve into this matter to try to elucidate the correct Torah response, since with the ubiquity of the twittering classes and the youtubers we live in a glass house today, having to defend our every action, thought and belief.

This really touches on a subject I have tackled previously.

The single biggest mistake everyone outside genuine Yiddishkeit makes is simply reading the Torah literally. So, the Reform, Conservatives, Conservadox, Christian and Rastafarians (probably) read the words in the Torah as they are, and -- quelle surprise -- conclude that the text has to be human-authored since there are so many contradictions and mistakes. And there are. Loads of them. If one reads the Torah in a literal fashion it makes as much sense as reading a multi-axis CNC mill manual written in Chinglish. At first glance some things appear to make sense, but the moment you try to operate the machine, you simply have to work it out from first principles since the manual makes no sense.

Take divorce. What exactly does one have to do in order to divorce a woman? Says the Torah: – וְכָתַב לָהּ סֵפֶר כְּרִיתוּת and he shall write her a book of separation. OK, so what goes into this book? Can one include illustrations? Poetry? How many pages does it need? Does it need a cover, or can it be soft back? How does one have to write it? Can it be written in fresh blood on a slab of stone, for a particularly original example?

How about shechita? The first chapter of Vayikroh contains a possuk we are all familiar with: “ – וּשְחַט אוֹתוֹ עַל יַרְךְ הַמִּזְבֵּחַ” you shall slaughter it next to the side of the altar. OK, but how? And what with? Can we use an axe? A sword? A chainsaw? Shoot it through the head? Handgrenade?

You begin to get the picture. The Torah is full of gaps and missing information which it presumes the reader is already familiar with. How on earth is anyone suppose to understand the Torah with all these missing pieces of information? To this the answer is quite obvious: we have the – תּוֹרָה שֶׁבֶּעַל פֶּה the Oral Law. This contains all the missing bits as well as the entire Torah itself.

Bearing all this in mind, we need to examine the whole concept of capital punishment, and how we relate to it today.

The Mishnah in Makkos records the following argument:

רבי טרפון ורבי עקיבא אומרים אילו היינו בסנהדרין לא נהרג אדם מעולם רשב"ג אומר אף הן מרבין שופכי דמים בישראל

"Rabi Tarfon and Rabi Akira say: were we serving on the Sanhedrin a person would never be executed. Rabi Shimon ben Gamliel says: they are proliferating murderers in Yisroel"

Why does Rabi Shimon ben Gamliel assume that his colleagues are referring to murder? Perhaps they are trying to save a Shabbos-desecrator or an adulterer? Perhaps the most difficult issue of all is that they appear to be abolishing a Torah-mandated punishment; how could they possibly do so?

The last question actually provides the key to understanding this argument, and in fact contains one element of the solution.

No-one may change even one element of the Torah. Even a נביא - prophet - who is permitted to temporarily suspend a mitzvah or permit the forbidden - may not abolish any mitzvah on a permanent basis. We therefore are forced to conclude that neither Rabi Tarfon nor Rabi Akiva had any intentions to change הוֹלָכָה in any way but were seeking to employ various judicial tactics to prevent the death sentence from being passed.

The gemoroh debates exactly how they would have achieved this both in cases of murder and adultery, and Tosafos explain why the gemoro discusses only those two sins as opposed to violating the Shabbos, for example. What Tosefos do make clear is that Rabi Tarfon and Rabi Akiva would have applied their policy right across the board for every possible case of capital punishment, and not

just murder and adultery.

Certainly from this what we do see quite clearly is that the debate raging today over capital punishment as an effective deterrent was something that was dealt with almost two millennia ago. Two millennia ago!

In which case we need to ask two further questions: what did Rabi Tarfon and Rabi Akiva think that the Torah instituted capital punishment for, if they were not going to apply it? Secondly, what would their response to Rabi Shimon ben Gamliel be? How would they prevent murders?

To the first question we can turn to the case of ben Sorer Umoreh, the rebellious son, which is one halocho in the Torah that is universally recognized as a purely theoretical exercise. The probability of actually having a genuine, dyed-in-the-wool ben sorer umoreh is as good as zero. If that is the case, asks the gemoroh, why do we have the ben sorer umoreh on the books? The answer that is given is: in order to have a reward for studying its laws.

Now we need to examine the possibilities left to the Beis Din if they will not apply capital punishment. Well, the actual reality, says Tosfos, is that Rabi Tarfon and Rabi Akiva were not going to abolish capital punishment entirely.

What would the Beis Din do when faced with irrefutable circumstantial evidence (please don't say video - I fake that for a living as a CGI artist) that Reuvein hired Shimon to kill Levi. Never mind Shimon, what about Reuvein? He hired a hitman to whack Levi! Of course even with witnesses he is not liable to the death penalty since he himself did not carry out the deed, and there is the principle of אין שליח לדבר עבירה, but we can hardly let him get away with it! In this scenario, the Beis Din has to judge the prevalent circumstances, and as the Rambam writes הלכות רוצח ושמיירת נפש) הלקוחות רוצח ושמיירת נפש) they or the king have the option of having him put to death if circumstances demand it, or if not then he has to be beaten within an inch of his life, imprisoned and tortured for many years so that those people susceptible to murder reconsider their impulses.

All this, of course, depends on a Beis Din that has the power to judge דיני נפשות, capital cases. Today, even with the eventual reinstatement of the Sanhedrin במהרה בימנו it will be a major challenge to hand out a sentence for מלקות - lashes - let alone capital punishment, since we no longer have an unbroken chain of judges that stretch back to Moshe; hence there are vast swathes of הלכה that we have no practical experience with which makes it almost -- if not entirely -- impossible to implement.

As it is, even if we were to somehow resurrect a Sanhedrin with the power to sentence in capital punishment cases, just how likely would it be that someone would be brought to Beis Din and be committed for murder? In order for that to happen, there would have to be two witnesses observing the case, who stand there yelling: "If you pull the trigger you will be taken to Beis Din and put to death! Don't do it!"

If someone actually pulled the trigger after that, I think the first thing Beis Din will want to know if he is entirely compos mentis or has a death wish. Why on earth would someone commit even a crime of passion knowing even in their full fury that they will die next? Clearly they must be bonkers! Anyway, how many murders have you heard of where there were witnesses there at the time?

So, do we really chop hand off? Nope. The gemoroh in Bovo Kamoh 83b states: הכל לפי המבייש והמתבייש - everything is judged according to the perpetrator and the victim. In this case we are talking about a fine, which varies according to the circumstances. We only know this from the gemoroh. If we took the verse at its face value, we will end up throwing stones in glass houses.