



After the Ten Commandments: The Laws of the Covenant Code

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Homicide (Exod 21:12-14)

מִכֶּה אִישׁ וָמֵת מוֹת יוּמָת.


He who fatally strikes a man shall be put to death.

וְאִשֶּׁר לֹא צָדָה וְהֶאֱלֹהִים אָנָּה
לִידּוֹ וְשִׁמְתִי לָךְ מִקּוֹם אֲשֶׁר
יְבוֹס שָׁמָּה.

If he did not do it by design, but it came about by an act of God, I will assign you a place to which he can flee.

וְכִי יִזְדֶּ אִישׁ עַל רֵעֵהוּ לְהַרְגוֹ
בְּעָרְמָה מֵעַם מִזְבְּחֵי תִקְוָנוּ
לְמוֹת.

When a man schemes against another and kills him treacherously, you shall take him from My very altar to be put to death.



Compare to rabbinic
literature

The destructive Sanhedrin

סנהדרין ההורגת אחד בשבוע
נקראת חובלנית.

A Sanhedrin that puts someone to death once in seven years is a destructive Sanhedrin.

רבי אלעזר בן עזריה אומר, אחד
לשבעים שנה.

Rabbi Elazar ben Azarya says: Once in seventy years.

רבי טרפון ורבי עקיבא אומרים,
אילו היינו בסנהדרין לא נהרג אדם
מעולם.

Rabbi Tarfon and Rabbi Akiva say: If we had been members of the Sanhedrin, no person would have ever been executed.

רבן שמעון בן גמליאל אומר, אף הן
מרבין שופכי דמים בישראל.

Rabban Shimon ben Gamliel says: In adopting that approach, they too would increase the number of murderers among the Jewish people

George Foot
Moore
(1927)

Re rules of procedure in Mishnah and Talmud
in capital cases:

“It is clear that with such a procedure
conviction in capital cases was next to
impossible, and that this was the intention of
the framers of the rules is equally plain. [But
these discussions were] purely theoretical.”

Gerald
Blidstein
(1965)

“Capital Punishment: The
Classic Jewish Discussion”
Judaism volume 14.



Compare to the
approaches to homicide
in Ancient Near Eastern
Law Codes

Professor Moshe Greenberg (1960)

The right of pardon in capital cases that Near Eastern law gives to the king is unknown to biblical law. Here would seem to be another indication of the literalness with which the doctrine of the divine authorship of the law was felt in Israel. Only the author of the law has the power to waive it; in Mesopotamia he is the king, in Israel no man.

[Greenberg cont.] The unexampled severity of biblical law on the subject [of homicide] has been considered primitive, archaic, or a reflex of Bedouin vendetta customs. But precisely the law of homicide cannot be accounted for on any such grounds.

Greenberg (cont.)

In the earliest law collection, the Covenant Code of Exodus, it is laid down that murder is punishable by death (Exodus 21:12ff.). If homicide is committed by a beast—a goring ox is spoken of—the beast must be stoned, and its flesh may not be eaten. If it was known to be vicious and its owner was criminally negligent in failing to keep it in, the owner is subject to death as well as the ox, though here the law allows the owner to ransom himself with a sum fixed by the slain person's family (vss. 28ff.). This is the sole degree of culpability in which the early law allows a ransom. It is thus fully in accord with a later law of Numbers (35:31) which states, "You shall not take a ransom for the life of a murderer who is guilty of death, but he shall be surely put to death." A ransom may be accepted only for a homicide not committed personally and with intent to harm. For murder, however, there is only the death penalty.

Greenberg (cont.)

These provisions contrast sharply with the other Near Eastern laws on homicide. Outside of the Bible, there is no parallel to the absolute ban on composition between the murderer and the next of kin. All Near Eastern law recognizes the right of the slain person's family to agree to accept a settlement in lieu of the death of the slayer, Hittite law going so far as to regulate this settlement minutely in terms of the number of souls that must be surrendered as compensation.¹⁶ Bedouin law is no different: among the Bedouin of Sinai murder is compensated for by a tariff reckoned in camels for any life destroyed.¹⁷ The Qur'an is equally tolerant of composition: "Believers," it reads (2:178), "retaliation is decreed for you in bloodshed: a free man for a free man, a slave for a slave, and a female for a female. He who is pardoned by his aggrieved brother shall

Greenberg (cont.)

be prosecuted according to usage and shall pay him a liberal fine."

In the Babylonian law of the goring ox, otherwise closely paralleling that of the Bible, no punishment is prescribed for the ox.¹⁸

On both of these counts biblical law has been regarded as exhibiting archaic features.¹⁰ To speak in terms of legal lag and progress, however, is to assume that the biblical and non-biblical laws are stages in a single line of historical development, a line in which acceptance of composition is the stage after strict talion. This is not only incapable of being demonstrated, the actual history of the biblical law of homicide shows that it followed an altogether different principle of development from that governing Near Eastern law.

Greenberg (cont.)

development from the beginning

A precise and adequate formulation of the jural postulate underlying the biblical law of homicide is found in Genesis 9:5f.: "For your lifeblood I shall require a reckoning; of every beast shall I require it. . . . Whoever sheds the blood of a man, by man shall his blood be shed; for in the image of God was man made." To be sure, this passage belongs to a stratum assigned to late times by current critical opinion; however that may be, the operation of the postulate is visible in the very earliest laws, as will be seen immediately. The meaning of the passage is clear enough: that man was made in the image of God—the exact significance of the words is not necessary to decide here—is expressive of the peculiar and supreme worth of man. Of all creatures, Genesis 1 relates, he alone possesses this attribute, bringing him into closer relation to God than all the rest and conferring upon him highest value. The first practical consequence of this supremacy is set forth in Genesis 9:3f.: man may eat beasts. The establishment of a value

Greenberg (cont.)

hierarchy of man over beast means that man may kill them—for food and sacrifice only (cf. Leviticus 17:4)—but they may not kill him. A beast that kills a man destroys the image of God and must give a reckoning for it. Now this is the law of the goring ox in Exodus: it must be stoned to death. The religious evaluation inherent in this law is further evidenced by the prohibition of eating the flesh of the stoned ox. The beast is laden with guilt and is therefore an object of horror.²⁰

Babylonian law on the subject reflects no such theory as to the guilt the peculiar value of human life imposes on all who take it. Babylonian law is concerned with safeguarding rights

Greenberg (cont.)

This view of the uniqueness and supremacy of human life has yet another consequence. It places life beyond the reach of other values. The idea that life may be measured in terms of money or other property, and *a fortiori* the idea that persons may be evaluated as equivalences of other persons, is excluded. Compensation of any kind is ruled out. The guilt of the murderer is infinite because the murdered life is invaluable; the kinsmen of the slain man are not competent to say when he has been paid for. An absolute wrong has been committed, a sin against God which is not subject to human discussion. The effect of this view is, to be sure, paradoxical: because human life is invaluable, to take it entails the death penalty.²¹ Yet the paradox must not blind us to the judgment of value that the law sought to embody.

Greenberg (cont.)

The sense of the invaluableness of human life underlies the divergence of the biblical treatment of the homicide from that of the other law systems of the Near East. There the law allows and at times fixes a value on lives, and leaves it to the kinsmen of the slain to decide whether they will have revenge or receive compensation for their loss in money or property. Perhaps the baldest expression of the economic valuation of life occurs in those cases where punishment of a murderer takes the form of the surrender of other persons—a slave, a son, a wife, a brother—“instead of blood,” or, “to wash out the blood,” or to “make good” the dead person, as the Assyrian phrases put it.²² Equally expressive are the Hittite laws which prescribe that the killer has to “make amends” for the dead persons by “giving” persons in accord with the status of the slain and the degree of the homicide. The underlying motive in such forms of composition is the desire to make good the deficiency in the fighting or working strength of the community which has lost one of its members.²⁸ This seems to be the meaning of Hittite Law 43: “If a man customarily fords a river with his ox, another man pushes him aside, seizes the tail of

Greenberg (cont.)

the ox and crosses the river, but the river carries the owner of the ox away, they (i.e. the authorities of the respective village or town) shall receive that very man." The view of life as a replaceable economic value here reaches its ultimate expression. The moral guilt of the homicide is so far subordinated to the need of restoring the strength of the community that the culprit is not punished but incorporated;²⁴ this is the polar opposite of the biblical law which requires that not even the flesh of the stoned homicidal ox may be eaten.

Sefer ha-
hinukh on
compensation
for murder

שורש מצוה זו ידוע,
שאם הורשו אדוני
הארץ ליקח כופר מיד
הרוצח, נמצא שכל
הגדול מחברו ועשיר
ממנו יהרגנו אם
יחרה אפו עליו ויתן
כפרו, ונמצא חרב
איש באחיו, והישוב
בטל.

The principle of this mitzvah is understood: If the authorities would be allowed to accept a ransom from a murderer, the result would be that anyone stronger and richer than his neighbour who got angry would kill that neighbour and just pay the ransom. The people would be at each other's throats and the land would become unlivable.

Verse 13

וְאִשֶּׁר לֹא צָדָה
וְהָאֱלֹהִים אָנָּה לְיָדוֹ
וְשִׁמַּתִּי לָךְ מִקּוֹם אֲשֶׁר
יָנוֹס שָׂמָּה.

If he did not do it by design, but it came about by an act of God, I will assign you a place to which he can flee.

Rashi on vs. 13

והאלהים אנה לידו. במה
הכתוב מדבר? בשני בני
אדם, אחד הרג שוגג,
ואחד הרג מזיד, ולא היו
עדים בדבר שיעידו – זה
לא נהרג, וזה לא גלה.

It came about by an act of God;
What is Scripture here referring
to? Two people, one of whom
killed a person with premeditation
and the other killed inadvertently,
and in neither case were there
witnesses to the deed who could
testify about it. Consequently, the
former was not put to death and
the latter was not forced into
banishment to a city of refuge.

Rashi (cont.)

הקב"ה מזמנן לפונדוק
אחד, זה שהרג שוגג עולה
בסלם ונופל על זה שהרג
מזיד והורגו, ועדים מעידין
אותו ומחייבין אותו לגלות.
נמצא זה שהרג שוגג גולה,
וזוה שהרג מזיד נהרג. (ע"פ
מכות י ב)

Now God brings them together at the same inn. The one who killed with premeditation happens to sit beneath a ladder, and the other who killed inadvertently ascends the ladder and falls upon and thus kills the one who killed with premeditation. Witnesses now being present they testify against the one who fell; that one has now been banished to one of the cities of refuge. The result is that the one who killed inadvertently is actually banished, and the one who killed with premeditation actually suffers death.

Shadal on vs. 13

כל מה שאין אדם עושה
בכוונה ורצון מיוחד לאל סבת
הסבות, כי מה שהוא בערכנו
מקרה, בגזרת האל הוא.

ושמתי לך מקום – אקבע לכם
ערים למקלט כשתבואו אל
הארץ (וכן דעת רשב"ם)

Anything that a person does not do purposely and willingly is ascribed to God, the First Cause, for what we think of as an “accident” occurs by God’s decree.

I will designate for you a place. “I will establish for you cities of refuge when you arrive in the land” (so Rashbam).