

Numbers 35 (*Etz Hayim*, pp. 962-965) is concerned with legal responses to bloodshed. Please notice that in the following, when the rabbis decide the killer is not liable, it means not liable for the death penalty; it does not mean the killer goes unpunished.

v. 11: "You shall provide yourselves with places to serve you as cities of refuge to which a manslayer who had killed a person unintentionally may flee."

v. 16: "Anyone, however, who strikes another with an iron object so that death results is a murderer; the murderer must be put to death."

v. 17: "If he struck him with a *stone tool*" [כֶּלֶבֶת אֶבֶן – more literally, *in a stone hand* or *with a stone in hand*] "that could cause death, and death resulted, he is a murderer; the murderer must be put to death."

v. 18: "Similarly, if the object with which he struck him was a wooden tool" [עֵץ יָד – *a wood hand* or *a tree limb in hand* or *a handful of a wooden tool*] "that could cause death, and death resulted, he is a murderer; the murderer must be put to death."

v. 21: "or if he struck him with his hand in enmity and death resulted, the assailant shall be put to death...."

So the Torah distinguishes between accidental and deliberate killing. But as these are matters of life and death, our rabbis sought to understand every nuance of these verses. Some examples:

- BT Sanhedrin 76b, Gemara: "Samuel said: why is hand" - יָד – "not mentioned in connection with iron?" [in v. 16, since it is mentioned in verse 17-18] "Because iron can kill no matter what its size.... This, however, is only if one pierced therewith." A commentary states: "But if used to strike therewith, it must be of a certain minimum size before the murderer is executed."
- Mishnah Sanhedrin 76b: "... A murderer who slew his fellow with a stone or an iron, or kept him down under water or in fire, so that he could not ascend thence, is executed." Thus, the Torah's listing of iron, stone, and wooden tools is taken as a partial list of examples, extended in the Mishnah to include additional examples such as water and fire. The Gemara adds:

"OR KEPT HIM DOWN UNDER WATER - ... though he himself did not push him [into the water], yet since he could not ascend [through being held down], and so died, he is executed.... [or] since he could have ascended, but died, he is free from death."

"Whence do we know that [he is liable to death] for keeping him down? Samuel answered" [citing v. 21, quoted above]: "The Writ sayeth, *or if with enmity he smote him with his hand* – this extends the law to one who keeps his neighbor fast [e.g., in water, thus causing his death]."

- Sanhedrin 77b: "Raba ... said: If one threw a stone at a wall, which rebounded and killed his neighbor" [a commentary adds, and this was his intention], "he is liable. And a Tanna teaches ... If murder is committed by a man playing, for example, with a ball, if intentional, the thrower is executed; if unintentional, he is sentenced to the refuge cities."
- Also Sanhedrin 77b: "Raba said: If one thrust his neighbor into a pit, in which there was a ladder [so he could have climbed out], and then another came and removed it, he [first man] is not liable [for the victim's death], because when he threw him in he could have climbed out.... If one shot an arrow at his neighbor, who was

holding a shield, but another came and snatched it away... he is not liable, because when he shot the arrow [the victim was shielded]."

It is often remarked by those who don't know any better that the Jewish Bible is a book of "stern justice," as opposed to the alleged superiority of other books and systems. But let's consider how the following verses were interpreted by the Rabbis to make the death penalty almost impossible to impose:

Numbers 35:30 (*Etz Hayim*, p. 965): "If anyone kills a person, the manslayer may be executed only on the evidence" [לְפִי - literally, at the mouth] "of witnesses; the testimony of a single witness shall not suffice for a sentence of death."

This is echoed at Deut. 17:6 (*Etz Hayim*, p. 1090): "A person shall be put to death only on the testimony" [again, literally *at the mouth* - עַל פִּי] "of two or more witnesses; he must not be put to death on the testimony" [and again, literally *at the mouth* - עַל פִּי] "of a single witness."

- Note the requirement of multiple witnesses implies a person could not be put to death merely by a confession. This greatly diminishes the incentive to torture a confession from the accused, and is a root of the 5<sup>th</sup> Amendment of the US Constitution.
- *Mishnah Makkot* 1:6b: By stressing "at the mouth," Rabbi Jose concludes the witnesses must have warned the killer before or during the slaying of the possibility of capital punishment. [How likely is that?] Another interpretation: by stressing "witnesses," the court is not permitted to take the evidence from an interpreter.
- Who is not eligible to be a witness or a judge? According to *Mishnah Sanhedrin* 24b and its Gemara, disqualified groups include professional gamblers, usurers, pigeon trainers<sup>1</sup>, traders in the produce of the Sabbatical year, slaughterers who certified *terefah* meat as kosher, robbers, extortionists, tax collectors (who in ancient times were often ruler-hired thugs rather than mild-mannered accountants or attorneys), etc. Perhaps the trait these groups had in common is a propensity for lax standards of truth and ethics.

As a result of these and other restrictions, the death penalty was made so difficult to impose by the Rabbis that we have *Mishnah Makkot* 1:7a:

"A Sanhedrin that effects an execution once in seven years, is branded a destructive tribunal; R. Eleazar ben Azariah says: once in seventy years. R. Tarfon and R. Akiba say: Were we members of the Sanhedrin, no person would ever be put to death. [Thereupon] Rabban Simeon b. Gamaliel [dissented], [Yea] and they would also multiply shedders of blood in Israel."

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<sup>1</sup> Perhaps the modern equivalent is horse trainers. In ancient times, pigeon racing was popular. This may reflect economics – if you want to own a racing animal and have a choice between a pigeon and a horse, would you want the one that "eats like a bird" or the one that "eats like a horse"?