Journal of Criminal Law and Criminology

Volume 15 | Issue 2 Article 6

1924

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SOME FUNDAMENTAL CONCEPTS OF HEBREW CRIMINAL JURISPRUDENCE

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Full justice has never been rendered to the magnificent and admirable system of Hebrew Jurisprudence. No other system in the world is so rich in commentary and codes as the Jewish and no system can disclose a lengthier traditional line of men devoted to the study of Law.

There is no army of police to compel obedience to a Jewish Law or "Judge's" decision and no person to incarcerate the insolent for Contempt of Court. But Jewish Law, Civil as well as Ecclesiastical enjoys the homage of the bulk of the Jewish race. It is orderly reasoned, logical, and is a living system and is developing and is therefor entitled to the name Law, as much at least as public international law, which also emanates from no sovereign authority and has no sanction, has been largely evolved by Civilian Jurists, and depends for its observance on the voluntary assent of the family of nations that calls itself civilized.

The basis of Jewish Jurisprudence and its point d' appris, is, of course, the Bible and especially the Five Books of Moses. The Pentateuch, the Jus Scriptum, is the only foundation of Jewish Law and the Jus non Scriptum the nearest annalogue to our English common Law. A work like the Pentateuch distinguished for its literary merit, its theology, its ethics and the pre-eminent excellence of its system of Civil Institutions, could not fail to exert a more wide and powerful influence on the opinions and practices of mankind. Moses made no secret of the high estimate which he placed upon his labors as a Law giver; "What nation is there so great that hath statute and judges so righteous as all this Law which I send before you this day," is the confident tone in which he claims the obedience of his countrymen and the admiration of the world.

Says Grotius in his truth of Christian religion, "The most ancient attic laws which in after times the Roman were derived, owe their origin to Mose's Law." He expresses the same opinion in his treatise on the Right of War and Peace, "Who may not believe that seeing the Law of Moses has such an express image of Divine Will, the Nations did well in taking the Laws thence?"

That Plato's ideal Republic was in many respects derived from the Hebrew Constitution is the opinion held by many and, as would seem, on good ground. His sacred College of Conservators of the Laws, composed of the principal priests, the elders of the people, venerable by age virtue, and the Chief Magistrate as President, was a clear imitation of the Jewish Synhedrin. The origin respecting the election and approval of priests requiring that they be perfect and legitimate was clearly Jewish.

Sir Frederick Pollock pays tribute in his introduction and notes to Sir Henry Maine's ancient law, "We may safely say that the case of Zelophibad's Daughters is the earliest recorded case which is still authority." Sir Matthew Hāle has traced the influence of the Bible generally on the Laws of England. Sismone testifies that Alfred the Great in causing a Republication of the Saxon Laws inserted several statutes taken from the Code of Moses, to give new strength and cogency to the principals of morality. The same Historian also states that one of the first acts of the Clergy under Pepin and Charlemange was to improve the Legislation of the Francs by inserting some of the Mosaic Laws.

The Law of the Areopogites against Accidental Manslaughter, which banished the offender with a year's banishment, is manifestly borrowed from the Mosaic Law respecting the Cities refuge.

Dr. Olous Robenius, formerly Professor of Law at the University of Upsal wrote that the Civil Law of Moses had been incorporated partly in the Swedish Jurisprudence and although it is no longer cited in Court, the influence still remains. The careful reader must bear in mind that parallelisms do not necessarily always imply derivative relationship. Certain rules are so similar that they are to be found in all systems. But where a rule occurring in two systems is obviously artificial or conventional, the only alternative to the inference that one borrowed it immediately or mediately from the other is that both derived it from a third source.

The "Beth Din" (House of Judgment), the Hebrew Title for the Rabinical Court is an Historic Jewish Institution of the First importance. The "Beth Din" in London (the Chief Rabbi's Court) has received Judicial notice in the English Courts. It was the practice of one of the Judges of the County Court of London containing the largest number of Jewish people, to treat the rulings of the "Chief Rabbi's Court" as authoritative upon questions of Jewish Law. Manchester and Leeds each possess a "Beth Din."

The Christian world stigmatizes the Talmudic System as cruel without good reason. This harsh feeling was caused by the most widely used dicta of the Hebrew Law; "Eye for an Eye, Tooth for a Tooth." This has frightened people away from the intelligent and fair pursuit of this ancient yet highly developed system of Law. This misconception is true of the Athenian Jurist Draco. His code is fabled to have been written in blood; death was the least of the punishments he inflicted but it is indeed interesting to note that according to his code a murderer was permitted to fly in order to escape the vengeance of his victim. Deutch on the "Talmud" in the London Quarterly Review for October, 1867, says, "In no other nation were ever current such simple form of Criminal investigation. Such ample safeguards for the accused, nowhere so much as here, has conscientious practice so far surpassed a highly liberal theory, above all, in point of humanity."

The qualifications of witnesses were most exacting and high. The following persons were incompetent to be witnesses: women, slaves, minors, demented persons, deaf and mute, blind men, persons convicted of irreligion, or immorality, or strongly suspected thereof, gamblers, usurers, and farmers, or collectors of imposts, illiterate or immodest persons, relatives by consanguinity or affinity and persons directly interested in the case, a glance at this array of exceptions to witnesses must remind the reader of the "Challenge to the Polls of the Jury," in Common Law which are: Propter honoris respectum, propter defectum, propter affectum, and propter delictum, Blackstone III 361.

Rabinic jurisprudence being founded upon human nature and divine justice, threw every possible safeguard around the accused according to the Common Law, a conviction on the testimony of an accomplice, uncorroborated is legal. Roscoe 119. But this evidence is improper according to the Talmud. Kiddushin 58.

Neither the Bible or the Talmud imposes upon the witnesses any oath to confirm his testimony. This provision is respected in the Civil Practice act of New York State. The Divine prohibition of bearing false witnesses was considered by Moses and the Jewish Legislators succeeding him, as sufficient to induce people to state truths only. Indeed, some Jewish Philosophers consider swearing injurious in itself; for he who swears is Ipso Facto suspected of lacking credibility, Philo Judeaus De Decalogo III.

The "Talmud" set a high standard for the qualification of a Judge. He was required to be proficient in various branches of sci-

entific knowledge, especially in medicine and astronomy. The services of an interpreter were never permitted; the judges were therefore bound to be acquainted with the tongues of the neighboring nations. It was necessary for them to be such apt and skillful logicions that they could demonstrate from the written text of the Pentateuch itself that all reptiles varying declared to be impure were pure. These qualifications were desired in order to secure for the unfortunate offender, the advantage of skillful and acute and learned counsel.

The relief of the poor was compulsory. It was permissible to enter a strangers garden or orchard to satisfy one's hunger. Petty Larceny and trespassing were therefore impossible.

The penal code of the Hebrews dealt practically with a small number of offenses. In our Law, only ignorance or mistake of fact excuses the crime. But not error in point of law—while Talmudic Jurisprudence allows conviction only when the criminal is not ignorant of even the slightest point of Law.

The following questions were asked the person about to give evidence:

1. In what Schemitah—cycle of seven years, reconing from the last jubilee was the offense perpetrated?
2. In what month of the year?
3. In what year of the Schemitah?
4. In what day of the month?
5. On what day of the week?
6. At what hour of the day?
7. In what place?

Replies to these questions were indispensable and imperative. Failure to answer any one rendered the testimony nul and void.

To procure the condemnation of an accused person two competent, independent and unrelated witnesses were absolutely necessary. No evidence as to the prisoner's antecedents was admissible. No previous conviction might be urged against him, no proof of character, good or bad, were permitted to impeach the witness. Heresay evidence was rejected as worthless and circumstantial evidence was inadmissible. When a conflict as to a natural fact in the testimony arose the evidence was rejected if a witness in a case of murder testified that the criminal was attired in a black coat, another asserted that he was wearing a white coat—their evidence was admitted. If, however, one said the murder was committed with a spear and the other with a knife, this constituted a material contradiction of a material fact.

The day that condemned an Israelite was a fast day for his judges. The day after the trial each judge in succession pronounced his decision and repeated the argument upon which it was based. The Scribes, tablet in hand, compared the statements now made with those recorded upon the previous days. If any member of the Tribunal, voting for a conviction founded his judgment upon reasoning materially opposed to that he before urged, his verdict was not accepted. One who had resolved to acquit on the preceding day was not permitted to change his determination. But anyone who had decided to convict, upon furnishing the Synhedrian with the original argument inducing him to do so could vote on this decision in favor of an acquittal; the sentence was again deferred in order that an opportunity may be had for the discovery of new evidence. At sunset the sentence and execution took place. The Court prayed that they might not commit sin and decreed death.

As soon as the punishment of death was decreed the criminal was conducted from the Court. Two elders, the witnesses and the officers of the Tribunal accompanied him. An attendant walked in advance —proclaiming aloud, 'So and So is to be executed for Such and Such an offense. So and So are the witnesses, the crime was committed at such a place on such a day, at such an hour. If any person can urge anything against the infliction of punishment, let him go to the Synhedrian now sitting and state his arguments.

The condemned man would be pressed for confession within six yards of the place of execution. If he refused to acknowledge his guilt he was asked to say "May death prove an atonement for all my transgressions." He was then conducted to within four yards of the place where the sentence was to be carried into effect. The death draught was here administered, the beverage was composed of Frankincens in a cup of vinegar or light wine. This made him semi-conscious and caused him to be indifferent and unmindful of the pain. The following were the methods of imposing the death penalty.

I. Stoning to Death

The criminal was conducted to an elevated place, divested of his attire if a man and was then hurled to the ground below. The height from which he was thrown was always more than fifteen feet. The elevation was not to be so high as to smash or disfigure the body. The first of the witnesses who testified against the condemned man acted as executioner in accord with Deutronomy XVII 7. If he was

not quite dead, a stone so heavy as to require two persons to carry it was taken to the top of the height from which he had been thrown and hurled on him who lay below.

A few days after an execution the friends and relatives of the dead man, who was no longer regarded as an offender, called upon the judges who had tried, and those charged with the administration of the law were regarded with no revengeful feeling by the family and friends of the dead man. Death by stoning was the penalty of the following crimes:

Adultery of an unnatural character.
Blasphemy and any form of idolatry.

II. Death by Burning

A criminal sentence to death by burning was executed in the following manner:

> A shallow pit some two feet deep was dug in the ground and in this the condemned person was placed standing up. His feet were firmly entrenched in the ground. A rope was pulled around his neck and suffocation was immediate. As the condemned man felt the strain of the cord the lower jaw dropped. Into the mouth thus opened a lighted torch was quickly thrown. This constituted the burning.

III. Decapitation

This was considered the most degrading death that any man could suffer. It was the penalty in cases of assassination and deliberate murder. It was incurred by those who wilfully and wantonly slew a fellowman with a stone or with an implement of stone or iron. The method of carrying out the execution by decapitation was effected as in burning and also as in stoning.

IV. Strangulation

Strangulation was a form of death by suffocation. It was effected as in burning.

These were the only modes of execution in accordance with Hebrew law. Crucifixion as practiced by the Romans and Carthaginians was unknown to the Scripture and Talmud.