

**CAPITAL PUNISHMENT
AMONG THE JEWS: A PAPER
READ BEFORE THE NEW YORK
BOARD OF JEWISH MINISTERS**

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Capital Punishment Among the Jews: A Paper Read Before the New York Board of Jewish Ministers by D. De Sola Pool

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D. DE SOLA POOL

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A PAPER READ BEFORE THE
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BY
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CONTENTS

THE FOUR METHODS OF CAPITAL PUNISHMENT	1
(a) <i>Stoning</i>	2
(b) <i>Burning</i>	6
(c) <i>Beheading</i>	9
(d) <i>Strangulation</i>	12
JEWISH ATTITUDE TOWARDS CAPITAL PUNISHMENT	15
RABBINICAL MODIFICATIONS	21
LEGAL RESTRICTIONS	25
PRACTISE AND THEORY	35
POST-TALMUDIC DEVELOPMENT	46

CAPITAL PUNISHMENT

In the following essay, an attempt is made at tracing the history of capital punishment among the Jews. From the Biblical period onwards, there took place a long and complex development of the principles, the methods and the application of capital punishment.

The story of this development is contained chiefly in the Old and the New Testaments, Josephus, the Rabbinic writings and the Responsa of the Middle Ages. The following study, which is based on these sources, attempts to make clear what was the nature of this development.

The Four Methods of Capital Punishment

According to a saying of the Rabbis, nine hundred and three different methods of death have been created for man.¹ But Rabbinic jurisprudence recognised only four legal methods of inflicting death as the penalty for a capital crime, namely: stoning, burning, decapitation and strangulation.² One man, Yakim (or

¹Ber. 8a, with reference to Ps. lxxviii, 61.

²Mishna Sanh. vii, 1.

Yakom), a nephew of Jose ben Joezer (2nd cent. B. C. E.), is said to have killed himself by all four methods at once. He first set up a beam from which he hung a noose. Then he arranged faggots at the foot of the gibbet, surrounded them with stones and set a sword with its blade pointing upwards in the stones. He then kindled the faggots and hanged himself in the noose, the flames burned away the rope so that his body fell into the fire, and at the same time on to the stones and on the sword-blade.³

(a) *Stoning*

In appraising the Jewish attitude towards capital punishment in general, it is necessary first to examine the history of these four methods of capital punishment among the Jews.⁴ The first to engage our attention is STONING (*Sekilah*).

In Biblical and Rabbinic legislation, stoning is the punishment decreed for a number of transgressions, such as idolatry, Moloch worship, magic, necromancy, false prophesying, Sabbath desecration, blasphemy of God's Name, cursing of parent, and other crimes, seventeen in all, listed in the Mishna.⁵

Stoning was apparently the usual method of inflicting the death penalty in Biblical times whenever burning was not specifically called for.⁶ It was

³Gen. Rab. lxxv, 22.

⁴This subject has been dealt with at length by A. Buechler, *Monatsschrift f. Geschichte u. Wissenschaft des Judentums*, 1906, Vol. L.

⁵Sanh. vii, 4.

⁶Compare Lev. xx, 10 with Deut. xxii, 24; and Num. xv, 35 with Exod. xxxi, 14f, and xxxv, 2; Matt. xxv, 37; Luke xiii, 34.

carried out outside the camp or town or at the gate,⁷ by the people or mob, without any other ceremony⁸ than the casting of the first stone by the witnesses.⁹

In post-Biblical times, we find that according to John x, 31, "the Jews took up stones again to stone" Jesus. According to Acts vii, 57f, Stephen, the proto-martyr of the Church, was stoned, but whether by the uprising of the mob or by judgment of the court, is not clear.¹⁰ According to Luke xx, 6, the chief priests and the scribes and elders feared to suggest that John the Baptist was not a prophet, because if they did so "all the people will stone us." In a passage which is admittedly a Christian interpolation in Josephus, we are told that the Sadducean high priest Anan (62 C. E.) removed James, the brother of Jesus, and some others by stoning, after a semblance of a legal trial.¹¹

In the Rabbinic literature also, there are incidental references to actual cases of stoning, which may seem to imply that in the earliest Rabbinic period lapidation was carried out in the simple manner described in the Bible. In the Mishna,¹² it is stated that a priest who ministered in the Temple in a state of ritual impurity was beaten on the skull by the young priests, with

⁷Lev. xxiv, 14, 23; Num. xv, 35f; Deut. xvii, 5; xxi, 19ff; xxii, 24; Acts vii, 58.

⁸Lev. xxiv, 16; Num. xiv, 10; Deut. xxi, 21; xxii, 21; I Sam. xxx, 6; I Kings xii, 18; xxi, 10, 13; II Chron. x, 18; xxiv, 21; Exod. xvii, 4; viii, 22; Josephus, *War* I. xxvii, 6; *Antiq.* XVI, xi, 17; XVI, x, 5.

⁹Deut. xvii, 7.

¹⁰Overbeck, *Apostelgeschichte*, 114; J. Juster, *Les Juifs dans l'Empire Romain*, II, 138, note 2; Schuerer, II, 262.

¹¹*Antiq.*, XX, ix, 1; Schuerer (4th edit.), I, 581.

¹²Sanh. ix, 6.

blocks of wood.¹⁸ In early Rabbinic times, the death penalty by stoning was undoubtedly carried out. Rabbi Eleazar ben Jacob (1st cent. C. E.) states that as an exemplary measure, the Jewish court (*Beth Din*) in Grecian days, imposed the sentence of stoning on one who rode on horseback on the Sabbath.¹⁹ Tosefta Sanhedrin ix, 5, mentions a definite case of a man going out to be stoned. Tradition states further that Ben Satda, later wrongly identified with Jesus²⁰, was stoned.²¹ The Beth Din in Jerusalem is also said to have inflicted the death penalty by stoning for a case of apparent incest and for another gross crime.²² But whether any of these cases of stoning was carried out in the Pharisaic method of precipitation described in the Mishna Sanhedrin vi, 4, is not clear from the sources.²³

It may be asked what basis there was for the Pharisaic modification of lapidation to precipitation. In a war with Edom, captive Edomites were killed by being precipitated from a rock.²⁴ Two Jewish mothers who had circumcised their children during the persecutions of Antiochus Epiphanes are said to have been killed by being hurled from the wall of the city.²⁵ The

¹⁸Compare Tosefta Kelim i, 6; Josephus, *War*, I, xxvii, 6.

¹⁹F. Chag. II, 14, 78a; Sanh. 46a.

²⁰Tos. Sabb. 104b; Chajes in *Hagoren*, IV, 33-37; Zuckermandel, *Gezam. Aufsätze*, II, 193.

²¹Sanh. 67a; Tos. Sanh. x, 11; J. Sanh. VII 2, 25d top.

²²Kid. 80a; Git. 57a.

²³Buechler *loc. cit.*, p. 691, doubts whether the method of precipitation was ever legally used.

²⁴II Chr. xxv, 12.

²⁵II Macc. vi, 10; but Josephus, *Antiq.*, XII, v, 4 says that they were crucified and then strangled by having their children hung round their neck.

false witnesses who accused Susanna were similarly dealt with.²¹ The gospel according to Luke relates that the people of Nazareth wished to cast Jesus headlong from the brow of the hill whereon their city was built.²² Precipitation was therefore a well recognised modification of lapidation, and not a sheer invention of the Rabbis.

A similar modification was very early introduced in the treatment accorded to the scapegoat. Instead of the scapegoat being sent forth into the wilderness, as the Bible describes,²³ it was in practise precipitated from a rock. Similarly, the Pharisaic tradition early substituted precipitation for stoning in the case of human punishment. According to a convincing emendation of a Talmudic text suggested by L. Ginzberg,²⁴ precipitation had taken the place of lapidation at least as early as the time of R. Jochanan ben Zaccai, (fl. 75 C. E.).

The Rabbis held lapidation to be the most severe of the four death penalties, and precipitation was regarded as a humane modification of it. The Mishna states that the victim was thrown from twice a man's height, i. e., about 11 feet. But if you wish to ensure a certain and easy death, asks the Talmud, why not cast him from a greater height? The answer is given because that would lacerate the body.²⁵ The words "his blood

²¹Susanna 62, LXX text.

²²Luke iv, 29.

²³Lev. xvi, 22.

²⁴Students' Annual, 1914, pp. 146, 147. I gladly take this opportunity of acknowledging my indebtedness to Prof. Ginzberg who read this essay in manuscript and gave me valuable suggestion on many points.

²⁵Sanh. 45a bottom.