

Bethel AME Church
Insights from the Rabbis 2
Class Notes 4/4/21

Last week we looked at the story of the woman taken in adultery and discovered that we have a whole lot of ideas about this story that have been added to the text that aren't really there. I argued that those ideas come from the anti-Jewish stereotypes that are part of Christian tradition. I suggested that rather than being a story about forgiveness of sin, which is nowhere mentioned in the text, it is actually a story about crime and punishment. Adultery was not just a private sin; it was a public crime punishable in a court of law. I want to explore more of the background for this puzzling story to help us understand the context of what Jesus says and does.

2. Capital Punishment

a. For Murder

Much to the dismay of modern liberal Christians, the Bible seems perfectly accepting of the practice of capital punishment. In the same passage in Genesis where we saw the prohibition against consuming blood, God tells Noah, "Whoever sheds human blood, by a human will his blood be shed, for God made humanity in his own image" (Gen. 9:6; see Numbers 35:16-18). Although many supporters of capital punishment have thought that verse makes the issue quite clear, in fact we see that things are much more complicated than that, both in the Bible and in later rabbinic teaching.

First, that verse is not a commandment but a simple statement of fact. There will come a reckoning: bloodshed will lead to more bloodshed. But the passage does not spell out just how this will happen. We do know that long before Torah established any type of legal system to carry out capital punishment by the state, ancient cultures including Israel had the practice of what is sometimes called the "blood avenger" (literally, "blood redeemer," someone who restores a situation to its proper state, who makes things right). The responsibility for retribution when someone was killed fell on that person's family, usually a close relative. If someone caused the death of a family member, they were hunted down and killed.

Torah allows for that practice to continue, but with a somewhat strange restriction. Torah sets up cities of refuge where someone who has committed unintentional homicide can flee for safety from the blood redeemer (Numbers 35:9-27; Deut. 19:1-13). An intentional murderer, however, is to be handed over to the blood redeemer by the elders of that city for execution. More oddly, if the person who killed someone accidentally is caught by the blood avenger before he can reach a city of refuge, the avenger can kill him without being accused of murder, even though according to Torah unintentional killing was not a capital crime. So at least in ancient Israel, capital punishment for murder was not primarily the responsibility of the state but rather the family of the victim. Torah only seeks to limit that common practice so that it does not become merely an act of vengeance.

Complicating the issue further, by the time we get to that verse in Genesis 9, we already have two instances where the death penalty should have been applied but was not. God

threatens Adam and Eve with death for eating from the tree (Gen. 2:17) yet in fact they are only kicked out of the Garden. Cain murders Abel (Gen. 4) but God simply sends Cain away with His mark of protection on him so no one else will execute him, so that he will be safe from the redeemer of blood. Both stories seem to indicate exile, not death, is the punishment for capital crimes. Later, Moses kills an Egyptian (Ex. 2:12) but again is only forced to flee into the wilderness. And perhaps most astonishing, David commits both adultery and murder yet no one suggests that he be executed for either crime. They remain heroes of the faith.

We have seen that the Bible is a mixture of narrative and law, of story and teaching, and that the two are intentionally interwoven to create a complex vision of God's truth. So the biblical narrative already cautions us about how we are to understand the laws, even as the laws provide some commentary on the narrative. The laws do not always describe how people act, and may not have always been taken literally. Torah certainly gives Israel permission to use the death penalty, but that does not mean that Israel insisted on that right all of the time or that execution was necessarily the right way to deal with a particular situation. As we will see, there are other principles in the Law that mitigate against an automatic insistence on the death penalty.

b. For Adultery

This is particularly true about adultery. It is doubtful that Jews in Jesus' day were regularly executing adulterers. We have no evidence that they were. The story in John does not presume that people were automatically executed for adultery or there would have been no question to ask Jesus. We have already seen one famous rabbinic pronouncement about adultery from that time period. Rabbi Shammai, supposedly a strict interpreter of the Law, says that adultery is grounds for divorce. He never mentions stoning as a way of ending the marriage. If Jesus had responded that they should follow the Law of Moses and put the woman to death, he may have been perceived as unusually harsh and inflexible in contrast to the custom of his day.

We see this also in the case of Mary, the mother of Jesus, who after her engagement to Joseph becomes pregnant by someone else (Matt. 1:18-19). Effectively this was equivalent to adultery and the claim is sometimes made by preachers that the Law required Joseph to have her stoned. But as we have seen that simply isn't the case.

Furthermore, in our English versions there is a translation issue in the passage. The NRSV translates verse 19: "Her husband Joseph, being a righteous man and unwilling to expose her to public disgrace, planned to dismiss (or divorce) her quietly" (see also KJV). However, the NIV reads: "Because Joseph her husband was faithful to the law, and yet did not want to expose her to public disgrace, he had in mind to divorce her quietly." The crux is whether to say "and" or "but." Both translations are possible from the Greek. Does Joseph choose to divorce her quietly because he is a righteous man, or does he do this despite being a righteous man? As I said, some people would claim that a righteous man was obligated to have her executed. The NIV's "and yet" follows this line of thinking.

But Joseph does not even consider this option. His is a choice between public shaming or a quiet divorce. Again, there is no mention of stoning and I think it is wrong to read it into the passage. Joseph's righteousness as a faithful observer of Torah means that he had

developed a more complex and holistic understanding of the Law, focusing on what Jesus called its “weightier matters” (Matt. 23:23) that include mercy towards sinners and faithfulness even to an erring spouse. Joseph does not have to put aside his faithfulness to the Law in order to do what he had in mind. Joseph’s righteousness is demonstrated precisely by his considerate treatment of Mary. (The NIV once again imports its anti-Jewish bias into its translation by understanding “righteousness” to mean an unthinking adherence to one particular law in isolation from the rest rather than a more thoughtful consideration of the broader teachings of the Law as a whole.)

Later the rabbis will see publicly shaming someone as a very serious offense. In a fascinating discussion in the Talmud, one rabbi begins by asserting, “Anyone who humiliates another in public, it is as though he were spilling blood” (*Bava Metzia* 58b). Another rabbi intensifies the sentiment, saying that only three types of sinners will not ultimately be saved: adulterers, one who humiliates someone else in public, and one who calls another a derogatory name. (As we will see, Jesus says something similar about such public name-calling). Another rabbi responds that it is actually better to commit adultery than to humiliate someone publicly, arguing somewhat obscurely from the story of David. Finally, the discussion ends with the affirmation by several rabbis that, “It is better to throw yourself into a fiery furnace than to humiliate another in public” (*Bava Metzia* 59a). Their proof text for this is the story of Tamar (Gen. 38), who risks being burned alive for adultery rather than shame Judah publicly. Instead of denouncing Judah to her accusers as the one at fault for her pregnancy, she sends him a private message that allows him to decide whether to take public responsibility. When Judah realizes what she has done, how she has spared him public shame, he commends her for being more righteous than he is.

So contrary to the NIV, Joseph’s faithfulness to Torah was precisely why he acted the way he did. Righteous Joseph understood the Law to be a *torah* of *chesed*, instruction or guidance in living a life of faithful loving-kindness. Despite Joseph’s discrete handling of the matter, Pastor has often suggested that we imagine Mary living under a cloud of public gossip and rumor, and that may well have been true, at least for a time. The evidence of her “sin” was clear for all to see and people in those days did know how to count. But there is no suggestion in the NT that anyone tried to stone her for adultery or that she lived her whole life wearing a scarlet letter and being shunned by her neighbors. Righteous people did not have to execute adulterers in order to be faithful to the Law.

c. For a Rebellious Son

In Torah, a number of specific crimes besides murder and adultery carry the death penalty as punishment. The most curious, and perhaps the most problematic one is the case of the rebellious son. “*If someone has a stubborn and rebellious son who does not obey his father and mother and will not listen to them when they discipline him, his father and mother shall take hold of him and bring him to the elders at the gate of his town. They shall say to the elders, ‘This son of ours is stubborn and rebellious. He does not heed our voice. He is a glutton and a drunkard.’ Then all the men of his town are to stone him to death. You must purge the evil from among you. All Israel will hear of it and be afraid*” (Deut. 21:18-21).

The rabbis are greatly perplexed and disturbed by this law and come up with so many restrictive interpretations of it that they essentially nullify the law. It can only apply to a son, not a daughter, and the son must not be a minor, when he would not be responsible for the law (i.e., before the age of bar mitzvah) nor can he be an adult, when he is no longer under his parents' authority. So they find only a 3-month window in which this law could apply, defined curiously by the onset of the growth of pubic hair. The parents must both be in agreement about wanting their son to be executed, and they must have similar sounding voices, since they are said to speak with one voice (the word is singular in v. 20). One rabbi takes that further and says that speaking with one voice also implies that the parents must be similar in appearance and height! Nor can either parent have a physical disability (missing a hand, lame, mute, blind, deaf) that would prevent them from precisely following the actions mentioned in this law. The son's bad behavior is limited to a combination of gluttony and drunkenness: he must have consumed a large amount of meat and wine at the same time (exact amounts are specified and no other foods count), and purchased that food with money stolen from his parents. The son must have been properly warned about his behavior in advance and punished for his disobedience first not simply in private by the parents but in a court of law. If one of these conditions is not met (and a few other minor ones as well) then the law cannot be applied (see *Sanhedrin* 68b, 70a, 71ab).

As a result of this discussion, Rabbi Shimon says, "*There has never been such a son and there never will be one in the future*" (*Sanhedrin* 71a). The conditions that have to be satisfied are so numerous that in effect the rabbis have cancelled out this law. Having reached this conclusion, Rabbi Shimon asks, "*Why then was it written? So that we should study the passage and receive reward for it.*" In other words, even though we do not take it literally, it still has serious things to teach us about parenting and the behavior of children and how that affects all of society. Again, this is a crime, not just a sin.

One rabbi objects to what R. Shimon has said, and says that he has personally seen such a case and has sat on the grave of the rebellious son. Further in the discussion, R. Yose the Galilean says that there is good reason for applying this law literally. It was more than just because the son consumed a large quantity of meat and wine. "*Torah foresaw the ultimate destiny of the stubborn and rebellious son. Having dissipated his father's wealth, he would seek to satisfy his wants and be unable to do so. He would then go to a crossroads and rob. Therefore the Torah ordained: Let him die innocent rather than die guilty—for the death of the wicked benefits both them and the world*" (*Sanhedrin* 71b). In other words, if he is not stopped now, he will go on to do even worse things.

Rabbi Sacks comments that R. Yose is articulating one particular idea in secular law about punishment: that it is to serve as a deterrent to future crime, rather than simply retribution for past crime (*Deuteronomy*, p. 190). He goes on to argue, as have many other Jewish authors, that such an idea goes against not only the biblical idea of justice but also the biblical idea of repentance. To punish someone for what they might do in the future is unjust and denies the possibility that the person might ever change. Jesus tells a parable about a rebellious son who looks very much like the one described in Deuteronomy, yet there is no suggestion that he should be put to death. Rather the father is eagerly waiting for him to repent and return.

So again, there is no evidence that Jews in Jesus' day, or any other time, were regularly executing rebellious children. Despite the fact that Torah contains laws that prescribe the death penalty, in reality people did not always insist on that punishment nor does God. Adultery might have been grounds for divorce or for execution, but certainly both the Old and New Testaments would value repentance and reconciliation as better solutions. Mary's husband Joseph understood this and so did the prophet Hosea. Note that the death penalty is prescribed for most of the offenses in the Ten Commandments: idolatry and blasphemy, Sabbath breaking, dishonoring parents, murder, adultery, and bearing false witness. This underscores the seriousness of these crimes in Israel's community and the need to keep Israel free from them. But as we have seen, Jews who read and interpreted the Law did not feel bound to apply the extreme punishment all the time. Jesus clearly follows that interpretive tradition in his treatment of the woman taken in adultery.

d. In the Talmud

As we saw with the case of the rebellious son, some of the most important rabbis shared Jesus' reluctance to impose the death penalty, and the Talmud contains lengthy discussions of the issue. As we have seen, Torah requires that there must be at least two eyewitnesses to the crime, who are to be examined closely and at length, and sternly warned, even threatened, with the punishment for false testimony. If they are found to be lying, they are subject to the same penalty: death. The rabbis actually modify the requirement for witnesses to adultery (since as we have seen, that would be difficult). The husband must have warned the wife in advance, in the presence of two witnesses, that she should not be involved with a particular man and only if she persists in her behavior can she be brought to trial (*m. Sotah* 1.1-2).

In capital cases, the Talmud says that the court must consist of 23 judges, with at least a two-judge majority for conviction. The trial must open with arguments in favor of the defendant and the judges must seek out witnesses who can support the defendant's case (*m. Sanhedrin* 4.1). Innocence is presumed and any evidence for it at all must be aggressively sought out by the court. In other words, there must be a sustained and concerted effort to defend the accused rather than a rush to convict. If the court rules to convict, the execution must not be carried out the same day, so that the judges can sleep on their decision and perhaps change their minds. Paradoxically, for this reason, the Talmud specifies that a unanimous decision to convict must lead to an acquittal, since there is no one to argue the case for the defendant and therefore the opportunity for the judges to be persuaded to change their minds has not been provided. So the Talmud presumes that even after the verdict has been rendered, the dissenting opinion, the minority report, must still be given an opportunity to argue its case for acquittal. The sense I get from what I have read is that the rabbis are looking for any possible reason to avoid having to condemn someone to death even though they can't deny that Torah allows for it.