‘‘Ki Teitzei: Ancient and modern delinquency “

By Rabbi Dr Jeffrey Cohen

According to the Talmud, the institution and execution of בן סורר ומורה , ‘‘the stubborn and rebellious son’’ (Dt. 21:18), was a purely theoretical situation, ‘which was never implemented and never will be’ (San.71a). This accords with the view that a Sanhedrin that executes a person once in seven years— another view quotes that as once in seventy years— is called ‘‘a Sanhedrin of murderers!’’ Rabbis Tarfon and Akivah stated, ‘Had we been on the Sanhedrin no one would ever have been executed’ (Mish. *Makkot* 1:10).

Indeed, Judaism’s Oral Law hedged all capital crimes around with so many preconditions that it was declared virtually impossible for a court to implement the death penalty and risk executing an innocent man. The objective of attaching a specific penalty to any biblical law, therefore, seems to have been to convey an appreciation of the comparative severity attached to each transgression.

We live in a so-called progressive and enlightened age, meaning that we have an exaggerated level of toleration for delinquency, notwithstanding the inevitable danger to which this exposes the public, with only a minority of reported crimes ending in conviction. Thus, a recent national study estimated that only 37% of reported rapes are prosecuted, with a staggeringly low 18% ending in a conviction! Hence, the biblical notion of imposing capital punishment on a youth of 13-plus for the crime of drunkenness and violent delinquency would be anathema to the thinking of our judiciary. Hence, we should point out that the Torah did not designate a youth as ‘a stubborn and

rebellious son' simply because 'he didn't listen to parental instruction' (Deut. 21:18).

The following verse makes it clear that the situation would be instigated through a state of despair on the part of parents who come to the anguished conclusion that their child is wholly uncontrollable. They appeal to the authorities who, if they uphold their assessment—ויסרו אותו— 'chastise him.' This involved the administering of lashes (once again, wholly unacceptable to 'our enlightened society!'). We may assume that such a traumatic and public experience would be sufficient to fulfil its intention of prompting the delinquent to take stock of his life.

That was the hope and expectation. But the Torah legislates further for a truly 'stubborn' and potentially hardened criminal. Hear the language:

> If he (still) will not listen to them, then his father and mother shall seize hold of him and bring him (once more) to the elders of his city and the gate of his place. And they shall declare to the elders of his city, 'This son of ours is stubborn and rebellious; he refuses to obey our voice; he is a glutton and a drunkard' (vv.18-20).

Imagine a situation where the previous 'chastisement' of the elders had absolutely no effect, and the parents come to the joint conclusion that their child is irredeemable! We may well imagine the disruption to their lives he had already wrought by his behaviour and the humiliation they had suffered over the years as the local townspeople kept reporting on and complaining about his conduct and the wicked influence he was on his peers. Knowing what the next judicial stage would lead to, we may assume that they would only have

proceeded to it in the full knowledge that their son was, without a shadow of doubt, a hopeless case and a danger to society, and that it was only a matter of time before his way-of-life led to his undoing.

Now, although the Torah does not refer to the alternative of incarceration in such a situation, such an institution did exist. Hence, when Moses was uncertain as to what punishment to hand down to the man caught gathering sticks on Shabbat, he consigned him to imprisonment (Nu. 15:34). I take the view, therefore, that it is more than likely that, in the case of 'the stubborn and rebellious son,' the elders would have viewed each case on its own merit, and that the imposition of capital punishment would have been viewed as the very last resort. Hopefully, a period of incarceration would prove a permanent deterrent.

Chronologically, the Torah placed the law pertaining to this type of delinquency immediately following on from that relating to the dysfunctional and strife-ridden family, wherein there are two wives, 'one loved and the other unloved.' This is not too far removed from one of the causes adduced for modern day delinquency, namely the emotional turmoil of children from broken homes, and especially those left to their own devices while single mothers struggle to eke out a livelihood.

Our tradition infers such a fraught situation as underlying the phrase, "'[a child who] doesn't listen to the voice of his father *and* the voice of his mother" (v.18). Hence the law that he is not to be punished as 'a stubborn and rebellious son' if his father and mother do not *speak with one voice.* Where there is parental strife, a lack of harmony in the home, or 'the voice' of one of the parents articulates contradictory values, advice or guidance, the Torah does not attach blame to the son, but to his parents!

Another most pertinent Talmudic inference from that phrase is that it is only where there is both a father *and* a mother that he is dubbed a delinquent. Where he is the product of a one-parent family, however, his anti-social and violent behaviour makes him a blameless victim of circumstances.

What is the nature of this biblical delinquent? The Torah refers specifically to an addiction to gluttony and drunkenness (v.20), that is to the cultivation of addictive physical pleasures that are far beyond his pocket, with the inevitable result that he will turn to crime to feed that addiction. In our age that is precisely the scenario, created by drink and drugs—leading to theft and violence— that fuels such a high proportion of crime.

The preceding episode, to which we have referred above, contains a warning to the husband of that 'unloved' first wife, that, when drawing up his will, he may not deprive her son, the firstborn, of the extra portion of the estate, to which the firstborn is entitled, in favour of the son of his loved wife. Again, we have echoes here of the sense of hurt and deprivation felt by those born into poverty who view themselves as an unloved underclass, and who are frequently moved to seize their 'birth-right' by force.

Reading of the social and domestic stresses and strains attending those ancient biblical scenarios, one is struck by the perception of the popular French expression, *plus ça change, plus c'est la meme chose.*

Shabbat shalom,

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