

Practical Hermeneutics: JAP346

## STONING ADULTERERS

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This article first appeared in the Practical Hermeneutics column of the CHRISTIAN RESEARCH JOURNAL, volume 34, number 06 (2011). For further information or to subscribe to the CHRISTIAN RESEARCH JOURNAL go to: <http://www.equip.org/christian-research-journal/>

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In his *Letter to a Christian Nation*, Sam Harris reminded Christians that God, in His “timeless wisdom,” commanded that we must “stone people to death for heresy, adultery, homosexuality, working on the Sabbath, worshipping graven images, practicing sorcery, and a wide variety of other imaginary crimes.” He further added, “If we are going to take the God of the Bible seriously, we should admit that He never gives us the freedom to follow the commandments we like and neglect the rest. Nor does He tell us that we can relax the penalties He has imposed for breaking them.”

New atheists and other critics of Christianity routinely include lists of passages such as these in their writings. Harris’s calling of Christians to live today as God commanded in the Old Testament makes a great blunt instrument; on a cursory reading of these passages one is immediately struck by the apparent harshness of the penalties, thus we are supposed to share in his amazement that it is “possible for people to believe such things in the twenty first century.”

Consider Harris’s example of stoning adulterers, found in Deuteronomy 22:22: “If a man is found sleeping with another man’s wife, both the man who slept with her and the woman must die. You must purge the evil from Israel”; and in Leviticus 20:10: “If a man commits adultery with another man’s wife— with the wife of his neighbour— both the adulterer and the adulteress are to be put to death.” Harris is essentially asking, “Why don’t Christians today stone women who commit adultery? Isn’t this what the Bible commands?”

I’ll make two points. First, those who press this line of argument assume that these commands are addressed to contemporary Christians. This is a dubious assumption—the laws occur as part of a covenant or vassal treaty between the tribes of Israel and God. While some of the laws reflect rules of justice and equity applicable to all people, Gentiles were not parties to this treaty nor were Gentile Christians required to be—something the New Testament spends a lot of time elaborating on.

Second, and this will be my main focus, this line of argument assumes that these laws should function like modern statute law, as literal and binding commands to kill people who have committed certain crimes. It is also assumed that the author of these

laws expected them to be carried out. It is precisely these assumptions that many scholars of these laws have questioned. Here are some reasons why.

### GRUESOME DEEDS OR GENRE DEVICES?

Comparisons between Leviticus and Deuteronomy and other ancient Near Eastern law codes written around the same time suggest they are all of the same genre. One feature of such codes is seemingly harsh penalties. In old Babylonian law, the hand that assaults was severed; a man who kissed another's wife was to have his lips cut off; a person who stole bees was to be stung by bees; a man who raped another's wife would be sentenced to having his own wife or daughter raped; a negligent builder whose house collapsed and killed another's son would be sentenced to having his own son killed, and so on.

Raymond Westbrook, an expert on the ancient Near East, notes that these prescribed punishments are both inconsistent with the actual legal practice known to have occurred in these cultures and are often internally inconsistent. He notes, "some law codes impose physical punishments and others payments for the same offenses, while some codes have a mixture of the two." The contradiction is only apparent because, "in high-lighting one or the other alternative, the codes are making a statement as to their view of the gravity of the offence." He argues that the laws "reflect the scribal compilers' concern for perfect symmetry and delicious irony rather than the pragmatic experience of the law courts." Westbrook concludes that the method used in ancient Near Eastern legal texts was "to set out principles by the use of often extreme examples."

Old Testament scholar John Goldingay suggests that many of these laws "were not intended to be enforced" but rather were "promulgated to indicate the moral and social priorities of the law giver." They functioned to express certain ideals of behavior, to denounce actions, such as adultery, as being really bad rather than to define precise penalties for these actions.

Westbrook points to the practice of "ransoming" as an explanation of how this worked in application. In ancient Near Eastern legal practice, a person who committed a serious crime would be considered to have forfeited their life or limb, but this did not mean they were executed or mutilated. Instead, they could "ransom" their life or limb by making a monetary payment and/or agreeing to some lesser penalty usually set by the courts. These texts were written and read with the background assumption that penalties would often be ransomed and not literally carried out.

**An Absurd Assumption.** Westbrook is not alone in this view. In a study of ancient Near Eastern laws, J. J. Finkelstein noted the absurdity and impossibility of putting many of these laws into practice. One Babylonian law, for example, stated that a physician whose patient died in surgery or was blinded by treatment was to have his hand cut off. Finkelstein remarked that "it is inconceivable that any sane person in ancient Mesopotamia would have been willing to enter the surgeon's profession if such a law were literally enforced." However, "if a system of ransom were assumed where the life

of the builder or his son could be redeemed and the hand of the physician could be redeemed by pecuniary ransom, these laws would not only have an admonitory function (for which the more graphic statement of the penalty—execution or mutilation—is more effective), but would also be practical as law.”

He concluded that the laws “were not meant to be complied with literally even when they were first drawn up, [but rather they] serve an admonitory function. If one would be bold enough to restate Hammurabi’s 230 as a direct admonition it might run to this effect: ‘woe to the contractor who undertakes construction and in his greed cuts corners.’”

From early rabbinical times, commentators have noted that the Torah appears to operate with the same assumption. For example, Exodus 21:29–32 addresses a case where if an ox gored another person to death due to negligence on the part of the owner, “the owner also must be put to death,” but the very next verse states that “if payment is demanded of him, he may ransom his life by paying whatever is demanded.” The text literally demanded a person be put to death but assumed the punishment would be substituted for a fine set by the courts.

**Clearing This Up with Some Clues.** Not only is ransoming implicitly assumed in many of the Old Testament laws about homicide, but reading the text this way explains many features of the text that otherwise appear inexplicable.

Gordon Wenham observes that “according to Deut xix19 false witnesses were punished with the punishment the accused would have suffered if substantiated,” that is, the penalty for falsely accusing a woman of adultery was not execution, but an unspecified punishment alongside a monetary fine. Wenham concludes that a monetary substitution must have been envisaged in this text if it was to be read as coherent and consistent.

Only a few chapters later Deuteronomy 24:1–5 deals with a case where a woman was divorced for committing adultery; the woman was clearly not executed, as she married another man in verse 2. This makes sense if the capital sanctions for adultery functioned as admonitory devices and in practice a ransom was made as a substitute, but it does not make sense if the woman was required to be executed.

In 1 Kings, a person had committed a capital crime and the sentence was announced as “a life for a life”; however, the immediate context shows what this sentence, in fact, was: “It will be your life for his life or you must weigh out a talent of silver” (1 Kings 20:39). Old Testament scholar Joe Sprinkle notes that “‘life for life,’ in the sense of capital punishment, has an explicit alternative of monetary substitution.”

Perhaps the clearest example is in Numbers 35. At least seven times in close succession the text states, “the murderer shall be put to death”; however, the text proceeds to state, “Do not accept a ransom for the life of a murderer, who deserves to die. He must surely be put to death.” Here the text assumes that a practice of substituting a fine for capital punishment exists, but the Lawgiver does not wish to see it applied in this circumstance, so the fine is explicitly forbidden. Sprinkle contends, “The availability of ransom seems to have been so prevalent that when biblical law

wants to exclude it, as in the case of intentional murder, it must specifically prohibit it.” Old Testament scholar Walter Kaiser draws the same conclusion:

*The key text in this discussion is Num 35:31: “Do not accept a ransom [or substitute] for the life of a murderer, who deserves to die. He must surely be put to death.” There were some sixteen crimes that called for the death penalty in the OT....Only in the case of premeditated murder did the text say that the officials in Israel were forbidden to take a “ransom” or a “substitute.” This has widely been interpreted to imply that in all the other fifteen cases the judges could commute the crimes deserving of capital punishment by designating a “ransom” or “substitute.” In that case the death penalty served to mark the seriousness of the crime.*

So when Harris claims that God does not “tell us that we can relax the penalties He has imposed for breaking them,” it is apparent that he has not read the Bible carefully, or the works of anyone who has, because it does appear to suggest and expect that some of the harsh penalties can and will be relaxed. It is not at all clear that the Old Testament ever commands Christians to stone women who commit adultery.

As useful a rhetorical club as Harris and other new atheists find this argument to be, it can only be accepted if modern assumptions about law are transposed back onto an ancient literary genre and practice. The genre of the passages, in light of the common ancient Near Eastern legal practices and customs, suggests that most capital sanctions functioned as a kind of rhetorical denunciation, which expressed, in vivid form, a moral ideal. Further, in practice, a ransom was paid and the punishment was not literally carried out; it was not statute law demanding the stoning of adulterers. —*Matthew Flannagan*

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