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The Courts of Judea

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THE COURTS OF JUDEA.

The study of Jewish jurisprudence has become interesting during the past ten years through the efforts of some painstaking scholars, who have not been burdened with any particular dogma, but have been actuated by a true Christian spirit. They have been close students of those portions of the Talmud which throw light on the jurisprudence of the Jews.*

We understand the meaning of the following terms: The Legislature, the Court, the City Council, the Board of Supervisors, the Township Board and the School Board. Which one of these fairly represents the Jewish Sanhedrim? Not any one of them. But if you can coin an English word which shall express the powers and duties of all of these municipal bodies imposed upon one, you may be able to correctly define the Sanhedrim in Judea. It was an authorized body of men, possessing political, legislative, judicial, municipal, religious, and educational functions. Its most important duties, however, were judicial.

The courts of Judea, established for the administration of justice, were of three kinds. First, the local or petty court of three, known as the inferior Sanhedrim, which sat in the smaller village communities. Second, the provincial Sanhedrim, with twenty-three members, the judicial tribunal of the larger towns and provinces. Third, the great Sanhedrim, which sat at Jerusalem and consisted of seventy-one of the most eminent judges of the country. Let us consider the jurisdiction of these several courts in their order, commencing with the inferior Sanhedrim.

The Local Sanhedrim of the Village.—This was not a permanent, but a temporary tribunal, which exercised authority whenever called upon. It had jurisdiction over civil cases and petty offences, now known as misdemeanors. It might inflict and enforce a pecuniary penalty for some infraction of the law, but had no jurisdiction in capital cases. This local court, or town board, of three persons, in its judicial powers, was not materially unlike the justice court of to-day.

The judges of this court were selected by a very simple process. The

*Mendelsohn's "Criminal Jurisprudence of the Ancient Hebrews." Lemman's "Jesus before the Sanhedrim." Benney's "Criminal Code of the Jews."

complaining party in a civil case named a judge, the defendant named one, and the two thus chosen named a third. The three heard the case and rendered judgment. This was, in fact, a court of arbitration. We may well say that the arbitrating of differences is not a fruit of modern civilization. It was tacitly understood that one member of the court of three should be a rabbi, some one learned in the law, and a student of Jewish institutions will readily understand that by custom the same persons were chosen in each case and were recognized as the judges of the village. It seems that this local court possessed not only judicial, but also municipal and semi-religious functions.

The Provincial Sanhedrim.—Above this petty court, was the provincial Sanhedrim, a tribunal of great judicial power and influence, composed of twenty-three judges selected by the people of the town or province, under authority of the great Sanhedrim at Jerusalem. Any town of 120 families was entitled to a provincial court. To such a town, the great Sanhedrim sent its mandate, commanding the people to nominate from their inhabitants twenty-three judges, who were required to be "learned, and modest, and popular." This command was observed by the people, who assembled and at an informal but public election named the judges. A report of the proceedings was returned to Jerusalem, and, if the great Sanhedrim approved, authority was given the judges, constituting them a provincial court.

We observe that the people only nominated their judges, and the great council might or might not confirm the nomination. In fact, the right of a provincial court to exist at all depended upon the discretion of the center of judicial power, seated at Jerusalem. Unless the people of a town selected for judges their best men, the authority to hold a court was refused. The reason for this we shall easily understand when we come to observe that the membership of the great Sanhedrim was recruited from the provincial courts of the larger towns. It was of the highest importance that the people should name the most learned and influential as judges in the provincial court, for some day one or more of them might be called to a seat in the great Sanhedrim.

This provincial court, once established, was possessed of original and general jurisdiction. Before it were tried men accused of crimes involving, (a) capital punishment, (b) confinement in a city of refuge, (c) imprisonment or seclusion for life. Hence, they took jurisdiction of cases of felonous homicide, blasphemy, adultery and incest, and of many other crimes entailing corporal punishment. This tribunal might also put a beast on trial. If a bull should gore to death a citizen, the beast might be tried, condemned and executed for his crime. In its general jurisdiction, the provincial court was not unlike our district or circuit court. It also exercised many important municipal functions. We shall not be far from the truth if we say that the provincial Sanhedrim performed the

duties now imposed on our Board of Supervisors, City Council, Board of Health, and School Board. It was a body possessing general judicial and administrative powers.

On Mondays and Thursdays of each week, the people gathered at the synagogue. Inasmuch as on these days the suitors were necessarily brought together, they became the regular court days. Sittings were held on other days, as occasion might require, and in the larger towns the court was probably in session from day to day throughout the year, excluding, of course, Saturday.

The session hours were in the morning on account of the heat. A trial commenced before noon might proceed through the day, and might, except in a capital case, continue after night-fall. The court held its sessions usually in the open air and at the city gate, the most public place, in obedience to this command in Deuteronomy: "Judges and offices shalt thou make in all thy gates, which the Lord, thy God, giveth thee." The courts of Jerusalem, however, sat at the gates in the temple.

We may inquire what were the qualifications for judicial preferment, and what would disqualify one from sitting as a judge. The positive requirements were numerous. We will name a few only. The Talmud prescribes that all judges "ought to have seven qualifications; wisdom, gentleness, piety, hatred of mammon, love of truth, they should be loved of men, and be of good repute." They were not allowed to seek the office. Who became judge through office-seeking was despised by his associates. First of all, he was required to be a Jew of pure Israelitish descent, thoroughly versed in the written and unwritten law, familiar with many languages, for interpreters were not allowed in court, also a man of experience, but not too old, lest he might be too severe, and a man of family, that he might be admonished by paternal feeling. Possessing all these qualifications, he might still be disqualified. One who played at games of chance for money, or who had not learned a trade by which he earned his living, or who loaned money upon usury, could not be a judge. Any judge who was any way, directly or indirectly, interested in a case or related to one of the parties in any degree of consanguinity or affinity, could not sit at the hearing. In a word, a judge was required to be an amiable gentleman, of great learning, of impressive personal appearance and commanding character. This was the theory of the law, but in Christ's time the commonwealth was passing away rapidly. The period of decay and dissolution had set in, and this excellent theory was not always put to practice.

The Courts at Jerusalem.—The center of the earth, supposed to be at Jerusalem, was under the jurisdiction of three courts, two ordinary courts, called the first and second ordinary, and the great Sanhedrim, which was the great council of the nation.

An ordinary, like the provincial court, consisted of twenty-three

judges, and had similar jurisdiction over crimes. The first ordinary held its sessions at the foot of the Temple Mount, the second ordinary sat at the court of the women, in the Temple.

The membership of these ordinary Sanhedrims of Jerusalem was recruited in this novel way. A vacancy occurring in the second was filled by calling up some member of the first, and a vacancy in the first was filled by some prominent member of the provincial court already described, and we may add in this connection that the membership of the great Sanhedrim was recruited from the second ordinary court, which sat at the Court of the Women in the Temple. Thus by promotion a citizen rose to the highest rank in the civil service. He might start as one of the seven men of the synagogue, who read and interpreted the Law, then become one of the triumvirs of the village, that local court having jurisdiction over petty offenses, then he might be elected to the provincial Sanhedrim, then by promotion he might pass to the first ordinary at Jerusalem, thence to the second ordinary, and finally to a seat in the Great Council of the nation. We of to-day are prepared to concede that this system of selecting judges ought to have filled the courts of Judea with very able jurists.

The Great Sanhedrim.—This historic body sat at Jerusalem in the Temple. It consisted of seventy-one members. The High Priest was the presiding officer of this body. About this, however, there has been some dispute, but certain it is that in the time of Christ the High Priest, Caiaphas, was President of the Sanhedrim. This was the supreme council of the nation. It possessed all the legislative, administrative and judicial powers of the state. We are interested only in its judicial powers.

First. It was a court of appeal, to which were referred questions which might arise in the lower courts. The right of appeal in contested cases was carefully regulated. Supposing a question arose in a provincial Sanhedrim, which the twenty-three judges could not decide because they were not sufficiently learned in the law. The case was referred to some other provincial Sanhedrim of greater repute. If here a precedent was found decisive of the issue, the case was ended, but if no satisfactory precedent was known to these judges, then the case was carried to the first ordinary, then to the second ordinary, at Jerusalem, and if the case still stood without precedent, it was carried to the Great Sanhedrim, where judgment was rendered according to equity and good conscience, and a precedent was thus established for the guidance of the lower courts, and which they were never allowed to question. To dispute or depart from the judgments of this great council was the highest crime in Jewish jurisprudence. It was high treason and punished with death. Thus we observe that case-made law was highly developed in Judea, and that the principle *stare decisis* controlled her courts.

Second. The Great Sanhedrim had original and exclusive jurisdic-

tion over certain crimes. In case a city or a tribe was charged with paganism, or any individual was to be condemned as a false prophet, or an accusation was made against a High Priest, or if persons were to be exiled, all these questions were under the exclusive jurisdiction of the Great Sanhedrim. The lower courts had nothing to do with them. This High Court established and had general supervision over the lower courts of which we have spoken.

The judges of all the courts were expected to perform their judicial duties without compensation. This they were required to do on the regular court days, Mondays and Thursdays. On other days they earned a living at their trade. If asked, by reason of press of business, to serve on other days, they were compensated out of the common treasury or by fees from litigants, but the parties to the case were required to contribute equally. The rabbis insisted that no man should give his whole time to judicial work, unless he possessed a fortune and was independent of temptation to receive money for his judgments. It was said that as Moses sat in judgment without expectation of material reward, but for the sake of duty, so must every judge act for the sake of justice only. The taking of legal fees by the magistrate was severely condemned, and justly.

At the present time, the judicial system of Michigan is open to criticism by reason of its legal fees in justice courts. They often tempt unscrupulous magistrates to most shameful practices. No man should be allowed to sit in judgment in any case where his decision, or even the fact that a case is or is not commenced, could directly or indirectly affect his financial returns. Magistrates ought not to be rewarded according to the number of cases that may have been commenced in their courts. This provokes senseless and petty litigation. Greater good will come to the public from salaried positions.

The Jews were exceedingly severe in their condemnation of all forms of judicial bribery. The more careful judges would not accept ordinary civilities from litigants. It is related that a rabbi crossing a river brought his boat near shore, and a stranger assisted him to land safely. Soon thereafter, the stranger appeared as a litigant before the tribunal where the rabbi sat. He declined to hear the case. The more conscientious judges would not sit in a case unless they could decide without fear or favor. Their conduct was not governed simply by technical rules of consanguinity and affinity. They would not judge the rights of a friend or an enemy. Whatever we may think of Jewish institutions, we must concede that her courts were fixed on a sound basis and under a system calculated to bring to the bench the wisdom and the learning of the state, men of great intellectual attainments, of sterling common sense. It matters not that we see in Christ's time much to condemn in the administration of justice in Judea. The glory of a state cannot be appreciated by those who study it only at its decline and fall.

CRIMES AND THEIR PUNISHMENT.

Having said thus much about the courts of Judea, we may pass by the civil jurisprudence of the country and inquire as to its criminal law. Only a few suggestions can be offered upon this subject, which has been so ably presented by the authors referred to.

At the English common law, crimes were punished under private prosecution. The individual wronged was the prosecutor. This was also the practice in Judea. Any member of the family of the deceased might pursue and kill the offender with impunity. The avenger of blood was the recognized minister of justice. This was an extra-judicial proceeding, and the right to it was lost as soon as the accused entered a city of refuge or was taken into the custody of the law for trial. It was not only the right but the duty of the party injured or a member of his family, to prosecute the criminal before the courts, and this duty was so accurately defined and so rigidly enforced that the neglect of its performance was highly criminal. The people were subservient to the Mosaic precept, "Whoso sheddeth man's blood, by man shall his blood be shed."

All persons were amenable to the law. There was no privileged class that could claim exemption from punishment. Even the High Priest might be tried and condemned by the Great Sanhedrim. There were certain physical infirmities, however, which were a good defence to a criminal charge. Idiots and madmen were incapable of a criminal act, and the defence of lunacy or drunkenness was very much as it is now. But those forms of insanity which fall far short of madness, such as emotional insanity, moral insanity, irresistible impulse, and which have occasioned so much discussion among modern jurists, did not trouble the courts of Judea.

Nonage or infancy was divided into three periods. A child was spoken of as an infant from birth to six years, as an impubescent from seven to thirteen years, and from that age to twenty he was an adolescent. At twenty he was a man. The precise degree of criminal responsibility assumed during these periods is not known. Certain it is, however, that no one suffered capital punishment for any act committed while he was under the age of twelve or thirteen, and there is much to indicate that while a person under twenty might be punished for criminal conduct, yet he could not be put to death for any crime committed under that age, which was, it is said, the age of complete civil and criminal responsibility.

The lesser crimes or misdemeanors were numerous, but perhaps not so much so as with us. Many were only penal offences. We will not attempt to enumerate them, but will simply note the several forms of punishment enforced and the leading offences to which they are applied.

1. *Flagellation* was the highest corporal penalty inflicted. It was administered in this manner: The offender was tied down to a post in a reclining position. A public servant lashed the bare body with a whip of

four leathern straps. The number of lashes depended on the nature of the offence, but in no case were more than thirty-nine strokes allowed. There were many technical rules regarding this proceeding. It is said, "If, after being pinioned, the convict succeeds in escaping, or if the lash breaks at the second stroke, the sentence is considered executed and the prisoner is discharged. Flagellation was the punishment provided for the violation of the major part of those positive ordinances and negative precepts found in the Pentateuch. It is said that the Talmudists found here 613 such ordinances and precepts.

2. *Penal servitude* was the punishment for larceny. This involved the sale of the offender into the service of another. It was enjoined by a law of Moses, and it is said to be the only case where the Mosaic law imposes servitude on a Hebrew.

3. *Exile* was the penalty for involuntary manslaughter or accidental homicide. By exile we do not mean banishment in the modern acceptation of the term, but rather, confinement in a city of refuge. The Jews never banished their citizens. They deprecated emigration. It might tempt a Jew to irreligion, perhaps idolatry, the greatest of crimes.

A city of refuge is an institution not easily understood, by reason of the fact that it is without a parallel in our jurisprudence. There were six of them in Palestine. They had been established in obedience to the law of Moses, and were places of safety for any man who had accidentally and innocently taken the life of a fellow man. The avenger of blood could not slay the offender so long as he was within the walls of a city of refuge. Supposing a man were at work on a scaffold over a sidewalk and negligently let fall a stone, which struck one passing by and killed him. This would be involuntary manslaughter under our law, and so it was in Judea. But there, any member of the family of the deceased might pursue the wrong doer and slay him, that blood for blood might atone. To prevent injustice in such cases, the cities of refuge were established, and if the wrong doer could reach one of these cities, or if taken into custody of the law by the officers of the Sanhedrim, he was safe. Then he would be tried, and if found guilty of involuntary manslaughter, he would be conducted to one of the cities of refuge, there to remain until the death of the High Priest, when he would be discharged as guiltless.

Within the city of refuge, he had all the liberties of its inhabitants, and it is said his confinement there entailed no expense on the state, that the mother of the High Priest supplied the culprit and the officers with food and raiment, lest they might pray for the death of her son.

4. *Imprisonment* was not provided for by the Mosaic law, but in the reign of the kings it was adopted and under the Talmudists it was carefully regulated. It was the penalty for some irregular homicides, for accessories to murder, and for persons twice convicted of an offence punished by flagellation.

CAPITAL PUNISHMENT.

These observations regarding the minor offences and their punishment are sufficient. Let us give our attention to capital crimes. When Blackstone wrote his Commentaries, there were 160 offences punished with death in England. But in Christ's time in Judea, only 36 offences were so punished, and these were in kind only twelve in number, namely idolatry, murder, rape, adultery, incest, sodomy or bestiality, kidnapping, maladministration, witchcraft, blasphemy, Sabbath-breaking and the violation of filial duty. Only those crimes which tended to undermine the social fabric were punished with death.

We are familiar with only one or two forms of capital punishment. We should remember, however, that in Greece there were ten methods and at Rome many more. In Judea there were only four kinds of capital punishment, and of these in their order.

1. *Stoning* to death was the penalty for 18 offences, which included chiefly various forms of adultery, rape, bestiality and Sabbath-breaking. The popular impression that one condemned to die by stoning was pelted with stones by the multitude is erroneous. The execution of the sentence was regular and somewhat formal. It involved precipitation, then a common form of capital punishment. The condemned was taken to a cliff or some elevation erected for the purpose, and cast over by the witnesses for the prosecution, for, as a rule, the witnesses were the executioners. If the fall did not occasion death, then a witness took a large stone and threw it upon the victim, and he was not then executed, the bystanders pelted him with stones until he was dead. Sometimes the victim escaped.

2. *Burning* was the penalty for incest and criminal commerce with the priest's daughter. The sentence of death by burning was executed in the following manner: The condemned was securely fastened so that he could not move, then his mouth was forced open and molten lead was poured down his throat. Burning at the stake was not practiced in Judea. They burned from the inside out.

3. *Decapitation* was the penalty for two offences, namely: murder and criminal apostasy from Judaism to idolatry. The sentence was executed by fastening the culprit to a post and severing his head from the body by a stroke of the sword.

4. *Strangulation* was the form of death penalty in all cases where the bible calls for the punishment of death but does not point out the method of execution. It was the penalty for idolatry, kidnapping, false prophecy, and a few other crimes of less importance. The sentence was executed by placing the culprit in soft earth up to his knees; then he was securely fastened, a cord wrapped with a soft cloth was wound round his neck, and at either end of the cord stood the executioners, who pulled until life was extinct. This was regarded as the mildest form of capital punishment, and, as you see, in no way resembles death by hanging.

5. *Hang*ing was not a form of death penalty in Judea, but was a posthumous ignominy, inflicted after the death penalty by stoning had been executed in cases of idolatry and blasphemy. Over the corpse of the victim was erected our modern gallows with its upright post and extending arm. From this arm the corpse was suspended, to remind the people of the great indignity which might be brought on the family of any idolator or blasphemmer. It hung, however, for an instant only, enough that the letter of the law had been fulfilled. It is said that two executioners performed this post mortem ceremony, that one hung the corpse and the other took it down, and that while one was tying the last knot in the rope the other commenced to untie the first knot tied. It is to the credit of the Jews that they made haste to put this unseemly performance out of sight.

It is interesting to observe that among all the forms of capital punishment recognized by the Jews, crucifixion was not one of them. And yet Jesus Christ, a Jew, tried and condemned for violation of Jewish law, was punished, at the command of the Jews, by a form of punishment unknown to the laws of his country.