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## **Crime and punishment in Jewish law**

**Jacob, Walter**

**New York [u.a.], 1999**

Introduction

**urn:nbn:de:kobv:517-vlib-9889**

## INTRODUCTION

"When the State of Israel has its share of thieves, prostitutes, and thugs, then it will be a normal state like all others" is a statement attributed to Ben Gurion; he wished to characterize Israel as a "normal" land among all other nations. Actually this should have been the least of his worries as we have always had such a criminal element in our midst.

Judaism has sought to move in the other direction and to minimize this criminal element. As a "chosen people," we would, hopefully, have a lower percentage of criminals in our midst. The aim is laudable, but the goal has never been attained. The legal systems that we have developed since Biblical days had to deal with crime and the criminal in an ethically effective way. The Bible presents only a small portion of the laws necessary for a state to function; undoubtedly criminal law developed separately as royal prerogative, although we know nothing about this. The later halakhah as we see it in the Mishnah and Talmud had to be creative even though the power of its courts both in Babylon and Palestine was limited. Whole tractates of the Talmud discuss a wide variety of legal issues both civil and criminal. Some elements of this material have been incorporated into modern Israeli law, but that is not the subject of this volume. We are concerned with the way in which the halakhic approach can shape our modern thinking in this area wherever we live, in the Diaspora or in Israel.

As we look at the halakhah, we must immediately distinguish between the practical and the purely theoretical. Although the jurisdiction of the bet din was limited in every land where we lived, the scholars felt that it was important to develop a system

which dealt with every aspect of life. This meant that scholars had the luxury of discussing criminal proceedings without concern for the practical realities of human nature. They could generalize; they were able to avoid the difficult and often expensive problems of enforcement; they did not need to worry themselves over the consequences of excessive leniency. They sought an ideal solution to problems in which compromise is inevitable. On the other hand, the rabbinic scholars who had to answer specific questions which dealt with critical issues in their respective communities were forced to be practical and did not hesitate to go beyond the traditional halakhah in order to protect the community or to rid it of criminals.

This mixture of idealism and reality shape the later rabbinic discussions. The discussions are valuable for us as they present another set of insights into problems which are much debated in the contemporary world. This area of the halakhah is very broad and has been little studied. The essays and responsa of this volume explore a limited number of facets of this subject. We hope that they will stimulate further efforts.