

Casey Anthony & Law

by: Rabbi Jeremy Rosen

There are many types of legal systems. Ancient systems included Babylonian, Egyptian, Hindu, Jewish, and Roman. Legal thought inspired by Grotius (early 17th century) developed new legal concepts based on "natural law". Countries began to free themselves from the vice of the Church and developed their own systems. For example Scotland diverged from English law in various ways, most notably that it allowed for a verdict "not proven" (as opposed to either "guilty" or "not guilty"), which might have come in useful in the Casey Anthony verdict that is now causing such a stir in Florida.

There are many legal systems nowadays that are mongrels, such as Israeli civil law, which is a mixture of English Mandate, Jewish, and Ottoman. Now that the World Court and the European Court are up and running, often overriding national laws, it is probably true to say all systems are mongrels nowadays.

There is no universal system, and certainly no perfect system, but I would like to put a plea in for the ancient Jewish system (no, not stoning—we did actually update our legal system regularly these past thousands of years, though I admit we seem to have hit speed bumps of late).

I have never much liked the American system as it is practiced (not preached of course) with its political appointments of prosecutors, even sheriffs, who are too often out to make names and careers for themselves, eager to court publicity and indulge in "perp walks." Arrests are public and great photo opportunities. (I have no doubt Cyrus Vance, Jr. will be more careful next time a roué Frenchman with a louche reputation is accused of rape.)

But more than that, I detest those features of legal systems that usually treat court cases not as honest attempts to find the truth but games to be played in order to win a conviction or a release, based not on facts but on style, tricks, and performances.

In Chapter 1 of Avot, Yehudah Ben Tabai said, "Do not, as judge, play the part of an advocate."

I take this to be a critique of the Greco-Roman system (which we have adopted in Britain and the USA), in which advocates argued rhetorically for their point of view. The Jewish approach involved judges trying to assess the situation, allowing both sides to plead, but having the responsibility to grill them rigorously. For better or worse, there was no jury system, which itself has its plusses and minuses. Very complex or technical cases can be beyond the capacity of many jurors. The Jewish judge (there were at least three) had the responsibility to make up his mind.

Also, in Jewish law circumstantial evidence was never acceptable in criminal cases. For all the times the Bible said, "He shall be put to death," it was

almost impossible to convict. In effect, the "death sentence" was more a way of indicating how serious the offence was, rather than an expected result. You needed two unrelated witnesses who had actually seen what happened. In addition, the idea of warning required a further layer of evidence that the perpetrator knew not only the crime but the punishment too. There was no way a Casey Anthony could have been convicted of murder under Jewish law. But leaving her disturbing case aside (and the millions that will be made in our sick material world), the horrific history of men and women wrongly put to death on circumstantial evidence by seemingly civilized legal systems is a blot on modernity.

Nevertheless, even in Jewish Law, failure to convict did not necessarily mean the accused went free. The pastoral and spiritual role of judges required them both to take steps to protect society and to see that anyone brought before them was taken care of. A judge might have to convict a poor man of stealing bread, but then he had a religious obligation to see he and his family did not starve. If an accused person was clearly in need of support, whether material or psychological, it would be a responsibility on an individual level (and thereby on the court) to see that the necessary was done. This might mean keeping someone they considered a threat to society under lock and key, or ensuring they had proper medical treatment. Of course this is modern terminology for an ancient religious obligation.

It seems obvious that Casey Anthony is a disturbed individual. She was found guilty in the eyes of public opinion and the press. The lynch mobs were outside the courthouse. I doubt she will come to a good end, but I feel most strongly she needs support and help, and I only hope her defense team does not just walk away and abandon her.

No legal system is perfect. You can find fault with them all. Any Jewish lawyer has to work with the system he or she is born or moves into. Still, the Jewish system seems to me to have a great deal to commend it. The trouble is finding the enlightened and sensitive dayanim who know how to temper Jewish law with mercy and who know when "the widow and the stranger is denied justice". It is precisely this meta-legal dimension that I see missing in all systems today. And in our case women are still not be allowed to sit as judges. I guess we will have to wait for Elijah to come and open our hearts and minds a little more.