

Ethics And The Death Penalty

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Q – Was it right for the state of Georgia to execute Troy Anthony Davis?

A – The **Davis case** has once again put capital punishment on trial. No DNA evidence implicated him, no gun, no fingerprints and a bevy of recanting witnesses. I'd say that there is more than a remote possibility that an innocent man was killed. That being the case, it was, from the Jewish ethical perspective, the equivalent of state sponsored murder.

I only wish that the execution had been televised on all the networks to a national audience. Put it on at halftime of an NFL (National Finish-off-your-opponent-by-beating-his-brains-out League) game. Then perhaps Americans would wake up to their own bloodlust. Or perhaps they wouldn't. In the past decade, four states – New York, New Jersey, New Mexico, and Illinois – have abandoned the death penalty, leaving 34 states still with capital punishment. Maybe this case will help to tip the scales in my own state of Connecticut, where recent legislative votes have been very close.

The Torah **mandates the death penalty** for 36 offenses, ranging from murder to kidnapping, adultery to incest, certain forms of rape, idolatrous worship and public incitement to apostasy, from disrespecting parents to desecrating the Sabbath. But the rabbinic sages effectively abolished the death penalty centuries later. Mishnah Sanhedrin 4:5 stresses the importance of presenting completely accurate testimony in capital cases, for any mistakes or falsehoods could result in the shedding of innocent blood. If any perjury were to cause an execution, "the blood of the accused and his unborn offspring stain the perjurer forever."

In Talmudic times, capital cases required a 23-judge court, while only three judges sat for non-capital cases. Two or more eyewitnesses were required to testify to the defendant's guilt, and their hands would, "be the first against him to put him to death" (Deuteronomy 17:6-7). In a capital case, a one-vote majority could acquit a defendant, but could not convict. Furthermore, if there was a mere one-vote majority or if any judge was undecided, additional judges were added in pairs until the majority ruled against conviction, or until one judge in favor of conviction was persuaded to err on the side of innocence (Mishnah Sanhedrin 5:5).

In practice, the death penalty became almost impossible to implement, though over the centuries there has been a diversity of opinion on the matter. Maimonides claims that murderers should not be executed if there was a question about how the trial was conducted. But if the trial was

conducted properly there is no restriction even if it means that one thousand murderers are executed in a single day. Rabbi **Moshe Feinstein** counters that the purpose of assigning the death penalty to so many crimes in the Torah is to educate people about the severity of the offenses, rather than to end the lives of the offenders. That practice has continued to this day in modern Israel, where not even terrorists with blood on their hands are executed. Only those convicted of crimes against humanity (i.e. Adolf Eichmann) have been executed.

In the U.S., the statistics are daunting:

Nationally, since 1973, 138 prisoners sentenced to death later have been exonerated.

The average time spent on death row by an exoneree is 9.8 years.

DNA has played a role in exonerating 17 death row prisoners. But in many death penalty cases, DNA testing proves impossible because of a lack of testable evidence.

Scientific evidence strongly suggests that Texas executed an innocent man, Cameron Willingham, in 2004. Compelling evidence in other cases suggests more innocent people have been executed.

Causes of wrongful conviction include: eyewitness misidentification, police coercion, perjury, prosecutorial misconduct, and inadequate representation.

Nationally, 50% of murder victims are white. In cases resulting in an execution, however, the murder victim is white 76% of the time. Studies in Connecticut, North Carolina, Maryland, and California found that one's odds of receiving the death penalty increase significantly when the victim is white.

Because of additional resources and preparation required in death penalty cases, a separate sentencing phase, post-conviction appeals, and the added costs of death row facilities, studies consistently find the death penalty to be more costly than life without parole.

Since death sentences peaked in 1996, at 315, nationwide the number of death sentences has been declining. The number of death sentences in 2010, 114, was near the historic lows.

It's time to put an end to this murderous circus