

*While the Death Penalty Repeal Bill will not be going anywhere on the floor, I wrote the attached for a potential Wyoming Interfaith Network piece.*

One of the issues coming up this legislative session is repeal of the Death Penalty in Wyoming. The two quick answers to any question concerning Judaism's opinion on any particular item are "It depends" and "It's complicated." The death penalty is no exception.

There is no question that the death penalty is allowed for within the Torah. Some of the times that penalty is reserved to God, and other times it is supposed to be imposed by the human court, if the fact that the deed was done can be shown to be true.

The rest of this article concerns the death penalty imposed by human courts within Jewish jurisprudence. Execution by human courts is much more complicated within Jewish jurisprudence than it is in American jurisprudence primarily because the presumptions are different (and, to be clear, Israeli jurisprudence is not the same as Jewish jurisprudence, although many of the motivations are similar). One other reason for these differences is that the rules concerning Jewish courts were composed by people who actually had no political power to impose capital punishment, although they were often allowed to impose civil punishments.

Within Jewish jurisprudence: 1) If you did not remember at the time of committing an action that it was against the law, then you have not broken the law. Breaking the law is a conscious, volitional act. 2) Self-recrimination is not allowed and is never accepted as evidence. Neither is testimony by immediate family. 3) The witnesses to the capital crime must have warned the perpetrator that if the perpetrator does this act, then the courts can assess the death penalty. 4) Witnesses must be in complete agreement about every fact which they are willing to answer (including facts like "how many cars passed by as this was happening"). 5) The jury must never be unanimous in their verdict, or the case is thrown out.

I am fairly sure that most of you could easily compare those five items with how the American system works.

Another item which is a bit different from most systems today is the cities of refuge. When somebody commits manslaughter (accidental homicide) then, according to the Torah, they have to go to the city of refuge. If they don't, then the nearest relative to the person who died is able to kill them to avenge the blood of the deceased. Once in the city of refuge, they are there until the High Priest dies.

Over and over again, a reason stated for making use of execution as punishment is so that the wickedness will be burned out of the community since nobody will repeat the action. Death penalty as deterrent, as it were. Most of the Rabbis were not concerned about deterrence, but were concerned about the effect of imposing a death sentence on those who were involved. Their opinion was that a court which imposed the death penalty even once within a 7 year period was a bloodthirsty court. A couple of them stated that even once within a 70 year period proved bloodthirstiness. Other Rabbis thought the imposition of the death penalty would deter somebody, so they claimed that a court which did not impose the death penalty when appropriate was a court that encouraged murder.

My personal opinion is that it would be nice if the death penalty actually deterred those who were inclined to kill others, because there would never have been any murders within the last 3,000 plus years. Unfortunately, murders continue to be committed, so the best we can do is go back to the city of refuge model, where the person who kills another is separated out from the community at large until such time as all crimes are expunged.

So, to sum up, there are opinions within Judaism that would support any position one takes on the repeal of the death penalty in Wyoming. My own personal opinion is that it is past time to go straight to life imprisonment, as the deterrent factor is not the most applicable, but getting the murderer away from the community is.