

*Testimony supporting a narrow definition of death penalty application, if at all
In Support of SB 1013*

I represent an ancient legal tradition in which the guilt of a convicted human being is always balanced against a measure of that same person's innocence. Whether due to age, mental capacity, or certainty of evidence, my tradition offers us the sobering thought that there is no human being who can be found entirely guilty by other human beings in a humanly limited court of law. Therefore we must take great care in considering how we deprive another of liberty, and all the more so of life.

The most fascinating example of the death penalty in the Jewish Scriptures occurs in the book of Deuteronomy, chapter 21. The case is that of a rebellious son whose mother and father denounce him to the elders in the gate of the city, whereupon the son is to be summarily executed. What is most interesting about this story is not the account itself, which clearly is meant to have a deterrent value since the final phrase is "all Israel will hear and be afraid" (Deut 21. 21). The most significant part of this provision is the way in which the Rabbis who develop Scripture into law two thousand years ago demonstrate that this practice is not practically enforceable.

I offer you this example of the Jewish ethical approach to the death penalty for the nuances those Rabbis explored. They looked carefully at the language and found too much uncertainty regarding this death penalty to ever actually apply it.

For example, they define a son as not yet an adult. Yet a minor is not responsible for his actions. Using the signs of puberty as a guide, they define the window within which a son may be denounced - and not a daughter, and not a child of indeterminate sexuality - as consisting of three months. (Midrash Aggadah 21.18.1) The language requires both mother and father to agree to denounce the child. Finally, the language requires mother, father and son to be able to see, hear and understand the implications of behavior.

I offer this to you as a way of recognizing the gulf of difference between a Biblical quote such as "he shall be put to death" and the reality of the society that had that law on its books. My ancestors regarded the death penalty as highly problematic in that there always is so much room for error, both in establishing the facts of a case and in determining the quality of a guilty verdict's effectiveness.

Each human being is born perfectly innocent, as my tradition teaches: each one of us is created in the Image of G*d, holy and whole. To end a life is to irreparably lose a world of potential. Therefore one must inquire, and inquire again, seven times, and do everything to uncover when someone's testimony in a death penalty case may be false or mistaken. (*Makkot* 1.9)

The one who commits a sin worthy of the death penalty but does so unknowingly is not killed but required to do restorative justice. (*Mishnah Yoma* 8.8)

A court that executes once in seven years is considered harsh; others say, once in seventy years. (*BT Makkot* 7a) Those who judge are required to fast and consider overnight; those who would speak in favor of an accused are granted all opportunity; that which haunts the judges over and over again is the possibility that a mistake may be made, and an innocent person may be killed.

The Rabbis of ancient Israel suspended the death penalty when capital crimes increased, and they saw that the application of the death penalty was not a deterrent. Despite mainstream acceptance of capital punishment,

The Rabbis evidently believed – and acted accordingly – that if capital offenses are committed to such an extent that courts lose their ability to properly adjudicate such cases, then the death penalty should be suspended. It follows from this view that the proliferation of murders in the United States mandates at least a temporary cessation of capital punishment.¹

The ancient judges of my tradition had an abiding belief in a justice that transcended their legal system. They knew that truth can never be known completely by human beings, even them. They insisted on maintaining their awareness of the ways in which their judgements could be mistaken. They knew that human attempts to impose justice are complicated by our own failings, such as those of racial bias and political and social influence.

Justice must be equal, not dependent upon the skill of an attorney nor the honesty of a witness.

¹ Samuel J. Levine, "Capital Punishment in Jewish Law and its Application to the American Legal System: A Conceptual Overview." Touro Law Center
<https://digitalcommons.tourolaw.edu/cgi/viewcontent.cgi?article=1029&context=scholarlyworks>

As a religious person and a faith leader, I oppose the death penalty. I want to see the abolishment of capital punishment in Oregon. To the extent that capital punishment remains in effect at all, it must be applied in the most restricted manner possible, in the narrowest of circumstances.

We should, we must, tremble at the thought of one single human life in our hands. For the state to kill a guilty person is problematic enough, since as we know from childhood, two wrongs don't make a right. For the state to kill an innocent person is unthinkable – and it has happened, and it will happen again if we do not insist on substantive and procedural safeguards as are adequate and sufficient to assure to the fullest extent possible that the death penalty is applied in the most accurate, fair, and equitable manner as human frailty will allow.

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