



Israel and Capital Punishment

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Israel does not believe in capital punishment. The legal system, inherited by the state of Israel from the British in 1948, did embrace the death penalty for murder, but the penalty was struck from the books soon thereafter. Aside from the military courts, capital punishment remains in the Israeli penal code as a punishment for treason in times of war or active hostilities against the state, and also as a punishment for Nazi crimes against the Jewish people. The only time capital punishment was applied in Israel was, famously, in the case of Adolf Eichmann. Eichmann was executed by hanging following his trial in the early 1960s. Had John Demianiuk (the alleged “Ivan the Terrible from Treblinka”) been convicted by the court, he would likely have received the death penalty as well.

The attitude against capital punishment goes back a long way in Jewish history. Despite various biblical injunctions in the spirit of “Whoso sheddeth man’s blood, by man shall his blood be shed” (Genesis 9:6), normative rabbinic Judaism recoiled from the death penalty. Indeed, the rules of evidence adopted by the Sanhedrin were so strict as to effectively prevent the court from imposing it. In Israel today, the death penalty was pronounced legally unconstitutional by Chief Justice Barak, because it contradicts the right to life embedded in Israel’s Basic Law: Human Dignity and Freedom.

Legal formalities aside, popular sentiment in favor of the death penalty occasionally rises in Israel in response to particularly heinous crimes. Still, the demand for capital punishment has never gained significant momentum and has not been adopted by any major political party as part of its platform — even in times of indiscriminate murder by terrorists of large numbers of Israeli civilians. In the past couple of years, since the outbreak of the second Intifada, the Israeli government has adopted a policy of “targeted killings,” aimed at Palestinian terror activists. This policy is supposed to be directed against actual perpetrators (as distinct from their political leaders) whose capture is considered impractical, or anyway potentially too costly in terms of Israeli soldiers’ lives. While this policy of state execution outside of the legal

system is opposed by human rights organizations in Israel as blatantly illegal and immoral, there is significant acquiescence with it by the demoralized and frustrated Israeli public.

The Israeli policy of not resorting to capital punishment, even in a time of bitter war against terror, is justified, sometimes explicitly but more often implicitly, by a number of considerations. First, there was never much belief in Israel in the deterrence value of the death penalty. The phenomenon of suicide bombers, which started in earnest around 1996, helped convince Israelis that to threaten their diehard enemies with death was futile. At the same time there was always real fear in Israel of the powerful effects of martyrdom. Israeli leaders like Menachem Begin and Yitzhak Shamir were personally active in the underground movements against the British. They were determined not to repeat the mistakes of the British who, by executing underground activists, helped canonize them and further fuel the struggle of the underground movements. The Israeli establishment is fully aware, for example, that national liberation movements can be effectively run from graves.

Moreover, there is the apprehension that, once a convicted Palestinian terrorist is put on death row, Israeli soldiers and civilians will become kidnapping targets for the purpose of serving as bargaining chips. Yet another consideration is the anticipated international outcry, from several European countries and from the Vatican, if Israel ever sentences a convicted terrorist to death. This intense pressure would further erode Israel’s claim to the moral high ground.

And so Eichmann remains the only person ever to be condemned to death by an Israeli court and executed by the state of Israel. Perhaps this fact inadvertently makes the point that, for the Israelis, the evil of the Nazi crimes, against humanity in general and against the Jewish people in particular, retains its historical uniqueness.

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