

Holding Fast to the Tree of Life

Yom Kippur ~ 5784

. Judaism places the value of human life above all other things. Leviticus tells us that we are given God's laws and statutes that we might follow them and live. Deuteronomy reminds that life and death hang in the balance, and that we are meant to choose life. Hillel taught: "One who has saved a life, it is as if they have saved an entire world." The Torah itself is called "A Tree of Life for those who hold it fast." **And yet: Judaism also has within it capital punishment; we can pick Divine-sanctioned killing from the branches of the Tree of Life as easily as we could pick any other mitzvah.**

Death is not a subject anyone **likes** discussing in private, let alone having to hear about it from the bimah. Yet, here we are on Yom Kippur. This solemn day forces us to reckon with our mortality and the worth of our lives. Prayers like *Unetaneh Tokef* and rituals like fasting, wearing white and abstaining from other daily pleasures, encourage this encounter with such a hard topic. A writer named Maya Bernstein wrote recently: "Yom Kippur is supposed to be: a theater of existential death awareness... [It] helps us to *feel* the truth that we theoretically know: that we are mortal."¹

Together, on this our tradition's day of judgement and teshuva, we should consider even more than death and mortality in general. We should consider the implications of our own role in causing other people's deaths, especially by killing them under legally

¹ <https://www.tabletmag.com/sections/holidays/articles/memento-mori-yom-kippur-mortality>

sanctioned acts such as the carrying out of the Death Penalty, and military or police killings. Today, as we do teshuvah as a community and strive toward the best version of ourselves, let us ask ourselves: Who are we when we do these things, when they are done in our name as members of society even if we don't pull the trigger ourselves so to speak? And how can we construct our humanity and live morally-conscious lives in such a world?

These questions are especially relevant to the Jewish community this year. 5783 saw the trial of the Tree of Life Shooter and the court's decision to sentence him to death for his unrepentant murder of 11 Jews praying in their synagogue. 5783 also saw the continuation of bloodshed in Israel and the West Bank as both terrorism and the continued occupation produced hundreds of deaths of Palestinians and Israelis—the most deaths in a single year since the Second Intifada. Many of those deaths were illegal - murders and terrorist attacks - **and** many occurred from military operations in which the deaths are, at least technically legal. I'm not a lawyer, but my understanding is that soldiers have a certain type of immunity for deaths caused by military operations. So this really has been a historically significant year with respect to sanctioned deaths connected to the Jewish community.

Jewish tradition has a complicated relationship with capital punishment, beginning in the Torah and continuing through to the Sages of the Talmud. Let's begin at the beginning—that is, in the Torah. We are all I'm sure familiar with one of the Torah's philosophical frames for how to mete out punishment: *lex talionis*, an eye for an eye. Exodus says:

When [two or more] parties fight, and one of them pushes a pregnant woman and a miscarriage results, but no other damage ensues, the one responsible shall be fined according as the woman's husband may exact, the payment to be based on reckoning. But if other damage ensues, the penalty shall be life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, bruise for bruise.²

Moreover, there are twenty-eight capital offenses in the Torah. These range from forbidden religious practices, to forbidden sexual practices, to issues of family discipline, to criminal offenses like kidnapping or murder.

As the Torah sometimes functions as a law-book, these crimes and their sentences are delivered in a purely matter-of-fact way much of the time. It is not until the Book of Deuteronomy, however, in Parashat Shoftim which we read on the first Shabbat of Elul, that we are given guidance as to how these penalties should be carried out. First, Shoftim says, the Death Penalty may only be carried out when more than one direct witness to the crime has testified to the guilt of the accused. We cannot execute someone based on one other person's statements, however trustworthy that person might be. Then, after laying out that stipulation, the Torah says something that I find profound: "Let the hands of the witnesses be the first to put [the condemned] to death, followed by the hands of the rest of the people. Thus you will sweep out evil from your midst."³ Every single member of society then—first the material witnesses in a capital case, and then everyone else—would participate in the public execution of the guilty party. This commandment is not possible to carry out—even in the Torahs' imagination of ancient times our People numbered in the hundreds of

² Exodus 21:22-25

³ Deuteronomy 17:7

thousands. Rather, the Torah is disguising societal ethics as judicial procedure. The execution of another human being, even if rightful, is not something to which anyone in our society can turn a blind eye. We all take responsibility in, to use the Torah's language, "sweeping out evil from our midst."

How would our relationship to the death penalty change if every single time it was carried out we all had to watch it on a live feed? How would our relationship to military raids change if we all were forced to watch them happen from the point of view of a soldier's body camera? Think of how much has already changed in our relationship to policing ever since the introduction of police body cameras! --the power of transparency.

There is a disconnect between the Torah's imagination of how an ideal society would handle capital punishment and the ways we do today. Perhaps we each cast a stone by paying our taxes--funding the criminal justice system and the military each year--but there is an undeniable, massive gulf between [working with your accountant and later reading about an execution in the news] and [watching one take place in real time.]

None of us have to look those people in the eye. We don't even have to look at ourselves all that hard. We hear about the verdict in the news, make a snap judgement--deserving or not--and then we can move on with our lives. Sequestering executions into such rarified spaces makes them almost imaginary. We don't have to look anyone in the eye: not the one to be executed, not the judge handing down the sentence, not the one who has to carry it out, not the one who has to confirm that the person is dead, and not the one who has to clean up the room when everyone leaves.

When we move from the Torah to the rabbis our tradition's reluctance to carry out such a serious punishment becomes even more crystalized. As Sam Berrin Shonkoff of the American Jewish World Service writes:

The Rabbis effectively abolish capital punishment, primarily on the grounds that human justice systems are fallible and that executing wrongly convicted individuals is unacceptable. The death penalty should be left in the hands of God, so to speak. To ensure this, the Rabbis prescribe extremely stringent legal measures for capital cases. For example, witnesses must have seen the entire crime as it was being committed, circumstantial evidence is illegitimate and the accused receives the benefit of the doubt. It is virtually impossible to sentence someone to death in rabbinic courts. Thus, the Mishnah teaches: A Sanhedrin [rabbinic court] that executes once in seven years is bloodthirsty. Rabbi Eliezer ben Azariah says, "Every 70 years." Rabbi Tarfon and Rabbi Akiva say, "If we were in the Sanhedrin, no one would ever be executed."

It should be noted what kind of rabbinic courts we are speaking of here. This is not the gathering of three rabbis that constitutes a beit din like we use for conversions to Judaism today. This is the Sanhedrin, a court made up of 23 rabbis, all of whom must confirm the guilt of the accused if the penalty is to be carried out. And the reluctance is obvious: just one death penalty in 70 years making a "bloodthirsty court."

This reluctance continues into later generations of rabbis. Maimonides famously writes in his Mishneh Torah: "It is better and more satisfactory to acquit a thousand guilty persons than to put a single innocent one to death." It is the execution of the innocent that is rightfully the greatest concern for our tradition. Not only, I would argue, because of how terrible it would be for that person to wrongly lose their life, but also because of the guilt that society takes on in the aftermath. Such an act is morally unforgivable, and it is **impossible** to make restitution or do full teshuvah. The person is gone.

I am reminded of the history I've learned and images I've seen from the Eichmann trials. Here is a man responsible for the worst act imaginable—Genocide, the Nazi “Final Solution.” His trial was highly publicized, televised, and took place in Israel. He sat behind bulletproof glass and the whole Jewish world watched as his evil was laid bare. Ultimately, he was publicly hanged for his crimes after it was found that he showed little remorse. Eichman is the perfect example of a “justified execution,” if there could be such a thing. His crime was heinous, resulting in the deaths of millions; he carried out his crime without remorse and showed no signs of remorse during the proceedings; his execution more than met the standard for public transparency, allowing the entire Jewish community, from a certain point of view, to cast a stone.

The execution of the shooter in Pittsburgh is a good example for comparison. He was similarly remorseless, so the questions that remain are: Did we achieve transparency? And: How many deaths are enough to justify the Death Penalty? We have other examples in American history of individuals who committed murder of just one person being executed, and those who killed more than one person who showed remorse being sentenced to life-imprisonment. How can we be sure in each case that we are in fact meeting our society's standards for sanctioning a death?

It is a curious irony—Israel has no death penalty, yet it is the country that held the most public capital trial in history. It is this irony that brings me to the case of Shireen Abu Akleh. She was a Palestinian American reporter for Al Jazeera, and she was wrongfully shot and killed during a military operation about a year and a half ago by an Israeli soldier. This was a tragedy—an innocent reporter's life taken wrongly and without cause. Israel's

government admitted, however reluctantly, that it was an Israeli soldier that was responsible, and Israel maintains that, because the killer was a soldier in an IDF operation, they are the only nation with the right to investigate the crime and punish those responsible. Others argued that since Akleh was an American citizen it should be the duty of the FBI to investigate this murder properly and punish those responsible. As it turns out, a year and a half later, neither country has done much of anything. No one in the Israeli army has been prosecuted, the military has not announced any disciplinary action, and the FBI has not called to question witnesses.⁴ This case remains a moral stain on the Jewish People. The question of the heinousness of her crime is irrelevant; she had committed no crime. The question of her remorse is irrelevant; she had committed no crime. Transparency is the only thing that preserves our humanity in the face of utterly immoral sanctioned acts, and yet our society has been denied even the semblance of transparency.

David Brooks, in his widely read article entitled “How America Got Mean,” touches on Iris Murdoch’s book *The Sovereignty of Good*. He describes her understanding of how to live a moral life, saying: “Normally, she argues, we go about our days with self-centered, self-serving eyes. We see and judge people in ways that satisfy our own ego. We diminish and stereotype and ignore, reducing other people to bit players in our own all-consuming personal drama. But we become morally better, she continues, as we learn to see others deeply, as we learn to envelop others in the kind of patient, caring regard that makes them

⁴ <https://www.nbcnews.com/news/world/shireen-abu-akleh-killing-fbi-justice-israel-military-palestinians-rcna83089>

feel seen, heard, and understood. This is the kind of attention that implicitly asks, “What are you going through?” and cares about the answer.”

As we do teshuvah, Yom Kippur asks that we pay this kind of attention. Yom Kippur asks that we consider our collective willingness to forget and move on, and it demands that we hold ourselves accountable for it. As a Jewish community, we need to see the humanity in each other and hold one another even as we hold ourselves and our leaders accountable. Our tradition urges us to hold these stories in our hearts, to not take lightly our ways of addressing them and to keep our eyes open until the end. We must look with open eyes at the ways we mete out justice and at the ways our neighbors are affected.

The case of the Pittsburgh shooter’s trial raised this difficult proposition within our community. I, for one, am a staunch opponent of the Death Penalty in all cases. I am not alone in this. There are numerous reasons to oppose it on civic or secular grounds—the incredibly high material cost to taxpayers; the reality that our methods remain horrifying when understood fully; the moral quandary of botched executions, about which we’ve seen more than a few lawsuits; the fact that the Death Penalty has not been shown to be a legitimate deterrent to the crimes that call for it. Yet I was surprised to read that Rabbi Charlie Cytron-Walker, the rabbi who, with his congregation, endured the events of that harrowing day in Colleyville, Texas, came out publicly as not opposed to the Penalty for the Tree of Life shooter, saying that even though he opposes the Death Penalty as a general rule in the United States because Judaism’s high standards for applying it are rarely if ever met, “In the Tree of Life case... All of the strict requirements that would have

allowed a Sanhedrin to condemn him to death have been met.”⁵ Even those directly affected by this shooter were not unanimous. Leaders and clergy of the Tree of Life community admitted that while they were ready to accept the sentence mostly because it would finally allow the community to turn the page and begin to heal, their members were torn about the realities of the sentence, and the broader lack of accountability for those who have enabled such mass shootings to occur.⁶

If that one community can disagree about all of this and remain a community, so must we all. The Torah itself calls us to be together in these moments—calls each of us to, metaphorically, feel the weight in our hands of the stone we might cast. 5783 was a violent year and in 5784 we will again pursue justice together. We’ll continue to call for the end of the loss of innocent lives as we oppose wars of aggression in Europe and abuses of power here at home and in Israel. We’ll continue to struggle together toward societies that live up to their own ethical standards. As we struggle, may it be our blessing this year to know that we are not alone. May we, even in the moments that make us feel broken and even when faced with impossible moral decisions, hold fast to our Tree of Life, allowing it to hold us in turn. May we pay the kind of attention that asks, “What are you going through?” and may we care about the answer. Maybe then, as we wade through inevitable future chapters of pain in our society, we’ll emerge on the other side with our humanity more intact. As we

⁵ <https://forward.com/opinion/554162/death-penalty-capital-punishment-tree-of-life-shooter-sentencing-jewish-bowers/>

⁶ <https://www.cnn.com/2023/08/02/us/pittsburgh-synagogue-shooting-trial-sentencing-deliberations/index.html>

say in our liturgy, the Torah's ways are ways of pleasantness, and all its paths lead to Shalom.

"Tree of Life" -Zasloff/Lindberg

Oh sweet Spirit hear my prayer
Help these words heal someone out there
I am but a voice just a cry in the air
But I sing nonetheless in this pain we share

Oh sweet friends come and dry your eyes
And hold each other by this Tree of Life
I'm angry and tired of this great divide
But I sing nonetheless with love on our side

Oh sweet souls who feel broken now
We'll heal together somewhere somehow
Time and again we have been let down
But we sing nonetheless still whole and still proud

Oh sweet Spirit hear my prayer
Help these words heal someone out there