

Yom HaRachamim: Moving Ourselves from Judgment to Compassion

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Rebbe Nachman of Bratslav tells this story: Two people were travelling with a terrified and disturbed horse, and the horse threw them from their wagon. One of the travellers stood up and began to hit the horse with his fist, over and over again.

The other traveller laughed at the first and said, “Aren’t you really just hitting your hand? What does it do to the horse? You should take a horse whip and strike it with that.” So the first traveller took a whip and began to hit the horse.

And what did the horse do? It stood up, and ran away as fast as it could, throwing the travellers into the mud as it went. Finally, the traveller took a rope and tied the horse to a tree — striking it again and again until both horse and human were exhausted, and there was nothing left to do but put the horse to death.¹

So what’s the moral of the story? It’s certainly not: “tie up your horse before beating it.” I share this story because Rebbe Nachman and his circle would tell it each year before Rosh HaShanah to bring to mind questions of judgment and undermine our belief in the value of punishment.

So we look back at this parable and ask: What was the purpose of hitting the horse? What did the travellers hope to accomplish by raining abuse on the animal? Did they hope to change its behavior, or were they just venting their anger?

The horse threw the wagon because it was frightened. Wouldn’t the travellers have done much better to calm the horse, by speaking to it in soothing tones, and patting it gently until it was no longer afraid?

Responding to the horse in a merciful and compassionate way would have been much more effective than the harsh and punitive approach the travellers took. What Rebbe Nachman wants us to learn from this story is that punishment is not the answer —it is cruel, ineffective, and ultimately self-defeating.

Rosh HaShanah is known as *Yom HaDin*, the Day of Judgment, when all creation stands before God, awaiting God’s verdict on the merit of our deeds. But in reality, Rosh HaShanah is actually *Yom HaRachamim*, the Day of Mercy, of Compassion. All night and all day, we recite prayers and supplications, trying to persuade God to approach our cases not with judgment, but with mercy.

This is vividly imagined in the midrash on the book of Leviticus: “When the Holy One — *HaKadosh Baruch Hu* — ascends the Throne of Judgment, it is with the intention to judge strictly.... But when the children of Israel take the shofar and sound it, the Holy One rises from the Throne of Judgment and sits upon the Throne of Mercy.”²

¹ Lekutei Moharan II:66

² Leviticus Rabbah 29:3

Imagine! God has sat down on the Throne of Judgment, mind made up, prepared to deliver a harsh decree. But upon hearing the shofar, a symbol of our desire to improve³ ourselves and our world, the Almighty God is moved, and turns to us, not in judgment, but with compassion.

If the Eternal — omniscient, omnipotent, and omnipresent — is willing to be moved, surely we can move ourselves.

So what if, tomorrow morning, when the shofar is sounded, we, created in God's image, emulate God's actions? What if, as we hear the primal blast of the ram's horn, we arise from our own seats of judgment, and move ourselves — each one of us — to a seat of mercy?

We live in a time of excessive *din*. Our world is overflowing with judgment. True, there is also a great deal of wrongdoing, but how we respond to wrongdoing is critical.

Do we judge people fairly?

Do we mete out punishment that fits the crime and results in rehabilitation?

Do we help people to change, or even make it possible?

When it comes to the American criminal justice system, for example, the answers are emphatically: no, no, and no.

Consider the incidence of wrongful convictions in the past thirty years. According to the National Registry of Exonerations, 2,240 wrongful convictions have been overturned since 1989. The total years lost to those imprisoned is a staggering 19,794. Dozens of individuals had already served more than thirty years.⁴ And among those who have received death sentences, there is an exoneration rate of five per year.⁵ Who knows how many innocent people have been executed?

In the case where a crime *has* occurred, enforcement is biased. White-collar crime that affects millions is largely ignored, and when it isn't, perpetrators often receive light sentences or no sentence at all. Our prisons are filled mostly with people of color, immigrants, and the poor who are there for small, nonviolent crimes, usually drug use.

Why is it, exactly, that crack cocaine and powder cocaine are treated so differently under the law? According to the ACLU,⁶ for every powder cocaine sentence, there are one hundred sentences for crack cocaine. Distribution of 500 grams of powder cocaine has the same mandatory minimum of five years as distribution of a mere 5 grams of crack cocaine. The two drugs are scientifically identical — the only difference is who uses them. Well-off white people tend to use powder cocaine; people of color in poor communities tend to use crack.

And what about helping people change? To me, this question is the most damning. The corrections system that is supposed to rehabilitate is failing. Prison conditions are poor, and they are

³ The root of שׁוֹפָר is connected to the verb שָׁפַר, to improve.

⁴ <https://www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx>

⁵ <https://deathpenaltyinfo.org/documents/FactSheet.pdf>

⁶ ACLU. *Cracks in the System: Twenty Years of the Unjust Federal Crack Cocaine Law*, October 2006.

understaffed, and lacking in education opportunities for inmates. Moreover, the system is rapidly privatizing and, increasingly, prisons are becoming for-profit institutions. This commodifies human beings and creates corporate incentive to keep people behind bars.

A recent article in the *Village Voice* calls this “America’s Profitable Gulag Archipelago,” in which “imprisoned men and women are the drivers of a multi-billion dollar shadow economy” where the minimum wage is 23 cents, and the maximum is \$1.15 an hour.⁷

When a person is released from prison, strict and complicated rules of parole and probation force people to walk on eggshells. The national recidivism rate is 65 percent. More than half of those returning to prison do so because of technical violations of probation and parole.⁸

Just like in Rebbe Nachman’s story of the horse, this system of punishment is cruel and self-defeating. Locking people away to do what amounts to slave labor doesn’t help people improve their lives — it can harden them, and, in some cases, it breaks them.

A recent article in the *New York Times* explained the psychological effects of punishment: “The idea of punishment conveys the message: ‘I need to make you suffer for what you did.’ ... Punishments tend to escalate conflict and shut down learning. They elicit a fight or flight response, which means that sophisticated thinking in the frontal cortex goes dark and basic defense mechanisms kick in...”⁹

In other words, punishment has a neurological impact on a person’s ability to use all their human faculties. As Rebbe Nachman says, *k’she-ma’anishin et echad, okrin oto mi-shoresh chiyuto*¹⁰ — when you punish someone, you uproot them from the root of their vitality, their humanity.

And it is not only the person who is receiving punishment who is hurt, but those who inflict punishment as well. Studies show that corrections officers in the U.S. function almost entirely in a punitive capacity, and as a result experience high levels of hypertension, alcoholism, and suicide. The average life expectancy of an American is 78. The average life expectancy of an American corrections officer is 59.¹¹

When a human inflicts punishment on another person, they both suffer. As Frederick Douglass said in 1883, “No man can put a chain about the ankle of his fellow man without ... finding the other end fastened [around] his own neck.”¹²

⁷ “Prisonstrike: A Rebellion Inside America’s Profitable Gulag Archipelago.” *The Village Voice*, August 31, 2018.

⁸ Website of “Reform.” — a movement to reduce the number of Americans caught in the criminal justice system.

⁹ “Which Is Better, Rewards or Punishments? Neither.” *New York Times*, August 21, 2018.

¹⁰ *Lekutei Moharan II*:66

¹¹ “Why Scandinavian Prisons Are Superior.” *The Atlantic*, September 24, 2013.

¹² Address delivered at the Civil Right Mass Meeting in Washington, D.C., October 22, 1883.

<https://www.loc.gov/resource/mfd.24004/?sp=11>

Once a person gets out of prison and stays out, what kind of life is available to them?

Individuals who have been incarcerated are denied many of the rights of American citizens: Equal opportunity for housing, the right to serve on a jury, and even the right to vote. A criminal record can keep people from access to their children. And one of the most insidious ways that people with a record are kept from building a life is in limited education and employment opportunities.

Very few positions that enable social mobility are open to people with criminal records. Without even knowing the details of a person's record, many would recoil at the mere thought of having an "ex-con" in their office, or school, or hospital.

When we keep people with a criminal record from building productive lives, we limit what psychologists Hazel Markus and Paula Nurius call "possible selves." These are informed by a person's past and how they think about their future — their "hopes, fears, and fantasies..."

Markus and Nurius explain that "an individual is free to create any variety of possible selves, the pool of possible selves derives from ... models, images and symbols provided by the media and by the individual's immediate social experiences."¹³ In other words, a person may be limited in their vision of possible selves based on what our society sees for people "like them."

An obvious example is the fight for women in the workplace. Justice Ruth Bader Ginsburg has become a late-in-life celebrity. Yet, from the very beginning of her career in the law, she has done critically important work to expand the range of possible selves for American women.

The recent documentary *RBG* describes how hard she worked during law school — rising to the top of her class, making the *Harvard Law Review* — all while caring for an infant and a husband with cancer. Yet, despite her obvious excellence, she was unable to find a job at a single law firm in New York. Those who would have hired her — all men — could not — would not — imagine a possible self for RBG other than "wife and mother."

My teacher Elana Stein Hain tells us that the limitations of possible selves we impose on others is undergirded by objectification — instrumentalizing others to serve one's own needs. This happens when we judge others based on what we see through our own lens, instead of letting others *show us* who they are.

But what would happen if we quieted our impulse to judge? A meditation in our S'lichot prayer book says, "Open your heart to hear the horn; believe in your power to change."¹⁴ Yes, we must believe in our own power to change, but we must also be willing to extend that same faith to others. Last October, our society was presented with one of its greatest challenges to this idea. When *Me Too* broke open the floodgates, I found the flow of stories from women from every walk of life extraordinarily powerful. The more I read and the more I reflected on my own experiences, the angrier I became. And it felt GOOD. It was liberating to be open about my own painful experiences and the shared pain that all women surely have.

¹³ Hazel Markus and Paula Nurius, "Possible Selves," *American Psychologist* 41, No. 9 (Sept. 1986), 954.

¹⁴ *Mishkan HaLev*, p. 90.

The takedowns of powerful men who used their power to hurt women, physically, spiritually, and socially, felt like more than just a corrective — it felt like balm on a wound.

Over the course of the past year there have been many stories, and many powerful men have fallen. Each time I read an article, I thought: Good, now this person has to stop. And, I admit, part of me also thought: Good, he got what was coming to him.

But the sheer volume of incidents has revealed complexities that were less apparent when it was Harvey Weinstein and Bill Cosby in the crosshairs. Now, the righteous anger has dulled to an ache, and what has become a mob response feels simplistic and vindictive.

I don't want to see gratuitous punishment inflicted on someone like comedian Louis CK, for example, for being gross and entitled — I just want him to realize what he's been doing; stop doing it; learn from it; and do everything possible to make it right with the women he hurt. I want him and all of them to do real *t'shuvah*.

But *t'shuvah*, repentance, is an inherently mutual project. Our tradition teaches that if someone who has wronged you approaches you in contrition, you are obligated to forgive. If you do not forgive, you become the transgressor.

For the many powerful men who have fallen, there is no clear path to redemption. If we, as a society, don't work to create that path, we may end up becoming the transgressors. And, when our collective response to a person's wrongdoing is "you're finished" how can we expect real change?

The Me Too takedowns are moving from acts of justice and accountability to gratuitous, gleeful humiliations. If the Internet is our public square, our insistence on dwelling on the worst of people has become the modern version of putting people in the stocks and pillory. I fear that our righteous anger will consume us from the inside.

The Hassidic master the Sfat Emet taught that one who does real *t'shuvah* is no longer the person who committed the wrongdoing. She or he is now a *bri'ah chadashah*, a new being. As my teacher Micha Goodman explains, if you see a person who has done *t'shuvah* as a repeat offender, then *you* haven't done the work of forgiveness. Forgiveness means changing the way you see another person, cleansing your memories of negativity and letting go of anger.

This is a real challenge. Even when we forgive, how do we let go? How do we trust again? I don't know the answer to this question. This is my struggle as much as it is anyone's. But what I would say is that we can start in small ways.

According to our tradition, *din* and *rachamim*, judgment and compassion, exist in balance with each other. There must be equal measures of the two qualities, or the world cannot be sustained. But there are voices in our tradition, the Kabbalists especially, who looked at the world and saw that achieving a balance was insufficient. They felt that an equal measure of *din* and *rachamim* was damaging the world — that there was a need for an extra measure of compassion and love.

So, they sought to tip the balance. Some of the ways in which they did this might seem overly subtle, but even seemingly small acts can serve as a reminder to us to do the work.

My favorite example of this is one I learned this summer in Jerusalem, where I was studying with a *sofer*, a master scribe of Torah scrolls and other sacred texts. Certain letters of the *alef-bet* have crowns on them, which looks like three vertical lines emanating from the top of the letter. My teacher told me: “If you want to be kabbalistic, you can make the right side, which stands for *chesed*, love, slightly taller than the left side, which represents *din*, judgment.”

And so I learned to make the crowns of the letters higher on the right side than on the left. Writing this way may not actually heal the world, but every time I form a *keter* on a letter, I think about allowing love and compassion to prevail over judgment, and I try to emulate the ink.

May this be a good and sweet year. May compassion prevail over judgment. And may we inscribe ourselves — and each other — in the Book of Life.