

BEING MERCIFUL TO THE CRUEL
7th Day Pesach
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There is a lot of confusion in our society about force and the use of physical force by those in a position of authority. Yesterday a judge acquitted three New York Police Department detectives of all charges in the shooting death of the unarmed Sean Bell in November of 2006. Many of us would like to believe our police officers do not use force excessively, or without due cause and therefore we were pleased with the judge's finding that was not the case here. Some others suspect a cover up – their assumptions are different than ours and they do suspect the police and authorities of unwarranted force and believe it is something that happens regularly and constantly. Such a belief is not a good state of affairs.

Similarly, there is a debate that is currently going on regarding torture and the value of torture in producing critical information from terrorists. Does our government use or abuse its interrogation techniques to include torture in the attempt to get vital information to save American lives? Our president insists they do not, many people do not believe him.

But what is lost in all of these conversations is that the issues are far too complex to reduce them to yes or no, right or wrong, good or bad. While I believe that the police in general are responsible and rational, I also am not so naïve as to believe that excesses are not possible – that is why our police are not above the law and subject to review by the judiciary. The results of this case should not be over generalized – all the ruling states is that in this instance there was not evidence to conclude that the officers had acted criminally – no more – no less. They may, in fact, have acted negligently or carelessly or callously – but that is another matter.

Should torture be categorically banned? Is the death penalty something that a progressive society should eliminate unconditionally? These are indeed weighty questions and I confess I do not have simple answers for them. I am suspect of those who see such view complicated issues simplistically. When the Reform Movement came out with a strong statement at its last convention condemning torture I read their statement with great care looking for some hint of sensitivity that there may be some rare, extreme situations that call for, demand extreme measures – I found no such wiggle room and as a result I was troubled by the absolute nature of this document. I am equally troubled by those who would counsel that we should have no rules and just trust our government to know and to do what is best for us. Such trust has too often been abused in the past – as Jews we know about the need for rules and for the rule of law and we also know how to deal with exceptions and unique situations. If the law was always clear and simple – the Talmud would have been only a few pages long – instead of the thousands of pages and the countless volumes of *teshuvot* that have followed it over the ages.

We are a people of compassion. Ours is a tradition that requires us to spill out some wine at our Seder tables because we are not allowed to rejoice over the downfall of our enemies. But, while we are required not to celebrate – drowned in the sea they were – ours is not a pacifist

tradition by any means. The image of the children of Israel walking through the sea on dry land with the water raging on either side is indeed illustrative – it is a narrow path we strive to walk and the dangers lurk *mi'minam usmismolam* -- to the right and to the left.

Allow me to present one point of view which appears in our tradition and which comes out of today's *Kriat ha-Torah* for your consideration. There is so much that needs to be said about this very complex subject – but for today, I will limit myself to just this.

The *Midrash* tells us that when the Israelites came to the Sea of Reeds with the Egyptian army in hot pursuit after them, God had there and then decided to drown the Egyptians in the sea. Thereupon the guardian angel of Egypt, whose name is *Uza* came before the Holy One to plead for mercy on behalf the Egyptians. So did the angels of the other nations of the world. At that point *Micha-el*, the guardian angel of Israel came before God and urged him to drown the Egyptians. God inquired of *Micha-el* why He should act so harshly, whereupon *Micha-el* sent the angel *Gavriel* before the Holy One. *Gavriel* held in his hand an Egyptian brick with the corpse of a Hebrew infant entombed inside. Seeing that awful gruesome site, the Holy One immediately decided that the pursuing Egyptian troops must be drowned and so they were. The brick became evidence of the perverted values of an Egyptian society that valued production more than human life. They did not permit anything to interfere with the building of their precious pyramids – an infant falls into the cement – no time to stop and rescue it. To halt the production line to save a human life? Bricks were of value, Jewish lives were worthless.

This is a fascinating *midrash* and it deserves much more attention and study than I can afford it from the bema this morning. I urge you to plumb its further implications at your Shabbat tables. But if I understand it correctly – God at first does not understand *Micha-el* – why is he so vengeful? Why does he demand the punishment of the Egyptians? God and all the other angels start with the assumption – and I would argue it is the base assumption upon which all of Judaism is based – that people are deserving of compassion. God's assumption is that the Egyptians, like all people are deserving of compassion. So what changes His mind? The angel *Micha-el* brings evidence that the Egyptians are not like all other people – the angel brings evidence that even God cannot ignore, to challenge His fundamental assumption – the sight of the brick with a corpse of a Jewish infant entombed inside of it, lays bare the reality of an evil that is not deserving of compassion.

And this really brings us to the core of this debate: Is there such a thing as an evil that is not deserving of compassion?

On the whole Judaism tends to err on the side of compassion. As you may know, it is virtually impossible to execute someone under Talmudic law. Only under the most exceptional conditions could somebody be executed by the Sanhedrin. That is one of the reasons that I personally oppose the death penalty. However there is also an awareness in Judaism as borne out by this *Midrash* that there are rules and there are exceptions to those rules and we ignore this fact at our peril. Does the modern state of Israel have the death penalty or not? Well, you are right – the answer is no and yes. They do not have the death penalty – except in certain unique situations. In the history of the modern state there has been exactly one execution---

Adolph Eichman. There is such a thing as an evil that is not deserving of compassion and Eichman embodied just such an evil.

The Rabbis enunciated a principle which I think is very important. They say: "He who is merciful to the cruel will wind up being cruel to the merciful."

I think that is a very important statement. It is one thing to be merciful to one who has transgressed with minimal impact upon other innocent people. Compassion should be our bias and lacking clear evidence of wrongdoing I believe the judge was correct to find the police officers not guilty. However such mercy cannot and should not be extended to those who are evil – when the angel brought evidence of the depravity of the Egyptians – God, our compassionate God, whose name is *Rachmana*, the Compassionate One – even God, could not avert His eyes from such evil and rescinded His decision and drowned the Egyptians in the sea. I am against torture – and there should be laws against it. But when the angel brings evidence before me that I cannot ignore – I also believe that there must be room for exceptions.

In an interview on NPR former President Bill Clinton gave what has become known as the "ticking-bomb scenario". He said, "You picked up someone you know is the No. 2 aide to Osama bin Laden. And you know they have an operation planned for the United States or some European capital in the next three days. And you know this guy knows it. And you think you can only get it out of this guy by shooting him full of some drugs or waterboarding him or otherwise working him over." President Clinton went on to say, "Congress should draw a narrow statute which would permit the president to make a finding in a case like that and that finding could be submitted, even after the fact to the Foreign Intelligence Surveillance Court. The president would have to take personal responsibility for authorizing torture in such an extreme situation." I don't know about you – but that sounds reasonable to me. Prof Alan Dershowitz in a recent article in the Wall Street Journal on this subject wrote that even though he opposes torture, he cannot imagine a president who would not authorize torture in such a scenario – if he believed it was the only way of securing information necessary to prevent an imminent mass casualty attack. For Dershowitz the only question is whether such a president would do it openly with accountability or secretly with deniability. He argues that the first is consistent with democratic theory and the latter is consistent with typical political hypocrisy. Recently, Israeli security officials confronted just such a "ticking bomb" scenario. Several days before Yom Kippur, they received credible information that a suicide bomber was planning to blow himself up in a crowded synagogue on the holiest day of the Jewish year. After a gun battle in which an Israeli soldier was killed, the commander of the terrorist cell in Nablus was captured. Interrogation led to the location of the suicide bomb in a Tel Aviv apartment. Israel denies that it uses torture and I have no evidence to the contrary. But what if lawful interrogation failed to uncover the whereabouts of the suicide bomber – Dershowitz asks. What other forms of pressure should be employed in such situations?

God believe in rules and He believed that all of His children were deserving of compassion and then the angel *Micha-el* brought evidence to the contrary – he held before the Holy One

Blessed Be He, a brick with an infant entombed inside of it – and even God understood there was evil in the world that had to be destroyed.

The most troubling section of the entire Passover *Haggadah* is the paragraph we read when we open the door for Elijah – “*Sfoch Hamatcha al hagoyim ashe lo yedaucha... Pour out your wrath O’ Lord on the nations who do not know Thee...*” It is such a vengeful paragraph – it seems so, well so un-Jewish – so lacking in compassion that we have come to associate with our sacred tradition – it makes us uncomfortable. I remember once at the Seminary a student railing against this paragraph and declaring that he would not recite, that he could not recite it – that he was taking it out of his *haggadah*. And Prof. Moshe Zucker – may his memory be a blessing – my teacher and one of the most learned and respected professors of Talmud on the Seminary faculty stood up and chastised that student – if you want to take *Shfoch Hamatcha* – out of your *haggadah* take it out – but don’t you dare touch it in mine – I who suffered at the hands of the Nazis – may their memory be cursed – I know evil, I experienced evil; -- and I want God to pour out his wrath on such evil! And so, we still read *Shfoch Hamatcha* at my seder – it makes me uncomfortable -- but I who know of a world in which babies are entombed in bricks – know that it has a place in our *haggadah*. It is indeed a complicated issue I raise with you this Shabbat morning -- we are a compassionate people and we would like to behave compassionately towards others. To day we recited *Hallel* --- the Psalms of praise and celebration – but we recited the abbreviated version today as we did on most of the days of Passover – our singing and rejoicing is cut short, it is muted because we recognize that our liberation came at the expense of others. It is precisely this sensitivity that I love about my tradition. But, the *midrash* reminds me that it is not only about compassion – and sometimes even God has to change His mind.

So let us learn how to mingle mercy with justice and justice with mercy and may we witness a world emptied of violence so we may be spared having to make these decisions.