

Restorative Justice and Yom Kippur: Healing the Harm, Personally and Communally

Central Synagogue Yom Kippur Afternoon 5782

Rabbi Rick Jacobs

Restorative Justice and Judaism

In March 2016 two men drove through Prestwich, an area of Manchester, England with a large Jewish population, shouting aggressive anti-Semitic abuse at passers-by. The offenders were caught by the police, who then traced two of the victims. One of them, Rabbi Amir Ellituv was driving through Prestwich at the time. He witnessed some of the abuse and was able to take a picture of the car and email it to the police. He said: "The car was found more or less straightaway, and the two men were interviewed under caution. The local community was pleased to hear how seriously the police were taking the incident." Rabbi Ellituv continued: "The police presented me with two options. I could go to court, or a restorative justice process could be followed, where the offenders would have to face up to the impact of what they had done. "I felt that the offenders needed to understand the true impact of their actions and to become better examples to their own children and friends, so I opted to try restorative justice."

Restorative Justice

Restorative justice emerged in the 1970s as an effort to correct some of the weaknesses of the western legal system while building on its strengths. An area of special concern has been the neglect of victims and their needs; legal justice is largely about what to do with offenders. It has also been driven by a desire to hold offenders truly accountable. Recognizing that punishment is often ineffective, restorative justice aims at helping offenders to recognize the harm they have caused and encouraging them to repair the harm, to the extent it is possible.

Howard Zehr, American criminologist, pioneer of restorative justice.

תשובה-- Teshuvah--Repentance

According to Maimonides, four of the most important steps of *teshuvah* are the following:

1. Verbally confess mistake and asking for forgiveness (*Mishneh Torah* 1:1).
2. Express sincere remorse, resolving not to make the same mistake again (*Mishneh Torah* 2:2).
3. Do everything in your power to "right the wrong," to make restitution or reparation for the misdeed and appease the person who has been hurt (*Mishneh Torah* 2:9).
4. Act differently if the same situation happens again (*Mishneh Torah* 2:1)

Confession/Apology --Remorse Required

כָּל הַמְתַּנְּדֵה בְּדַבָּרִים וְלֹא גָמַר בְּלִבּוֹ לַעֲזֹב הַרִי זֶה דּוֹמֶה לְטוֹבֵל וְשָׂרֵץ בְּיָדוֹ שֶׁאֵין הַטְּבִילָה מוֹעֵלֶת לוֹ עַד שֶׁיִּשְׁלִיךְ הַשָּׂרֵץ.
"אֲנִי הִטָּא הָעַם הַזֶּה הַטָּאָה גְּדֹלָה": (שְׁמוֹת ל"ב ל"א) וְכֵן הוּא אוֹמֵר: "וּמוֹדָה וְעֹזֵב יִרְחָם."

Anyone who verbalizes his confession without resolving in his heart to abandon [sin] can be compared to one who immerses [in a *mikvah*] with a reptile in his hand; the immersion is of no value to him until he casts away the reptile. Thus the [principle] is said (Proverbs 28:13): "He who confesses and abandons [his sins] will be treated mercifully."

Moses Maimonides, Mishneh Torah, Laws of Repentance, 2:3; משנה תורה, הלכות תשובה ב'ג'.

Apology Without Remorse

In recent days, the airwaves have been flooded with political and religious leaders attempting to apologize.

“...I do apologize if you’re offended by that.”

“If I’ve offended anyone, I’m sorry,”

“Am I sorry? Of course--if I did the things that they said I did.”

Public Apology-- ADL Head: On NY Islamic Center, We Were Wrong, Plain And Simple

Institutions, especially century-old institutions like ADL, also can commit to the practice of self-examination and Teshuvah. And it is in this spirit that I have been reflecting on a stance ADL took 11 years ago when we opposed the location of the then-proposed Park51 Islamic Community Center & Mosque near Ground Zero in Lower Manhattan. Originally known as Cordoba House and modeled after institutions such as the JCC in Manhattan, now known as the Marlene Meyerson JCC Manhattan, and the 92nd Street Y, the project planned to include community and cultural spaces with the goal of fostering interfaith dialogue and promoting peace and understanding. I believe the stance we took is one for which we owe the Muslim community an apology...

We can't change the past. But we accept responsibility for our unwise stance on Cordoba House, apologize without caveat and commit to doing our utmost going forward to use our expertise to fight anti-Muslim bias as allies.

CNN Opinion by Jonathan A. Greenblatt, CEO and National Director of ADL September 5, 2021

Healing the Harm

Restorative justice posits that there isn't a binary between those who cause harm and those who don't – we all cause harm, just at different scales. Restorative justice also assumes that restitution is possible. Even those who have caused grave harm have the potential to engage in the noble work of repair. These values resonate with Jewish concepts of the soul and the power of repentance.

Restorative Justice and Judaism, Jericho Vincent

אין התשובה ולא יום הכיפורים מכפרין אלא על עברות שבין אדם למקום קגון מי שזכר דבר אסור או בעל בעילה אסורה וכיוצא בהן. אבל עברות שבין אדם לחברו כגון החובל את חברו או המקלל חברו או גונלו וכיוצא בהן אינו נמחל לו לעולם עד שיתן לחברו מה שהוא חייב לו וירצהו. אף על פי שהחזיר לו ממון שהוא חייב לו צריך לרצותו ולשאל ממנו שימחל לו. אפלו לא הקניט את חברו אלא בדברים צריף לפיסו ולפגע בו עד שימחל לו.

Repentance and Yom Kippur only atone for sins committed between a person and God, for example, one who ate forbidden food or engaged in consensual but illicit sexual relations, and the like. However, sins between a person and his/her fellow human, and for example, one injures another person or curses another person or steals from him, and the like, **is not forgiven until the person makes restitution for what they owe and appeases the person they wronged.** Even if a person restores the money that they owe [the person they wronged], they must appease the person and ask to be forgiven. Even if they only offended their fellow with words, they must appease them and approach them until they are forgiven.

Mishneh Torah, Repentance 2:9, הלכות תשובה ב:ט, 9

South African Truth and Reconciliation Commission as Restorative Justice

The South African Truth and Reconciliation commission had adopted the rule that amnesty would be granted to those who had committed crimes under the apartheid regime if they confessed their crimes truthfully and provided whatever information they had about the crimes in which they had participated. Among those participating in the forum was a white police officer. This policeman had ordered that two houses in a black township be set on fire. Seven adults and five children were inside, and all 12 were killed. The amnesty rule freed the police officer from any legal obligation to the families of the victims, and from any punishment for the crime. A rabbi who attended the session recalled: “As the officer recounted his story, lamenting how much he regretted his action, audience members began to weep, eventually giving him a standing ovation.

“I was aghast” the rabbi recalled, “I’m sorry, but this is ridiculous,” he called out “You can’t sadistically murder 12 innocent people by burning them alive and just say “I’m sorry.”

Solomon Schimmel, Wounds Not Healed by Time: The Power of Repentance and Forgiveness, p.8

Sexual Abuse, Teshuvah, Restorative Justice

Fulfilling the steps of teshuvah includes apologizing to the ones we have harmed after regretting, renouncing and confessing our actions. In understanding the ways in which the wider community has failed victims, we also find the role we can play in engaging in communal repentance. It has been disheartening to hear silence from rabbis and other community leaders in response to cases of abuse. Why have they not publicly supported victims? We cannot simply struggle with the idea of child sexual abuse or other #MeToo accounts in theory – unfortunately, there are plenty of stories for us to deal with in practice. We do not need to wait to be told to have empathy for survivors or to reach out and offer support. We can become vocal about protesting abuse, abusers and their enablers, and protecting children and the wider community on our own. It would be nice if these values were demonstrated at the top.

Dr. Guila Benchimol, Center for Communal Research of the Orthodox Union

An Ashamnu for #MeToo

Danya Ruttenberg, S. Bear Bergman, Leah Greenblum, Emily Becker, Abby Citrin

We **Abused** our power, we didn’t **Believe** survivors, we were **Complicit**, we **Demeaned**. We **Echoed** the majority, we **Focused** on our own self-interest over safety, we **Gave** abusers opportunities to further harm, we **Humiliated** survivors, we **Ignored** our impact, we **Justified** inappropriate behavior. We **Kept** abusers in power, we **Laughed** at jokes that supported rape culture, we **Marginalized** narratives that weren’t easy to digest, we **Normalized** problematic behavior, we **Ostracized** victims, we **Participated** in the erasure of survivors’ voices. We **Questioned** survivors’ motivations, we **Reinforced** harmful myths, we **Silenced** voices trying to come forward, We **Trivialized**. We didn’t **Use** safe protocols, we **Violated** boundaries, we **Waited** too long to take action, we **Exonerated** perpetrators who didn’t repent, we **Yielded** to our basest impulses, we **Zealously** defended perpetrators of harm.

Ethical Accountability

Our movement is in a moment of reckoning. For far too long we have looked the other way when harmful actions were committed by some in our community. We have been quiet as instances of sexual harassment, oppression, and abuse have occurred in our institutions. And, we have been reticent to speak out when those in positions of authority use their power to impede and demean our colleagues who are women, LGBTQ+, people of Color, people with disabilities, simultaneously harming them and robbing our institutions of their essential contributions.

Rabbi Rick Jacobs, Yom Kippur Video Message 5782

Reparations

“Our Jewish texts are clear on the importance of restitution for wrongs committed. The rabbis understood that the victim of a crime was made whole by financial repayment for damages done. Maimonides went one step further, linking the payment of damages to the concept of *t’shuvah*, noting that repentance must accompany the financial commitment (Mishnah Torah, Hilchot Teshuvah 1.1).

In 2008, the U.S. House of Representatives adopted a formal resolution that “apologizes to African Americans on behalf of the people of the United States, for the wrongs committed against them and their ancestors who suffered under slavery and Jim Crow.”¹³¹ Today, there are growing calls for reparations to be made to the descendants of slaves.”

Resolution on the Study and Development of Reparations for Slavery and Systemic Racism in the U.S. URJ Resolution Adopted at Biennial Convention, Chicago, Illinois, December 2019

German Reparations to Israel

The first reparations payments to the Israeli state as goods in kind began in 1953 and ended in 1965; payments to individuals continue to this day. By the end of 2008, Germany had provided 66 billion euros in all forms of compensation, with the largest share going to Israel. Some Israelis said it was akin to taking blood money, but the agreement brought in German goods and infrastructure that built and stabilized the Israeli economy.

“In Germany, restitution has rightly been paid, and continues to be paid, to survivors of the Holocaust. In America, it was the slaveholders who got restitution, not the people whose lives and wages were stolen from them for twelve generations.”

Isabel Wilkerson, Caste: The Origins of Our Discontents

Prime Minister Naftali Bennett offers Dvar Torah-Leaders Who Sin, Washington DC

“He walked in with the energy of a Bnei Akiva counselor ready to start a Shabbaton. He stood at the buffet table and told us a few words of Torah about leadership. And then, when he was told there was still another 10 minutes until Shabbat, he launched into a second lesson, comparing the sins of Kings Saul and David, and their repentance. The bottom line was that a leader is judged not only by his mistakes but by whether he owns up to and learns from them.”

Jerusalem Post, Lahav Harkov, August 30, 2021

Nechemta-Redemptive Final Thoughts

"When we forget the essence of our own soul... everything becomes confused and in doubt. The primary teshuvah, that which immediately lights the darkness, is when a person returns to themselves, to the root of their soul-- then they will immediately return to God, to the soul of all souls."

HaRav Kook, Orot HaTeshuva

דָּאָמַר רַבִּי אֲבָהוּ: מְקוֹם שֶׁבִעָלִי תְּשׁוּבָה עוֹמְדִין — צְדִיקִים גְּמוּרִים אֵינָם עוֹמְדִין, שְׁנֵאמַר: "שְׁלוֹם שְׁלוֹם לְרַחוּק ... וְלִקְרוֹב". "לְרַחוּק" בְּרִישָׁא, וְהִדָּר "לְקְרוֹב"...

As Rabbi Abbahu said: In the place where penitents stand, even the full-fledged righteous do not stand, as it is stated: “Peace, peace upon him who is far and him who is near.” Peace and greeting is extended first to him who is far, the penitent, and only thereafter is peace extended to him who is near, the full-fledged righteous...

Berakhot 34b- ל"ד ב- ברכות