

Rabbi Sarah Krinsky

Yom Kippur 5779

In college, I spent several semesters as a psychology major. And over the course of the 8 or 10 psych classes I took, I started to recognize some familiar experiments. Pavlov and his dogs, of course. Milgram's realization of the dangerous reaches of human obedience. And an oft-referenced philosophical dilemma called the trolley problem.

In this famed trolley problem, subjects are told of a runaway trolley barreling down a railway, directly on track to hit and kill five workers fixing the railroad a little ways down the path. And, while the trolley driver is powerless to stop the train, the subjects are told that *they*, as spectators, have the power to pull a lever and - in so doing - divert the trolley down a *new* route where it would hit and kill not five workers, but just one worker. Subjects are then asked - would you pull the lever? 9/10 say yes. That's phase 1.

Phase 2 of the study involves the same set-up - same runaway trolley, same five unlucky workers in its path. This time, though, the subjects are told that rather than have access to a *lever* to divert the trolley's route, they are standing on a bridge *overlooking* the track next to a person in a large and elaborate costume. So large and elaborate, so full of mass and girth, that it would be *sure* to stop the trolley in its tracks before it hits the workers should the costumed man be in front of the train. Subjects are asked -

would you push the costumed man over the bridge into the path of the trolley?

The math is the same as in phase 1. Kill one, save five. But here, in phase 2, 9/10 say no. 9/10 would *not* push the costumed man into the path of the trolley.

What's interesting about this dilemma - which has existed for decades in *philosophical* debates - is that it has now made its way into *science*. As subjects are asked these questions and reason through their answers, researchers have the ability through real time fMRI scans to track what parts of the brain are active in subjects' thought processes. Dr. Joshua Greene, a leading expert in "trolleyology" (not a made up term) has performed just this experiment.

Dr. Greene's results? In phase 1 - the phase where subjects overwhelmingly decide to pull the lever, making the calculation to sacrifice one for the sake of five - in this phase, the part of the brain that lights up is the dorsolateral prefrontal cortex - the part of our brain involved in logic. Involved in rational thinking, in fair decision making. In the pursuit of calculated *justice*. In phase 2, however - the phase where subjects overwhelmingly decide *not* to push the costumed man onto the tracks - a *different* part of our brain lights up too. In this phase, the neural system associated with emotional processing, with feeling, with love - *that* is what gets activated.

Justice - logic, the dorsolateral prefrontal cortex - justice tells us to do the math. To say five is greater than one, and to pull the lever. And that type of justice, of calculation, is rooted in our brains.

But there's something else deep and innate within us too. And that something else that is triggered when we are forced into contact, into proximity, with another human life - that something else is there too, and seems to override - or at least *fight against* - those logical instincts. There's something else that compels us not to use our hands to cause harm. That something else called mercy. Called compassion. Called love.

This dilemma - this competition between justice and compassion, or logic and love - it plays out in our brains. And in our philosophy. And it plays out in our tradition.

In a mishnah in Pirkei Avot, there is a variation on the rabbinic idea about the three things the world stands upon. Here, Rabban Gamliel asserts:

על שלשה דברים העולם קיים, על הדין ועל האמת ועל השלום

The world exists on three things: justice, on truth and on shalom (peace and harmony).

A classic midrashic read of this text would deduce, then, that these categories are not overlapping but rather mutually exclusive. Justice, truth and peace must be *three distinct principles* to stand upon, *three different ways* of existing in the world. Where there is justice, there is no room for lived truth, our mishnah asserts. Where there is shalom - experience of whole selves at love and at peace - justice cannot be found.

Or, in words of the midrash, Breishit Rabba,
“If you want to have a world, there can be no justice, and if justice is what you want, there can be no world.”

In this period, in this week, on this day - we are primed, I think, to want to pick justice - to assume justice - as our world and our tradition's organizing principle.

Because for many of us, the conception of Yom Kippur and the idea of divine judgment and justice are, in fact, inextricably intertwined. Today is our tradition's moment, we're taught, of trial and appeal, of accountings and books. This is when our deeds are totaled and our fate is decided by scales that tip toward good or toward bad, toward life or toward death. When *justice means logic. And reason. And calculations.*

This isn't always what justice means - we'll come back to that. But I do want to hold it up as *one version* of what justice in our tradition stands for and, in response to that type of justice - which abounds in our high holy days - to offer up an alternative.

An alternative that acknowledges what we intuit: that this version of justice - a version based on logical calculations and cold facts (a version that also exists in pockets of our lives and our laws and our society) - is not enough. That it is not enough to reduce our existence to a tally of divine pluses and minuses.

What I want to suggest is the way in which, instead, we can conceive of Yom Kippur as a day "beyond justice" - beyond the impersonal tallies and totals. Yom Kippur - when just justice isn't enough.

So if not justice, then what?

I want to offer three things - three other ways to experience Yom Kippur, to be in relationship with God, to connect with one another - that extend beyond (and that can, in our world of mutually exclusivity, even come to stand in the place of) this type of divine justice.

Mercy. Believing the best. And love.

Mercy. Mercy is an attribute that we see even God must seek. In Tractate brachot, we read a breathtaking passage:

“What does God pray for?” the Talmud asks. Rav Zutra answers, [here is the text of God’s prayer]: “May it be My will that my mercy...overrides my other attributes. May it be My will that I behave with my children through the attribute of mercy, and - in so doing - go *above* the letter of the law.”

What a prayer. And what is so poignant, so striking, is the way in which *even God* recognizes that this capacity for mercy extends beyond a strict expression of justice - “may my mercy go above the letter of the law,” God pleads.

It’s hard, leaning into mercy. Harder than just counting and comparing sins and virtues, for sure. And our rabbis knew this. They knew that to tap into that place of compassion and charity and concern is *so hard*, in fact, that they imagined that *even God* had to pray for such strength.

It’s hard for God, and it’s hard for us too.

Bryan Stevenson, the attorney who fights wrongful death row convictions, gave the NYU law school commencement speech last year. And in his speech, he warned these bright-eyed new lawyers of the inevitable times in their future in which they would confront a justice that wasn’t enough - that needed, but may sorely lack, mercy as a companion.

Here was one such time for him. Stevenson got a call that in 30 days' time, Jimmy Dill was going to be executed. Calls like this were routine for Stevenson, but something about this one that was different. Jimmy Dill, Stevenson learned, had an intellectual disability. And in Dill's home state, at that time, there were protections against executing someone with intellectual disabilities.

Stevenson presented Dill's case to the trial court, only to be told that it was too late for such an appeal - the deadline had passed. Stevenson went to the state court - same thing. Too late. Deadline's passed. Appeals court? Too late; deadline's passed. Federal court, federal appeals court. Too late, too late. Deadline's passed, deadline's passed. One hour before Dill's scheduled execution, Stevenson received the final verdict from the Supreme Court. Same thing, they told him. It was too late for such an appeal. The deadline had passed. Dill was executed.

In analyzing what went wrong, Stevenson reflects that "one of the greatest challenges in our law right now is that we have this priority for *proceduralism over fairness*." Sometimes, rules, Stevenson noticed - sometimes, strict, unbending, stubborn versions of justice - just don't have the capacity to make room for the lived experience of the person they're judging. That's why we need more. That's why we need mercy too.

Believing the best. More than anything else, the story of our God on Yom Kippur is one of God continually believing the best in us, even against all facts or odds. Rabbi Jonathan Sacks writes that “God sought to make us partners in creation, but we repeatedly disappoint. *Yet God never gives up.* God forgives us time and again. The real mystery for Judaism is not our faith in God but *God’s faith in us.*”

Sometimes believing the best can mean, *must* mean, obscuring reality - must mean giving up on some of those precious facts to which justice clings so firmly, and believing with a faith that sees what can be, rather than what was or what is.

In the Talmud, Rav Huna proclaims “there is no forgetting by the Holy One! But - if God were to forget - it would be for the sake of Israel.” Or, in more modern parlance, Justice Ruth Bader Ginsburg shares that one of her keys to *professional* success comes from *personal* advice received from her mother-in-law: “sometimes, in marriage, it’s okay to pretend you just didn’t hear.”

What both the Gemara and Justice Ginsburg were getting at, I think, is that collecting information and recording testimony and reviewing each and every detail - those are helpful processes for pursuing objective truth. For administering strict justice, they’re surely necessary. But sometimes that sort of accounting can get in the way of seeing people - real people, whole lives - for the best of who they are or can be.

When I moved to DC, I got a quick lesson in the dangers of overly zealous accounting. Within the first two weeks of living here, I got something like four speeding tickets from the radar cameras. In my indignant outrage, I examined the tickets - and found that they were for “offenses” like going 58 MPH in a 50 zone. Or - worse - 32 in a 30. 32 in a 30?! I grew up in LA, where we purposefully set our cruise control for 8 miles per hour over the speed limit, universally understood as a degree of speeding for which no cop would ever pull you over. So a ticket for going 32 in a 30?! Preposterous.

Preposterous - and, technically, legal. But not the sort of legal that assumes that people are generally trying. Not a legal that has room for understanding or context. Technically “just” - but not from a space of seeing, seeking or believing the best.

Collecting information and reviewing every detail - helpful processes for objective truth or strict justice. But sometimes that sort of accounting can get in the way. And sometimes, we - each of us, and the Blessed One too - need to engage in some holy forgetfulness. Need to believe in versions of people that may not align with the facts in front of us, but that recognize their infinite potential for goodness. That has faith beyond the odds.

Which brings us, then, to love. Here’s how this kind of love works.

The quintessential prayer pleading for God's forgiveness begins "avinu malkeinu." "Our parent. Our sovereign."

It's a funny plea. Isn't today the day of God as judge? Why God as parent? Why sovereign?

Hadar's Dena Weiss gives an explanation. She teaches that in the *human* legal system that our ancient rabbis set up, certain people were categorically prohibited from serving as judges. Some of those categories were situational, others absolute; some were relational, others occupational. One such category prohibited from judging a particular case? A relative of one of the parties. A parent. Avinu. An occupation categorically prohibited from ever judging a trial? A king. A sovereign. Malkeinu.

Why are these categories excluded? The halakha is clear. Because they are "noge'ah b'davar." They are too close, too invested. Why exclude them? *Because we can't really judge someone we love.* We can't exact detached, calculated judgment on someone whose soul, whose emotional life, is entwined with our own. And if ever those two roles come into conflict - if ever we're asked to judge someone we love? Love wins. Over justice. Every time.

I was talking recently with Rabbi Yolcut who, as many of you know, has three young children. And we found ourselves wondering if there was anything her children could do in their theoretical futures that would cause her to stop loving them. Drop out of school? No way. Rob? Steal? Still no. What about killing - if your children killed someone, I asked, would you stop loving them then? No, she replied unequivocally. Even then, they would still be my children. Even then, I would still love them.

Not every parent-child relationship works that way. There are fights and faults and flaws, and sometimes love is strained or broken in real and painful ways. But it's that place - that place of "even then, they would still be my children. Even then, I would still love them." That's what we ask of God on this day. We ask God to forgive us not because we didn't err - but because God - Avinu malkeinu, our parent, our sovereign - *loves us*, even then.

Mercy over anger. Believing the best. Choosing love. All ways in which we ask God to move beyond just justice.

And, of course, this plea, these principles to live by - they're not only for God. They're for us too.

Because we too are often called on to exact judgement. To make decisions, to execute power, to influence others' fates in ways large and small. It may be doling out rewards or consequences to our children. It may be impacting our societal systems of law and justice. It may be in the thousands of snap judgements that comprise every relationship we have, from our dearest loved ones to the folks we pass on the street. Who do we open the door for? Who do we trust? Who and how do we punish? Who and how do we love?

In these moments, it can be easy or tempting to simply rely on cold facts. To stick to the evidence, to count up merits and shortcomings and to plug them into a formula that gives us an "objective" answer.

What this holiday calls on us to do - what we ask of God *and what we demand of ourselves* - is to operate from a different set of holy spaces. To actively fill the world from our well of compassion instead of from our place of detached judgement. To see the person in front of us - whoever that person may be - as a whole person, a holy person, a person who we believe in and care for and trust.

And when we do so, when we access that place of relationship, of compassion, of connection, then - suddenly - we don't need tipping scales. We don't need calculations. We don't even need the dorsolateral prefrontal cortex. We need people. And we need the depth of our emotional lives. And we need mercy, and faith, and we need love. It's as simple as that.

And - lest the legal-minded folks among us are feeling wary - I do believe, in my heart of hearts, that *this* sort of engagement with one another - contextualized by relationship, responsive to lived experience, inspired to believe the best and driven by mercy and love - this sort of engagement can, indeed, lead us back to a fuller and deeper form of justice.

The mishnah from Pirkei Avot - the one that says that the world exists on three things: on din (justice), on emet (truth), and on shalom (peace and harmony). In most versions, it ends there.

But in a tractate of the less-studied Jerusalem Talmud, we read an alternate ending. “The world exists on three things: on din, on emet, and on shalom. *U’shloshtan d’var echad hen. And these three are actually one.* Na’aseh hadin, na’aseh emet, na’aseh shalom. When we do justice, we do truth, and thus we do peace.”

This sort of peace - this way of existing in the world, driven by compassion, harmony and love - *that can be justice*. These things that our brain worked so hard to tell us were disparate and conflicting - they can, actually, exist together, and grow from each other, and inform one another.

Justice can - justice must! - exist. Our prayer, then, and our call, this Yom Kippur and beyond - is to live out a justice - and to nurture and grow principles *alongside* our sense of justice - infused not just with law. Not just with formula. Not just with the logical pulling of the switch. But to also embrace and embody a system that honors those *equally* divine places of mercy and compassion. That equally divine place of love.