

## Yom Kippur Morning Sermon 5767 (2006)

Right now, if we were in a traditional synagogue on this Yom Kippur, you would not have to listen to the words of my or any other rabbi's sermon at this hour of the day. Rather, we would be moving into the Mincha or afternoon service.

Many years ago the early members of Bethesda Jewish Congregation decided to eschew the traditional Yom Kippur afternoon liturgy in favor of hours containing discussion, music, and time for reflection. We are not alone in this, as many congregations in the United States have made similar choices. Today at various synagogues in our area, you could at this hour be listening to a concert by a string quartet or a friendly debate between Tom Friedman and Dennis Ross. These offerings are designed to hold our interest, demonstrate Judaism's relevance to the "modern world", and keep us from thinking too much about our empty stomachs.

And...they work.

But because we do not recite the traditional afternoon Yom Kippur liturgy here at BJC, many of us are unaware of the content and power of some of the most moving, yet emotionally difficult passages of our prayer book.

I refer to the prayer *Eleh Ezkerah* – "These I Remember and my soul melts with sorrow" – and the associated paragraphs sometimes called the martyrology.

The Yom Kippur liturgy is shot through with images of martyrdom, with remembrances of the sufferings of our people. Scholars tell us that for the last thousand years, the traditional *selichah*, the prayer of forgiveness, has always included a *piyut akedah*, a form of poetry that rehearses the martyrdom of our people. At the height of the day, we storm heaven with the tale of the cruel deaths of the rabbis of the generation of Rabbi Akiva who were martyred by the Romans. Among them were Rabbi Eliezer ben Hyrcanus who was wrapped in a Torah scroll and burnt at the stake, and Rabbi Akiva himself whose flesh was torn from his body with hot combs and sold in the marketplace.

The High Holiday *Machzor* that you hold in your hands, *The Gates of Repentance*, tells on page 106, the story of Rabbi Amnon of Mainz, the legendary author of the *u'netanah* *tokef* prayer, who had his hands and feet cut off by the local bishop, but refused to abjure

his faith. Unable to use any of his limbs, he was carried to the lectern, recited this prayer he had composed, which declares that it is God who decides who shall live and who shall die, whereupon he breathed his last breath.

Or we can recall the story of Maria and Isabella Lopez, who converted to Christianity during the Spanish Inquisition but were accused of secretly practicing Judaism when locals took note of their avoidance of pork and their habit of wearing festive clothes on Saturday. The inquisitors hung Maria upside down and immersed her head repeatedly in water until she was sure that she would drown. To end the ordeal, all she had to do was recount her heresy as her tormentors demanded. Under extreme duress, she spoke the words they wanted to hear only to be subsequently burned at the stake. In an act of “mercy” her daughter Isabella was released.

We are a people who can catalogue the forms of human mistreatment. We have been victims of torture and abuse. We know what it means to be accused of all sorts of sins and have no defense. We know what it is to be captured, imprisoned, forced to confess to sins we have not committed. We know what it is to submit to arbitrary authority.

In its place we have preached the rule of law – and have been accused by our enemies of being too legalistic; we have preached the dignity of every human being, and have been persecuted for it.

And on Yom Kippur after having recalled our own suffering, after having said, “These I remember...,” we are asked to adopt the lesson of compassion: to learn that our own fate is not all that matters.

On Yom Kippur we experience for a few hours what it means to be deprived of water and food, of the daily requirements of nourishment and cleanliness.

How frail we find our own bodies. How easy it is to bring us down. Is it too difficult, at this moment, to imagine the fear of being locked in a cold jail cell, alone? How deprivations of water or food can seem excruciating? And there are the indignities and sufferings we do not experience ourselves on *Yom Kippur* but which in this hour we can easily imagine: What it means to be beaten, to feel the loss of the use of a limb. How hard it is to live with pain. What it means to lose one’s dignity, to be made sport of.

Our Jewish tradition is very specific in its repudiation of the use of coercive measures to obtain a confession. In point of fact Judaism rejects the entire idea of convicting **anyone** accused of a crime through a first person confession.

*The Talmud teaches - Ain Adam Mesim Atsmo Rasha - A Person May not Incriminate Himself!* (Babylonian Talmud, Tractate Sanhedrin 9b)

Jewish law is almost categorical in its ban of self-incriminating statements, declaring confessions inadmissible as evidence whether involuntary **or voluntary**, in-court or out-of-court, spontaneous or extorted.

In American law, by contrast, the right against self-incrimination is a privilege, intended by its framers and interpreters to provide a legal shield against police brutality and physical and psychological coercion in interrogations.

This constitutional right excludes involuntary confessions made under duress or without proper warning; however, a deliberate confession or guilty plea may be submitted as evidence and serve as the basis for conviction.

The Fifth Amendment—the privilege in American law against compulsory self-incrimination—imposes a constitutional check against governmental cruelty and coercion.

It reflects an historical Anglo-American repugnance towards the “fishing expeditions” associated with inquisitorial justice systems, upholding an absolute right of due process and thorough fact-finding rather than trial by ordeal and forced confessions.

Remarkably, in the classic Fifth Amendment case, *Miranda v. Arizona*—dealing with the interrogation of suspects in police custody and made famous through renditions of the police warnings it enshrined—Chief Justice Earl Warren traces the origins of this humane law to the Jewish halachah.

And, as scholars of comparative Jewish and American law note, the halacha’s rigid proscription against self-incrimination makes “the Warren Court’s progressive decision” appear “moderate, if not minimal.”

The Jewish prohibition against self-incrimination is derived from two Biblical verses:

“One witness shall not rise up against a man for any iniquity... At the mouth of two witnesses... shall the matter be established” and

“The fathers shall not be put to death for the children, neither shall the children be put to death for the fathers...”.

The sages read the first verse literally; a person may not be convicted on the basis of one witness’ testimony, even when confirmed by circumstantial evidence.

From the second verse, the rabbis derive the law excluding the testimony of relatives as found in tractate Sanhedrin 27b.

On the basis of this second rule, the rabbi known as Rava sets forth the principle that becomes the basis of the ban on self-incrimination; a person may not incriminate himself **since he is his own kinsman**. Like his relatives, he may not join in the prosecutorial process, serving—through a self indicting confession—as one of the two witnesses necessary under Jewish law to determine guilt.

Why does Judaism designate such an extraordinarily demanding rule that deprives confessions—what many believe to be the most infallible verification of guilt—of any legal status in a trial? What is the rationale for this unique law, seemingly unparalleled in its reach in any other legal system?

Many contemporary scholars, recognizing the historical context of Roman persecution and torture in which the law was formulated, present a persuasive thesis.

Perhaps the halacha developed a strict prohibition against self-incrimination—part of an elaborate and rigorous complex of procedural safeguards—as a way of repudiating the Roman system of justice, with its official brutality and violations of privacy, human dignity, and due process. The Jewish court must build a case against the accused and may not shortcut the fact-finding process by physically coercing a confession, as did the Roman and medieval European courts.

The purpose of the rule banning self-incrimination was to eliminate the possibility of forced confessions and testimony motivated by fear .Early Jewish law insisted on a strict standard for the admission of evidence and eliminated the possibility of torture to compel

confessions at a time when torture and other cruel practices prevailed in the Roman courts.

Perhaps the depth of Jewish law's commitment to an accusatorial rather than inquisitorial system of justice reflects the victimization of our history—and the drive to never inflict what had so often been ruthlessly inflicted upon the Jewish people.

Should the due process protections enshrined in Jewish and American criminal justice systems apply to suspects of crime but not terror?

Should different rules apply to the detention and interrogation of prisoners of war and domestic criminals?

The Senate, in ratifying the Convention Against Torture in 1994, set a constitutional standard for the U.S. obligation to refrain from both torture and “cruel, inhuman, and degrading treatment.” In doing so, the United States determined that the military interrogation room must abide by the same standard as that enforced in the police precinct, unless the United States determines that its treaty obligations apply only in relation to its own citizens.

Perhaps the legal architects of the black hole into which political detainees have been swallowed in the “war on terror” should join the American Supreme Court in learning a few lessons from a long history of humane and prudent Jewish precedent.

So what can we do having learned that in our name, people in our custody have been beaten, humiliated, physically and spiritually harmed, and some even killed? What shall we do on this Yom Kippur, a Yom Kippur in which we have learned that we belong to a country that has engaged in these activities?

Later this evening, as the setting sun begins to change the very nature of the light that allows us to see the world and as the skies threaten to become blood red, at that moment, when fear and awe and joy commingle with tiredness and hunger, we are asked to read the book of Jonah.

Jonah, the prophet, has been sent to Nineveh to call those people to repent. Nineveh is the capital of Assyria, the kingdom that will terrorize and destroy Israel, but Jonah, the Jewish prophet, is called to speak compassionately to these people, to call them to repentance. He is physically forced by God to overcome his reluctance to do so, and even after having accomplished his task, regrets what he has done. And so God teaches him the lesson of compassion—Jonah sees the carob tree that has shaded him dry up. He cries for protection. God says, “You cry for a carob tree, can you not cry for the rest of the creation?”

Jonah cries for himself, for his own loss of that which shaded him, that which gave him comfort, and he is made to see that the pain he feels is a pain that permeates the world, and that he, and we, like him, are called upon to alleviate pain.

Jonah doesn't get it. He does not want to deal with the people of Nineveh, he wants to run away. The last thing in the world he wants to do is be a prophet.

And that's probably us as well.

We would prefer not to hear such things on Yom Kippur. We don't want to take this one on. We'd prefer to keep things spiritual on this holy day. We don't want to believe that our country has soiled itself, that we need to collectively engage in an act of repentance, that we must do all we can to insure that we treat every human being, even our enemy, with dignity.

In the Jonah story, the people of Nineveh get it. The king and all his countrymen, upon hearing Jonah's words, immediately and without any prevarication admit to their wrongdoing. But Jonah the Jew has to be taught, has to be instructed.

Many might say that our situation today is too complicated to put forth easy answers. These horrors may have been committed but they were done so for the sake of a good: extracting information, critical information needed to defeat terrorism. Some mistakes might have been made. Sure, some people who oughtn't to have been, like Canadian citizen Maher Arar, were tortured in third party countries like Syria. Come on, Syria?!?

Syria is a legitimate candidate to replace Iraq as a vector on the axis of evil. It is a country that the U.S. State department has accused of sponsoring terrorist organizations pledged to attack us, and THIS is the country the U.S. military turns to?

I grew up in the America of the 1950's & 60's as did many of you. I said the pledge of allegiance every morning and intoned the sacred phrase; "with liberty and justice for ALL! Not, liberty and justice for some. Torture was something done to US by evil regimes and evil men. Hollywood gave us images of Steve McQueen, Frank Sinatra, and Alec Guinness as victims of torture who would not surrender. WE wore the white hats. WE were the good guys. The torturers wore black or grey, with swastikas or rising suns on their arms, not American flags.

Our leaders have declared that we become Nineveh. Where is our generations Jonah?

Jonah can seem like a simple story, something out of a storybook for children—the story of the man in the belly of the whale. But sometimes it takes simple truths to instruct us. And those simple truths are not easily held on to, because as adults we've learned to see the world as a complicated place; we celebrate our ability to see two sides of every issue. And yet today on this Yom Kippur we've been instructed in some simple truths. We've been instructed about the frailty of the human body, of how we can feel sorry for ourselves, less so for our neighbor and perhaps not sorry at all for those supposed to be our enemies. We've been reminded how each of us sins, personally and collectively. And today we've been instructed with the teaching of compassion. We've been taught that the reason we experience the sufferings of Yom Kippur is to be able to understand what we potentially do to our enemies.

We've been taught that our own experience of suffering should rouse us to a heightened consciousness of the suffering of others, of the suffering we inflict on others, of the humanity of Nineveh.

We Jews know what it means to be the object of collective hatred. We know what it means to be suspected of being a third column, of being imprisoned and tortured simply because we are Jews, or because some government wants to extract something, material goods, information from Jews who will report on the Jewish community. We know what

it means to be tortured by the Inquisition so that the church could discover other Jews who had betrayed their new Christian faith. We know what it means to be suspected and accused without trial and with no possibility of defense. We know what it means to suffer under the whim of governments—governments who are always self-justifying.

Jonah calls us back—from our defensiveness, from our building up of walls to separate ourselves off,

from our failure to see that everyone is created in the image of God, even our enemy, and that therefore there are fundamental human rights which apply to everyone.

Jonah is sent to Nineveh to call them to repentance. Ultimately, it is he who is asked to repent.

I am appreciative of the work of Rabbis,

Melissa Weintraub, and Edward Feld, who taught me much of what I share with you today.

And, in closing, I share with you these words of Eleh Ezkarah by Rabbi Sheila Peltz Weinberg .

Eleh Ezkerah

These are the things I will remember

And my soul is melting with sorrow

In the time of the Romans, Rabbi Ishmael and Rabban Shimon ben Gamaliel were the first to be taken to the place of execution, where each desired to precede the other in being slain and thus be spared the sight of seeing his friend suffer. When Rabbi Ishmael was flayed, suffering with great fortitude, he wept only when his tormentors reached the place of his Tefillin.

From Guantanamo Bay to the Bagram holding facility in Afghanistan, detainees have been stripped, left naked in isolation, hooded, beaten, kicked, shackled in humiliating and physically painful positions for hours on end, spat at, deprived of food and sleep for days, exposed to extremes of hot and cold, bombarded with painfully bright lights and loud violent music, and threatened with dogs.

Many have been interrogated in abusive ways.

And this I would prefer to forget, but must remember on this holy day.

Rabbi Chananya ben Teradyon was wrapped in the Torah from which he had been teaching and placed on a pyre of green brushwood, and his chest was drenched with water to prolong the agony. His disciples, watching the flames dancing over their beloved teacher, asked, "Master, what do you see?" He replied: "I see parchment burning, while the letters of the Torah soar upward." His disciples then advised him to open his mouth that the fire might enter and sooner put an end to his sufferings; but he refused to do so saying, "It is best that he who has given life should also take it away; no one may hasten his own death."

Hearing this, the executioner removed the wet sponge, fanned the flame, thus accelerating the end, and then plunged himself into the fire.

And on this holy day we would like to forget and we are charging ourselves to remember:

And their Holy Scriptures were desecrated.

And our souls melt with sorrow.

As it is written in the Talmud, "How do you know that your blood is redder? Maybe his blood is redder."

And we affirm that the abolition of torture, like slavery, is the measure of a free and ethical society.

And we remember on this day the crowning principle of Jewish law is human dignity.

And today we see the parchment burning while the letters of the Torah soar upward.

On this Holy Day,

Remember us O Lord

Open our hearts to love you and love your creatures

Remind us that only by remembering - that your love fills all your creatures

Can we come near to You.

G'mar Chatimah Tovah