

I know it is only Yom Kippur, but it is hard not to already begin thinking about one of the most popular of Jewish holidays, Chanukah. Speaking of which, I wrote a blog with links last year dedicated the subject of the dearth of quality Chanukah songs. In terms of melodies, we just can't seem to compete with that other winter holiday. It is disturbing in part because so many of their great songs were written by Jews, "White Christmas" anyone?

But thankfully that trend is changing and evolving due in large part to Adam Sandler. Now I should mention that my family and I have been thrilled with our time here in Baltimore and with Har Sinai Congregation. But I found out last year, at the tot service in Temple Emanu-El in Tucson, which I had always conducted, my successor was greeted by a special guest, you guessed it, Adam Sandler. Mr. Sandler was apparently in town visiting his sister, who has little children, and they decided to go to the Temple Emanu-El's tot service. There are even pictures on facebook to prove it.

So far the only celebrity who has attended High Holy Day services I have conducted, to the best of my knowledge, is Adam Richman of the Travel Channel's Man Versus Food fame. I just wonder how much he ate at the break fast afterwards.

Getting back to Adam Sandler, I would like to mention how, in his now infamous Saturday Night Live Skit, he has almost single handedly revived Chanukah with his Chanukah song. This song I feel has gone on to inspire a generation of writers and musicians including the Maccabeats, whose song Candlelight has become a web sensation. John Stewart did a song about Chanukah on the Stephen Colbert Christmas special, and I am sure with the Internet, there are many more delightful melodies to look forward to in the years to come.

Adam Sandler's Chanukah Song, for those of you who aren't familiar, lists some of Hollywood's famous celebrities who also happen to be Jewish. One of my favorite lyrics from his song is, "We got Ann Landers and her sister Dear Abby. Harrison Ford's a quarter Jewish. Not too shabby." Though I believe Harrison Ford's mother is actually Jewish, which would make him half-Jewish.

In a related topic, Apple recently yanked an app in France called "Jew or not Jew."<sup>1</sup> This app apparently, "pulls together a database of thousands of famous Jews – including movie stars, musicians, Nobel Prize winners and more – and offers insight into their backgrounds. Jewish mother? Jewish father? A convert?"

The Jew or Not Jew app was created by a developer who happens to be British, French, and Jewish. In response to the public outcry, the app creator Johann Levy said, "I'm not a spokesperson for all Jews, but, being Jewish myself, I know that in our community we ask ourselves often if this or that celebrity is Jewish or not. For me, there's nothing pejorative in saying publically that this person or that person is Jewish. Instead, it's something to be proud of."

In France, which is still grappling with its anti-Semitic past, especially during the reign of the Vichy government in the 1940's, which compiled such lists, this app simply did not fly. And France demanded it be taken down under threat of legal action.

The app was removed from France, but still available to those who wish to purchase it in this country. The legality of the app in France aside, this app does reflect an ongoing dilemma in the Jewish world. Its not a dilemma about who is a Jew, which is a significant challenge facing our communities today.

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<sup>1</sup> [http://religion.blogs.cnn.com/2011/09/15/apple-bids-adieu-to-jew-or-no-jew-iphone-app-in-france/?hpt=hp\\_t2](http://religion.blogs.cnn.com/2011/09/15/apple-bids-adieu-to-jew-or-no-jew-iphone-app-in-france/?hpt=hp_t2)

The dilemma which I feel this app represents is the idea of, aside from community, bagels, chopped liver, deli, and Chinese Food, is there anything unique about Judaism that is different from other religions or other cultures?

Religion itself is under attack from such pseudo-scholars as Sam Harris and Richard Dawkins. And Judaism that served as the fertile soil for both Christianity and Islam is itself under attack even if it is just under the banner of “Judeo-Christian values.”

Reform Judaism in its early years also very much grappled with the question of the uniqueness of Judaism often taking a more universalist approach. The early reformers worked to remove such things as Kol Nidre from the Yom Kippur evening service and any religious mention of Israel as our people’s homeland. Both of which tended to be specific rather than universal in their religious appeal.

So is there something specific about our tradition that is worth celebrating other than famous Jewish celebrities? The short answer is, “Yes.” And the long answer is, “Yes.” I believe one of the greatest gifts our tradition has to offer in particular is our system of ethics.

In today’s combative society, most people want simple answers that can fit onto a bumper sticker. But our tradition has never taken this approach when it comes to providing guidance to difficult issues.

For example, when does life begin? For Catholics, it begins at conception. For Jews, when the child graduates from medical school.

But in all seriousness, I was thinking about Jewish ethics with the recent execution of Troy Davis. For those of you not familiar with the story, Troy Davis was an African American who was convicted of the murder of Mark MacPhail, a police officer

in Savannah Georgia during a fight outside a Burger King.

The problem with the case is that over time, Mr. Davis' guilt came to be more and in doubt. Witnesses recanted their testimony, and another triggerman was implicated. All that being said, Davis was executed on Thursday Sept 21, 2011. This execution was protested not just here, but also abroad. Pope Benedict XVI appealed it along with Germany's junior minister for human rights, Markus Loening who said, "An execution is irreversible – a judicial error can never be repaired."<sup>2</sup>

It is believed that the judicial error was in part because of the recent tradition of "finality of judgment." "That is, once a verdict and judgment are rendered, it should be difficult to upset." So once the judgment is rendered, there should be a limit to any further deliberation.

In an editorial response to this issue and the execution, Mark Osler, a professor of law at the University of St. Thomas Law School in Minnesota wrote, "deliberation is a predominant central virtue promoted by the constitution. That document requires that in criminal cases, there be an initial appearance, indictment by a grand jury, representation by counsel and the right to not only appeal a conviction but to petition for habeas corpus. All of these slow down the process. Above all, our Constitution expressly mandates 'Due Process, even when that process produces delay and uncertainty, as it is bound to do. Deliberation is what makes us civilized, and when it fails, we fail profoundly.'<sup>3</sup>

The Troy Davis trial made me think of an instance I encountered during my days in graduate school. Before I began my studies at the Hebrew Union College – Jewish Institute of Religion, I was a graduate student in American History at Sam Houston State

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<sup>2</sup> cnn.com "World Shocked by U.S. execution of Troy Davis"

<sup>3</sup> cnn.com "Troy Davis and constitutional virtues"

University. Sam Houston State University is located in Huntsville, Texas about an hour north of Houston, give or take. The courses were mostly designed for teachers, which meant I had a lot of evening classes.

One night, during one of my favorite classes, we were a little on edge. It was a small survey course that involved primarily group discussion. We were on edge because maybe one hundred yards away, the State of Texas was preparing to execute Karla Faye Tucker, the first woman to be executed in Texas in 135 years.

Of course this drew national and international attention. And it was hard to focus on our topic at hand, so instead we discussed the pros and cons of the death penalty. Unfortunately the fervency of my beliefs led one of my classmates to get into a verbal confrontation with me over this issue. He was quite passionate to demonstrate how completely wrong I was about the subject.

I of course put out the standard arguments: the cost of keeping someone on death row. The inequality of its application. The possibility of uncertainty especially since the majority of those on death row are poor and minorities and thus oftentimes lack quality representation. Every one of these arguments was shouted down. "It's in the Bible!" He proclaimed. And needless to say, the whole experience left me rattled. I don't think that classmate and I said two words to each other for the rest of our academic year.

But I began to wonder after that experience, what does my tradition have to say about the death penalty? Is it really in the Bible? Should I be in favor of the death penalty because the Torah not only permits it, but seems to demand it in certain circumstances?

But then I let the matter slip from my thoughts, and for the next few months, I did

not pay it close attention. It was only after I began my studies in rabbinic school, did I want to revisit this most important of topics of concern.

Jewish tradition, would seem, at least on a superficial reading to be in full support of the death penalty. In the Torah it lists on more than one occasion cause for capital punishment. “Whoever sheds the blood of man, by man shall his blood be shed, for in His image did God make man.”<sup>4</sup> “He who fatally strikes a man shall be put to death.”<sup>5</sup> “You may not accept a ransom for the life of a murderer who is guilty of a capital crime; he must be put to death.”<sup>6</sup> And these don’t even include the issue of wayward sons or Sabbath violators.

The Torah offers two reasons for executing murderers. “So that others will hear and be afraid, and such evil things will not again be done in your midst.”<sup>7</sup> And “You shall burn the evil out from your midst.”<sup>8</sup>

But, Jews are not really a people of the Torah alone. As a matter of fact, most of what we do, most of what we believe as Jews, is not found in the Torah, but instead in the subsequent interpretations found in Rabbinic literature.

To start off with, though the Torah allows for it, the ruling sages were extremely reluctant to engage in capital punishment as is indicated in one of the most famous rabbinic responses which can be found in the Mishnah. “A Sanhedrin that executes [a criminal] once in seven years is known as destructive. Rabbi Eleazar son of Azariah says: Once in seventy years. Rabbi Tarfon and Rabbi Akiva say: If we had been

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<sup>4</sup> Genesis 9:6

<sup>5</sup> Exodus 21:12

<sup>6</sup> Numbers 35:31

<sup>7</sup> Deuteronomy 19:20

<sup>8</sup> Deuteronomy 19:19

members of the Sanhedrin, no man would have been executed.”<sup>9</sup>

But, though they were reluctant, the Torah still commanded the death penalty under certain circumstances. What where the rabbis to do?

When it comes to rabbinic tradition there are generally two responses to Toraaitic commandments. One is to, as it says in *Pirkei Avot*, the ethics of the fathers, build a fence<sup>10</sup> around Torah so as to prevent someone from breaking a Toraiitic law. Kashrut is the perfect example of this. In the Torah it says, “do not boil a kid in its mother’s milk.”<sup>11</sup> The rabbinic response is to separate all milk and meat, along with all porous dishes to prevent the possibility of a kid and its mother’s milk being inadvertently consumed.

The problem with this sort of reasoning is it can be taken to extremes. This is where the accusation comes that we are so focused on keeping the law that we ignore the spirit of the law. One example are those Jews who choose to isolate themselves from the outside community.

However our tradition does not always get enough credit for the other rabbinic response to Toraaitic commandments. And that is, to preserve life, *pikuach nefesh*, whenever possible.

In terms of the death penalty, the rabbis take this approach. To this end, they set up a system where “only deliberate murder was punishable by death, and proof of culpability had to be nearly absolute. Intent to commit the murder, treacherous lying in wait, and the use of a deadly weapon had to be proven. The murderer had to be warned

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<sup>9</sup> Mishnah Makkot 1:10

<sup>10</sup> Pirkei Avot 1:1

<sup>11</sup> Exodus 23:19

specifically by two separate individuals and verbally acknowledge to each that he or she understood the nature of the act and the severity of the punishment – prior to committing the crime. To establish guilt, two witnesses were required to give identical testimony against the accused in the commission of the murder.”<sup>12</sup>

Also in the Talmud it says, “A man cannot bear witness against himself [literally, a man does not depict himself as evil.”<sup>13</sup> This means, in capital cases, the Sanhedrin rejected the use of confession. Which by the way also means that Jewish tradition rejects the use of torture as well because what is the main purpose of torture, to get confessions. Now it is true that Jews rarely had political autonomy to impose such things as the death penalty. This rabbinic tradition nonetheless sets forth, what was in essence, a legal impossibility for imposing the death penalty.

The problem of course is that all of this is under the working assumption that God punishes those who are wicked. “The rabbis were confident God would personally wreak punishment on murderers (which helps us) understand their apparent nonchalance about whether or not the courts did so.”<sup>14</sup>

So where does this leave us? According to these interpretations, true justice can only be administered by the heavenly court. This of course is not a very satisfying answer. But the reality is there is no true justice when it comes to capital crimes. Also there is increasing literature that demonstrates the ineffectiveness of the death penalty when it comes to preventing crimes.

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<sup>12</sup> Vorspan, Albert and David Saperstein, *Jewish Dimensions of Social Justice: Tough Moral Choices of Our Time*, New York, UAHC Press, 1998, pg. 23

<sup>13</sup> Babylonian Talmud, Sanhedrin 9b

<sup>14</sup> Telushkin, Rabbi Joseph, *Jewish Wisdom*, New York, William Morrow and Company, Inc., 1994, 416.

It is also increasingly unequal in how it is applied. “A comprehensive study of the death penalty in North Carolina found that the odds of receiving a death sentence rose by 3.5 times among those defendants whose victims were white.”<sup>15</sup>

Implementing the death penalty is also proving to be a money pit for already financially cash-strapped states. For example, according to the LA Times, “the California death penalty system costs taxpayers \$114 million per year beyond the costs of keeping convicts locked up for life. Taxpayers have paid more than \$250 million for each of the state’s executions.”<sup>16</sup> Or, “In Texas, a death penalty case costs an average of \$2.3 million, about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years.”<sup>17</sup>

And this does not even include the issue of the death penalty when it comes to juveniles or those who are mentally disabled.

Clearly this is a broken system for administering justice by any reasonable standards. So where do we turn? To end, where we began, we turn to our inherited tradition. According to rabbinic interpretation, what they are basically saying, is we can almost never be truly certain when an execution is warranted, so best leave this matter up to God rather than bloody our own hands with the lives of the innocent. This does not mean, we cannot lock up people for life, far from it. Nor does it mean that there is not the possibility of extreme cases where capital punishment is warranted, like with the case of Adolf Eichmann. But the reality is, our tradition does not live on the extremes. It tends to focus on where most of life falls, somewhere in the middle.

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<sup>15</sup> Professor Jack Boger and Dr. Isaac Unah, University of North Carolina 2001

<sup>16</sup> LA Times, March 6, 2005 <http://www.deathpenaltyinfo.org/documents/FactSheet.pdf>

<sup>17</sup> Dallas Morning News, March 8, 1992

It acknowledges the complexity of issues, where others might see straightforward answers. It says to us, give it serious thought. It says, we as human beings will never have all the answers, for we cannot hope to know all the facts. It says to us, when in doubt, better to not take a life.

There is a story of a medieval Jewish astrologer who prophesied to a king that his favorite mistress would soon die. Sure enough, the woman died a short time later. The king was outraged at the astrologer, certain that his prophecy had brought about the woman's death. He summoned the astrologer and commanded him: "Prophecy to me when you will die!"

The astrologer realized that the king was planning to kill him immediately; no matter the answer he gave. "I do not know when I will die," he answered finally. "I only know that whenever I die, the king will die three days later."

As a people who have known far too much death throughout our history, better to stand for life. And on this Yom Kippur, where we request both literally and metaphorically to be sealed in the book of life, may it be God who serves as the final judge and arbiter, so we can focus on more timely issues, like whether or not Harrison Ford is in fact, Jewish.

For when it comes to the death penalty, it seems quite clear, for us as a people and as a society, the time for this practice has come and gone. And it is time instead to refocus on our own fates rather than to determine the fates of others. All the rest, for good or for ill, should be up to God. For if we learn nothing else from this season of teshuvah, we are all fallible. We are all prone to err. But we can only seek forgiveness from God for those sins we have committed against God on this day. For sins of

humanity, there can be no forgiveness unless the one hurt forgives. How much the more so should we strive not to take that power from them during this season of forgiveness. Better not to put ourselves in that position just in case, and instead stand on the side of justice **and** mercy. As we are reminded in the words of Micah, “And what does the God require of you? To act justly and to love mercy and to walk humbly with our God.”<sup>18</sup>

*G'mar Chatimah Tova*, May we all be sealed for life in the book of life. Amen.

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<sup>18</sup> Micah 6:8