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The King's Great Cover-Up and Great Confession

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If there is a foundational idea for the high holiday season, it is surely the redemptive power of *viduy* or public confession. And if there is anyone in Jewish history who exemplifies this redemptive power, and how it may redress our pernicious tendency to cover up sins rather than confess them, it is King David.

Consider first the cover-up. Don Isaac Abarbanel (1437-1508) lists five "aspects" to David's sinning in chapter 11 of II Samuel, consisting of an 'original sin' and those elicited by the ensuing cover-up:

a. He had sexual relations with Bathsheba, a woman who was married to his stalwart officer Uriah the Hittite (II Samuel 11:2-4).
b. After learning from Bathsheba she was pregnant, he tried to distort the ancestry of the child by luring Uriah into having a conjugal visit with Bathsheba (11:5-13).
c. After failing in this first plan, he committed manslaughter by issuing orders to his general Joab that put Uriah's life (and those of others) at unnecessary risk (11:14-25).
d. David thereby caused Uriah—and others who fell that day—to suffer an undignified death.
e. David took Bathsheba as a wife immediately after the mourning period, thus violating the Halacha mandating a three-month waiting period to clarify paternity (11:27).

Where is there a more dramatic illustration of how a cover-up tends to exacerbate a crime?

Yet if David's response to sin is a paradigmatic cover-up, his response when confronted by his sin seems to be a paradigm for the redemptive power of confession. Unlike Saul who reacted to the prophet Samuel's rebuke by blaming his failure on others (I Samuel 15:20-21),[1] David accepts full blame when he is confronted by the prophet Nathan. As recorded in II Samuel, David offers only a simple two-word response: "I have sinned to God" (12:13). And if this version of David's confession is perfect in its simplicity, the version in Psalm 51 ("a psalm of David, when Nathan the Prophet came to him after he had come to Bathsheba" (51:1-2)) is perfect in its eloquence. In this moving prayer for "compassion and mercy" (51:3), David deploys the word *het* or "sin" seven times to refer to his actions, establishing it as a "guide

[1] Note in this regard the allusions in Nathan's parable of the "poor man's ewe" to Saul's sin (II Samuel 12:1-4), especially concerning the motivation of not wanting to spare—*vayahmol*—one's sheep and cattle (compare I Samuel 15:9 with II Samuel 12:4). See also R. Yaakov Medan, "Megilat Bat-Sheva," *Megadim* 18/19 (1993): 67-167, and R. Shmuel Klitsner, "Victims, Victimizing and the Therapeutic Parable: A New Interpretation Of II Samuel Chapter 12 (2013) for complementary analyses showing how Nathan's parable is designed to make David think of Saul and how he wronged him, thus inducing him to find the rich man culpable.

word" for the poem. He also uses two synonyms for sin— *pesha* and *avon*—three times each, with the thirteen total references to sin likely alluding to the thirteen attributes of God's mercy (Exodus 34:6-7).[2]

Strikingly, this confession seems effective. To be sure, David and Bathsheba's newborn son is soon struck dead by a divine plague, and David's family and monarchy suffer from unending turmoil and scandal in the ensuing years in accordance with Nathan's curses (see 12:10-11). But David's death sentence is commuted, and he and Bathsheba merit the birth of a second son, Solomon, who is beloved by God (12:24) and ultimately inherits the throne.

Yet to note that David's confession had redemptive power is not to explain this power: Given the magnitude of David's sins, could the mere uttering of words and prayers of repentance truly be sufficient to mitigate them?

One approach is to point to various technical legal considerations that mitigate David's sins. An extreme position is reflected in the famous admonition of R. Shmuel Ben Nahmani in the name of R. Yonatan (*Shabbat* 56a): "Anyone who says that David sinned is but mistaken."[3]

But such apologetics seem strained; and accordingly, this is hardly the consensus view.[4] Certainly Nathan the Prophet was unimpressed by any exculpatory points in David's favor. As R. Yaakov Medan notes, Nathan's rebuke is consistent with the general approach of "the prophets [of Israel who] were unimpressed with formal excuses for moral transgressions based on technical-legal considerations; and in their words of rebuke, the prophets ignored such considerations as if they were naught."[5]

Thus let us follow Abarbanel in not "countermanding the simple truth" by "tolerating a lessening of David's sin."[6] At the same time, let us consider the possibility that we have yet to fully grasp the nature of David's sin, and of the significance of his cover-up and confession.

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[2] See Rabbi Moshe Shamah, "On Number Symbolism in the Torah," in *Recalling the Covenant: A Contemporary Commentary on the Five Books of the Torah* (Jersey City: Ktav, 2013): 1057-1066.

[3] This approach is supported by three exculpatory possibilities: (a) that Uriah followed the common practice whereby soldiers divorced their wives (perhaps conditional on their deaths) before heading off to war (*Shabbat* 56a); (b) that "Uriah the Hittite" was not Jewish, and thus not technically subject to the laws of adultery (Medan, *op cit.,* pp. 82-83); and (c) that Uriah deserved to die because he was insubordinate in his words (seemingly calling the general Joab his "master" in front of David) and possibly his actions (not going down to Bathsheba when commanded by the king; *Shabbat* 56a).

[4] For review, see Rav Amnon Bazak. "Chapter 12 (Part III) The Attitudes of Chazal and the Rishonim Toward the Episode of David and Bat-Sheva."

[5] Medan, *op cit.,* p. 136.

[6] Abarbanel *ad loc.*, II Samuel 11:14.

Quite strikingly, the analysis in the next section indicates that the biblical text is hinting loudly that David's sin has an important dimension below the surface. Furthermore, we will see that an appreciation for this dimension can resolve several outstanding puzzles in the story of David and Bathsheba. And we will also see that it carries three important lessons regarding the perniciousness of cover-up and the redemptive power of confession.

The *Yibbum*-Theme in David's Sin

The heart of the suggested approach is an analysis of the many textual and thematic links between the story of David-Bathsheba in chapters 11-12 of II Samuel and the story of Judah and Tamar in chapter 38 of Genesis.

To recall, the story of Judah and Tamar culminates in the birth of Peretz, who was the ancestor of David's forebear Boaz (Ruth 4:18-22). At the heart of the story is a struggle by Tamar to ensure that a man from Judah's family perform *yibbum* or levirate marriage, the ancient rite (found also in other ancient/patriarchal cultures) by which a brother of a man who dies without children marries the childless widow and dedicates their child to his dead brother's legacy. Judah's second son Onan ostensibly accepts his responsibility as levir for his deceased brother Er, whom God had killed because he was evil (Genesis 38:7). But God kills Onan as well as punishment for refusing to "give seed to his brother (38:9)" by consummating the marriage. Then, with two sons mysteriously dying while married to Tamar, Judah delays having his third son Shelah be the levir. Tamar's patience eventually wears thin and she takes initiative by seducing Judah in the guisde of a (veiled) roadside prostitute. In this way, she induces him to perform the role of levir and *inter alia* to recognize his error.

At first glance, this story would seem to have little to do with the story of David and Bathsheba. But a review of the many links between the stories strongly suggests that we take a closer look:[7]

a) Each story begins with a leader abandoning his brothers (see Genesis 38:1) or comrades (II Samuel 11:1).
b) An announcement of an illicit pregnancy is pivotal to each story, with parallel statements of acknowledgement that appear nowhere else in the Hebrew Bible: *harah anokhi* (II Samuel 11:5) and *anokhi harah* (Genesis 38:25).
c) In Genesis 38, the protagonist begins the story married to a woman named Bat Shua (38:12), who is Canaanite. In II Samuel 11, the protagonist ends the story married to a woman named Bat Sheva (Bathsheba) (referred to as Bat Shua by I Chronicles 3:5) who was married to a Hittite.

[7] Parallels b, c, f, and a version of l are noted by Rav Amnon Bazak, "Chapter 11 David and Bat-Sheva (Part II).". Rav Bazak also notes the most important parallel, concerning God's judgment of Onan and David, as discussed below.

d) The male protagonist's lust is elicited by a woman who is dressed in an unconventional or provocative manner—uncovered in the case of Bathsheba and covered in the case of Tamar.

e) This woman is observed in a scene associated with water (bathing in the case of Bathsheba, at springs in the case of Tamar).[8]

f) In both stories, the woman is ironically referred to with the root for holy, *kadosh*, precisely to refer to preparations for the illicit relationship. In Tamar's case, it is the word for cult prostitute (*kedeishah*; Genesis 38: 21-22). In Bathsheba's case, it refers to her immersing herself after menstruating (*ve-hi mitkadeshet mi-tumat*a ; II Samuel 11:4).

g) There is unusually extensive use of agents throughout each story, perhaps suggesting that each story is in part about how a leader goes astray when he has others do his 'dirty work'. In particular, there are five instances of *shalah* ("send") in Genesis 38, and 15 instances in II Samuel 11-12), with the heaviest use pertaining to the procurement of the woman for the illicit liaison (David-Bathsheba) or to paying her (Judah-Tamar).

h) In both stories, the cessation of mourning is prelude to sex. This happens twice for Bathsheba (II Samuel 11:27 and II Samuel 12:24), and once each for Judah (Genesis 38:12) and Tamar (38:14). In each case, the word *vayenahem* —"and he comforted" (II Samuel 12:24), or *vayyinnahem* — "and he was comforted" (Genesis 38:12), is the sign of movement from mourning to availability for the sexual encounter that leads to the birth of an heir.

i) In both stories, a man (Onan, in Genesis 38; Uriah, in II Samuel 11) refuses the opportunity/mandate to have intercourse with his wife. In both cases, this failure leads to that man's death due to the orders of a king (God, in Genesis 38; David in II Samuel 11).

j) Each story involves a theme of *bizayon* or denigration/calumny. In Genesis 38, Judah is reluctant to give Tamar to his third son Shelah as a levir "lest we come to calumny"(*pen nihyeh lavuz* ; Genesis 38:23) and Nathan twice uses this terminology in describing David's sin ("*ekev ki bizitani*" "*madua bizita et devar Hashem*"; II Samuel 12:9-10).

k) The two stories contain the only two instances in the Hebrew Bible in which there is a transitive verb phrase in which (a) the object is *artzah*, to/towards the ground; (b) the subject is "and he"; and (c) the verb starts with the letter *shin*. In Samuel 12:16, David is described as *vishahav artzah*, and he prostrated himself on the ground. In Genesis 38:9, Onan is described as *vishihet artzah*, and he destroyed (his seed) towards/on the ground.

[8] Various commentators understand *einayim* (Genesis 38: 14,21) as referring to springs. Note also that David's suggestion that Uriah go home and "wash your feet" (II Samuel 11:8) is widely interpreted as an allusion to intercourse. And note that Ruth too washes herself (Ruth 3:3) before going to Boaz's bed.

l) In each story, a key turning point is when (a) a judge reacts overly harshly to a case that is brought before him; (b) it turns out that he is the guilty party; and (c) he immediately recognizes his fault.

m) Flocks of herd animals—*tzon*—play prominent roles in each story even though they are seemingly extraneous. In II Samuel 12, there are two references to *tzon*, sheep, in the parable of the "poor man's ewe" and in Genesis 38, Judah is passing Tamar on the way to sheep-shearing festivities, and a goat from the flocks (*gedi izim min ha-tzon*; 38:17) is offered as payment for sex.

n) The root "to give," *latet*, plays key roles in each story.
   - In I Samuel 12, it is the name of the prophet (Nathan has the unusual meaning of "he gave") who drives the action from sin to repentance. His name appears seven times, testifying to its significance. The root also appears three additional times, in the context of describing God's gift of the kingdom to David and once in describing his punishment.
   - In Genesis 38, the verb also appears seven times and plays a crucial role in driving the narrative. The first two times, failure to give twice drives the action. Then there are four instances where it is part of fixing the problem via the deposit Judah gives to Tamar. Finally, it is involved in the birth of the dynastic heir.

o) Each story concludes with a newborn child becoming the dynastic heir, in the context of an odd naming pattern. In each story, (a) two names are given; (b) the first name is given by a "mix" of man and woman[9]; and (c) the second naming is performed by a man alone.[10]

This long series of thematic and textual allusions make a strong case that the story of Judah and Tamar has something to teach us about the story of David and Bathsheba. But what precisely?

The key is to ponder what is perhaps the most remarkable link of all. In particular, in both stories the very same unique five word phrase appears, with a slight modification of word order as appropriate to its context:

> ***va-yeira be-einei Hashem asher asah***
> **And what he did was evil in the eyes of the Lord** (Genesis 38:10)
>
> ***va-yeira*** *ha-davar* ***asher asah*** *David* ***be-einei Hashem***

[9] In Genesis 38:28-29, a woman—ostensibly the midwife but perhaps Tamar—provides the rationale for Peretz's name, but a man—presumably Judah—formally names him. In II Samuel 12:24, Solomon is named by both David and Bathsheba [the literal text says that "he" named him, but the Masoretic note has us read it as "she" named him].

[10] In Genesis 38:30, this is a man (ostensibly Judah again), providing a name to the second twin, Zerah. In II Samuel 12:25, this is Nathan giving a second name to Solomon, Jedidiah.

And the thing that David **did was evil in the eyes of the Lord** (II Samuel 11:27)

This phrase, which appears nowhere else in the Hebrew Bible, is also noteworthy because it is quite rare for God's state of mind to be described, especially His attitude towards a particular person's actions. Moreover, these phrases are the climactic descriptions of sin in each story.

I would now like to suggest that they describe the very same sin. In particular, just as Onan *refused to perpetuate his brother's legacy* by performing levirate marriage, David's taking Bathsheba as his wife and especially his taking their child as his own—the action that immediately precipitates the divine condemnation above—*is tantamount to erasing Uriah's legacy when he could have perpetuated it.*

Consider: the law of levirate marriage (Deuteronomy 25:5-10) states that when a man dies, his "brothers" have a mandate to perform levirate marriage lest the dead brother's "name be erased from Israel." Furthermore, we know from the story of Ruth that "brothers" was interpreted liberally as a moral if not a legal mandate for any relative to help the widow carry on the name or legacy of the dead man by essentially giving a son to the dead man. But who was worrying about Uriah's legacy? Certainly not David. By taking Bathsheba as a wife and *treating the child as his own*, he was preventing anyone else from taking up the call to perpetuate Uriah's legacy. In effect, David was refusing to provide "seed" on his "brother's" behalf, just as Onan did.

Seeing David's sin in this manner manner also renders it biographically significant in an especially tragic way. Up until this moment of history, the Davidic line was marked by increasing success in attending to the status of women who were left vulnerable and bereft by the loss of their husbands. One side of David's family—the Moabite line—was founded in Lot's failure to find husbands for his bereft daughters.[11] The other side of the family—the Judahite/Peretz line—began somewhat more auspiciously: after his initial failures, Judah was prompted by Tamar to step up. And then Ruth and Boaz bring these two lines together in a towering success—they go beyond the letter of the law to build the house of David in exemplary acts of kindness (by Ruth towards Mahlon, and by Boaz towards Ruth). David is the quintessential "*yibbum*-man" and all this signifies. It is thus so very poignant that his great fall is a *yibbum*-themed fall.

Finally, this interpretation is consistent with two puzzling details in the story. First, Nathan does not in fact accuse David of adultery, but only of "taking the wife of Uriah the Hittite (II Samuel 12:1-12)." It is not otherwise clear why this is such a major sin; but it looms much larger in the context of David's family history and of contemporary attitudes regarding levirate marriage. Second, David's actions are not deemed "evil in God's eyes" (leading to His

[11] See Seforno and Kimhi on Genesis 19:31, and see Harold Fisch, "Ruth and the Structure of Covenant History," *Vetus Testamentum* 32 (1982): 425-37.

sending Nathan to rebuke David) until many months have elapsed from the time of the initial liaison and pregnancy and Uriah's death—not until after the child is born and is described as having been taken by David "as his" (see II Samuel 11:27-12:1). R. Yaakov Medan suggests that it is not until this point that David's descent into sin has reached its nadir, where he is attempting to profit from someone else's misfortune.[12] I am suggesting that it is not merely that he is taking someone else's wife and child, but that this act is a high crime by the lights of ancient near eastern society, given the institution of levirate marriage and what it signifies.

How Cover-Up Produces Sin

But surely to cast David's sin as a failure to perform *yibbum* is to fall into the trap of minimizing it. Isn't adultery even worse?

Of course it is.

But if we consider why it would not have been wise for Nathan to accuse David of adultery, we arrive at deeper lessons about the significance of the cover-up and the confession.

The most straightforward reason why Nathan did not allege adultery is that he had no evidence for it. While David's messengers would have known that Bathsheba had visited David (see II Samuel 11:3-4), there is no evidence that this information had spread. Moreover, even if rumors had spread, and even if Nathan had special insight into what had happened (the text does not say that God informed him), he can hardly accuse David of a crime without evidence or testimony. After all, seven months had passed and no one had come forward to supply such evidence against the king. Finally, we cannot assume that Nathan knew that David would confess to his sins. David could have responded to Nathan's rebuke by declaring "fake news!" Nathan surely would have thought this risk would be even greater were he to accuse David of a crime for which he had no evidence. But he *did* have evidence that David had betrayed his family legacy and contemporary norms by stealing Uriah's legacy: it was there for the whole world to see. While David's hidden sins may have been greater than his overt sins, those overt sins were more than sufficiently serious to merit Nathan's rebuke.

This in turn suggests an important lesson about why cover-ups are so pernicious. David was apparently so focused on covering up the sin of adultery, it warped his sense of morality to the point that he *openly engaged in actions that he should would have recognized as sinful*.

Indeed, consider David's overt sins (causing Uriah's undignified death and having a child with his wife) from two other angles that should have been obvious to David because of their importance in the Torah: (a) the potential for abuse of authority inherent in monarchy; and (b) the importance that each individual build a household. The former theme begins in

[12] Medan, *op cit., p.* 144.

Genesis, with a series of episodes that illustrate the great fear that pagan kings would see themselves as above morality to the point that they would kill foreign men and steal their beautiful wives.[13] How could David have been blinded to the astounding fact that he did what Abraham and Isaac feared that Pharaoh and Abimelech would do?! Moreover, David was surely aware of how Deuteronomy counterpoises limits on kingly authority with the protection of the individual and his rights:[14] the general worry is that the king's "heart will become haughty over his brothers" (Deuteronomy 17:20) and come to dominate them in various ways. And a specific worry is the nightmare scenario of a man dying (in war, presumably initiated by kings) before he has an opportunity to consummate his marriage and build a household, thereby allowing another man to take his place.[15] This nightmare is precisely what the institution of *yibbum* is meant to address: the protection of the legacy of each "brother" of Israel. *And tragically, this nightmare is precisely Uriah's fate, and the man responsible is the king of Israel in a quintessential act of haughtiness.* What is more haughty than the conceit that one can hide one's sins from God (cf. Genesis 3:8)?

The Power of Confession

Attention to the *yibbum*-theme in the story of David and Bathsheba not only helps us appreciate how covering up for sin induces moral blindness, it also helps us sheds light on the redemptive power of confession.

To see this, first consider one of the great mysteries of this story: David's enigmatic pattern of behavior in response to his and Bathsheba's first son's illness and death (II Samuel 12:16-23). During the illness itself, David is beside himself, giving himself over completely to intense fasting, prostrating, and praying on behalf of the child. The court elders try to get him up from the ground—behavior unbefitting a king!—but to no avail. Indeed, his attachment to the child is so extreme that his servants are afraid to tell him that the child has passed; David must figure it out from their whispering about it. But then he surprises them again by immediately getting up, washing himself, getting dressed, going to the "house of God" and bowing, and then sitting down for a meal. Asked for an explanation, he offers only that while the child was alive, "who knows," maybe God would save the child; but that once the child is dead, he can't bring him back (II Samuel 12:22). This pattern of behavior is puzzling to say the least, and various commentators and exegetes struggle to make sense of it.

But let us consider this pattern in the context of a community that would have had lingering questions about the paternity of this boy. Note first: if it was not common knowledge that the child was David's biological child, David's dramatic devotion to the child would have

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[13] See Medan, *op cit.*, pp. 87-90.

[14] See Joshua A. Berman, *Created Equal: How the Bible Broke with Ancient Political Thought* (New York: Oxford, 2008).

[15] See Deuteronomy 20:7, 28:30.

clinched it. *Who but a true father would pray for a child in this way?* So his actions at this stage were tantamount to declaring to the world that he was the child's biological father.

And now consider what is signaled by his decision not to mourn the child. Indeed, and quite strikingly, not only does he not mourn the child, but the text tells us that "he comforted Bathsheba" (II Samuel 12:24) even though the child was his too! This pattern of action is also tantamount to a declaration—i.e., that *he is not the child's rightful father*. David seems to be declaring that in a moral sense and perhaps a legal sense, he has stolen Uriah's child. He is proclaiming that he had wronged Uriah, the stalwart warrior.[16]

Thus David's confession does not end with his explicit declarations of having sinned to God. He seems to transcend mere admission of sin by taking action to address it: if his sin was the erasure of Uriah's legacy, anything he might do to remind the public that Uriah was a great officer who was wronged by the king would *promote Uriah's legacy*. Any such confession would be hard for David to do—David's reputation must necessarily fall as Uriah's rises—but necessary if the sin is to be addressed.

This form of confession may have taken an even subtler and more powerful form. In particular, let us now consider what is perhaps the greatest puzzle pertaining to the story of David and Bathsheba: *how and why would a king (David) allow a scribe (Nathan) to publish chapter 11 of II Samuel, where Uriah emerges as a dedicated warrior and David comes across as a scoundrel?* In the first instance, we should assume that as in other ancient near eastern cultures, scribes worked for the king and were meant to write accounts that made the king look good. They hardly could be expected to write highly negative accounts of their masters, especially concerning actions that occurred completely in private! Moreover, while it is perhaps not unreasonable to expect a scribe to write negative accounts of historical kings, this does not apply when such kings were part of the same (Davidic) dynasty.[17] To be sure, rabbinic tradition implies that the prophets had full autonomy to write true accounts unfettered by kingly censorship. But we should not take this for granted. Rather, such protection of the prophetic/scribal "estate" should be regarded as a major achievement, and a great fulfillment of Deuteronomy's vision of monarchy.

More specifically, the publication of this story can be thought of a powerful act of *yibbum*. Why does our text tell us that David committed adultery with Bathsheba? After all, it seems

[16] It is unclear when David would have hatched this plan. But item k in our list of allusions is suggestive, in that it links David's praying for his son with Onan's destroying his seed. Perhaps the text is hinting that it was at this moment of prostrating himself before God that David realized that he needed to do the *opposite* of Onan (who was hiding from God): to promote Uriah's legacy rather than destroy it.

[17] This last assumption parts company with those adopted by critical scholars (e.g., Baruch Halpern, *David's Secret Demons: Messiah, Murderer, Traitor, King* (Grand Rapids, MI: Eerdmans, 2003) who understand Samuel as hagiography designed to mask David's sins with false virtues. Such approaches have yet to come up with a plausible explanation for why chapter 11 of II Samuel would be included (see David A. Bosworth, "Evaluating King David: Old Problems and Recent Scholarship," *Catholic Biblical Quarterly* 68 (2006): 191-210).

that it was not common knowledge in David's court. And how do we know that Uriah was a great warrior who was wronged? The answer to both questions seems to be: *David authorized this story to be told*. Thus if our assumptions about the publication process are correct, David would have taken remarkable steps to correct his failure to perpetuate Uriah's legacy and address his ugly abuse of authority more generally. By publicizing this story, one that would forever stain his own legacy (I Kings 15:5), he would have been promoting Uriah's name and publicizing his abuse of authority so that it would stand forever as a warning to all future kings and leaders.

Countering the Danger of Confession

There is one final aspect to this story that is elucidated by the *yibbum* theme: David's relationship with Bathsheba after their first son's death. An enduring mystery is why it would have been legally permissible for David to marry Bathsheba if they had indeed committed adultery. R. Yaakov Medan suggests that on a moral level if not a legal one, David earned significant merit for having accomplished what Judah (and Boaz) did via *yibbum*: ultimately doing the right thing and "spreading his wings" of protection (Ruth 3:9) over an otherwise bereft/abandoned widow.[18] And if Judah (and Boaz) was duty-bound to provide such protection, how much more so would this have been the case for David who was to blame for the fact that such protection was needed. What kind of life and legacy would Bathsheba have had, especially if David had publicly proclaimed she was an adulteress?

Consider as well: While the institution of *yibbum* is ostensibly meant to promote the legacy of the dead husband, a review of the *yibbum* stories in the Hebrew Bible reveals that *yibbum* actually tended to promote the legacy of the bereft women (and their lineage) *who had to take matters into their own hands in order to induce powerful men to do the right thing.*[19] After all, who remembers Er or Mahlon or even Uriah today? It is Tamar, Ruth, and Bathsheba we remember. In that sense, while David's continuing his marriage with Bathsheba (recognized as "his wife" only at this point; II Samuel 12:24) was not technically a form of *yibbum*, it did (a) followed on actions that promoted Uriah's legacy; and (b) protected Bathsheba's life and legacy. And an indicator that this 're-marriage' with Bathsheba was considered a form of *yibbum* is that whereas Bathsheba is described as *giving birth* to the first *son for him* (i.e., David; 11:27), she is described simply as *birthing a son*, when it comes to Solomon (12:24). This is striking given that Solomon is in fact the dynastic heir. But it is unsurprising if we see this as a form of *yibbum* such that the child's legacy is associated with Bathsheba and Uriah (as well as God and Nathan; see 12:25).[20]

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[18] Medan, *op cit.*, p. 145.

[19] The same is true for the daughters of Zelophehad (Numbers 27:1-11). They succeed in perpetuating their father's legacy, but the indirect effect is to promote their own legacies.

[20] This 'pseudo-*yibbum*' outcome may provide something of a solution to a very difficult dilemma (thanks to Davida Kollmar for posing it): Once Uriah had died due to David's instructions to Joab, what should David have done? If he confesses at that point (or even after the initial adultery), how will Bathsheba and her son be protected? But if he does not confess, how will Uriah's legacy be protected? Ultimately, the answer is unclear. What does seem clear is not the one that David chose—i.e., to take Bathsheba and the son as "his" rather than

But where does Bathsheba take initiative to secure that legacy? After all, in II Samuel 11-12 Bathsheba says only "I am pregnant" and otherwise exhibits little agency. The key moment seems to be when David is on his deathbed and Bathsheba and Nathan collude in inducing David to proclaim Solomon king and undercut his half-brother Adonijah who had proclaimed himself king (I Kings 1). It is quite curious that Nathan and Bathsheba are so close; there is no previous indication they had ever spoken. Even more enigmatic is that Bathsheba and Nathan refer to a promise David had made that Solomon would be the heir even though no such promise is recorded. Surprisingly, David acknowledges the promise and he acts as they request.

Perhaps in fact there was no explicit promise. Rather, what Bathsheba and Nathan are saying is that if David does not act as if the crown was promised to Solomon, his act of *yibbum* will be incomplete. Indeed, Nathan's opening line to Bathsheba is that her and her son's lives are in danger (I Kings 1:11-12); after all, the natural next step for a usurper like Adonijah to take is to *kill all rivals to the throne*, as well as Nathan and everyone associated with his father's court. But their lives will be preserved if David names Solomon heir, and Solomon succeeds in assuming the throne.

Bathsheba's assignment is not easy. Like Ruth (3:1-14), she must appear at her "levir's" chamber when she was not invited. And she must suffer the indignity of petitioningf talking to David as the young and lovely Abishag is attempting to warm him. But with Nathan reinforcing her appeal, Bathsheba succeeds in preserving her life and the life of her son, as well as their legacy. And David is coaxed into protecting their legacies as well, and indirectly that of Uriah. Thus whether or not David's confessions were indeed sufficient to atone for his sins, they did serve to redress some of the harm he caused with those sins.

Conclusion

The text of the story of David and Bathsheba hints loudly that there is an important *yibbum* dimension to David's sin lying just below the surface. The textual and thematic allusions to the story of Judah and Tamar seem so extensive as to be undeniable, and they are especially compelling in the context of David's family history. Moreover, they help resolve several puzzles in the story of David and Bathsheba.

The larger implications of the *yibbum* theme are more debatable. Three possible implications have been discussed here. First, far from minimizing David's sin, the *yibbum* theme suggests how David's attempts to cover-up that sin distorted his moral vision to the point that he openly committed major moral transgressions without realizing it. Second, this *yibbum* theme helps us appreciate the redemptive power of David's confession. In particular, he seems to have done more than admit that he "sinned to God" by taking painful steps to

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Uriah's. It is possible that if David had turned to (Nathan and) God at that point, he would have been guided to a resolution along the lines of the one that is ultimately achieved via Solomon. And perhaps this would have occurred via the first child. But it is of course impossible to know.

publicize his otherwise hidden thefts of Uriah's life and legacy, and thereby to promote that very legacy. Finally, the *yibbum* theme suggests that David was induced (by Bathsheba) to protect her life and legacy, and thereby to address the harm he had caused.

Whether or not the reader agrees that these lessons are implied by the biblical text, they nevertheless seem general and meaningful: First, covering up sin distorts moral vision. Second, true confession of moral transgression requires difficult action that may do lasting damage to one's reputation. Third, since it has the potential to help others, especially those who we have harmed, confession and repentance are worth the effort even if we will never know whether they fully atone for our sins.

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Yom Kippur, Fasting, and the Poor: Considering the Message of Isaiah 58

Shlomo Zuckier

What is Yom Kippur about? Reflexively, many of us would say "fasting," in the sense of refraining from eating and drink. But the *haftara* read on Yom Kippur, taken from Isaiah 58, gives a radically different conception of what a fast day should be, focusing on matters other than refraining from eating. This essay will take a close look at the literary artistry of Isaiah, trying to discern its literary-theological message, and considering what this tells us about fasting and Yom Kippur in general.

The charge to fast on Yom Kippur stems from the biblical phrase תענו את נפשותיכם (Lev. 16:29), usually translated as "you shall afflict/debase yourselves" but probably better construed as "you shall deny your gullet." This phrase, cited several times in the Torah and clearly associated with Yom Kippur, will be the key to decoding the literary message of Isaiah 58.

Isaiah 58 comes to correct the people's severe misimpression of fast days They saw the technical observance of the fast, namely debasing oneself and abstaining from eating, as the be all and end all of its observance. While meticulously following the ritual technicalities of fasting, they were oppressing their workers – even having them work on the fast itself! – and they failed to assist those less fortunate.

For Isaiah, however, the fast must be directed towards helping others. One is to practice self-debasement precisely in order to support others. We see this in the multiple cases of inversion that the chapter offers to the phrase ענוי נפש (self-affliction), which function on both a literary and a thematic level. The passage is uniquely constructed so as to complicate the standard understanding of mortification of flesh that people generally associate with Yom Kippur.

- Rather than affliction (ענוי), the people are bidden to do the opposite: they are to feed the hungry (v. 7; הלוא פרס לרעב לחמך), and satiate the gullet (v. 11; והשביע בצחצחות נפשך). In fact, there is a charge precisely to satiate those souls that are afflicted (v. 10; ונפש נענה תשביע), the exact opposite of תענו את נפשותיכם!

- Not only is the opposite of ענוי called for, but the root עני itself is redirected, as well: by punning on the root for affliction (ענוי) the text shows that it cannot be simply followed as it sounds. The poor (עני) are mentioned, but they are to be brought in (v. 7; עניים מרודים תביא בית). If one acts properly, God will respond (v. 9; אז תקרא וה' יענה), clearly a pun replacing affliction (יְעַנֶּה) with divine response (יַעֲנֶה).

- Additionally, the word נפש (soul/person/gullet) is redirected in various manners. The people are expected to "given themselves," i.e. their compassion, to the hungry (v. 10; ותפק לרעב נפשך), and satiate the gullet of the oppressed (v. 10; ונפש נענה תשביע), such that God will in turn satiate their gullet (v. 11; והשביע בצחצחות נפשך).

The literary assault on עינוי נפש thus includes the deployment of antonyms to affliction as well as the use of both the root ע.נ.י and the noun נפש to promote the *opposite* of affliction – supporting the poor is what will cause God to respond.

These linguistic inversions are accompanied by several thematic inversions, as well. It is clear that the standard understanding of a fast, as understood by Isaiah's addresses, was to not eat or drink (see vv. 3 and 5), to wear sackcloth (v. 5) and to bow one's head and ignore one's flesh (v. 5). These practices correlate to the additional ענויים (Yom Kippur observances) familiar from the Talmud and contemporary practice – one neither eats nor drinks, afflicts one's flesh by neither washing nor applying oil, refrains from sexual activity, and practices sartorial debasement by not wearing shoes.

Yet Isaiah's account of the fast required by God inverts each of these themes:

- Isaiah charges the people to eat and drink and be healthy, the opposite of the prohibitions against eating and drinking. Specifically, the people are told to feed the poor and downtrodden, to *reverse* their affliction.

- The people are charged to clothe the poor, *inverting* the concept of mourning by wearing sackcloth and/or not wearing shoes.

- The nation is urged "do not forsake your flesh," which clearly opposes a conception of carnal debasement. However, there is another inversion at work. This verse is understood, in various Second Temple and Rabbinic traditions, as relating to a scenario where a man would marry his niece in order to support her financially.[21] This is another counterweight to the prohibition against carnal activity for the fast day, as one is urged to consider undertaking a sexual relationship for the purpose of assisting someone in an unfortunate financial position.

The key to reading this critique is the overturning and re-directing of the fast day, accomplished through punning and re-deployment of the phrase ענוי נפש that is paradigmatic of fast days, and especially Yom Kippur.

A true fast, one God desires, will inspire those fasting to utilize the self-abnegation for the purpose of caring for those less fortunate than themselves. The failure of the people was that their fast was accompanied by doing business, and doing so on the back of others (vv. 3-4, הן ביום צמכם תמצאו חפץ, הן לריב ומצה תצומו). In doing so, they doubly missed the point – they were not truly denying themselves, and they certainly were not helping others. A successful fast, says Isaiah, must – either by reallocation of resources (v. 7, פרס לרעב לחמך) – or a reassignment of sympathies (v. 10, ותפק לרעב נפשך) – redirect one's attention from preoccupation with one's self (נפש) to concern for others. In the long run, he promises, the self-affliction (ענוי) leads to God listening (ה' יענה), and leads to ultimate self-fulfillment (והשביע בצחצחות נפשך).

Whether by redirecting food not eaten to a food pantry or becoming inspired through fasting to identify with those who are starving, Isaiah's message – equally important now as

[21] Aharon Shemesh has treated this matter in various places. See his "Scriptural Interpretations in the Damascus Document and their Parallels in Rabbinic Midrash," in *The Damascus Document: A Centennial of Discovery*, ed. J. Baumgarten, (Leiden: Brill, 2000), 163-167, which cites CD 6:21-7:1 CD 8:4-8 and bYevamot 62b.

then – is that we ensure that the practices of Yom Kippur reinforce our awareness of those less fortunate and our capacity to support them. Failing to do so would mean that we have become so self-absorbed in our own affliction that we missed its point entirely.

May we all merit to internalize Isaiah's rebuke, and to fulfill the fast with its full significance!

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Jonah and the varieties of religious motivation

David Bashevkin

> The consolations of Religion, my beloved, can alone support you; and these you have a right to enjoy. Fly to the bosom of your God and be comforted.
> — Letter of Alexander Hamilton to Elizabeth Hamilton, 4 July 1804

> **Rust Cohle:** What do you think the average IQ of this group is, huh?
> **Marty Hart:** Can you see Texas up there on your high horse? What do you know about these people?
> **Rust Cohle:** Just observation and deduction. I see a propensity for obesity, poverty, a yen for fairy tales, folks putting what few bucks they do have into little, wicker baskets being passed around. I think it's safe to say that nobody here is gonna be splitting the atom, Marty.
> — *True Detective*, Season 1, The Locked Room

The journey towards more fervent religious life so often begins with personal turmoil. Some people turn to religion because they are lonely, some are looking to cope with feelings of mortality, while others may turn to religion in the hopes that it will serve as a respite from a broken family. As a religious educator, it is hard to ignore the gnawing feeling that the object of these people's search is not authentic spirituality, but a very, almost secular driven, emotional catharsis from the everyday pain of life. Of course, as an educator, there is a duty to remain egalitarian as to the religious motivations of those who seek counsel; but can I be faulted for noticing that so many people who are seeking religious commitment would seem to be better suited in finding simple healthy social interactions? Does the teenager looking to make sense of her or his parents' impending divorce really need theological purpose or would she or he be better suited with the guidance of a mental health professional and a friend?

I don't think I am the first educator to develop fatigue from watching many who began with intense motivation and then slowly watch said motivation (d)evolve into either disappointment or disuse. The prime suspect, in my eyes, of such abortive entrances into religious life was often the nature and substance of the motivation that brought them there in the first place. Perhaps, I wondered, if people came to religion for the "right reasons," if such can even be said to exist, the resulting religious experience would be more fruitful.

Of course, I recognize that everyone is welcome to seek meaning where they see fit, but my frustration was couched not so much in the breadth of what motivates religiosity than by incredulity towards the religious commitment that emerges from such fleeting emotional pain. A person can surely find God after a devastating diagnosis, but what enduring sense of duty could such motivation produce? Can religious motivation devoid of theological urgency still foster lasting religious commitment? It is an uncomfortable question to ask, for who has the authority to question others' religious search, but it was a question I nonetheless found myself asking, however quietly.

I don't know if I ever found a definitive answer to my difficulties, but my frustrations were assuaged, somehow. In December of 2014 I was invited to deliver a series of classes at a

weekend program for teenagers. Many of the participants would have the personal backgrounds that typically irked me in my endeavors at religious education. But, those classes changed my view on the varieties of religious motivation and experience. My classes focused on a personality, who I learned, dealt with a set of frustrations and difficulties similar to the ones with which I had been grappling. His name was Jonah.

II.

Jonah was approached by God to convince the people of Nineveh to repent and return to Him. Instead of listening, Jonah chose to run. Why did Jonah, a prophet, decide to run?

Like many biblical characters Jonah's underlying religious ethos was alluded to in his name. He was Jonah the son of Amittai, which derives from the Hebrew word *emet* – meaning truth. Jonah was a man of truth. He was not interested in religious comfort or convenience. He was not concerned with escaping the terror of death and finitude. Jonah was motivated by truth. Jonah's religiosity was founded on theological fact and doctrinal integrity.

After fleeing, Jonah found himself on a boat in a tempestuous storm. His fellow sailors began to panic. "And the mariners were afraid, and cried every man unto his god." Throughout the story the operative description of the sailors is fear. The religious motivation of the seamen was based on the impending crisis of their own mortality. Jonah, however, took a nap. He was not interested in being a prophet on this boat. The task of reminding them of repentance so as to escape death's grasp is the very job he absconded by running away from Nineveh. Jonah understood that the people on that boat were not seeking religious truth, but rather religious comfort.

After being thrown overboard in the midst of the storm, Jonah is saved from drowning by miraculously being swallowed by a fish. Inside the fish, Jonah prays and recommits himself to God, who in return ensures he is safely returned to dry land. Jonah, now seemingly reformed, agreed to return to Nineveh – which he did. The Nineveh community, hearing Jonah's exhortations to repent, promptly responded with a communal commitment to return from evil, which God just as promptly accepted.

Jonah, however, is still in pain. His outreach work still leaves him unfulfilled. He finally discloses to God why he ran:

> וַיִּתְפַּלֵּל אֶל ה' וַיֹּאמַר, אָנָּה ה' הֲלוֹא זֶה דְּבָרִי עַד הֱיוֹתִי עַל אַדְמָתִי—עַל כֵּן קִדַּמְתִּי, לִבְרֹחַ תַּרְשִׁישָׁה: כִּי יָדַעְתִּי, כִּי אַתָּה אֵל חַנּוּן וְרַחוּם, אֶרֶךְ אַפַּיִם וְרַב חֶסֶד, וְנִחָם עַל הָרָעָה.
>
> He prayed to God and said: Please, God, was this not my contention when I was still on my own soil? Because of this I fled towards Tarshish; for I knew that You are a gracious and merciful God, slow to anger, abundant in kindness, and who relents of evil.

While Jonah clearly intends to offer an explanation as to why he ran, his justification at first glance still remains unclear. A close reader, however, will notice that Jonah invokes the opening of the familiar refrain of Moses (or God, depending on who you ask), known as the Thirteen Attributes, that are repeated throughout the High Holiday season – albeit, with one

exception. The standard sequence of God's attributes that most readers are surely familiar with ends **not** with the term "*nicham al ha-ra'ah*," but rather with the term "*emet*"—truth. The word *nicham* derives from the word *nechamah*, comfort. Jonah in his aggravated description of God substitutes comfort for truth. Jonah the son of Amittai finally discloses his frustration with outreach to God. "You want to know why I ran away? Because for most people God, religion, spirituality—it's not about truth—it's about comfort."

Why did the fear of death and mortality seem to have no bearing on Jonah's religious outlook? Perhaps, it was his childhood. I Kings ch. 17, presents the story of the widow Zarephath, whose son died only to be revived by the Prophet Elijah. That son, according the Midrash, was Jonah. Death for Jonah, then, was not an abstract fear lurking in his future, but a reality he had already experienced. Having already lived through the terror of death, Jonah sought another motivation to ground his religious commitment: truth.

Jonah's concern has been articulated by many critics of religion. David Hume, in his *History of Natural Religion*, considers the concerns which motivated the advent of religion commitment. Hume, who was quite skeptical of religion, assumes that religion began not in the search for truth, but rather in a search for comfort:

> But what passion shall we here have recourse to, for explaining an effect of such mighty consequence [i.e., religion]? Not speculative curiosity surely, or the pure love of truth. That motive is too refined for such gross apprehensions; and would lead men into enquiries concerning the frame of nature, a subject too large and comprehensive for their narrow capacities. No passions, therefore, can be supposed to work upon such barbarians, but the ordinary affections of human life; the anxious concern for happiness, the dread of future misery, the terror of death, the thirst of revenge, the appetite for food and other necessaries. Agitated by hopes and fears of this nature, especially the latter, men scrutinize, with a trembling curiosity, the course of future causes, and examine the various and contrary events of human life. And in this disordered scene, with eyes still more disordered and astonished, they see the first obscure traces of divinity.

His pessimistic view of the underlying motivation for religion is shared by many philosophers. Ernst Becker, in his Pulitzer Prize winning book *The Denial of Death*, flatly declares that "religion solves the problem of death." No doubt, this view is best encapsulated in Karl Marx's often cited declaration that "religion is the opiate of the masses." An opiate does not bring its users truth, of course; it is a specious solution for the harsh pain of a harsh world.

Long ago, Maimonides was also concerned with this issue. In his Laws of Repentance (10:2), Rambam makes an important distinction regarding the proper motivation for religious commitment:

> Whoever serves God out of love, occupies himself with the study of the Law and the fulfillment of commandments and walks in the paths of wisdom, impelled by no external motive whatsoever, moved neither by fear of calamity nor by the desire to obtain material benefits—such a man does what is true because it is true…

The ideal form of religious commitment, according to Maimonides, is founded upon truth as opposed to the solace religion proves in the face of calamity. Of course, he readily concedes, most will never achieve such purity of motivation – but it stands as an ideal nonetheless.

In 1967, Gordon Allport wrote "Personal Religious Orientation and Prejudice," an important essay that invoked a similar dichotomy in religious motivation to that of Maimonides. According to Allport, religious motivation can be characterized based on two binary poles – intrinsic versus extrinsic motivation. He succinctly defines this scale as follows:

> Perhaps the briefest way to characterize the two poles of subjective religion is to say that the extrinsically motivated person uses his religion, whereas the intrinsically motivated lives his religion. As we shall see later, most people, if they profess religion at all, fall upon a continuum between these two poles. Seldom, if ever, does one encounter a "pure" case.

Using Maimonidean terminology, those motivated by truth could therefore be considered intrinsically motivated, while those motivated by fear of calamity or, for that matter, by social, emotional, or any other form of temporal comfort could be typified as extrinsically motivated. Thus, what plagued Jonah was his insistence on pure intrinsic motivation.

The story of Jonah can be read as the narrative of a frustrated outreach professional. As a prophet, Jonah has proclaimed God's impending wrath to wayward communities and time and again he sees them repent out of fear. Man, when confronted with his own mortality, finds comfort in the community and eternal promises offered by religion. Jonah, however, grew tired of serving as the temporal haven for man's fear of crisis and transience. If religion is only a blanket to provide warmth from the cold, harsh realities of life, did concerns of theological truth and creed even matter?

III.

What was God's response to Jonah's religious torment? The story of Jonah ends abruptly. God provides a tree for the ailing Jonah to find shade. After momentarily providing Jonah comfort, God summarily destroys the tree. Jonah is crestfallen. With the sun beating down on Jonah, he pleads for death. God, in the closing statement of the story, rebukes Jonah for becoming so attached to the comfort of the tree, while still failing to develop any empathy for the religious struggle of the people of Nineveh.

Comfort, God reminds Jonah, is a need inherent in the human condition. The comfort provided by a tree no more obscures the role of God, than the comfort that religion provides. The means through which we find solace need not obscure the ultimate source from which all comfort derives.

Christian Wiman, a noted American poet, knows that his religious motivations are looked at with suspicion. After living as an atheist for much of his teens, he rediscovered God following a bout with cancer. As he acknowledges in his brilliant collection, *My Bright Abyss: Meditations of a Modern Believer*, "[t]hat conversion often happen after or during intense life experiences, especially traumatic experiences, is sometimes used as evidence against them." As he surely was accused of himself, "The sufferer isn't in his right mind. The mind tottering

at the abyss of despair or death, shudders back toward any simplicity, any coherency it can grasp, and the man calls out to God." Wiman, however, does not accept this skeptic narrative of religious motivation, "[t]o admit that there may be some psychological need informing your return to faith does not preclude or diminish the spiritual imperative any more than acknowledging the chemical aspects of sexual attraction lessens the mystery of enduring human love."

Religious motivation, however fleeting, however fearful, can still beget dignified religious commitment. Many people seek out religion, just as Jonah thousands of years ago desperately sought shade. Few, if any, are purely and intrinsically motivating by theological truth – but the story of Jonah teaches that their stories are still endowed with religious depth and significance. Perhaps this is why the story of Jonah is read on Yom Kippur. People come to synagogue for all sorts of reasons on Yom Kippur; many come only on this day. Reading the story of Jonah is an apt reminder that it doesn't matter what brought you to synagogue, be it comfort, truth, or otherwise.

Religious integrity is not determined by the door through which you enter, or even the length of your stay. Our momentary religious experiences are meaningful, regardless of their motivations or durations. So whatever brings you to prayer on Yom Kippur, know that your presence has meaning. We're glad you're here.

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Why I Don't Miss Shul on Yom Kippur

Leslie Ginsparg Klein

When I was single, I stayed with my brother and sister-in-law for Yom Kippur every year. They lived next door to a yeshiva, and I much preferred the yeshiva-style davening to the standard synagogue service. While I typically wasn't the most fervent *shul*-goer, Yom Kippur was different. I was present when davening started and there when it ended.

I managed to tap into the intensity of the day: the dread of *Kol Nidrei*; the heartfelt pleas of *viduy*; the emotion-packed crescendo of the room exploding at the end of *Neilah*, "*Hashem hu ha-Elokim;*" and the euphoria of the declaration, "*Le-shana ha-ba bi-Yerushalayim*!"

I was very comfortable in my Yom Kippur routine. Year after year, I sat in the same seat, wearing the same Steve Madden (non-leather) slides, using the same *mahzor*, anticipating the tune that was coming next. As I traveled the familiar and yet always emotional journey that is Yom Kippur, I had the full confidence of knowing that I was exactly where I needed to be in that moment, doing what I needed to be doing. I was in *shul*. Because that is what you do on Yom Kippur.

There is a level of *simha* in knowing you are doing the right thing.

Only that's not what I do anymore. I haven't been to *shul* on Yom Kippur in years. And I am okay with that.

Back in my yeshiva-going days, when my brother and I would go back to his house during the short break, my sister-in-law would greet us at the door with a smile. Drained from the hours in *shul*, I could barely muster a smile in return. She, on the other hand, was relaxed and upbeat. And I, still in the intense headspace of *shul*, couldn't relate. To be so "chilled" on Yom Kippur seemed wrong. But now, that is me. And it is kind of nice.

These days, I don't spend hours standing in *shul*, feeling the heaviness of the day, the intensity, the dread. These days, I spend Yom Kippur reading storybooks and playing board games. I try to talk with my kids a little about Yom Kippur, but I end up devoting more time to building elaborate structures out of Magnatiles. When I get tired, I rest and adjudicate inter-child disputes from the comfort of my couch. I also hang out with the other moms on the block as we have a steady stream of rotating playdates/tag team *davening*. With my friends' and my husband's help, somewhere along the day, I sneak in the five requisite *Shemoneh Esrehs*.

Towards the end of the day, the kids who are still awake daven the end of Neilah along with me. It's not quite as impressive as at the yeshiva, but it still gets a little loud. It may be less inspiring, but it's not just about me. It's about sharing the meaning of the day with my kids.

Not every woman experiences Yom Kippur the same way. Thankfully, most *shuls* have groups, babysitting and families make other arrangements that allow women with young

children to be in *shul*, at least part of the day. I hope that the available options continue to increase.

For me, staying at home works and makes the most sense. Sure, there are elements of being at home on Yom Kippur that are challenging. But during the many years I spent the *Yomim Norai'm* single, the primary thing I davened for was to be in this stage of life. While there is certainly much to daven for today, and I could daven more effectively in *shul*, I can't feel upset. My prayers were answered.

While this most definitely is not the Yom Kippur of my single years, this is the reality of my stage of life. So I don't feel guilty for not missing being in *shul*. And I don't feel guilty for being less intense and more relaxed. Instead, I have the full confidence that I am exactly where I need to be in the moment, doing what I need to be doing. And there is *simha* in that too.

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Can a Court Really Ban *Kapparot* and Why It Matters for the American Jewish Community

Michael (Avi) Helfand

Like many Jews, I do *kapparot* with my kids on Yom Kippur eve. But like many others, I don't wave a chicken around my head—I use money and then donate the money to charity. I do the *kapparot* with money even as I readily admit that the "money version" of the ritual is a recent change to the more traditional chicken-based routine. My reason: I find the chicken alternative just more than I can handle and, honestly, I don't feel comfortable doing the ritual with a live animal.

Discomfort, of course, is one thing. Taking legal action against the live-chicken version of *kapparot* is another. But the legality and constitutionality of *kapparot* is precisely what is at stake in a federal case current on the docket in California. The fact that someone is making a, pardon the pun, federal case out of *kapparot* may seem surprising. First, you might legitimately wonder what law someone is breaking when they use a chicken for *kapparot*. Second, and maybe more fundamentally, you might also wonder why isn't someone engaging in *kapparot* protected by the First Amendment's guarantee to protect the "free exercise" of religion. The answers to these two questions are important and not simply because of the current litigation; they tell us something important about why the Jewish community must take a more active role in current debates over religious liberty in the United States.

So What Law Prohibits *Kapparot?*

Let's start with the current litigation. On September 28, United Poultry Concerns, an animal rights group, filed suit in California federal court against the Chabad of Irvine, arguing that the ritual practice of performing *kapparot* with chickens violated California law. The plaintiff's legal claims are themselves a bit complicated—a Rube Goldberg form of legal argumentation if you will, so you have to keep your eye on the ball.

Here's step 1: California's Unfair Competition Law prohibits "any unlawful, unfair or fraudulent business act or practice." Easy enough. A business violates California law if it engages in an unlawful business practice. But there's an important twist. If a business does engage in an unlawful business practice, a private citizen—including, potentially, a non-profit animal rights group like United Poultry Concerns—can file a civil suit against the practice. So let's say a business engages in a practice that the district attorney believes is not unlawful and therefore the district attorney doesn't prosecute the business; a citizen that disagrees with the D.A.'s conclusion can take advantage of this California rule to file his or her own lawsuit, arguing the practice really is unlawful--again, even though the district attorney disagrees.

Of course, under this California rule, that citizen would have to demonstrate that he or she had been injured by the unlawful business practice—that he or she had "lost money or property as a result of the unfair competition." This is what gives the citizen "standing" in the first place to file the suit. Otherwise, there's no reason for the citizen to be in front of the court. In the *kapparot* case, United Poultry Concerns attempts to satisfy this requirement by claiming that it has been harmed because of all the money it's lost while investigating the conduct of the Chabad of Irvine.

So next comes Step 2: California law prohibits the "malicious" and "intentional" killing of an animal. This law could make a business practice "unlawful" if that business is maliciously and intentionally killing an animal. And as we know from Step 1, a non-profit can sue a business for engaging in an unlawful business practice. So if a California non-profit believes that a business is maliciously and intentionally killing an animal—such as the ritual practice of *kapparot*—and this practice causes it to lose money, it can file its own lawsuit claiming that the business is engaged in "unfair competition."

Hopefully in describing the legal argument, you can already see some of the problems. First, it's hard to understand how the plaintiffs have been actually financially harmed in this case. Second, the Chabad of Irvine--a religious non-profit--is presumably not a business. Third, the *kapparot* themselves are not a business practice, even as Chabad does receive some amount of money as a donation from participants in conjunction with the practice. And fourth, it isn't clear that the actual method of killing the chickens is itself malicious; indeed, the actual killing of the chickens—as opposed to process of swinging the chicken around the head—is done via ritual *shehitah*, which has never been deemed to be legally "malicious."

Indeed, these reasons are why at least one California state court has previously dismissed claims brought by United Poultry Concerns against a different Chabad institution in California. And given that United Poultry Concerns needs to win at each step of the argument to win the overall case, there is good reason to believe that the lawsuit is doomed to failure.

But What About Religious Liberty?

In reading the ins and outs of California law, you may find yourself wondering why even bother--aren't *kapparot* protected by the constitutional guarantees of religious liberty? The answer to this query, like all good legal questions, is maybe. And that uncertainty--combined with the plaintiff's patchwork of California laws--was enough to convince a federal court to temporarily prohibit *kapparot* in the days leading up to Yom Kippur. This outcome is, in and of itself, troubling.

But the outcome is grounded in Supreme Court precedent. Indeed, since 1990, the Supreme Court has interpreted the First Amendment's religious liberty protections to only prohibit the targeting of religious practices; where laws apply across the board, the fact that they burden religious practices simply doesn't raise a constitutional problem. And none of the rules raised by United Poultry Concerns target religion in any way. So the fact that they threaten to prohibit a particular practice does not, in and of itself, trigger the protections of the First Amendment.

Now, there are good arguments to claim that *kapparot* should still be protected by the First Amendment. Most notably, California's law against the malicious and intentional killing of animals has a bunch of exceptions for things like "game" or scientific experiments. And where a law grants exceptions for secular purposes, but doesn't do so for religious practices, it is typically viewed as no longer imposing a prohibition across the board—thereby triggering the protections of the First Amendment.

However, the fact that *kapparot* will have to be defended in federal court raises a more central problem for how the Jewish community should think about religious liberty. When the Supreme Court interpreted the First Amendment to only prohibit laws that target religion, it also provided a blueprint for how religious individuals might get a reprieve from laws that incidentally bar a religious practice. Instead of asking a court to provide constitutional protection, religious individuals or institutions could ask a legislature to just write a religious exemption into the law. So, for example, if a legislature enacts a law prohibiting minors under 21 from drinking alcoholic beverages, it can also add a provision that allows minors to drink alcohol as part of a religious ritual like communion or kiddush. In this way, the Supreme Court encouraged religious groups to find a new address for their complaints. Don't call a court--call your senator or congressman.

The problem with this suggestion is that it is unlikely to be equally effective for all religious groups. More established religious groups, with more well-known religious practices, are likely to have a relatively easy time when they ask legislators for legal exceptions. But minority religious groups, with more obscure religious practices, will presumably face far more skepticism when they present similar requests.

This asymmetry between the likely legislative reception of different religious groups is precisely why many states, following Congress's lead, have enacted religious liberty laws to supplement the limited protections afforded by the First Amendment. These laws vary in scope, but they all—in some manner—require courts to balance the importance of religious liberty against the importance of the state's law--and they subject laws to this balancing even if the law doesn't target religion. Where the state doesn't have a strong reason for enforcing the particular law, the religious practice may proceed even though it conflicts with the law. Such a framework, if implemented in this case, would pretty much end the litigation dead in its tracks; it is unlikely that the religious needs of Chabad would be trumped by California's unfair competition law, assuming the unfair competition law even applies in the first place.

States, however, have become wary of these religious liberty bills because they are seen as allowing businesses to discriminate against same-sex couples. While many states have laws prohibiting business from discriminating against customers on the bases of sexual orientation, religious liberty bills could be interpreted to allow a baker, for example, to refuse to bake a cake for a same-sex wedding by arguing that doing so burdens his religious practices. Indeed, when Indiana tried to enact a religious liberty bill in 2015, the public outcry was so ubiquitous that Indiana amended the law. And attempts in other states have faced a similar backlash. The problem here is that religious liberty bills have become politically toxic because of the potential of such laws to be deployed against members of the LGBTQ community. In this way, religious liberty bills--originally conceived to protect religious minorities whose voices might not be heard in a state legislature--are now viewed as themselves tools to target other minority groups.

And this new narrative is of particular worry for the American Jewish community. The fact that religious liberty bills have become so toxic has limited the protections afforded religious groups in far less complicated cases. And the *kapparot* litigation serves as a case in point. In an ideal world, a court would resolve the *kapparot* case by balancing religious liberty against the importance of California's unfair competition laws--and employing that calculus, find in favor of allowing Chabad to practice its *kapparot* ritual. But California has no such religious

liberty bill that provides a legal framework for that kind of balancing--and it never will in the current political climate.

This is why the American Jewish community needs to discover its voice when it comes to debates over religious liberty. Groups on the political right will use the *kapparot* case to convince the Jewish community to take a far more aggressive stance when it comes to current culture wars over religious liberty and LGBTQ rights. Groups on the left will encourage the American Jewish community to stand in solidarity with other minorities even if that means supporting more limited religious liberty protections.

But between the two lies a different path--one where the American Jewish community remains true to both its standing as a religious group and as a minority group. To do so requires embracing a legal framework that balances the needs of religion against the needs of others, recognizing that in some cases religion deserves protection, but in other cases religion might have to lose out. All told, the *kapparot* litigation is a reminder that the American Jewish community, in the coming years, will need to make its voice heard on how to balance the claims of religion against other legal imperatives. And in so doing, the Jewish community will need to provide an alternative--a uniquely Jewish alternative--to the current clash between religious and LGBTQ groups, one that reminds the law that the practices of minority religious groups should not be caught in the crossfire of the current culture wars.

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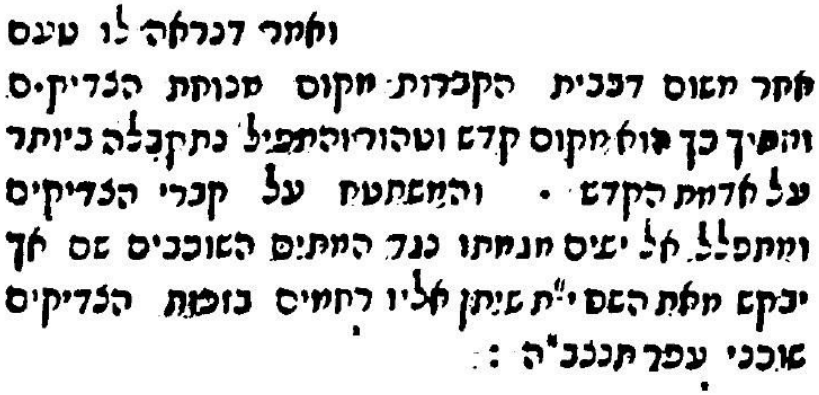
Praying at the Grave of Franz Rosenzweig

Elli Fischer

There is an old Ashkenazic custom to visit the graves of Jewish saints on fast days, and particularly on the day before Rosh Hashana.[22] Rabbi Jacob Moellin of Worms, Germany (better known as Maharil) explained this practice:[23]



> He said that another reason appeals to him: a cemetery is the resting place of the righteous, and therefore is a place of sanctity and purity, and prayers are better received on holy soil. One who prostrates himself on the graves of the righteous and prays should not direct himself toward the deceased lying there. Rather, he should petition God, blessed be He, to show him mercy in the merit of the righteous who dwell in the dust, may their souls be bound in the bonds of life.

Let us sharpen Maharil's idea a bit. Visiting a grave is about more than calling upon the merit of the righteous generically, though that is definitely part of what drives the dead rabbi tourism industry. Visiting the grave of a particular Jew offers a chance to meditate on his or her specific legacy, the way this saint changed the world and changed us. A visit to the grave of a historical figure who has inspired us or shaped us is a journey of self-discovery, a cathartic dredging of the soul.

This past February, I had an opportunity to visit the grave of Moreinu Franz Rosenzweig in Frankfurt am Main.[24] His grave is not (yet) a pilgrimage site, yet I was drawn to it, drawn to

[22] No, this didn't start with Uman.

[23] *Sefer Maharil*, Laws of Fast Days, p. 95a of the Frankfurt 1688 edition (because *of course* the Frankfurt edition). By the way, this custom is cited by Rema, *Orah Hayim* 581:4.

[24] Among German Jews, the honorific "Moreinu," which literally means "our Teacher," was given to a learned layman who has exhibited mastery of halakhic texts. As the gravestone shows, Rosenzweig was indeed awarded this title, though he did not publicize this fact during his lifetime. The plan to grant the title to Rosenzweig was initially conceived by Rabbi Nehemiah Nobel, but as Rosenzweig later wrote, "I told him right off that he had no idea how difficult my unlegalistic head would find the *halakha*." Rabbi Nobel died young, and shortly thereafter Rosenzweig himself was diagnosed with ALS and knew that his time was limited. His only child, a son named for Rabbi Nobel, was born just a few months later. Thus, when Rabbi Leo Baeck offered the honorific, Rosenzweig accepted, not because he felt he deserved it, but because: "above all, there is my little boy, who will one day be called up to the Torah under this patronymic and there learn that his father, to whom it

him, drawn not necessarily to *what* he thought, but to *how* he thought. As it happens, about a week later I was asked to join the editorial board of this exciting new project named for Rosenzweig's adult education initiative, *Lehrhaus*. Now the *Yamim Nora'im* are upon us, and our site is about to launch, and I can't help but think about Rosenzweig.

It is said that there are Purim Jews, Tisha Be-Av Jews, and Yom Kippur Jews. Rosenzweig was a Yom Kippur Jew—not just because of his "conversion" at the Potsdamer Brucke Synagogue, but because the holiest day on the Jewish calendar seems to have exerted a gravitational pull on the entire trajectory of his life. In 1917, he spent Yom Kippur in a Ladino-speaking Sephardic community in Uskub, Serbia (today Skopje, Macedonia)—a community of whom he said, prefiguring his later observations about Polish Jews and the ideas about *halakha* that he articulates in *The Builders*: "Their Jewish knowledge is nil, but the Jewish way of life is entirely natural to them" (Glatzer, *Franz Rosenzweig*, 51, 61). And it was on Yom Kippur in 1922, soon after Rosenzweig fell ill, that Ernst Simon, a *Lehrhaus* colleague, first organized the *minyan* that would continue to meet weekly in the Rosenzweig home until Franz finally succumbed to his paralysis in 1929.

One other description of the *Yamim Nora'im* is worth mentioning. Though it is allusion and metaphor, it is a stirring description of the process of *teshuva*—often translated as "repentance" but better translated as "return"—and establishes beyond doubt that Franz Rosenzweig was a true *ba'al teshuva* in the most literal sense.[25] He was a master of return, a man who recognized that he, along with his entire generation, was lost, was born lost, and managed to reorient himself and find his way home.

The letter was to Professor Friedrish Meinecke and was written in August 1920. Meinecke[26] had offered Rosenzweig a university lectureship in Berlin, and the latter declined in favor of founding the *Lehrhaus*. In the letter, he attempts to explain his decision:

> It was then (one can speak of such matters in metaphors only) that I descended to the vaults of my being, to a place whither my talents could not follow me; that I approached the ancient treasure chest whose existence I had never wholly forgotten, for I was in the habit of going down at certain times of the year to examine what lay

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was not given to be his teacher, may yet, through 'ours,' be his teacher." (Nahum Glatzer's *Franz Rosenzweig: His Life and Thought* [130-131]).

[25] He was also a *ba'al teshuva* in the sense that he became observant later in life. There is some debate about whether he was "Orthodox," which misses the point. He wasn't Orthodox; he was *frum*. The difference can perhaps be explained by yet another metaphor that he used in a letter to his mother: in the 1850s, Empress Eugenie and Queen Victoria attended a theatrical performance together. They approached the railing in the royal box, thanked the audience, and sat down—Victoria, a royal by birth, sat down without looking around. Eugenie first glanced around the make sure a chair was there. Rosenzweig aspired to be able, like East European Jews, to sit down without looking around. For those still curious, yes, he kept kosher, kept Shabbat, and there was a *mehitza* at the *minyan* in his home.

[26] He later became a Nazi sympathizer. This has nothing to do with the present story, but it needs to be said all the same.

> uppermost in that chest: those moments had all along been the supreme moments of my life. But now the cursory inspection no longer satisfied me; my hands dug in and turned over layer after layer, hoping to reach the bottom of the chest. They never did. They dug out whatever they could and I went away with armfuls of stuff—forgetting, in my excitement, that it was the vaults of myself that I was thus plundering! Then I climbed back again to the upper stories and spread out before me what treasures I had found: they did not fade in the light of day. These, indeed, were my own treasures, my most personal possessions, things inherited, not borrowed!

It was the very same vision that animated his vision for the *Lehrhaus*. It was designed to "lead from wherever we are in life back to the Torah. We shall not disregard whatever we are, not renounce whatever we have acquired, but lead everything back to Judaism."[27]

Perhaps, then, Moreinu Rosenzweig—and despite his deprecation of his own accomplishments in traditional Jewish learning,[28] he has taught us all—would smile at the idea of reciting a prayer for the success of this new venture at his grave. After all, Maharil, the hero of Ashkenazic custom, was part and parcel of that treasure trove that Moreinu Rosenzweig inherited, and graveside prayer—a customary, non-rational, natural expression of Jewishness—could easily be a manifestation of one's excavation of his own soul. Thus:

> May it be Your will, Lord my God and the God of my fathers, that I and my colleagues find success in this new endeavor, for Your sake, and for the sake of Your holy Torah. Help me find the path, and help me help others find the path, from Torah to life, and from life to Torah; to find eternity within the details, and the details of the Eternal. Unite us all in the pursuit of Jewish learning, so that we may embrace the whole of Judaism. Permit me to return to You by returning to the treasures I have inherited from my ancestors, and help me appreciate that others may embark on similar journeys and discover very different treasures. In the merit of your servant, Moreinu Levi ben Shmuel, who translated and expounded Your Torah amid terrible suffering,[29] grant me the courage to face life's challenges with humor, dignity,

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[27] This is from the opening convocation of the *Lehrhaus,* October 17, 1920. The entire address appears in Glatzer, Franz Rosenzweig (228-234). Needless to say, it is self-recommending.

[28] He indeed never truly mastered the Talmud. He first tried teaching himself Aramaic while stationed on the Balkan front during World War I, and studied Talmud daily, first with Joseph Prager, then with Rabbi Nobel. Once he was paralyzed, he preferred to study Talmud, because he spent so much time on each page that it was less burdensome for his nurses and attendants, who otherwise would have had to turn pages for him constantly. Nevertheless, he was largely unfamiliar with the Talmud when he wrote *Star of Redemption*, a fact which earned some criticism from Dr. Isaac Breuer (as well as others—including Rav Soloveitchik—who came from the world of the Talmud and did not think much of works of Jewish thought that were not anchored in the Talmud). Rosenzweig responded to Breuer: "When I finished the *Star of Redemption* I thought I would then have decades of learning and living, teaching and learning, before me, and that perhaps toward the end, when I had reached a hoary old age, another book might come out of it, and this would have been a book on the Law." It is worth noting that *The Builders*, where he makes the case, contra Buber, that Jewish learning and Jewish observance are inseparable, appeared about a year before his correspondence with Breuer.

[29] In his translation of Tanakh, undertaken together with Martin Buber, they got through Chapter 52 of Isaiah. I like to think that the last years of his life, in their entirety, were a translation of Chapter 53.

and common sense, and to heed, study, teach, observe, perform, and uphold Your Torah with love.

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Rabbi Yehudah ha-Nasi's Yom Kippur

Shlomo Zuckier

Does the Torah's description of the *Kohen Gadol*'s ritual in Leviticus 16, commonly known as *Avodat Yom Ha-Kippurim*, refer specifically to Yom Kippur? Perhaps not. The first 28 verses do not mention Yom Kippur at all, only discussing the nature of "*Be-Zot Yavo Aharon El ha-Kodesh*," how the *Kohen Gadol* can enter the Holy of Holies. After, and only after, that point, from verse 29 and on, does the Torah mention that this is to be performed annually on Yom Kippur, the "tenth day of the seventh month." Then, the Torah teaches other aspects of Yom Kippur: that it is a Sabbath of Sabbaths, with an obligation to afflict oneself, and concludes with another reference to the *Kapparah* that is effectuated in the Temple on that day.

The Gaon of Vilna and Some Precedents

The Vilna Gaon (cited by the *Hayyei Adam* at the end of *Avelut*) noticed this. He made use of this literary fact, arguing that Aharon had the option of conducting the ritual within the Holy and entering the Holy of Holies at any point in time, so long as he fulfills the process delineated in Leviticus 16:1-28. In other words, it is possible to detach the beginning of the chapter from its end, to separate the ritual inside the Holy from Yom Kippur.

This insight of the Gaon is a celebrated one. But I believe it is possible to see this insight echoed, to a certain degree, in a much earlier rabbinic text – in a Talmudic dispute (*Yoma* 3a):

> דתניא, רבי אומר: איל אחד, הוא האמור כאן הוא האמור בחומש הפקודים. רבי אליעזר ברבי שמעון אומר: שני אילים הם, אחד האמור כאן, ואחד האמור בחומש הפקודים.
>
> It was learned—Rabbi [Yehudah ha-Nasi] says: "one ram" (Leviticus 16:5)—the one stated here is the same as the one stated in Numbers (29:8). Rabbi Eliezer be-Rabbi Shimon says: There are two rams, one stated here, and one stated in Numbers.

These rabbis dispute whether the service in the *Mikdash* on the day of Yom Kippur features one ram or two. The *Avodah* of Yom Kippur opens with this verse (Leviticus 16:3):

> בזאת יבא אהרן אל הקדש בפר בן בקר לחטאת ואיל לעלה
>
> With this shall Aharon enter the holy: with a young bull for a sin-offering and a ram for a burnt offering.

Aharon enters the Temple's inner sanctum bringing these two animal offerings. It seems simple enough, but this verse raises a certain question when considered in context of what appears in Numbers 29:7-8:

> וּבֶעָשׂוֹר֙ לַחֹ֣דֶשׁ הַשְּׁבִיעִ֔י הַזֶּ֥ה מִקְרָא־קֹ֖דֶשׁ יִהְיֶ֣ה לָכֶ֑ם וְעִנִּיתֶ֣ם אֶת־נַפְשֹׁתֵיכֶ֔ם כָּל־מְלָאכָ֖ה לֹ֥א תַעֲשֽׂוּ׃

וְהִקְרַבְתֶּם עֹלָה לֵיקֹוָק רֵיחַ נִיחֹחַ פַּר בֶּן־בָּקָר אֶחָד אַיִל אֶחָד כְּבָשִׂים בְּנֵי־שָׁנָה שִׁבְעָה תְּמִימִם יִהְיוּ לָכֶם׃

And on the tenth of this seventh month, there shall be a holy calling for you, and you shall cause yourselves discomfort; you shall do no work.

And you shall bring a burnt offering to the Lord, a pleasant smell, one young bull, one ram, seven unblemished year-old sheep for you.

In discussing the offerings for Yom Kippur, we are told to bring a bull, ram, and seven sheep, all as burnt offerings. An identical set of offerings—apparently the seasonal sacrificial complement—is brought on Rosh Hashanah and Shemini Atzeret. The verse (Numbers 29:11) notes that these are all in addition to the ritual, non-seasonal *Hattat* unique to Yom Kippur.

The Crux of the Matter

A question emerges from the confluence of these *pesukim*: what about the rams? Is the ram noted in Numbers 28 (which is notably *not* called a *Hattat*) the same as the ram for *Olah* noted in Leviticus 16? Or are they two separate rams? No verse explicitly clarifies this matter, which then becomes subject to the dispute between Rabbi Yehudah ha-Nasi and Rabbi Elazar be-Rabbi Shimon noted above.

There's a fundamental question residing at the core of this matter. The key quandary is whether the sacrifices that Aharon is told to bring into the holy in Leviticus 16 overlaps and integrates with the holiday offerings of Numbers 28. Are the offerings of the service inside the Holy defined as essentially Yom Kippur offerings, or are they merely necessary steps enabling the *Kohen Gadol* to enter the Holy of Holies, while holding no particular connection to the day.

Rabbi Yehudah ha-Nasi argues that there is really only one ram, and thus a unity exists between the two passages governing Yom Kippur, held together through the nexus of this ram. Each passage emphasizes a different aspect of the complement of sacrifices of the day, but both are part of a singular whole. The passage in *Aharei Mot* includes an offering specific to Yom Kippur, part of the bull/ram/seven sheep structure for the *Tishrei* holidays, because it comprises an integral part of the sacrifices for entering the Holy of Holies.

On the other hand, Rabbi Elazar be-Rabbi Shimon rejects this unifying thread between the passages. For him, like for the Gaon many centuries later, the first 28 verses of Leviticus 16 are detachable, with no Yom Kippur-specific content. The fact that both they and Numbers 28 discuss the bringing of a ram is a complete coincidence; the rams are distinct and unrelated, and nothing holds the day together, composed as it is of unbridgeable seasonal and ritual offerings.

The Yom Kippur Trait

We might consider more deeply the ramifications of Rabbi Yehudah ha-Nasi's position, that the service inside the Holy has essential Yom Kippur characteristics to it. In the

contemporary world we live in, where there is no Temple service, do the positive effects of Yom Kippur still apply?

The more that the ritual service historically carried out on Yom Kippur is detachable from day itself (as Rabbi Elazar has it), the more Yom Kippur becomes a mere platform for a generic process of atonement. Absent an actual ritual service in place, or some replacement thereof, it is difficult to see the tenth day of tenth of *Tishrei* offer atonement of its own. If one is to attain atonement, presumably one would need to invoke some sort of stand-in for the ritual process as well, and draw the atonement from there rather than from the day of Yom Kippur.

However, for Rabbi Yehudah ha-Nasi, where the High Priest's service inside the Holy is essentially tied to the day of Yom Kippur, there is a simpler path to contemporary atonement on Yom Kippur. For Rabbi Yehudah ha-Nasi, as the very day of Yom Kippur is defined by this process of atonement, and the *Avodat Penim* is unique to Yom Kippur and definitional to the day, we might argue that in the present world we are well-positioned to receive atonement even absent the ritual process of service inside the Holy.

And sure enough, we find another statement of Rabbi Yehudah ha-Nasi makes this very point, appearing in an important dispute about the nature of *teshuvah* through Yom Kippur. The Mishnah (*Yoma* 8:8) writes:

> חטאת ואשם ודאי מכפרין מיתה ויום הכפורים מכפרין עם התשובה תשובה מכפרת על עבירות קלות על עשה ועל לא תעשה ועל החמורות הוא תולה עד שיבא יום הכפורים ויכפר:

> Sin-offerings and guilt-offerings atone; death and the Day of Atonement atone along with repentance; repentance atones for minor sins: for a positive commandment and for negative commandments, and for the more severe sins it "hangs" [the sin] until the Day of Atonement comes and atones.

Yom Kippur plays a certain role in effecting atonement, but always in conjunction with *teshuvah*. Absent repentance, the day of Yom Kippur has no such power according to the straightforward underspending of the Mishnah. Just as in the time of the Temple, when the day was insufficient and required the *Avodat Penim* itself to atone, nowadays, it appears, the day is insufficient and requires a process of *teshuvah* to serve in place of that expiatory service in order to offer atonement. Repentance replaces ritual, providing Yom Kippur with its necessary supplement.

Rabbi Yehudah ha-Nasi's Yom Kippur Remedy

However, Rabbi Yehudah ha-Nasi's position is presented as diverging from at least the straightforward meaning of the Mishnah. (See, however, *Yoma* 85b, which resolves that the Mishnah can be read as similar to this position.) Rabbi Yehudah ha-Nasi says (*Shevuot* 13a):

דתניא, רבי אומר: על כל עבירות שבתורה, בין עשה תשובה בין לא עשה תשובה—יום הכפורים מכפר, חוץ מפורק עול ומגלה פנים בתורה ומפר ברית בבשר, שאם עשה תשובה—יום הכפורים מכפר, ואם לאו—אין יום הכפורים מכפר

> It was taught: Rabbi says: For all sins in the Torah, whether one repents or not – the Day of Atonement atones, except for one who throws off the yoke, offends regarding Torah, or revokes his carnal covenant, where if one repents—the Day of Atonement atones, and if not—the Day of Atonement does not atone.

Yom Kippur has the power to atone for every sin, without that person even repenting! The only exception is for three especially severe and offensive violation, which do require repentance. But in general, the power of the day of Yom Kippur itself is sufficient to effectuate atonement for the person in nearly all cases. The essence of the day of Yom Kippur, all on its own, has the power to effectuate that atonement.

It is by no means surprising that Rabbi Yehudah ha-Nasi holds this position. The very sage who defines the service in the Holy as *Avodat Yom Hakippurim*, an essential aspect of the day of Yom Kippur, will view the atoning power of Yom Kippur in its fullest-force, even in a world that lacks the Temple service.

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