

**Forgiving the Unforgivable**  
**Rabbi Allison Lee Poirier**  
**Kol Nidre 2023/5784**

In August of this year we learned that Robert Bowers, the shooter who perpetrated the Tree of Life massacre, was convicted and sentenced to death. If this sentence is carried out, he will be the most prominent antisemitic terrorist to be tried, convicted, and put to death since Adolf Eichman. In the wake of this sentence, the Jewish community publicly grappled with questions about the purpose of the criminal justice system, the position of Jews in American society, and the position of our sacred literature on matters of forgiveness and capital punishment. Opinions about this sentence poured out from Jewish communal leaders, writers, social activist agencies, and, perhaps most importantly, the victims' families. It will come as no surprise that opinions varied widely. Several of the victims' families signed a letter stating, "We, the undersigned, will feel further violated by letting the defendant have the easy way out. His crimes deserve the death penalty."<sup>1</sup> At the same time, Miri Rabinowitz, the widow of victim Dr. Jerry Rabinowitz, called the application of the death penalty a

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<sup>1</sup> [Pittsburgh Jewish Chronicle. Letters to the Editor. November 16th 2022.](#)

“bitter irony” given her husband’s professional devotion to the sanctity of life.<sup>2</sup>

Anyone who tries to explain the “Jewish position” on a given topic, especially a topic as controversial as capital punishment, is fibbing to you. There is no single Jewish position. But in the face of increasingly public and violent antisemitism, it is important for all of us to be well versed in the wisdom of our sacred tradition, as any one of us can be called upon by a friend, neighbor, student, or colleague to represent the Jewish community. Sadly, I am afraid that we must also prepare ourselves to survive the emotional upheaval of continued public violence. Knowledge of our sacred literature and commitment to our values can bring us strength and comfort in these tumultuous times.

The Torah does provide legal guidance on how to deal with capital crimes, including several instances in which a court might execute a murderer,<sup>3</sup> an adulterer,<sup>4</sup> an idolator,<sup>5</sup> or a rebellious son.<sup>6</sup> The Torah also imagines several methods of executing offenders by sword, stoning,

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<sup>2</sup> [Campbell Robinson. “Amid Shared Pain Over Synagogue Massacre, Divisions on Death Penalty.” NYT. July 27th 2023.](#)

<sup>3</sup> Leviticus 24:17

<sup>4</sup> Deuteronomy 22:21-22

<sup>5</sup> Leviticus 24:16

<sup>6</sup> Deuteronomy 21:18

hanging, or burning, and subsequent rabbinic interpretations imply that the method of execution correlates to the perceived severity of the crime.

Fifteen hundred years later, the rabbis of the Talmud cultivated a complex relationship with the Toraitic laws of capital punishment. These rabbis did not have any practical authority to carry out capital punishment - they lived under the Roman and Babylonian empires, who took control of all criminal cases. Still, the Sages took their hypothetical interpretation of the Torah's criminal code very seriously. While they sought to uphold the laws of the Torah, they went to great lengths to interpret the Torah's commandments in such a way that actually executing someone would be almost impossible. They wrote capital punishment out of practice by narrowing the scope of cases to which capital punishment applied, and by raising the burden of proof so high that it was nearly impossible to meet.

First, in cases like the “בן סורר ומורה” the rebellious son” the sages of the Talmud wrote simply, “בן סורר ומורה לא היה ולא עתיד להיות” “there has never been and will never be such a thing as a rebellious son.”<sup>7</sup> They could not fathom the existence of a child so rebellious that his parents would want to kill him, and so they determined no such child had, did, or ever would exist. When pressed to explain the presence of this case in the Torah they

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<sup>7</sup> Sanhedrin 71a

responded that the Torah put forth an impossible example only “so that you may expound upon new understandings of the Torah and receive reward for your learning.”<sup>8</sup> So that took care of that.

Second, while Dvarim requires the testimony of two witnesses to put someone to death, the Talmud adds that these two witnesses must have warned the perpetrator against committing the crime and subsequently witnessed the entire crime from beginning to end in order for their testimony to lead to a death sentence.<sup>9</sup> I cannot imagine a scenario in which two people interrupt a violent encounter to say “excuse me but you really shouldn’t do that,” and then stick around to watch the whole crime take place, and I don’t think the rabbis of the Talmud imagined that would ever happen, either. One can only conclude that they enacted this impractical mandate because they wanted the standard of proof to be so unattainably high that it would never be met.

Finally, the Talmud cautions against a rabbinic court that upholds the letter but not the spirit of its aforementioned addenda to the laws of capital punishment:

סנהדרין ההורגת אֶחָד בְּשָׁבוּעַ נִקְרָאת חֲבֻלָּנִית. רַבִּי אֶלְעָזָר בֶּן עֲזַרְיָה אוֹמֵר, אֶחָד  
:לְשָׁבָעִים שָׁנָה. רַבִּי טַרְפוֹן וְרַבִּי עֲקִיבָא אוֹמְרִים, אֵלֹהֵי הַיָּיִנוּ בְּסִנְהֶדְרִין לֹא נִהְרַג אָדָם מֵעוֹלָם

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<sup>8</sup> Sanhedrin 71a

<sup>9</sup> Mishnah Makkot 1:8

“A sanhedrin that executes once in seven years is called murderous. Rabbi Eliezer b. Azariah says: once in seventy years. Rabbi Tarfon and Rabbi Akiva say: “Had we been members of a sanhedrin, no person would ever be put to death.”<sup>10</sup>

Rabbi Tarfon and Rabbi Akiva suggest that executing the perpetrator even in a case that meets the technical requirements for capital punishment is “murderous.” Although the actions might be technically legal, judges who handed down a death sentence would be morally equivalent to the murderers themselves.

Two thousand years after the Talmud conversations, all the major movements of American Judaism have publicly condemned the use of capital punishment in the US criminal justice system. Rabbi Shmuly Yanklowitz, leader of the Orthodox Jewish social justice organization, implores “Jewish community leaders [to] call for an end to this cruel practice.”<sup>11</sup> Similarly, the Rabbinical Assembly of the Conservative movement asserts that “Religious Jews should advocate for [renunciation of capital punishment] as the superior moral stance and best public policy.”<sup>12</sup> Finally, the Union for Reform Judaism asserts, “We believe there is no crime for which the taking of human life by society is justified.”<sup>13</sup>

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

<sup>11</sup> S. Yanklowitz, “Jewish Leaders Take A Stand Against The Death Penalty,” Jewish Journal, February 17, 2016

<sup>12</sup> [Jeremy Kalmanofsky. “Participation in the American Death Penalty. 2013.](#)

<sup>13</sup> <https://urj.org/what-we-believe/resolutions/opposing-capital-punishment>

While American courts aren't explicitly considering Jewish values, we do have a Modern Jewish country that does.

Capital punishment has only been carried out twice in the 75 year history of the State of Israel. First, in 1948 IDF officer Meir Tobiansky was court-martialed and executed for passing privileged information about Israeli power plants to the Jordanian army. He was posthumously exonerated when evidence demonstrated that his 45 minute court-martial hearing was a sham. No one else was ever convicted of leaking the classified information, and it remains unclear whether there was in fact any crime committed at all or whether the Jordanian army simply lucked into successful strikes.<sup>14</sup> Thus the first capital case in Israeli history is almost universally condemned as a moral failure. Second, as mentioned above, in 1962 Adolf Eichman was tried and executed for his role in orchestrating the Nazis' Final Solution. No other death sentences have been handed down by Israeli courts.

As Jews who might be called upon to voice an opinion on capital punishment of antisemites, it is important that we understand and take seriously the opinions expressed by our sacred literature and modern leaders. Beyond our role as representatives of our community, we also need

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<sup>14</sup> [David B. Green. "This Day in Jewish History." Haaretz. June 30, 2016.](#)

to make sense of antisemitic violence, and the way perpetrators are held accountable, for our own emotional well-being.

With the wisdom of our tradition fresh in our minds, how can we understand the sentences handed down to violent antisemites? I originally wrote this sermon two years ago as I was reflecting not upon the sentence handed down to Robert Bowers, but rather on the case of Sirhan Sirhan. In the summer of 2021 Robert F. Kennedy's assassin was granted release by a California state parole board. Sirhan is among the most famous Palestinian terrorists; he changed the course of history by assassinating a man who very likely would have become the President of the United States because of that man's policies and positions on the State of Israel. Sirhan's attorneys claimed a number of mitigating factors influenced his actions, including traumatic youth and alcoholism. At each parole hearing they also argue that it is exceedingly unlikely that an elderly man, who has reportedly been a model citizen while incarcerated, would perpetrate further violence upon release from prison.

Their arguments make sense and yet I was immediately and viscerally opposed to his appeal for parole. You cannot simply release a man who killed an almost - president! What kind of message does it send to me, to my Jewish community, when to release the most famous antisemitic

terrorist?! Doesn't anyone care about the rise in antisemitic violence? Don't they see how he will become a mascot, an icon, a rallying point for all who want to do us harm?! I was devastated by the parole board's ruling. I have spent a lot of spiritual energy since then trying to understand why this upset me so deeply, and what I believe to be the most just course of action.

One reason I found the possibility of parole so upsetting is that Sirhan, famously, stops just short of admitting his guilt or apologizing for his actions. At his most recent parole hearing Sirhan told the panel, "It pains me ... the knowledge of such a horrible deed, if I did in fact do that."<sup>15</sup> He maintains that he was under the influence and does not remember his role in the events of the assassination. He expresses sadness the assassination occurred but not that he did it. California Governor Gavin Newsom appears to be troubled by this same factor, as well. In March of 2023, Governor Newsom vetoed the decision of the parole board, writing, "After decades in prison, [Sirhan] has failed to address the deficiencies that led him to assassinate Senator Kennedy. Mr. Sirhan lacks the insight that would prevent him from making the same types of dangerous decisions he made in the past." Sirhan remains in prison.

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<sup>15</sup> [NPR](#)



Robert Bowers has also not apologized or acknowledged responsibility for his actions, although his attorneys did not dispute his role in the attack. Rather, they claimed he was not responsible for his actions because he was “blatantly psychotic” and was not cognitively capable of forming the legal intent to kill.<sup>16</sup> The prosecution successfully argued that the complex preparation involved in planning for the attack indicates that Bowers was, in fact, aware of and responsible for what he was doing.

There is a reasonable and logical train of thought that connects Sirhan Sirhan’s parole plea to the way we feel about the sentence handed down to Bowers. Sirhan was originally sentenced to death, but when the death penalty was outlawed in California, his sentence was commuted to life in prison without parole. Yet now each year he comes before the parole board and asks to be released and sometimes he very nearly succeeds. Should we not kill Robert Bowers now to prevent him from being paroled in this same way 40 years from now?! The logic of this argument is quite sound, and yet I am just as viscerally opposed to this train of thought as I was to the idea of Sirhan being paroled.

So where does that leave us? Fortunately, we in this room do not have to decide the fates of either of the antisemites in question. But we do have

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<sup>16</sup> AP

to represent ourselves and our community, and we do have to care for ourselves in the face of this ongoing communal trauma. I believe the most important factor in the way we approach this healing process is whether we believe violent antisemitic terrorists can repent and earn forgiveness. The commonly accepted Jewish standard of repentance, of Teshuvah, is the definition put out by Rambam, which states:

אי זו היא תשובה גמורה. זה שבא לידו דבר שעבר בו ואפשר בידו לעשותו ופרש ולא עשה מפני התשובה. לא מיראה ולא מכשלון כח.

Who has reached complete Teshuvah? A person who confronts the same situation in which he sinned, has the potential to sin again, and nevertheless abstains, and does not sin because of his Teshuvah alone and not because of fear or a lack of strength.<sup>17</sup>

In other words: a person who has completed teshuvah would face the same situation and behave better, thus earning forgiveness. Since neither Bowers nor Sirhan has taken responsibility or apologized for their actions, they have not done the necessary work to meet the definition of teshuva and earn forgiveness. But does the fact that they have not done teshuvah prevent us from forgiving them? Is teshuvah the only path to forgiveness?

You might at this point be wondering, **why**, if they haven't done teshuvah, would we **want** to forgive them? In some ways, it is self-serving. Although we may not believe they are worthy of forgiveness, we must also

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<sup>17</sup> Mishneh Torah Teshuvot 2:1

consider that forgiveness is a gift to the giver. It is hard work to be angry! That is why we use expressions like “holding a grudge” or “carrying the burden of anger.” Anger is a heavy emotion to hold and carry: Fanning the fire of our anger, however righteous, takes a lot of energy.

Just this week I was listening to a standup special by my favorite comedian, Mike Birbiglia, in which he recounts a traumatic car accident. He was T-Boned by a drunk driver who ran a light, smashed into him, tried to leave the scene of the accident, and was so intoxicated that he crashed into a nearby telephone pole. To add insult to grave injury, the police officer who responded to the accident made several mistakes in filing his report, including conflating the drivers and confusing the vehicles and ultimately indicating that Mike was at fault despite acknowledging that the other driver was profoundly intoxicated. After several attempts to contact the officer and other witnesses, Mike was unable to convince anyone to reconsider the report, and was staring down a \$12,000 lawsuit from the other driver’s insurance company seeking payment for the damages to his car. Mike recalls becoming obsessed with the case to the point of neglecting his comedic work, ignoring all other hobbies, losing sleep, and straining relationships. Eventually his girlfriend, Jenny, suggested he give up the case. He screamed at her “BUT I’M RIGHT.” To which she calmly replied, “I

know you're right, **but it's only hurting you.**" He gave up the case. He paid the other driver's damages. He and Jenny were married within the year.

Controlling our anger and granting forgiveness is much easier said than done. It is hard to let go of hurt and anger, especially when we are in the right **and** especially when the other person has not acknowledged their wrongdoing. But we learn from our sages and from our own experiences that it behooves us to try. Fortunately our sacred literature and the liturgy of Yom Kippur offer a structure for how to respond to unforgivable sins and to situations of absent apology. First of all, the liturgy emphasizes the point that HaShem is only able to forgive only the sins people have committed against HaShem. We must seek forgiveness from one another for the sins we have committed against one another. If you are the offender, don't ask God to forgive you for insulting your brother, call your brother and apologize! However, if you are the offended party and that call never comes, HaShem can still help you. HaShem knows that sometimes, an apology never comes, and the wounded party still needs release.

This is why we have, in the traditional liturgy of Kol Nidre, the declaration, "I hereby absolutely forgive anyone who has harmed me, other than those who owe me money I can still claim by law, or those who

harmed me assuming that I would forgive them. Other than that, I completely forgive, and may no person be punished because of me.”<sup>18</sup> at first glance it may seem like this declaration let’s a bad guy off the hook, but this preparatory plea is just as much for our benefit as it is for the benefit of whoever has hurt us. We already know that in the best case scenario, two people who have offended one another will talk through their differences and build a better relationship. But here we are in the 11th hour, holding onto hurt or anger, wronged by another person who has not had the decency to say they are sorry. So in this moment, our goal is to prevent further harm to anyone, including ourselves. **We grant unearned and perhaps undeserved forgiveness even when our cause is so just that Hashem on high is willing to seek retribution on our behalf. We know that we are right. And we know that HaShem will not grant forgiveness to another person for a wrong they have committed against us. And yet ask HaShem not to harm anyone on our behalf.** We would do well to include ourselves in that “anyone.” Even when we are right, we must keep the anger from hurting us. so we ask HaShem to help us release the burden of the hurt we’ve been carrying. Help us ease our own pain. Help us forgive even those who have not asked for forgiveness.

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<sup>18</sup> Machzor Beit HaKippurim

The burden of this hurt should not be underestimated. It takes a great deal of emotional energy to cultivate anger. **And it can feel so good.**

**Righteous anger is so satisfying!** I am afraid that in the face of rising antisemitism, we will cultivate a Jewish practice of anger and fear, and I don't want that for our community. I want vigilance. I want security. I want validation from our friends and neighbors. But I do not want anger. **I do not want to give antisemites the power to turn me into an angry person. I do not want to give antisemites the power to change my joyful Jewish practice into a practice rooted in revenge, because anti antisemitism is not a meaningful form of Judaism for me. I do not want to give antisemites the power to make me hope for a death sentence to be carried out.**

So even though they have not earned my forgiveness, I need to give myself the gift of forgiving antisemitic terrorists. I need to leave my fear and anger behind in order to go into this new year with joy and happiness.

“I hereby forgive all who have hurt me and all who have done me wrong...may no one be punished on my account.”<sup>19</sup> May we all enter this new year relieved of the burdens of hurt and released from the bonds of anger. “Kein Yehi Ratzon - May this be God's will”

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<sup>19</sup> Lev Shalem 203

