Sermon for Kol Nidrei 5780 October 8, 2019
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Forgiveness & Restorative Justice

Dark'cha Eloheinu l'ha'arich apecha
La-ra'im v'la-tovim
V'hi t'hilatecha

YOUR WAY, GOD, IS TO HOLD BACK YOUR WRATH
NOT ONLY FOR THE GOOD, BUT ALSO FOR THE WICKED,
AND THAT IS WHY WE PRAISE YOU.

This night is about forgiveness, about asking for it for ourselves, about granting it to others, and about hoping for it from God. But how do we do this? How do we ask for forgiveness, and how can we hope to receive it, whether the ways we have harmed others are minor or serious? We all cause pain to others through thoughtlessness, momentary anger, or passing disrespect, the catalogue of sins that we recite together tonight. And sometimes, we cause deeper harm, wounding others' feelings, injuring their hearts, and troubling their minds in ways that can have long-lasting effects. The pain we experience and the pain we cause are both real and cry out for redress. How can we ask for forgiveness for what we have done? And how can we grant it to others?

I hope by now we know how not to do it. We have all heard the apologies that ring false. The conditional apology: "If anyone has been hurt by my actions then I apologize for them." The impersonal apology: "I'm sorry that you were hurt." The self-justifying apology: "I'm sorry if I hurt you, but it was really your own fault." These false apologies often do more harm than good. In fact, because we hear them so much—voiced by public figures as well as by people close to us—they unconsciously become our models, and they do not serve us well. They give the apology a bad name, reducing it to the "Now say you're sorry!" of parents and toddlers on the playground instead of a powerful tool for reconciliation and healing. So, we need some other models to follow. How do we do it right? How do we ask for forgiveness as if it really matters? And even more important, how do we forgive others when they have really hurt us, sometimes in ways that we will never completely heal from? What do we do? What does it take?

The Jewish reference point for forgiveness is medieval, the 12th-century *Hilchot T'shuvah* – "Laws of Repentance" – by the great scholar and rabbi Moses Maimonides, also known by his Hebrew acronym, Rambam.[1] Importantly, Rambam saw forgiveness as the last step in the process of *t'shuvah*, an end to which it was only possible to arrive if the other steps had been properly carried out. The first step is for the sinner to recognize their sin, to

[1] This acronym was created from Maimonides' Hebrew name, **R**abbi **M**oshe **b**en **M**aimon. Rambam wrote a monumental compendium of Jewish law called the *Mishneh Torah* ("Re-telling of Torah"), and the "Laws of Repentance" is one chapter of the first book of that work, called *Sefer ha-Mada* ("The Book of Knowledge"). Rambam's work was so comprehensive and of such high caliber that its influence spread quickly across the medieval Jewish world, and it is still a standard reference work in the study of Jewish law 900 years later.

understand where they have gone wrong and the severity of the consequences they have created, the pain they have caused others.[2] This is traditionally what we do in the month of Elul, the month before the new year: we reflect on our lives in order to be able to discern where we have missed the mark, gone off course, and hurt other people. Without reflection, it is impossible to understand our sins enough to prompt us to exert the effort needed to change.

Rambam's second step is to feel and to express a sincere desire to change our ways, to never again act as we did in committing the sin, since we see the negative consequences that has had for us and for those around us.[3] This is what we are doing tonight, and throughout Yom Kippur. By jointly confessing to some of the most common sins to which we all fall prey, using the first-person plural and standing in front of each other, we powerfully express our desire to turn away from those sins and not commit them again. Rambam realizes, though, that there is a danger in starting with reflection and the desire to change. Neither of those steps involves the person against whom we have sinned. They are essentially individual, private processes that do not require entering into relationship with another person. Rambam warns that these steps on their own, even when we are taking them on this holy day of Yom Kippur, do not have the power to lead to forgiveness when our sins involve hurting others. The kinds of things we can do sitting in the synagogue on this day, he argues, can only constitute repentance for sins between a human being and God, violations of the commitments we make and the standards we hold ourselves to that nonetheless do not injure other human beings.[4] For sins between one person and another, we must continue the process.

The third step is to approach the person against whom we sinned and to apologize directly to them, face to face. Now, this part is very hard. How much easier to repent in the easy protection of the first-person plural, to send out a Facebook message saying "to those I have harmed, please forgive me," to utter an apology to God, to ourselves, to anyone except the person whose pain we caused. Standing face-to-face with someone, admitting we have hurt them, and apologizing to them is so hard that we would do anything to avoid it, and that's mostly what we do – avoid it. We think about it, we feel guilty, but we let the moment pass. Or we convince ourselves that what we did was really not that bad, that the other person was not really hurt by it, so there's no need to apologize. Or we figure that so much time has passed that it would be better not to remind the other person about what happened; they've probably forgotten all about it, and raising it again would really do more harm than good. Or we actually do manage to face the person, but we chicken out when it comes to saying the actual words of apology, resorting to one of the ineffective forms of non-apology I mentioned earlier. But sometimes, just sometimes, we do manage it. We push through our discomfort and our shame, we stand in front of the person we have hurt, and we say the actual words we need to say. That was so hard, we think. Aren't we done now??

[2] See *Hilchot T'shuvah* 1:1.
[3] Ibid.
[4] *Hilchot T'shuvah* 2:9.

Rambam reminds us that the apology, as tough as it is to do, is not the end of the line; we can't expect that forgiveness will come to us just because we've apologized. There are two more things we have to do, and the first one is perhaps obvious, though it is so often skipped or ignored: if we can, we need to provide recompense to the person we have hurt. For material sins like embezzlement of funds, this is clear – we repay what we have taken, we make the other person financially whole. This is what the Torah commands when we have taken something from another, sometimes with a penalty of 20% of the value of what was taken added on, sometimes more.[5] Of course, for so many sins we have committed against another, restitution is much more difficult to figure out. How do we compensate someone for damage to their reputation, for harm to their relationships with others, for injury to their hearts? How can we provide restitution for acts that cannot be reversed or undone?

This question brings us to the last of the steps in the process of *t'shuvah,* the most difficult, most subtle, and most shortchanged, the last step before forgiveness can be achieved or hoped for. It's usually translated as something like "appeasement." Here's what Rambam has to say about it:

> Sins between one person and another, like someone who attacks another or curses another or steals from another and the like, they are never forgiven for them until they [first] give to the person [they harmed] what they owe them and [then] appease them. Even if they return to the person [they harmed] the money they owe them, they [still] need to appease them and to ask the other to forgive them.[6]

So, appeasement is not just for cases where there is no way to materially compensate someone for what we have done to them; it is for every case. Even in cases where it is clear what compensation is owed, and that compensation is paid, we still need to do something else before we can ask for and expect forgiveness. Unlike every other step in the process of *t'shuvah*, appeasement requires a two-way interaction with the person who has been harmed. We can't know what will appease another person unless we ask them. We need their help to figure out what steps we need to take—beyond materially compensating them in whatever way we can—to truly enter the realm of forgiveness.

This is probably why we tend to ignore the step of appeasement, to shortchange this part of the process. Asking another person to tell us what it would take to move toward repair of our relationships is even more difficult and challenging to our self-esteem than the act of apology. Appeasement requires letting go of our control over the situation and putting ourselves in the power of the person we have wronged. It implicitly requires us to commit to carrying out whatever that person feels is necessary, before we even know what it is! No wonder that most of the time, we skip this step. As happens to us all, in my life I have been in situations where a friend hurt me deeply. In a couple of those situations, the friend was Jewish,

[5] Numbers 5:6-7. See also Exodus 21:28-36 and Exodus 22:4-5 for other cases of negligence in the Torah that require restitution.
[6] *Hilchot Teshuvah* 2:9.

and around about the time of the High Holidays, they wrote me a letter apologizing for what they had done and asking me to forgive them. And you know what? I didn't forgive them. Their apology may have been difficult for them to make, but the fact of the apology alone wasn't enough for me; it wasn't what I needed in order to forgive, and they never asked me what I would need. They skipped the step of appeasement, and our issues were never resolved, our relationship never repaired. And I have done the same thing to others, offering an apology but side-stepping hearing what I needed to do to appease them, rushing instead to clear my conscience and put something of which I was ashamed behind me. But without appeasement, there is no reconciliation and no closure. Without that crucial, interactive step, there are just two sides, two combatants, one who caused pain and one who experienced it, or maybe both were hurt. But faced with just an apology, with no chance to explain what it would take for you to move on, you only have two alternatives: you forgive or you don't. Apology without appeasement gives no way to move past an impasse, no method through which the relationship can be, if not repaired, at least resolved. Appeasement offers a method, a roadmap that can be followed, if we have the courage to listen to it.

Rambam's emphasis on appeasement also highlights that the goal of this whole process is not just forgiveness but restoration of the relationship between two people when one has hurt the other. The point of *t'shuvah* is not to punish one side or elevate the other; this is not a court of justice. Instead, the process of *t'shuvah* seeks to find ways for the two to reconnect, to rebuild the bonds of trust between them. It is a tool for restoration and healing. Because ultimately, when we look at ourselves and others honestly, we know that none of us is perfect. We all are flawed beings trying to find our way through the world, sometimes hurting others and sometimes being hurt by them. We all take both roles in the drama of sin and repentance. And condemning other people, or feeling superior to them because of their faults or our supposed virtue, is ultimately an empty exercise. Whatever happens, most likely we will still be in the world, and so will the person we hurt or who hurt us. We can't erase what has happened between us, not by denying it and not by placing blame or meting out punishment. What we can do, if we have the courage and tenacity to try, is to give ourselves and each other the chance to move toward repair, or if not repair reconciliation, or if not reconciliation at least restoration and the ability to move on in our lives.

I want to zoom out now from our experiences of sin and repentance in our personal lives to the way that our society deals with those who violate its norms: those who commit crimes. I make this move not only because I think there is an important parallel here between the individual and the collective but also because just as we are responsible for how we deal with those we harm and those who harm us in our personal lives, so too are we are all collectively responsible for the way we deal with those who cause harm in our society. The criminal justice system is supposed to stand for us, the people, in dealing with the sins of others, crimes that cause grievous harm to our fellow citizens. And yet what kind of system is this that acts in our name? Tragically, the criminal justice system in this country is far, far away from the vision of Rambam, far from an ideal of sin, realization, apology, compensation, appeasement, and forgiveness. Instead, as many have documented, the American criminal

justice system focuses almost exclusively on punishment, and that punishment is overwhelmingly incarceration. As a result, we the people of the United States have incarcerated more of our fellow citizens than any country on earth.[7] The rate of incarceration in the U.S. is higher than that of the repressive, authoritarian governments of El Salvador, Turkmenistan, and Cuba. It is 50% higher than the rate in Russia. When we try to compare the U.S. to other Western democracies, we find that the U.S. incarceration rate is 3, 4, or even 5 times the rate in those countries, even though they have similar rates of crime. Why?

Many recent writers have examined mass incarceration in the U.S., looking for answers. I was particularly influenced this summer by reading Danielle Sered's book, *Until We Reckon: Violence, Mass Incarceration, and a Road to Repair,*[8] in which she focuses on violent crime. Of course, a huge part of the story of mass incarceration is about racial injustice, with the bulk of the burden of imprisonment in this country falling on people of color, way out of proportion to the representation of people of color both in the general population and among those who commit crimes. But Sered goes further. She writes not from a theoretical point of view but as the founder and director of Common Justice, a Brooklyn-based group that works with victims and perpetrators of crimes. From her experience speaking with both groups, she argues that the American addiction to incarceration is based on a misunderstanding of its effects on both of them. The system assumes that victims' deepest desire is for punishment, the longer and harsher the better. But this is seldom what the victims themselves say, and their voices are routinely ignored in court. She tells the story of speaking with an older woman named Annie, who was brutally assaulted. Unusually, her case went to trial and the assailant was sentenced to a long prison term. Several years later, Sered talked to her about her reaction:

> *Ms. Annie, with all my respect, may I ask, when that man who assaulted you was sentenced to that long prison term, were you relieved?* And she answered: *Oh yes, honey, of course I was.* And I asked: *Can I ask how long that relief lasted?* And she said: *Oh, baby, at least three or four hours. And then I took the bus home,* she said, *and I was still afraid. And I got to my apartment, and I was still poor. And when I crawled into bed that night, I still couldn't sleep, and when exhaustion finally took me and I fell asleep, I still had those same nightmares. And when I woke up that next morning, the only difference was that I could not shake the image of that boy's mother's face in court when those guards took her baby from her for good. Because that is my face.*[9]

Instead of punishment, Sered argues, the things victims long for focus much more on the interpersonal: validation that what happened to them was wrong; information about why this happened to them, the motivations and thoughts of the perpetrator; the ability to speak and be heard so that they can have an impact on what happens; to have the person who harmed them

[7] See https://www.prisonpolicy.org/global/2018.html for the full list of statistics.
[8] New York: The New Press, 2019.
[9] Sered page 36.

repair the harm as best they can; and, most importantly, "to know that the person who hurt them would not hurt anyone else."[10]

For those who commit these crimes, the system we have assumes that incarceration will have four desirable effects: deterrence, rehabilitation, incapacitation, and retribution. As Sered shows by citing the research into these supposedly beneficial effects of incarceration, our current system achieves none of them. Because prison terms are imposed arbitrarily, with different defendants receiving wildly varying terms for the same crime, and because the gap between the crime and the punishment is typically very long, incarceration does not deter people from committing crimes. Because the experience of prison is so brutal, dehumanizing, and violent, "most criminologists would predict that, on balance, offenders become more, rather than less, criminally oriented due to their prison experience,"[11] so although rehabilitation is possible, it is extremely unlikely to be facilitated through incarceration. Because crime often involves groups of people rather than individuals, incapacitating one offender by imprisoning them often does not make the victim safer, since the other members of the group can still threaten and harm them. And, as we've seen, retribution is not something that victims long for, and its imposition can often make the offender more likely to commit a crime again, so it is not functional for society at large either.

In place of this dysfunctional system of mass incarceration, Sered offers another vision, one often called "restorative justice." It is based on the central principle of accountability, working with victims and those who harmed them to go through a process, one that is strikingly similar to Rambam's process of *t'shuvah*:

> (1) acknowledging responsibility for one's actions; (2) acknowledging the impact of one's actions on others; (3) expressing genuine remorse; (4) taking actions to repair the harm to the degree possible, and guided when feasible by the people harmed, or "doing sorry;" and (5) no longer committing similar harm.[12]

Remember that she is dealing with violent crime here, and that this is not theoretical. Her organization, Common Justice, works with real victims and real offenders every day, who voluntarily agree to divert their case from the criminal justice system to instead try to find their way to healing and restoration. Like the process of *t'shuvah*, this is not primarily about punishment; it is not a court of law. Instead it is about looking forward, finding a way that offenders can change and that victims can heal.

Sered tells the story of Ana, who was on the subway with a group of friends handing out sweets for Hanukah and wishing people a happy holiday, when she was assaulted by a group of young people claiming that the Jews had killed Jesus. Ana and her friends were badly beaten,

[10] Ibid. page 30.
[11] Francis T. Cullen, Cheryl Lero Jonson, and Daniel S. Nagin, "Prisons Do Not Reduce Recidivism," Prison Journal 91, no. 3 supp. (September 2011), 53S, quoted in Sered, page 66.
[12] Sered page 96.

much of her hair was torn out, and the rest eventually fell out. After much consideration, Ana chose to enter into a restorative justice process with Trish, one of her assailants, and they came to a series of commitments that Trish would make to try to make things as right as possible. But they got stuck on the issue of Ana's hair. What could Trish do to make that right? Ana wanted Trish to shave her head, but the process does not allow remedies that are harmful or degrading to the responsible party. But Ana wanted Trish to have some of the experience she was having—thinking of Trish and her assault every day, every time she looked in the mirror. Eventually they came to an agreement: Trish would agree not to ride the subway for a year, even though this would be a great hardship for her in New York, and to keep a journal of how she imagined Ana was feeling. At first, her journal entries were perfunctory, but as time went on, she began to have insight into how the assault had affected Ana. Ana, in turn, began to experience a lessening of the symptoms of trauma she had been exhibiting and started to be able to live her life again. By interacting with each other to find ways to make things right—what Rambam would call "appeasement" and what Danielle Sered calls "doing sorry"—both Ana and Trish were able to find a productive path forward, a path far different from the criminal justice system's focus on punishment and incarceration, which does little for either the person harmed or the responsible party.

We might understand why those who have committed harm choose to enter a restorative justice process, since it holds the potential to prevent their incarceration. But why do people who have been harmed, or those whose loved ones have been harmed, choose a program like Common Justice over the criminal justice system? One mother of a child who had been badly beaten and robbed explained why she abandoned her initial desire for revenge and instead entered into this process of restorative justice:

> …three years from now, when my nine-year-old son is twelve, he is going to be coming to and from his aunt's house, to and from school, to and from the corner store alone. And one day he's going to walk by that young man. And I have to ask myself: when that day comes, do I want that young man to have been upstate [in prison] or do I want him to have been with y'all? And the truth is…, the truth is I'd rather him be with y'all.[13]

This mother saw that safety for her child, her highest priority, would not be assured by punishment, by incarceration. Like so many victims of crime, she put aside her understandable desire for revenge in the interests of what was best for the future, for her son's ability to move forward with his life, to live safely and to heal from the trauma he had experienced.

This is the promise and the dream of restorative justice programs like Danielle Sered's Common Justice: to take away the combativeness, the win or lose approach to justice and to replace it with a collaborative process that can lead to healing for both parties. Such a process gives us hope that there is a real alternative to our current broken and dehumanizing system of mass incarceration, a system that serves neither the victims of crime nor those responsible for

[13] Sered page 44.

causing them harm. Surely there are situations where incarceration may be the only option, but the work of Common Justice suggests that in the majority of cases, even cases of violent crime, demanding accountability from those who have committed crimes against others can be productive for the parties involved and for society as a whole. This is a system worthy to be enacted in our name, in the name of "the people," a system that focuses on healing and transformation that breaks out of the cycle of violence, punishment, and more violence that is an epidemic in our society.

So tonight, I am asking you to make a double commitment with me. First, I want each of us to commit to taking the process of *t'shuvah* seriously, more seriously than we ever have before, with a big emphasis on the step that Rambam calls "appeasement" and that Danielle Sered calls "doing sorry." To truly move forward in our lives after we have harmed someone else or been harmed ourselves, we need that step of interacting with each other, finding out what it will take to repair the relationship between us, and actually doing it. Second, I want each of us to commit to advocating that this process be extended to the way that our society, in our name, treats the victims of crime and those responsible, to support and expand restorative justice programs right here in the city of Philadelphia, in the Commonwealth of Pennsylvania, and across the country. We will have the opportunity to learn about one such local program through Mural Arts at our Bregman Program tomorrow afternoon, and I urge all of you to attend and learn about what is happening. We can no longer ignore the epidemic of mass incarceration that is causing such injustice in our name, and we need to raise our voices to support the alternatives that are out there, just waiting to be expanded, to change our justice system into something worthy of that name.

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Through our individual efforts to move ourselves along the process of *t'shuvah*, and through advocating for change in the way we deal with sin and repentance as a society, may we emulate the way of the divine, combining judgment and mercy to arrive, finally, at true justice, true forgiveness, true healing, and a true way forward, for every one of us flawed, immensely valuable human beings.