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By Steve Brown

Justice or Mercy?

Justice or Mercy? That is the question.
Whether 'tis nobler in mind to follow what is right according to revered principles that have stood the test of time. To choose correct actions according to norms shaped by logic, reason, values, and wisdom rigorously vetted over the ages. To pursue that which maintains intellectual and historical integrity; to render judgement that maintains consistency, order, and tradition; and to carry out punishment that matches the transgression.

Or, to take arms against a sea of troubles by pursing what is most merciful, compassionate, gentle, and forgiving. To consider emotional well-being; relational dynamics; communal cohesion; personal and societal growth.

The question is everywhere.

In bioethics, we speak of time-honored primary principles – to do good; respect personhood, avoid harm, and treat equal people equally. The first and often predominant exercises in bioethics education involve how to apply rigorous principles-based logic to adjudicate ethically controversial issues and inform intimate personal decisions. It often comes later in bioethics curricula, and sometimes only in passing, that alternative frameworks are explored for assessing morally complex terrain. Such frameworks may emphasize relational dynamics, personal narratives, concepts of care, interdependence and connectedness, power structures and inequities, the ethical salience of emotions and sociocultural differences, and virtues like compassion. Consider these scenarios: a medical team struggles to palliate a dying patient's suffering through incremental narcotic titration yet feels torn by family pleas for larger doses that might hasten death; a liver transplant team weighs offering transplantation to a patient whose social circumstances seem inadequate for aftercare management; an ICU team faces parent's requests for CPR in a neurologically devastated child unlikely to survive outside the ICU. Sometimes a "reflective equilibrium" can be achieved whereby principles-based logic integrates well with alternative conceptions. At other times, various approaches conflict. A tension exists, that, broadly construed, pits what appears most logically "right" against what seems most humane.

Similar tensions inhabit common familial dynamics, where distinctions between right and wrong form powerful developmental imprints. The questions are familiar – how will someone learn from their mistakes, escape maladaptive behaviors, remain safe, and succeed in life if they don't remain

disciplined, work hard, assume accountability, and rightfully earn their rewards. As one song famously muses, "if you don't eat your meat, how can you have any pudding?" - "how can you have any pudding, if you don't eat your meat!" The message appears plain: justice first; mercy second.

Many would agree that a "justice-first" approach is sometimes essential for someone to learn crucial life lessons, recalibrate, and gain healthy insight, maturity, and resilience. "Tough love," as some may call it, can be difficult to exert, whether toward a parent, child, partner, sibling, or friend. It risks harms – to emotional well-being, self-esteem, relational and familial cohesion, and long-term flourishing – that may sometimes be avoided by a gentler, more compassionate approach. We may all recognize those in our lives who place particular emphasis on putting justice forward, and others more inclined toward mercy. Those who will and will not let you have your pudding when you want it. The interpersonal tensions that may arise around what some perceive as most appropriate and what others consider most merciful, even if functionally suboptimal, can be agonizing, and can undermine precious relationships.

The question of justice or mercy also suffuses Jewish religious communal contexts. It figures prominently in deliberations where valued traditions and rigorously arbitrated standards, essential to maintaining religious coherence, integrity, and stability, are weighed aside inclusivity, compassion, and concerns about harms to individuals, relationships, and community. Sometimes these correspond well, and sometimes they don't, bringing dissension and pain.

And of course, the tension between justice and mercy imbues the themes of Yom Kippur. The morning Torah reading immediately evokes the punishment exacted upon Nadav and Evihu - a devastating instance of justice pure and unforgiving. Here is a display of God's capacity to show no mercy at all. Compassionate and gracious? No. Slow to anger and abundant in kindness? No. Forgiver of iniquity, willful sin, and error? No.

The Mincha haftarah captures a more nuanced dynamic. Yonah is first mercifully redeemed from within the fish's belly. One can imagine the poignant urgency of Yonah's supplication as mirroring ours in these waning moments:

> *"Water has surrounded me even to the soul, the deep encompassed me; the Red Sea hangs over my head."* (2:6)
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> "*Those who keep worthless futilities abandon their kindness. But I-with a voice of thanks will I sacrifice to You; what I vowed I will pay, for the salvation of the Lord."* (2:9-10)

Yonah's redemption here offers encouragement that our own t'fillah and t'shuvah are anchored in humble, genuine faith in God's compassion. God's abundant mercy is further demonstrated in the treatment of Nineveh, whose earnest communal t'shuvah yields broad divine benevolence. This is the God that, to borrow from the Unetaneh Tokef, desires not the death of the condemned, but rather that the condemned turn from their path and live.

God's handling of Nineveh contrasts starkly with the unpitying treatment that Yonah eventually receives. One may speculate that perhaps Yonah's initial redemption was not a matter of God's benevolence, but rather a cold, hard utilitarian calculus. God redeemed Yonah out of practical necessity, the argument may go, rather than from any particularly charitable urge. Many observe that Yonah's prayer is, in fact, "devoid of contrition" - a "psalm of lament" rather than repentance. One may see Yonah's tefillah itself as a charade - a demonstration of false humility and hypocritical piety - the only avenue available for salvation, taken by a desperate individual who later rejects the mercy extended

toward others who themselves offer sincere atonement. Thus, as some explain, Yonah is depicted as having been "vomited" or "spat" from the fish, rather than freed.

Even if Yonah's pleas and God's response are authentic here, Yonah still later fails to advocate for the Ninevites' redemption. This ignobility represents an irremediable ethical lapse and spiritual flaw. He wants mercy for himself, but he demands only justice towards others. Thus, whereas Yonah's tefillah may initially save him from the ocean depths – from the fate of being "Mi B'mayim," if you will - he ultimately fails in tzedakah, which nullifies his t'shuva and leaves him spiritually depleted. Accordingly, he is rendered victim to a worm - among the humblest of creatures - and he is left to scorch under a merciless sun. Yonah, in the end, is "Mi B'aish".

Now, once again, it is our turn to face the fire. We stand here in the closing moments of intense self-reflection, in highly vulnerable spiritual states, reckoning with our relationships to God, religion, family, community, the world, ourselves. This is an opportunity for crucial identity consolidation, a final yearly recalibration of our values, responsibilities, connections and belief systems. We prostrate ourselves before God, whom we understand as both brutal in judgment, and forgiving, willing to absolve us of our sins even as we acknowledge frankly that we are so flawed, so unworthy of the forgiveness for which we plead. As our self-affliction reaches its final crescendo, we are asking for mercy first; justice second. Thus we concede in Selichot:

כִּי לֹא עַל צִדְקֹתֵינוּ, אֲנַחְנוּ מַפִּילִים תַּחֲנוּנֵינוּ לְפָנֶיךָ, כִּי עַל רַחֲמֶיךָ הָרַבִּים:
"For it is not on the strength of your righteousness that we throw down our pleadings; but on the strength of your great compassion"

To ask for such admittedly undeserved mercy, is, as with Yonah's tefillah, an act of desperate faith. It is also an audacious act of self-compassion that carries us through the day, if not the year. Our individual capacities to believe sincerely that we merit redemption despite our flaws may in large part establish who shall have rest and who shall wander, who shall be serene and who tormented. This exercise in self-belief, if successful, is an empowering act of inwardly focused tzedakah. "*A person has to judge themselves favorably,"* R. Nachman of Breslov taught, *"and find in themselves some remaining good point, in order to give themselves the strength to avoid falling completely...."* For those of us who are our own worst enemy - our own worst critic - our success in this exercise of self-compassion may represent powerful t'shuvah.

But it is not t'shuvah in the fuller spiritual sense that seems is being demanded of us today, now, in this late hour. It takes us only as far as it takes Yonah to his station overlooking the city. For how can we, like Yonah, plead so nakedly for mercy over justice for ourselves, and, in any meaningful sense of the humility and integrity required of us at this time, not extend such mercy to others. In this context, tzedakah and t'shuvah may mean connecting with the 13 middot as a blueprint to achieve reflective equilibria in our own lives – by offering patience and compassion at every opportunity and putting forgiveness and understanding ahead of anger in the face of flaws and errors; by looking concertedly to the most gracious and kind solutions available, giving them abundant consideration and hesitance to determine that justice must be prioritized over what may be more gentle, sympathetic, or kind; by acknowledging the injuries that prioritizing justice may incur, and endeavoring conscientiously to palliate associated harms where possible; and by tempering our initial reactions regarding what is right and our impulses regarding punishment - lest we emulate God's severity toward Nadav and Evihu; lest we choose who in our own lives fails to thrive, is overwhelmed by judgement, and is left to wither in confusion and trauma, rather than in the embrace of safety and peace.

Justice or mercy? As we plead for mercy for ourselves in this closing moment, which will we choose for others?

G'mar Chatima Tova.

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* Another bioethics example, removed for time limitation purposes: a pregnant person in active labor and with fever declines recommended cesarian section despite progressive fetal distress. (This example and the narcotic example © Harvard Medical School Medical Ethics and Professionalism teaching files).