

All Standing Trial: Who by Scorpion and Who by Snake?
Rosh HaShanah 5776
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i thank You God for most this amazing
day: for the leaping greenly spirits of trees
and a blue true dream of sky; and for everything
which is natural which is infinite which is yes

(i who have died am alive again today,
and this is the sun's birthday; this is the birth
day of life and of love and wings: and of the gay
great happening illimitably earth)

how should tasting touching hearing seeing
breathing any—lifted from the no
of all nothing—human merely being
doubt unimaginable You?

(now the ears of my ears awake and
now the eyes of my eyes are opened)

These words from a poem by E.E. Cummings carry so many Rosh Hashanah truths: we thank God for this amazing day. We call today the Birthday of the World. We celebrate Creation, the Universe, and Life: all with our ears awakened by the shofar, and our eyes wide open.

The truth is, we spend so much of our lives with our ears asleep and eyes closed.

I recently heard a story of a man who asked his doctor if there was anything that could be done for his snoring. The doctor asked if it disturbed his wife. The man said, “no, just the rest of the congregation.”

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Unetaneh Tokef, our Rosh HaShanah poem, is our “wake-up call” for this Holy Day, so let’s try awakening our ears and opening our eyes to what this text actually says.

The poem begins:

“Let’s proclaim the holiness of this day — for it is amazing.” (In other words, let’s talk about what this day really means).

It continues—and I’ll excerpt its clearest imagery:

Today awakens deepest awe and inspires highest praise for Your dominion, for Your throne is a throne of love; Your reign is a reign of truth. And here is the truth of this day: You are Judge and Plaintiff, Counsel and Witness. You inscribe and seal. You record and recount.... Behold, this is the Day of Judgment!

On Rosh HaShanah this is written; on Yom Kippur this is sealed:
How many will pass away from this world, how many will be born into it;
who will live and who will die;
who will reach the ripeness of age,
who will be taken before their time;
who by fire and who by water;
who by war and who by beast;
who by famine and who by drought;
who by earthquake and who by plague;
who by strangling and who by stoning;
who will rest and who will wander;
who will be tranquil and who will be troubled;
who will be calm and who tormented;
who will live in poverty and who in wealth;
who will be humbled and who exalted....

Perhaps you’ve heard the legend behind this poem, describing the martyr Amnon of Mainz, who, during the days of the Crusades, was dismembered for refusing to convert. Legend has it *Unetaneh Tokef* were his last words. Most storytellers recount Amnon’s fate gruesomely, to instill vicious dread.

However, today, this year, the most relevant detail of Amnon that is rarely if ever recounted is not the brutality inflicted on him, but the beauty embodied

by him. Amnon is described as “*yafeh to’ar vifeh mar’eh* - well built and handsome.” These are the exact words that are used to describe only one other person in our tradition, and that is Joseph in Genesis (39:6).

The key to unlocking the meaning of *Unetaneh Tokef* is to examine the story of Joseph. Why? Because Joseph is the one character who can relate most viscerally to the judgment, the dread, the trial of this Rosh HaShanah poem.

“Joseph, well built and handsome...” (And did he know it!) If we were to read *only* that first part of the story of Joseph and his brothers, and nothing else, we, the readers, might actually feel like the brothers, they got it right—that God, unmentioned at that point, may have been on their side. Joseph the oblivious dreamer shows off his wealth, he gloats that he's the favorite one. He practically threatens to enslave his brothers, telling them vivid dreams in which they worship him as their lord. Simply put, he's a conceited brat.

Thus, overwhelmed by jealousy and fear of subjugation, the brothers take action. Acting as judge and plaintiff, counsel and witness, they conspire and throw their sinfully arrogant brother into a pit. In a most unusual manner the Torah describes what the pit looked like: “*Haborah reik. Ein bo mayyim* - the pit was empty. There was no water in it.” Two sentences that are obviously redundant – If the pit is empty, we can assume that there’s no water in it.

Our sages picked up on the problem, and they interpreted the verse to mean that the pit wasn’t empty of everything- it was *just* empty of *water*. Inside the pit, they said, there were actually *scorpions and snakes*.

What could be more horrifying than being stuck in a pit with nothing but scorpions and snakes!

This is the first instance in the Torah of imprisonment, and it comes in the form of solitary confinement—a loneliness far beyond anything we’ve read up to this point: a stark aloneness that Adam, the first human being, doesn’t experience. Even Noah, in a story about wiping out all of humanity, is told to bring along his family—and a bunch of animals.

Joseph’s loneliness tops it all: starving, terrified, with nothing around him but scorpions and snakes. *Unetaneh tokef, who shall live and who shall die*.

Let's imagine, now, if we never read on beyond Joseph stuck in the pit—if the eyes of our eyes never followed him from the pit to slavery to prison and eventually to the palace. Imagine if our eyes read on to follow other stories, perhaps of lesser import, leaving Joseph out of sight, out of mind. What if the Torah curtailed the Joseph story right there – on his *Yom HaDin*, day of Judgment.

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Today, in the United States, there is a class of citizens whom we “read” precisely in this way, like a person thrown into a pit – *reik, ein bo mayim* – empty with nothing but scorpions and snakes, who remains there: out of sight out of mind. I'm speaking of those of us who are incarcerated for our crimes—our *asurim*, our prisoners.

In the United States today, more people are imprisoned, in the pit with Joseph, than any other industrialized nation. We have the highest rate of incarceration in the entire world. The United States makes up about 5% of the world's population but 25% of the world's prisoners.

How we arrived at this state of mass incarceration is vibrantly discussed and debated among historians, politicians, and legal professionals. We've recently seen a surge of bestselling books and articles now shining the light of awareness into this dark pit. This is not “news” to us, it's a part of our world that we hear with our ears and see with our eyes. Our picture of the *asurim*, the prisoners in our midst, our understanding of their conditions—the scorpions and the snakes—has become hauntingly clear and spiritually abominable.

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As Bryan Stevenson relays in his bestseller *Just Mercy*,

- The prison population has increased from 300,000 in the early 70's to 2.3 million people today.
- 6 million people are on probation or parole.
- 1 in every 15 people born in our country in 2001 is expected to go to jail or prison.
- Stevenson writes, “For years, we've been the only country in the world that condemns children to life imprisonment without parole,” about 3,000 kids sentenced to die in prison.

The late legal scholar William Stuntz in his seminal work, *The Collapse of the Criminal Justice System*, offers his insightful, provocative reading on how our nation dug this pit, the many factors that got us to this point, including the “war on drugs” declared in the 80’s and the significant lengthening of sentences for nonviolent and violent offenses.

Stuntz laments that one of the primary causes of mass incarceration is the movement toward what he calls “*discretionary justice*” – which he describes as the shifting of power in criminal justice away from the courts, and toward the empowerment of legislators and law enforcement officers, who now exercise increased discretion over guilt and innocence, over what crimes to punish and how severely to punish them. Stuntz argues that “*discretionary justice* too often amounts to discriminatory justice.”

We cannot stare into the pit of mass incarceration without naming the scorpions of discrimination and the snakes of racism.

The claim of “colorblindness” is worse than naïve; it is pernicious. Race matters. Today we hear the cries in the public square, voiced with the hashtag #BlackLivesMatter. Our hearts ache over *black deaths that matter*:

- *Treyvan Martin*, killed by [a citizen exercising] *discriminatory justice*.
- *Eric Garner*, killed in a chokehold that millions of Americans watched on YouTube, with the eyes of their eyes, welling up with tears. *Discriminatory justice*.
- *Michael Brown*, shot to death before the eyes of the eyes of his community. *Discriminatory justice*.

His mother was interviewed, right after he was killed. Here were her first words to the local news station: “You took my son away from me...do you know how hard it was for me to get him to stay in school and graduate? You know how many black men graduate?”

What an expression of grief! Before anything else, she talked about how hard it was to keep her son from dropping out. *Race matters*.

It matters that people of color experience society differently than people who are white. It matters to see how being perceived as white determines so much of one’s life experience.

There is no community in America that is more ravaged by incarceration than African Americans, in particular black men. This devastation is detailed in Michelle Alexander's bestseller, *The New Jim Crow*.

As Alexander notes, "the [US] imprisons a larger percentage of its black population than South Africa did at the height of apartheid." In some major cities afflicted by drug wars, as many as 80% of young black men have criminal records.

Studies show that black people don't use drugs more than white people do, but they are 9 times more likely to go to prison for drugs. Racial minorities are more likely to get arrested, convicted, sentenced harshly, and are far more likely to be sent to death row than people whose skin is whiter.

And then, once imprisoned, Alexander writes, "as a criminal you have scarcely more rights, and arguably less respect, than a black man living in Alabama at the height of Jim Crow. We have not ended racial caste in America; we have merely redesigned it."

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We need not imagine what it would look like if the Torah were to have left Joseph in the pit.... because we see this story when we confront the reality of the treatment of those whose poverty or pigmentation makes them so much more likely to end up in the enslavement of incarceration.

Mass incarceration is getting a whole lot of coverage, we see it, but the *eyes of our eyes*, remain closed to seeing our Joseph in the pit. We hear stories on the news, but the *ears of our ears*, are so far removed from the cries that are frankly- so close in proximity. A mile or two in each direction from where we pray, from where we recite the words of *Unetaneh Tokef*—our poem about criminal justice—are communities in which everyone knows someone locked up—a best friend, a cousin, a brother, a father. But the social walls between us are virtually soundproof.

Unetaneh Tokef K'dushat Hayom:

How can we hear with the *ears of our ears* what this day really means?

How do we keep the sound of our shofar from becoming "white noise"?

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Our Prophet Isaiah bewailed the mistreatment of not just “the stranger, the widow, the orphan,” but also *the prisoner!* When he talks about the purpose of Israel, why we exist, what it means to become holy, he says:

I... called to you in justice, taking hold of your hand in a Covenant, to become a light unto the nations, to open blind eyes in order to free prisoners and those who sit in houses of darkness...and [to] transform the darkness into light.... (Isa. 42)

If only it were that easy. Prophets famously bemoaned injustice but were far from being practical agents of change.

There is no quick fix for this crisis. However, there’s more traction now than there has been in decades:

- Anti-recidivism programs emerging, with opportunities for our involvement.
- A believe-it-or-not bipartisan political consensus around the alleviation of mass incarceration.
- The U.S. Sentencing Commission has diligently addressed the issue.
- And here in our own Commonwealth we have thought-leaders, activists, and opportunities to make change on a local level, where, frankly, we lag behind in many ways.
- We have a growing cohort of folks in our community and our interfaith community who are ready and eager to roll up their sleeves and get to work.

In this community we are no strangers to this kind of work: it’s a part of who we are, how we pray, and how we read.

We read the whole story of Joseph.

We know that the arc of his story bends from slavery to freedom to redemption.

We know that Joseph brings us to Egypt, foreshadowing another story of moving from slavery to freedom to redemption. And every year when we sit around the dinner table telling that story of Exodus, we read, “*b’chol dor vador*, in every generation the responsibility of being human is to see oneself as having come of Egypt.”

With the *eyes of our eyes* we see ourselves alongside all who are shackled;

With the *eyes of our eyes* we see ourselves with Joseph in the pit, with scorpions and snakes;
With the *eyes of our eyes* we stare into the darkness and affirm our prophetic purpose to “become a light.”

Unetaneh Tokef K’dushat Hayom- we proclaim the holiness of this day, a day of awakening: today is the Day of Judgment! And here is the truth of this day: We are all under spiritual indictment!

Unetaneh Tokef, And as we speak these words, we embrace in our hearts those for whom trial is no metaphor, but a dreadful reality.

As we speak these words, we yearn for the day that *we* can judge our brothers and sisters with the compassion that we ourselves ask of God, *k’dushat hayom*, on the holiness of this day.

As we speak these words, in 5776, we pray for a year of just mercy, of *matir asurim*, freeing the captives and transforming darkness into light.

Blessed are You, Eternal our God... who frees the captives.
Baruch Atah Adonai Eloheinu Melech HaOlam, Matir Asurim.

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