

Accountability for Genocide

Maimonides, Mishneh Torah, Laws of Repentance 2:2-3

What constitutes teshuvah? That a sinner should abandon their sins and remove them from their thoughts, resolving in their heart, never to commit them again as [Isaiah 55:7] states "May the wicked abandon his ways." Similarly, they must regret the past as [Jeremiah 31:19] states: "After I returned, I regretted." [They must reach the level where] the One who knows the hidden will testify concerning them that they will never return to this sin again as [Hoshea 14:4] states: "We will no longer say to the work of our hands: 'You are our gods.'" They must verbally confess and state these matters which he resolved in their heart.

Anyone who verbalizes their confession without resolving in their heart to abandon [sin] can be compared to [a person] who immerses themselves [in a mikvah, or ritual bath] while [holding] a lizard in their hand. Their immersion will not be of avail until they cast away the lizard.

ומה היא התשובה. הוא שיעזב החטא חטאו ויסירו ממחשבתו ויגמור בלבבו שלא יעשה עוד שגגה (ישעיה נה ז) "יעזב רשע דרכו" וגו'. וכן יתנחם על שעבר שגגה (ירמיה לא יט) "כי אחרי שובי נחמתי". ויעיד עליו יודע תעלומות שלא ישוב לזה החטא לעולם שגגה (הושע יד ד) "ולא נאמר עוד אלהינו למעשה ידיו" וגו'. וצריך להתודות בשגגתו ולומר ענינות אלו שגמר בלבבו:

כל המתודה בדברים ולא גמר בלבבו לעזוב הרי זה דומה לסוגל ושרץ בידו שאין הטבילה מועלת לו עד שישליך השרץ

- What do you think is the distinction between "abandoning" a sin and "removing it from one's heart"?
- Why do you think confession must be verbal? What are the stakes of verbal confession compared to internal, mental contemplation? Why do you think material restitution is not mentioned here?
- What, for today's Jewish community, is the "lizard" in Maimonides's metaphor?

Maimonides, Mishneh Torah, Laws of the Murderer and the Preservation of Life 7:13-14

When a killer returns to their city after the death of the High Priest, they are considered to be an ordinary citizen. If the blood redeemer slays them, the blood redeemer should be executed, for the killer has already gained atonement through exile.

רוצח ששב לעירו אחר מות הכהן הגדול. הרי הוא כשאר כל אדם. ואם הרגו גואל הדם נהרג עליו שפך נתיפף לו בגלותו אף על פי שנתפף לו אינו חוזר לשורה שהיה בה לעולם. אלא הרי הוא מורד מגדלתו כל ימיו הואיל ובאה תקלה זו הגדולה על ידו

Although the killer has gained atonement, they should never return to a position of authority that they previously held. Instead, they should be diminished in stature for their entire life, because of this great calamity that they caused.

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- What does this text imply about “atonement” and its impact upon a person’s past deeds?
 - What “calamities” has the contemporary Jewish community caused? What is the role of your corner of the Jewish community? Of your own actions?
 - What does this text imply about different levels of culpability and complicity within our communities? How might we distinguish those levels?
 - What might it look like for those who have caused harm to be “diminished in stature”? How does this sit with frameworks of transformative and restorative justice?

Mishnah Horayot 1:4

If the court ruled and one of them knew that they had erred and said to the others, “You are making a mistake”, or if the best of the court was not there, or if one of them was a proselyte or a mamzer or a netin¹ or an elder who did not have children, they are exempt, for it says here [Vayikra 4:13] “congregation” and it says later on [Bamidbar 35:24] “congregation”; just as the “congregation” further on must be fit to issue rulings, so too the “congregation” mentioned here must be fit to issue rulings.

הורו בית דין, ויָדַע אֶחָד מֵהֶן שֶׁטָעוּ, וְאָמַר לָהֶן טוֹעִין אַתֶּם, אוֹ שֶׁלֹּא הָיָה מִפְּלֹא שֶׁל בֵּית דִּין שָׁם, אוֹ שֶׁהָיָה אֶחָד מֵהֶן גֵּר אוֹ מִמְזֵר אוֹ נְתִין אוֹ זָקֵן שֶׁלֹּא רָאָה לוֹ בְּנִים, הָרִי אֵלּוּ פְּטוּרִין, שֶׁנֶּאֱמַר כָּאן עֲדָה (וּיִקְרָא ד) וְנֶאֱמַר לְהֵלֵן (בַּמִּדְבָּר לֹא) עֲדָה, מָה עֲדָה הָאֲמֹר לְהֵלֵן עַד שִׁיְהִיו כְּלָם רְאוּיִין לְהוֹרָאָה, אִף עֲדָה הָאֲמֹרָה כָּאן עַד שִׁיְהִיו כְּלָם רְאוּיִים לְהוֹרָאָה.

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- What is the significance of one member of the court communicating verbally that they disagree?
 - How does the description of the court align with the leadership structures of today? How do differences in leadership structures change how we might think about accountability?
 - How do we define inclusion or exclusion in terms of both leadership and community membership? What implications does that have for responsibility for the actions of the Jewish community?

¹ A “mamzer” is a person born of a sexual relationship forbidden by the Torah. A “netin” is a descendant of the Gibeonite people, who converted in the context of a deceptive treaty with the prophet Joshua. Jewish law places various restrictions on both of these groups in the context of their communal membership, including, for example, a prohibition on marrying other Jews.

We need to set a very, very high bar for repentance, particularly for people whose social influence and reach—and harmful impact—are significant. It is possible for someone who has committed cancellation-worthy harms to come back from that, but they should not be automatically given a free pass because they (or their publicist) wrote a regret-filled statement of apology. But that doesn't mean that there's no way back. There is, and we know what to look for. If someone is truly, earnestly doing the work, we will be able to tell . . . Repentance is conceivable even for those who have caused profound harm with wide-ranging public implications.

- Do you agree that repentance is possible even for those who have done truly horrific things? Why or why not?
- What do you think this kind of repentance—or a genuine attempt at such—ought to look like to an outside observer?
- Have you seen examples of repentance that meet this bar?