דבר אחר | A Different Perspective

Cities of Refuge

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Pu`uhonua O Hōnaunau, Hawaii

Pu`uhonua O Hōnaunau, the City of Refuge, on Hawaii's Big Island was functional into the early 19th century, when *kapu*, Hawaii's system of ritual taboos, was overturned by King Kamehameha II. Until that time, many breaches of the *kapu* could result in death, including for an offence as ephemeral as allowing your shadow to fall over a chief's house. However, by entering a *pu`uhonua* (a place of refuge), often by swimming across a bay, and performing a ritual facilitated by the priest there, the punishment could be annulled.

Though the cities of refuge described in our parashah (Num. 35: 6-34) have significant differences from the *pu`uhonua*—such as the requirement to remain there until the death of the High Priest, and the application of the law only to the manslayer—a common motivation can be discerned. Through the performance of a crime, the essence of the system (whether the sanctity of human life in the Torah, or the hierarchical ritual order of old Hawaiian religion) has been disturbed and must be repaired. However, the death of the culprit is not desirable either. To mediate between these opposing needs, locations of special sanctity were established, both in the Land of Israel and on the shores of the Pacific islands.

Photo: Ashira Konigsburg
Sources: Sally Engle Merry, *Colonizing Hawai'i: The Cultural Power of Law* (56); J. Gordon Melton, *The Encyclopedia of Religious Phenomena* (59)

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Restorative Justice from Numbers to Now

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What does restorative justice look like? The Torah pauses Israel's journey toward the Land to consider this complex question. Forty years of desert wandering have come to their end, and only the thin ribbon of the River Jordan divides the Israelites from their promised land. As the distance remaining falls to footsteps, urgency mounts to establish values and norms for sovereignty and justice.

The Land will test the people—with power and wealth, with conflict and war. They will become responsible for self-policing—how will they handle divisive and ambiguous cases such as manslaughter? One person has caused terrible harm to another and their family. Perhaps they never intended to kill, but still, they have caused tragic loss of the most permanent sort. What consequence can restore a sense of justice for the offender, the victims, for society and for God?

Numbers 35 includes an extended passage dedicated to this presumably minor concern—the treatment of killers accused, but not convicted, of murder. The Torah declares that Israel must establish six cities of refuge, three within the Land, and three in Trans-Jordan, to which unintentional killers may flee (vv. 1–29).

The cities of refuge are unlike anything known to modern society. They signal that a person who unintentionally kills another ought not escape significant consequences. After all, they have killed someone, and so they must live in exile for an indefinite period, until the death of the High Priest. The purpose of their exile is not mere punishment but also rehabilitation. There they will have time to ponder the impact of their negligence on the victim even as they reestablish themselves in a new community.

First, they are put on trial. If found guilty of murder, the Torah prescribes execution. But the Torah immediately sets a high evidentiary bar for determining guilt for murder. There must be two eyewitnesses to the crime; one will not suffice (v. 30). Shedding the blood of an innocent person is said to "pollute the Land."

This biblical concept goes back to the story of Cain and Abel, when God declares that Cain will be cursed by the land that "opened its mouth" to absorb the blood of his brother (Gen. 4:11). Here too the Torah warns that improper killing, even as a punishment, can pollute the Land and lead Israel into exile (Num 35:33).

If a killer is executed with insufficient evidence or imperfect process, then the Land becomes polluted. Conversely, if a wealthy killer is found guilty of murder, but is given the opportunity to buy back their freedom, this too pollutes the Land. Likewise, a person found guilty of manslaughter, not murder, is not allowed to buy their freedom (v. 31). They too must seek exile in the city of refuge, or else the Land will be polluted. The purpose here is to purify the Land by repairing the moral damage caused by violence. Restorative justice in biblical terms is not only about restoring the soul of the offender, but also about restoring the entire society to a just basis. Without such restoration, the only option is national exile.

Twice the Torah prohibits the taking of *kofer*, the ransom paid to avoid punishment, which is from the same root as *kapparah* or *kippur*, atonement. But can one truly atone for violence with money? It might be tempting for the killer to offer, and perhaps for some aggrieved families to accept, payment in place of punishment. Indeed, the Rabbis allow the giving of *kofer* in other circumstances, as when an ox gores a person. The owner of the ox must pay *kofer* to atone for the loss (M. Bava Kamma 4:5). But a human who kills a human has committed either murder or manslaughter, and money alone cannot atone for their violent act. As the Talmud notes, both verses are necessary, one for murder, and one for manslaughter (BT Ketubot 37b).

Money can be a tool for restitution of financial damages, and it can be used positively for charitable purposes. But when money allows wealthy offenders to evade consequences, a protection unavailable to poor offenders, then justice is denied. Taking *kofer* is akin to a bribe, and bribery erodes the moral fiber of a society.

Kofer has another sense—denial. A person who denies owing a debt to another is *kofer bakol*—in total denial. A person who denies the unity of God is *kofer be'ikar*—in denial of the essential truth. In later rabbinic texts, *kofer* comes simply to mean a heretic. We see that an initial positive association of *kofer* with *kapparah*, atonement is pushed aside for more negative associations with denial and heresy. Why might this have happened? *Atonement* implies introspection, remorse, and responsibility. *Denial* indicates the opposite: brazen disregard for the lives and property of others.

In recent years Americans have begun to pay more attention to the intersection of race, poverty, and incarceration. There is a persistent and pernicious differential in the treatment of criminal offenses by people depending on their class and color. White offenders are more likely to be reprimanded over minor offenses that for people of color would garner harsh treatment such as arrest and even physical assault. Wealthy defendants can post bail and mount effective defenses while poor defendants are left to languish in jail and then prison. Money corrupts criminal justice, creating a two-tier system where some citizens suffer severe consequences while others are able to escape with impunity.

Because criminal justice in America is often more punitive than restorative, and because it plays out so differently for people of privilege, we have a crisis of confidence. Poor people lack the resources to post bail and to mount competent legal defenses. Even brief incarceration can cause cascading calamities of unemployment, mental and physical illness, homelessness, and consequences for entire families. We are in a crisis, but we have an opportunity to reform our criminal justice system and point it back toward the higher ideal of restorative justice.

In warning Israelite society not to accept *kofer* for violent crimes, the Torah anticipates the role that wealth may play in shielding offenders from the consequences of their misconduct. In this and other contexts the Torah warns the people of Israel not to pervert justice, but to apply it equally. The cities of refuge are an early example of restorative justice. They honor the lives of the victims by forcing offenders into exile. They treat all offenders equally, regardless of class, and prevent wealthy people from buying their freedom. And for the offenders, living out their uncertain sentence in exile, the cities of refuge are an opportunity for reflection and remorse. In place of *kofer*, denial, they provide the time and structure to achieve something precious and deep: *kapparah*, true atonement.

The cities of refuge may not be practicable today, but as a metaphor for equal justice and restoration, they are timely. The Torah is not interested in the wealth or standing of the victim of the crime, and it offers no avenue for wealthy offenders to evade responsibility. It honors the life of the victim and forces even unintentional offenders to experience dislocation so that they can reflect on the harm they have caused. This is what restorative justice looks like.

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