FORGIVENESS AND THE LAW with THE HONOURABLE JUDGE MARSHALL ROTHSTEIN
TEMPLE SHOLOM - RABBI DAN MOSKOVITZ
SEPTEMBER 24, 2016

INTRODUCTION BY RABBI MOSKOVITZ (5 MIN)

1. Thank you all for coming this evening and thank you most sincerely to the Honourable Judge Marshall Rothstein, who graciously accepted my invitation while we sat together at a wedding this summer to speak to our congregation.
2. Judge Rothstein – we are so incredibly honoured to welcome you to Temple Sholom.
3. One of the first things Judge Rothstein said to me as we started to plan this evening was to make clear that he is not an expert in Jewish Law. I assured him that was not why I had sought him out for this discussion. Rather what intrigued me and as we talked about it what intrigued both of us, was that as Jews forgiveness is at the core of our spiritual legal system we both wondered is it also present in the Canadian Judicial system. And to the extent that it is present to what extend does match or contrast with our own Jewish values and understanding of repentance and forgiveness?
4. By way of background for all of us, in Judaism, the acts of repentance and forgiveness are inextricably linked. Torah teaches that we must never let our anger toward others cause us to lose sight of self-reflection and cleansing. We set aside the high holy days of Rosh Hashanah and Yom Kippur and the days of repentance in between as a time to look at our own behavior over the past year and to come face to face with the Jewish concept of forgiveness, a psychologically demanding and ultimately, spiritually fulfilling obligation.
    a. Jewish sources tell us that forgiveness fulfills two distinct roles, one symbolic and the other personal.
        i. The symbolic aspect of forgiveness is that it enables the wrongdoer to achieve atonement for his act. Jewish belief states that G-d doesn't forgive our sins against others until we ask and receive forgiveness directly from the person we wronged. In this sense, we are commanded to accept someone's apology in order to facilitate his or her spiritual development, as exemplified perhaps most dramatically by the Israeli government's acceptance in 1990 of the East Germany's formal apology for the Holocaust. It is one thing for nations to express remorse and seek symbolic forgiveness for acts of a faceless government or bureaucracy generations removed from the offense.
        ii. BUT for many, the personal act of forgiveness is both more difficult and more pressing than the symbolic one. Its purpose is to enable people to put a hurtful incident behind them and to restore a meaningful and compatible relationship, for the wronged party to wipe the slate clean of negative feelings and let go of any self-righteousness. This concept of healing and repair is central to Judaism, as it is our obligation to practice "Tikkun Olam," the repairing of the world. Jewish tradition asks us always to try to rise above anger and to help dissolve it by believing in the

beauty of the world that G-d has created and the people in it as an act of faith, even when it takes all the power of our imagination.

   b. It is one thing on the inter personal level to forgive your fellow for a wrongful act, but should the law show the same understanding of the human condition? Should the law be like people, or be as Torah commands us to be – concerned about restoring meaningful and compatible relationships? Or should the law be unmoved by the story, the explanation, the qualification, the circumstance?
   c. Should the law forgive as human beings are commanded to forgive or should it only punish and hold accountable? And if it is to forgive, by what agency does it as the voice of the state forgive an injury to another person or private property?
5. I have asked Judge Rothstein to share with us his thoughts on these fundamental questions and to share with us his own experience as a Supreme Court Justice of Canada on the role of forgiveness in the law.
6. Following Judge Rothstein's presentation, he and I will engage in a dialogue about a couple of questions that I think will further illuminate the issue and then Judge Rothstein has said he will be very pleased to take questions from the floor. And when we come to that section I will ask you please to use the microphone provided so that we can call hear the question being posed. And I'll remind you gently to please pose a question and not give a sermon, the time for sermons is not till next week.
7. Please join me in welcoming the Honourable Judge Marshall Rothstein to our bema.

JUDGE ROTHSTEIN'S PRESENTATION (30 MIN)

QUESTIONS BY RABBI MOSKOVITZ

1. In "The Power of Forgiveness," Elie Wiesel (z'l) refers to a Jewish view that in order to be forgiven, one must first admit to wrongful action and apologize. The German government, in response to his request, did indeed issue a formal apology at the Knesset in Israel for its involvement in the Holocaust. The Canadian Government did a similar thing with the Truth and Reconciliation commission.
   a. What role does admission of guilt and apology play in the adjudication of Justice? Should those words, heartfelt as they may be make a difference in sentencing?
   b. Then a follow up, Wiesel continues in his essay and reflects on how he looks at pictures of the lost children and questions whether or not he can, in fact, forgive the acts that took so many lives and destroyed so many families.
      i. When should the law NOT be forgiving?

2. The leaders in the restorative justice movement emphasize that the resolution of a criminal case should lie in a dialog-based process between the community, the victim, and the offender. They to look to the past and point to major shift in criminal law approximately one thousand years ago. When William the Conqueror successfully invaded England, though he was king, he found that his hold over the people and nobility was lacking. In looking for a way to get the nobility to pay him respect, he devised an innovative strategy. Starting at first with violent "crimes," he and his son

following him (King Henry I) made the offender pay the State (either with money or other penalties)." William injected the State in the resolution of disputes among citizens. Prior to this change in English law, even violent offenses had avenues of making the victim whole (for example, the State reinforced a community ethic by making the offender compensate the victim).

a. This tradition of the State requiring healing, compensation or restitution to the victim was present in Torah and Rabbinic law as well. The emphasis was on healing and reconciliation between the victim and the offender (for example, if you stole your neighbor's horse or if you physically assaulted and injured him, you made your neighbor whole). After the change in English law, harming your neighbor is a crime against the State. Thus, English criminal law took a major shift with William the Conqueror. Essentially, what the new king did was to replace the victim with the State. Crimes were now considered against the State, and the offender owed, first and foremost, the State.
b. Today, it is accepted almost without question that when someone breaks the law (criminal law) his or her primary obligation is to the State, and not to restore the broken relationship with the victim.
    i. This is not the Jewish system where t'shuvah repentance takes into consideration repairing the wrong done to the other.
        1. **What role should sentencing or the law have in repairing the wrong done to the victim?**
        2. **What is the interest and limit of interest of the state in fostering forgiveness between the parties?**

QUESTIONS FROM THE CONGREGATION (TIME REMAINING)

<u>BACKGROUND MATERIAL ON JEWISH LAW OF FORGIVENESS – NOT FOR PRESENTATION</u>

1. From where do we know that it is cruel to not forgive? For it says, "Abraham prayed to G-d and G-d healed Abimelech..." (Bereishit (Genesis) 20:17). Mishna in Baba Kamma 8:7 Jewish Law (Halacha) requires one to ask forgiveness from anyone whom you may have harmed whether the harm was physical, financial, emotional, or social. Also, one is required to be gracious in granting forgiveness.

2. The Rambam in Hilchot Teshuvah (Laws of Repentance) 2:9-10, writes: Repentance and Yom Kippur only atone for sins between Man and G-d such as eating forbidden foods or engaging in forbidden sexual relations. Sins between one man and his fellow, such as striking, cursing, or robbing are never forgiven until one pays up his debt and appeases his fellow. Even if he returns the money he owes he still must ask for forgiveness. Even if he only spoke badly about him he must appease and beseech until he is forgiven. If his fellow refuses to forgive him then he must bring a group of three of his friends (presumably the injured party's friends) and go to him and ask him [for forgiveness]. If he still does not forgive him he must go to him a second and third time (with three other people). If he still refuses to forgive him he may cease and the other is the sinner. If [the injured party] is his teacher (rebbe) he must go to him even a thousand times till he is

forgiven. It is forbidden to be cruel and difficult to appease, rather, a person must be quick to forgive and difficult to anger and when the sinner asks for forgiveness he should forgive him willingly and wholeheartedly....

3. The Shulchan Aruch, Orech Chaim 606:1 in the Laws of Yom Kippur, says essentially the same thing adding that one may withhold forgiveness if it is for the good of the person asking. It may be appropriate to withhold forgiveness to teach the supplicant not to take it lightly. Withholding forgiveness may also be permitted when someone spread false rumors about you but then it says that in such a case one should still forgive.

4. The prayer before Kol Nidrei on Erev Yom Kippur says: I extend complete forgiveness to everyone who has sinned against me, whether physically or monetarily, or spoke lashon hara about me or even false reports. And also for any damages, whether on my body or my property and all sins between a man and his fellow except for money which I can claim in a court of law and except for someone who sins against me saying, "I will sin against him and he will forgive me". Except for these I grant complete forgiveness and no person should be punished on my account. And just as I forgive everyone so should You grant me favor in the eyes of all men that they should completely forgive me.