



SERMON KOL NIDRE: JUDGE JUDAISM

Student Rabbi Gabriel Webber, Tuesday 18 September 2018
Beit Klal Yisrael

- 1 You might call me a bit of a nerd, in fact you probably will, but I like to read legal judgments. I read the news and general books as well, but legal judgments fascinate me.
- 2 When a court gives judgment, it traditionally divides it into four sections: facts, law, application of the law to the facts, and a conclusion.¹ It's the first of these sections that I find most captivating. The law is interesting enough, but what really excites me is the stories.
- 3 These are real stories of real people,² and they're often not the sort of stories one would read about elsewhere. They might be too small for novelisation, or too outdated to appear in the news. But they grip me, and show mesmerising sides of human nature.
- 4 In 1834, a mother sued her son's boarding school for false imprisonment when the headmaster held the boy hostage as collateral for unpaid school fees.³
- 5 In 1974, a market trader was banned from his market after offering "words of abuse" to an official of the local council (as the judge delicately put it, "I have not been told the actual words, but it is not difficult to guess: I expect it was an emphatic version of 'You be off'") and he sued for reinstatement.⁴
- 6 In 1978, an airline passenger found a gold bracelet in the departure lounge, handed it in to the airport's lost property desk, then, when they couldn't



trace its owner and sold it, he sued them, claiming that the £850 was rightfully his.⁵

- 7 And the judgment of the 2015 election court describing the web of corruption that voided a mayoral election in Tower Hamlets is 200 pages long and reads like a political thriller.⁶ In fact, I'd strongly recommend that one for bedtime reading.
- 8 There's something that appeals to me in the very formality of a court – a serious judicial process with lawyers and ringbinders and wigs – concerning itself with everyday people's stories. Stories that go to the very heart of what it is to be a human interacting with other humans. Some of the most senior judges in the land sat down to adjudicate over the incident where Mr Hook peed in an alleyway and then swore at the market manager. Small but genuine vignettes from the lives of ordinary people end up being immortalised and recorded for others, many years later, to read. I look over these stories and feel an astonishing connection to other members of society.
- 9 Kol Nidre brings this feeling closer still. This service started not like other services, with a cheery, welcoming rendition of Mah Tovu. Instead, we formed ourselves into a formal beit din, a Jewish court of law (or a court of Jewish law: one of those), and recited a legal formula which had an official effect on all of us present. Rabbi Dr Aaron Panken, who tragically died in May, זיכרונו לברכה, described the Kol Nidre ritual as “high legal drama”.⁷ It certainly adds a note of solemnity to our service. But I feel it adds another ingredient as well: it puts all of our stories at centre stage.
- 10 The portion of the Yom Kippur liturgy in which we rise and recite together ... אשמנו, בגדנו, גזלנו...



robbed, etc etc... – is a well-known and iconic one. Its keynote is togetherness.

- 11 But as a thought experiment, imagine if, instead of treating it as a piece of prayer, we treated it as a piece of market research. Everybody starts off standing and reciting together, but as soon as each person comes across a ‘confession’ that doesn’t apply to them, they sit down. Doubtless most will stay standing for the word **אשמנו**: over a year, having transgressed at least one commandment is inevitable. But the notion of **בגד**, treachery, is likely to cause some people to sit down: perhaps we’ve not all been treacherous. Surely a large part of the congregation will resume its seats if they are not guilty of **גנל**, robbery. And I suggest that, by the time the Hebrew acrostic reaches its final clause – **תעתענו**, we led astray – there will not be a soul left standing.
- 12 This thought experiment is slightly flippant. It is slightly flippant because what it demonstrates – that prayers codified in a book and designed to be read out loud by a group of people will not carry all of that group with them all of the time – inevitably applies to all liturgy and is, if one thinks about it, fairly trite. A liturgist normally intends their liturgy to be directed towards God by a worshipper who is not them, but if the liturgist is writing long before the worshipper was born they are unlikely to know precisely what that worshipper wants to say to God.
- 13 This is a feature of what Rabbi Lawrence Hoffman calls “closed-script worship”.⁸ It has advantages and disadvantages. It brings a pleasing togetherness; it allows people not to feel alone in their misdeeds – if I actually made you all publicly declare which sins you had and had not committed, it would be a horrendous breach of confidence – and it brings



some universalism to the table: we have sinned, whether that ‘we’ is us in the room, us as in Liberal Judaism, us as in the whole world.

- 14 But it can also stifle one’s own private penitential prayers: the wrong I did over the last year which is occupying my mind the most may not be the one which takes pride of place in the machzor. A word in a reading may jog my memory and make me think of something for which I need to atone, but before I can complete the thought, the closed script of the liturgy has dragged me on in a different direction.
- 15 And those of us who have duties to perform today – aliyot, music, stewarding, gabbai-ing – will have one mental eye on the practicalities imposed by the machzor rather than on its content and meaning at all.
- 16 Yom Kippur is difficult. Which is why it is so important that it starts with something easy. Calling the Kol Nidre formula ‘easy’ might seem perverse: it’s written in dense Aramaic, it has a complicated tune, and countless pages of ink have been spilled trying to analyse its meaning. But at the same time, it’s easy, because it’s home turf: our vows, our year, our story.
- 17 To imagine our own story taking centre stage is not hubristic or self-centred. Because our story is only ‘ours’ in the sense that we carry it. It is no story without its cast of other characters. A court recording a litigant’s story is, in fact, recording the story of both litigants – it takes two to tango – and of all the other people who participated. A court case is about how one person’s relationship with others is to be regulated. So too is ‘our’ story, the story of our wrongs, a story of community. Rabbi Reuven Hammer has observed,⁹ “Religion is not simply what we do with our aloneness, but what we do with others. Prayer should not isolate us, it should not lead us to believe that we need only God and ourselves, but prayer should lead us outward toward the



love and care of the world we meet. Through prayer we discover how important the community is for sustaining our own salvation.”

- 18 The very notion of promises and vows – כל נדרי – all our vows – is one of community. It is the fact that we can be trusted at our word that enables one human to build a relationship with another. “Promises,” says the Israeli political theorist Joseph Raz, “are commitments to others that facilitate cooperation, the forging of relations that presuppose dependence, trust, joint actions and more. The capacity to make promises gives us enhanced control over our own lives.”¹⁰
- 19 He was writing, of course, about promises between person and person: exactly the sort of promise from which the Kol Nidre ritual does not exempt us. However, the same principle applies to self-vows, or to vows we made to God: they were a means of controlling our lives, of exercising our agency, and the plot of the last year has been the story of the vows we made.
- 20 Just as the court considering the schoolboy held as collateral for his parents’ fees put his story, just for a few moments, on an official footing, and in the eyes of the nation, so does Kol Nidre liberate us not just from our vows but from the uniformity and imposition of the Yom Kippur liturgy. For the rest of tonight, and most of tomorrow, we will be together, reading from the same pages in the same prayerbook, from the closed script that forms the backbone of our worship, and while the meditations of our hearts are different, the words of our mouths will be the same.
- 21 But tonight, just for a few brief moments at the beginning, we were all litigants; we were all in court; we each applied to God to release us from the hastily-made self-promises and God-promises we unwisely got ourselves into over the last year. For a few brief moments, our own lives’ stories, and



their links with others' stories, are the focus of everyone's service. Our task now is to continue that feeling of personal investment for the rest of this holy day.

Check against delivery.

GW 18.09.18

¹ Roslyn Atkinson. *Judgment Writing* (Queensland: Supreme Court, 13 September 2002): <<http://www5.austlii.edu.au/au/journals/QldJSchol/2002/44.pdf>>, p 3

² Sorry, Judge Judy...

³ *Herring v Boyle* 6 CAR & P 496

⁴ *R v Barnsley Metropolitan Borough Council ex p Hooke* [1976] 1 WLR 1052

⁵ *Parker v British Airways Board* [1982] 1 QB 1004

⁶ *Erlam and others v Rahman* [2015] EWHC 1215 (QB)

⁷ Aaron Panken. 'Courting Inversion: Kol Nidre as legal drama' in Lawrence A Hoffman (ed), *All These Vows: Kol Nidre* (Woodstock, Vermont: Jewish Lights, 2011): 194-99.

⁸ Lawrence A Hoffman. *The Art of Public Prayer: not for clergy only*, 2nd ed (Woodstock, Vermont: SkyLights Paths, 1999), 28.

⁹ Quoted in Edward Feld, ed. *Maḥzor Lev Shalem* (New York: Rabbinical Assembly, 2010): 202.

¹⁰ Joseph Raz. 'Is there a reason to keep a promise?' in Gregory Klass, George Letsas and Prince Saprai (eds), *Philosophical Foundations of Contract Law* (London: Oxford University Press, 2014), 58-77: 61.