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JUSTICE, JUSTICE SHALL YOU PURSUE . . . IN 2021: THE RUBRIC FOR PROSECUTING DONALD J. TRUMP

By Rabbi Moshe ben Asher, Ph.D.

Rarely in the living memory of Americans has our national agony caused us to look for civic salvation in the Bible's call for justice. But perhaps this moment is another one of those times, when we deeply need the ancient vision:

"You shall appoint judges and officers in all your gates, which God, your God, gives you for your tribes, and they shall judge the people with righteous judgment. You shall not twist judgment, you shall not recognize faces and shall take no bribe, for bribery does blind the eyes of the wise and makes perverted the words of the righteous. Justice, justice shall you pursue, that you may live. . . ." (Deuteronomy 16:18-20)

Is there a moral soul in America now who does not long for justice?

With only days to go before the 2020 election, it's not too soon to begin thinking about criminal justice for Trump once he is out of office. Because undoubtedly, apart from his mocking the Constitution and violating institutional norms, his felonies call for prosecution and imprisonment—but under what rubric?

Exactly what strain of justice do we want to pursue? Unlike any other president, Trump has managed to threaten the moral-spiritual soul of the nation. Our declared national purpose when we respond to his criminality may affect us as much as him. It may further divide us or begin to unify us; it may degrade us or uplift us. In some measure, perhaps large, it may determine the moral spirit with which we set out to the future as a nation. Paying attention to our civic morality in respect to justice for Trump, then, is no small thing.

In our civic tradition, justice is required when there has been a betrayal of moral purpose. The objective is to reestablish righteousness in order to displace the effects of the injustice, which deprives us of our humanity. Restoring justice is essential to the health of our society because, by strengthening our humanity, it allows us to maintain civility despite our diversity of ideologies and interests.

Our civic commitment to justice, as an indispensable condition of human life, arises from religious tradition, as a demand of God. Our unique potential as humankind is rooted in morality that is widely shared be-

cause it springs from a source which is, ideally, all-encompassing, and which is not self-interested.

If we regard justice as a requirement of civic morality, what should be the motivation of the demos in pursuing it? Should we demand *revenge*? Should we advocate *retribution*? Should we argue for *deterrence*?

Although supporting the demand for revenge might be politically advantageous for some officeholders and emotionally satisfying for the most aggrieved among us, those who have suffered the most from injustice, how is shared civic morality achieved by throwing fuel on the fire of national division and hatred? That would seem to be the least sensible approach to meting out justice to Trump and his minions.

Retribution, while it has historical religious credentials, promises to be problematic in a country as ideologically fractured as ours. Part of the problem is that although most of us would agree that the perpetrators of crimes should suffer for the suffering they have inflicted, we're all over the map on what should be the appropriate suffering, if any, which should be administered in Trump's case. Focusing on retribution, like revenge, would be likely to result in more divisiveness and less shared civic morality.

Prosecuting and imprisoning Trump for the sake of deterrence, as a disincentive to other would-be criminal presidents, may satisfy a sense of civic morality for some of us, but it seems not only divisive but superfluous. Do we, in fact, need to deter future presidents from mimicking Trump's malevolent behavior, like his corrupting of elections, conspiring with foreign dictators, attacking the Post Office, smearing mail-in voting, arresting first-amendment demonstrators, attacking the Fourth Estate, sabotaging the powers of Congress, appointing unqualified, double-dealing, self-serving individuals to high positions in government, and shamelessly lying to the American public?

Trump seems destined to become the most reviled icon in our history—much like Benedict Arnold and Richard Nixon but making them look like minor misdemeanants. "Trumpist" may yet become the way we describe an historic double whammy of unrivaled political corruption and unprecedented incompetence. Once

Trump's entire misanthropic mission is revealed and he is prosecuted and jailed in ignominy, will any future president ever want to appear to resemble even slightly any aspect of the Trump iconography?

Revenge, retribution, and deterrence all fail to get to the essence of the justice we desperately need.

We should take our cue about how to proceed in this matter from what Trump has done to us. To his everlasting discredit, he has corrupted our civic morality and, in doing so, he has destroyed our safety and security. He has crippled our ability to go about our everyday lives free to attend to the fulfillment and happiness of our loved ones, our friends and neighbors, our jobs, our communities, and our country. He has deadened our "pursuit of happiness," burying it in pervasive anxiety and hopelessness. It's no exaggeration to say that we are suffering extraordinarily as a nation, mourning both the loss of lives and the loss of trust in our institutional lifelines, such as the Department of Justice, the Centers for Disease Control and Prevention, the Food and Drug Administration, the United States Postal Service, and, most of all, the United States Senate, Supreme Court, Presidency, and democracy itself.

We have been subjected to the traumatic experience of witnessing in real-time the moral corruption of our treasured institutions, watching them slide into the ambit of presidential authoritarianism and corruption.

But when all the criminality is eventually brought to light, we will have only one completely untarnished moral justification to prosecute and imprison Trump and his criminal hirelings and sycophants: The moral health of our society, our institutions, our communities, and our families depends on restoring justice.

Only by the triumph of criminal justice will we restore our trust in the nation's foundational institutions, in their leaders, their policies and practices; only with morally impeccable criminal justice will we once again sleep well and be free to pursue our happiness, knowing that our institutions and their leaders are dedicated and qualified to ensure our well-being and, most of all, that they are committed to uphold the Constitution and be democratically accountable to us, the people.

Our unqualified moral right to impose criminal justice rests on what is required to revivify the soul of the nation and to restore the peace of mind that Trump has shattered.

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