



Human Rights Shabbat

Rabbi Rachel Kahn-Troster

Detention

Universal Declaration of Human Rights, Preamble

“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”

Pirkei Avot 3:14:

Beloved is all humankind for they were made *b'tzelem Elohim* (in the image of God). Doubly beloved are they, for they were told that they were made in the image of God. As it says: "In the image of God was humankind made." (Genesis 9:6)

Rabbis for Human Rights - North America
www.rhr-na.org

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In Psalms 9:8, we read, “It is God who judges the world with righteousness, rules the peoples with equity.” The idea of God as judge, deciding each day between strict justice and mercy, is pervasive in Jewish thought. At the heart of these images is the sincere belief that righteousness and fairness are a core element of God’s judgments. Before God, there is no rich or poor, no strong or weak. The basis of a stable society, mirroring God’s in heaven, is thus likewise one in which justice is endowed with righteousness. Psalm 94: 15 reads: “Judgment shall again accord with justice and all of the upright shall rally to it.” And when justice is not found, we are commanded to restore it to our society. Deuteronomy 16:20 implores us: “Justice, justice shall you pursue.” The double use of the word *tzedek*, justice, spotlights the imperative that equal justice be present for every member of society.

As Americans, we also put our faith in a court system that we hope is just. Our constitution ensures that the enforcement of our laws is carried out in a system provides equal access to all. We are prohibited from torturing prisoners to get confessions, and evidence obtained under torture is prohibited at trial—something that Jewish law, with its bar against self-incrimination, supports.¹ Suspects cannot be held indefinitely, without being charged with a crime, and cannot arbitrarily be arrested for a crime they might commit in future, simply because of those with whom they associate. Suspects in America have the right to see the evidence against them and the right to a speedy trial. This is true whether the crime is large or small.

These and other rights are part of our cherished values as Americans, and part of the promise of democracy that we encourage other countries to embrace. It is the realization of the commandment in the Torah (*Deuteronomy 18:18-20*): “*Judges and officers shall you appoint in all your gates, which the Lord your God gives you, throughout your tribes; and they shall judge the people with just judgment.*” Just judgment is what keeps our individual rights and liberties free.

This weekend is Human Rights Shabbat. Together with more than 100 communities around the world, we are coming together to celebrate the connections between Jewish values and human rights. There are many rights contained in the Universal Declaration of Human Rights, based on the idea that “All human beings are born free and equal in dignity and rights.” Just as the Constitution and Bill of Rights are statements of American values, the UDHR is a statement of shared global values. It is a messianic ideal, endowed with the hope that someday—maybe today, maybe in 70 years—they will all be realized.

A number of the articles of the UDHR deal with the right to a fair trial and to untainted evidence. Article 10 reads:

<http://www.rhr-na.org/resource/bar-against-self-incrimination-a-protection-against-torture-jewish-and-american-law>

Everyone is entitled in equality to a fair and full public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

And Article 5 states plainly

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

The Jewish value at the heart of human rights is the idea that every human being is created *b'tzelem elohim*, in the image of God, and that a respect for *k'vod habriot*, human dignity, can take precedence even over other parts of Jewish law. We read in the Mishna in Pirkei Avot: Rabbi Eliezer said, "Other people's dignity should be as precious to you as your own." Torturing another human being denies that the other person is created in the image of God; indeed, the Talmud states that shaming and humiliating another in public is akin to spilling their blood. If this is so, the evidence obtained in this cruel manner is not part of the pursuit of *tzedek*, justice.

Likewise, Jewish law demands equal treatment for everyone, regardless of status. *Exodus 12:49* states: "There shall be law for the citizen and for the stranger who dwells among you." The stranger, the one who was landless, was the most vulnerable member of ancient society. The Torah implores us to protect the strangers in our midst, because we were strangers in the land of Egypt. Indeed, the Talmud teaches us that the injunction to love the stranger occurs in the Torah more times than the laws of Shabbat or of keeping kosher. In Judaism, our laws must protect everyone equally.

Since 9/11, the American legal system has veered dangerously towards not judging with justice. These are indeed uncertain times, with terrorists who attack civilians and non-traditional battlefields that leave everyone at risk. Voices have been raised that suggest that new legal norms are needed, norms that ignore both traditional rules of war and traditional rules of evidence, to keep us safe from harm. None of us want to be afraid, but subverting our justice system is not the answer.

The United States is currently holding hundreds of prisoners indefinitely, without trial and for many without hope of trial, at Guantanamo Bay in Cuba and the Bagram prison in Afghanistan. Some of these prisoners have been tortured, or are being held because of evidence obtained under torture. We have been told that some of them may be held indefinitely, without trial, because of risks they might pose, but we are not allowed to see evidence of those risks or that they are even terrorists at all. Even more troubling, a parallel

system of justice, military commissions, is being proposed to try some of these detainees, which would allow looser rules of evidence than federal courts.

According to the American Civil Liberties Union:²

While the government has the right, under the laws of war, to detain prisoners captured on the battlefield until the end of hostilities, no president should have the power to declare the entire globe a war zone and then seize and detain civilian terrorism suspects anywhere in the world — including within the United States — and to hold them forever without charge or trial. But the Bush and Obama administrations have done just that, defining their powers too broadly, and claiming the authority to pick up and detain without charge or trial prisoners from around the globe who they deem engaged in the "war on terror."

If there is reliable evidence against a detainee, he should be prosecuted in our federal courts, which are well-equipped to handle sensitive national security evidence while protecting fundamental rights. If there is not enough reliable evidence for prosecution, there is certainly not enough to justify locking them up – possibly forever.

Make no mistake: federal courts are an effective venue for handling terrorism cases. For example, those responsible for the 1993 World Trade Center attacks were convicted in federal courts and are serving sentences in domestic prisons. There are other benefits as well. We learn from the organization Human Rights First:

Federal courts delegitimize would-be terrorists by treating them as criminals, not warriors. Federal courts also legitimize America as a country of laws. Federal courts have convicted 400 terrorists since 9/11. Military commissions have convicted only 4 [Note: Now 5 with Omar Khadr's guilty plea]. Federal courts have nearly 225 years of experience, with precedent to guide them. Military commissions are new, and many of the rules remain constitutionally defective.

This bears repeating: Federal courts, using regular rules of evidence and without admitting the results of torturing detainees, have convicted 400 terrorists in the past 9 years. Military commissions have convicted 5. This past summer, a group of retired judges from across the country and the political spectrum came together to issue a report demonstrating the effectiveness of the federal court system in determining *habeas corpus* cases and other aspects of prosecuting terror.³

² <http://www.aclu.org/indefinitedetention/>

³ <http://www.humanrightsfirst.info/pdf/Habeas-Works-final-web.pdf>

Judging with justice is clearly working to keep us safer. We can be safe and live according to our values. Leviticus 19:5 implores us: “You shall commit no injustice in judgment... You shall judge your fellow with *tzedek*, justice.” This weekend, when we celebrate the human rights of all, let us hope that the United States recommits to keeping justice at the heart of our judicial system.

For more information about indefinite detention and military commissions, please visit:

www.rhr-na.org

www.rhrna.org (the RHR-NA blog)

www.humanrightsfirst.org

www.aclu.org/indefinitedetention

<http://www.aclu.org/indefinitedetention/>

<http://www.aclu.org/national-security>

http://www.humanrightsfirst.org/us_law/guantanamo/talkingpoints.aspx

<https://www.nytimes.com/2010/11/09/opinion/09tue1.html?adxn1=1>

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