

WHEN CAIN BECOMES ABEL

Once, when I was part of jury selection for a criminal court case, the judge's admonishment to us potential jurors made a deep impression on me. Before he began what would turn out to be several hours of tortuously slow proceedings, he said to us, "I know that this process will be very boring, but it is one of the most significant things you will ever do in your lives. If you are selected for this jury, you will have a tremendous responsibility placed upon your shoulders."

At that moment I glanced over at the defendant and realized that no matter how carefully the judges and lawyers selected the twelve jurors, his well-being would lie in that jury's all-too-human hands. The judge's admonition reminded me of a famous passage in the Mishnah (the compendium of ancient Jewish law and legal argument) that cites the story of Cain and Abel to warn witnesses to capital crimes about the gravity of their testimony.

In the Land of Israel of ancient times, capital cases—those in which the accused could be executed if convicted—encompassed crimes as diverse as murder, idolatry, adultery, even violations of the Sabbath (a ritual prohibition). Jewish law does not provide for what we would recognize as a jury of one's peers, but the Torah does require capital cases to be tried with no fewer than two

witnesses (Deut. 7:16). Ancient Jewish communities in the Land of Israel tried capital cases before regional courts with twenty-three sitting judges. If necessary, a capital case could be brought as far as the Great Sanhedrin, the Jewish “supreme” court,” where seventy-one judges sat in session in the Holy Temple in Jerusalem.

The Mishnah and its later running commentary, the Gemara, record the great caution with which these capital cases proceeded. In principle, a person could be put to death for a crime, but Jewish law made it very difficult for this to happen. When witnesses in a capital case were interrogated and vetted before a trial, as part of the judges’ warning to them about not providing false or inaccurate testimony, they were admonished with these words:

In civil cases (involving payment) a person can pay money and make restitution. In capital cases, the witness is answerable for the blood of the defendant who is wrongfully condemned to death, as well as that of his offspring.

We learn this from the story of when Cain killed his brother, Abel. There, the Bible tells us that God said to Cain, “Hark, *your brother’s blood* cries out to Me from the ground.”

The Bible literally writes, “*Your brother’s bloods* [in the plural in Hebrew]. This means that Cain not only spilled Abel’s blood, but also the blood of his potential descendants who would never be born.

Note how the judges of ancient Jewish times used an extremely literal

reading of the biblical Hebrew word for blood to make a compelling moral point. Taking the life of an innocent person destroys not only that person but his or her potential descendants. The murdered person's blood, as well as that of the progeny who will never be born, cries out from the ground to God, demanding justice.

I suggest that the Mishnah chose the story of Cain and Abel, an extreme case, to make a crucial point about justice. The biblical story relates the horrible consequences of allowing our anger and other passions to drive us to take an *innocent* life. Now, consider the courtroom context in which it is retold. Here, the person who could become the victim of murder is not a crime victim but a potential victim of justice gone awry—that is, the accused who is *under suspicion* of taking an innocent life. In admonishing the witnesses this way, the Mishnah is making an analogy to the ease with which Cain committed the first murder against his own brother. The Mishnah wants us to think likewise about how easy it would be for us, as witnesses (or by extension as members of a jury), to kill a person accused of a terrible crime. The defendant standing before us might have committed the crime, but we cannot be sure of that yet, without first hearing and weighing the evidence. Our righteous indignation, vengefulness, biases, or apathy could easily get in the way of our fair and impartial judgment.

I thought about this insight as I sat in court watching the process of jury selection. Although this was not a capital case, the jury's decision might irrevocably change the defendant's life. Would we, the jurors safeguard the rights and life of this defendant? Would we, the jurors, simply dismiss this person as guilty, by assuming uncritically or self-righteously that he or she must bear the proverbial "mark of Cain"?⁷ If so, what would this say about us, the supposed defenders of all the Abels of the world, the other innocent people of the world? By treating the accused as if *he or she were Cain, without considering the facts and the grave consequences of our potential actions*, we, the appointed arbiters of justice would engage in gross injustice. *We would become Cain and the accused would become Abel.*

As the murder of George Floyd has forced us to finally acknowledge, the administration and miscarriage of justice begins well before a defendant shows up in a courtroom. The last few weeks since his death, we have been forced again to confront ugly truths about how American policing, courts and prisons systematically demonize Americans of color, particularly young Black men. Sleepwalking through the loud echoes of the racist legacy of slavery, we White Americans watched Floyd's murder with utter horror and actually had to wake up to Black America's persistent nightmare: being born with the shooting target of

presumed guilt on your back, a misfit by virtue of the embedded skin color paranoia of others who view you as Cain and can extirpate you as easily as Abel.

The Mishnaic teaching that I quoted above draws tellingly from the chilling genius of the Cain and Abel story. Reading this story about the first murder, (Genesis 4:1-16), we immediately encounter the anomalous absence of Adam and Eve, Cain and Abel's parents, from the narrative action. This is because these brothers are far more than flesh-and-blood siblings within the confines of a nuclear family. They are models for all hatred and violence between all human beings, siblings within the great family of humanity, all of whom are "descended" from those first mythic parents. As the paradigm for *homo detestabilis* ("hateful man"), Cain refuses to acknowledge being his brother's keeper because he refuses to acknowledge that Abel is actually his brother, an equal worthy of Cain's absolute fraternity, if not his fondness. As a foundation story of human origins, Cain and Abel delivers the clear message that the propensity to demonize one's fellow human inheres in the human condition. To borrow from contemporary discourse about race, Cain-like hatred of the Other is not a disease of the individual, but a systemic disorder of society. For all of its historical complexity and specificity, White supremacy "boils down" to its origins in this basic sickness that drove Cain to commit what Elie Wiesel once called the world's first genocide.

In America, systemic racism, which goes back four centuries to its origins in slavery, requires systemic excision: not only from our collective psyche but from the formal structures of the American justice system of which we are otherwise quite proud. This should be cause for deep despair when we consider the size and scope of this task. Once again, Cain and Abel's story speaks to us with a message of hard-fought hope. When God confronts Cain's depression and murderous rage, God doesn't tell him, "Don't murder Abel." That would be too narrow a warning for God to offer to us the readers, who can see our universal selves mirrored in Cain's specific hatred. Instead, God tells Cain, "Sin (the impulse to do wrong) crouches at the door//It's urge is toward you//But you can be its master." For America, the "original sin" of White supremacy is not at all original, and it is also not at all insurmountable. The Bible demands of us that we not fall prey to the false and despairing idea that racial – or any kind of – hatred is a fait accompli in any individual or institutional form. Each of us, and all of us, possess Cain-like capacities. We possess the capacity to conquer them as well.

Will our awakening in the wake of George Floyd's death compel us to finally dismantle White supremacy? As we do this arduous work of healing, our ancestors echo to us from the pages, courtrooms, and fields of their ancient

writings, pleading, reassuring, demanding: “Can you master this demon of hatred crouching at your door? Yes, you *can* be its master.”

This sermon is partially adapted from Rabbi Ornstein’s book, *Cain v. Abel: A Jewish Courtroom Drama* (The Jewish Publication Society 2020)