

***Tikkun Olam as an Antidote to Hash·hatat Yishuvo shel Olam***  
**(The Destruction of Society)**

Jill Jacobs

Today, the term *tikkun olam* conjures up images of activists, lawmakers, and rabbis trying to create a more just and perfect world. But contemporary usage results from a long and rich tradition in which the term works its way through the worlds of prayer, law, and mysticism.

As I have laid out more fully elsewhere,<sup>1</sup> the term *tikkun olam* goes through at least four distinct major periods. The earliest known usage, in the Aleinu prayer, equates a repaired world with the elimination of idol worship and the full expression of God's sovereignty. The Mishnah employs the idea of *tikkun olam* as a means of closing loopholes, changing laws, or establishing policies in the face of a threat to the social order. Lurianic Kabbalah sees *tikkun olam* as the reunification of the divine being and a restoration of the world to its original state. In the United States in the 1950s and 1960s, the term began to refer to social justice or social service. While some authors have pointed to the differences between the earlier uses of the term *tikkun olam* and its contemporary meaning as an argument against applying it to contemporary justice work, I see these four categories as building on and enriching one another. In speaking of *tikkun olam* today, we might ask what changes we need to make in law and policy in order to help society to flourish, while also drawing inspiration from the possibility of summoning the divine presence and moving closer to the messianic era.

One use of the term *tikkun olam*, however, seems to defy these four categories and presents a far less positive image of the phrase that is most often associated with justice and perfection. In his *Mishneh Torah*, Rambam<sup>2</sup> references—and justifies—the right of the king to carry out capital punishment without due legal process, or after the legal process has resulted in acquittal, as an act of *tikkun olam*:

If someone kills another person and there is no clear evidence, or no warning was given [to the perpetrator before the crime], even in the case in which there is only one witness; or if one person accidentally kills someone he or she hates—in these cases, the king has permission to execute that person and [thus] *l'takkein ha-olam* (“to fix the world,” or “to engage in *tikkun olam*”), according to what the hour requires. He may execute many on one day, and may hang and leave the bodies hanging for many days, in order to instill fear and to break the hand of the evildoers of the world.<sup>3</sup>

In all of these cases of murderers and the like who are not liable for capital punishment at the hands of the court, a king of Israel who wishes to execute them in accordance with *din ha-malkhut* (“the law of the land”) and *takkanat ha-olam* (a variation of the phrase *tikkun ha-olam*) has permission to do so. Similarly, if the court saw it necessary to execute them because of the exigencies of the moment (*hora'at sha'ah*)—if the hour required this, they have permission to do as they see fit.<sup>4</sup>

As for those whom the king did not execute, and in the case in which the hour did not require strictness, the court is obligated in any case to flog them severely, to the point of near death, and to imprison them in harsh conditions for many years, and to afflict them with all types of afflictions, in

order to sow fear and terror among the rest of the evildoers, so that this event will not become an obstacle and a stumbling block for them, that they should say, “I will arrange to have my enemies killed just as so-and-so did, and I will go free.”<sup>5</sup>

The laws of criminal justice, as laid out in the Talmud, strive to prevent any possibility of executing an innocent person or someone unaware of the consequences of his or her actions. Thus, the rabbis established strict laws of evidence that require, among other stipulations, that the two witnesses be cross-examined on points not directly relevant to the crime, that the two must have viewed the crime from the same vantage point (and not, for example, from two different windows), and that the perpetrator must have been warned of the punishment for his or her action and must have indicated formally that he or she understands the consequences before actually committing the crime. Unlike the king in the Mishneh Torah text above, the court may not hear two capital cases in a single day—lest the judges fail to devote their full attention to either.

These strictures should certainly prevent the conviction of an innocent person—and should serve as a sharp rebuke to the American courts, which too often have convicted, and even executed, people based on unreliable or coerced testimony. On the other hand, these conditions make it almost impossible to convict anyone. Even a person known beyond all reasonable doubt to have committed murder may be acquitted based on a technicality.

One famous passage reflects both the rabbinic ambivalence about the death penalty and the concern that the absence of such punishment in a system that does not normally allow for imprisonment will lead to murderers roaming free:

A Sanhedrin that puts a person to death once in seven years is called a murderous one. Rabbi Eleazar ben Azariah said: Or even once in seventy years. Rabbi Tarfon and Rabbi Akiva

said: If we had been in the Sanhedrin, no one would ever have been given a death sentence. Rabban Shimon ben Gamliel said: If so, they would have multiplied murderers in Israel.<sup>6</sup>

The very existence of capital punishment in classical Judaism begins with a paradox. The Torah teaches us: “Whoever sheds human blood, by the human hand shall that person’s blood be shed” (Genesis 9:6). Since human beings are created in the image of God (*tzelem Elohim*), the murder of a human being represents the ultimate sin: the simultaneous desecration of humanity and the desecration of God. Capital punishment seems only to compound this crime.<sup>7</sup> Thus, each of the first three statements of this *mishnah* advocates for a rarer and rarer use of the death penalty. And yet, Rabban Shimon ben Gamliel worries that a Sanhedrin that acquits everyone will let murderers roam free, and perhaps even encourage potential murderers who might otherwise be deterred by the prospect of death by execution.

The rabbis themselves understood that they had effectively legislated capital punishment out of existence. For this reason, they invented the penal institution of the *kippab*—a sort of solitary confinement cell leading to certain death, which was to be employed in certain cases in which a person escapes capital punishment on a technicality. While we have no evidence that any Jewish court ever actually implemented the *kippab*, we may view this institution as evidence of the rabbis trying to create an alternative to the capital punishment system they had rejected.

### **The Power of the King**

Rambam proposes an entirely different solution to the question of how to punish murderers whom the Sanhedrin cannot convict. As we saw in the passages above, he allows the king—and, in some cases, the court—to carry out capital punishment, even without the

necessary evidence. The court gains permission to do so in the case of *hora·at sha·ab*, an emergency situation. The king's power falls under a different rubric, *takkanat ha-olam*, which we might understand according to the mishnaic definition of the term as "maintaining the social order."<sup>9</sup> While the court acts according to the needs of the moment, the king must keep in mind the broader picture of the long-term needs of society.<sup>10</sup> This distinction becomes even clearer in the words of the Ran, who defines the king's role as "repair of the societal order" (*tikkun ha-siddur ha-m'dini*) and "repair of general matters" (*tikkun inyanim*). In contrast, the role of the Sanhedrin is to "judge the people according to *mishpat tzedek* (righteous judgment)."<sup>11</sup>

The king, then, has far broader powers than the court has. But where does the king get such powers?

Commentators on Rambam generally understand him to base the broad permissions for the king to carry out his own justice on an incident reported in the Talmud Yerushalmi, in which two men engaging in sex with a female dog worry that a righteous (and solo) passerby will report their crime, and that King David will kill them. This story seems to suggest that a king—or at least one as powerful as David—has the authority to enact capital punishment based on the testimony of a single witness.<sup>13</sup>

This incident alone hardly seems to justify granting the king broad powers to carry out capital punishment. Our historical knowledge of the behavior of kings and dictators tells us that such leniency will almost definitely lead to abuse. No wonder Radbaz emphasizes that "the king must concentrate [on using this power] for establishing faith and repairing injustice, and not for his own glory."<sup>14</sup>

Menachem Lorberbaum notes that the Rambam's permission for the king to carry out capital punishment applies only to the crime of murder, and not to any other capital crimes such as idolatry or certain sexual transgressions.<sup>15</sup> He ascribes this distinction to the nature of *din ha-malkhut*, which he defines as an extra-legal system of law that operates in conjunction with the normative legal system, and whose purpose is *tikkun ha-olam*:

The expression *bash'hatat yishuvu shel olam* appears to be the opposite of the expression *tikkun ha-olam*. The first describes the result of the actions of the murderer, and in the second, one should see the result of the actions of the king—and, by extension, the result of his actions in regard to the social order.<sup>16</sup>

Therefore, Lorberbaum writes: “The severity of the crime of murder—the destruction of civilized society—calls for the king to take action in order to mend the world.”<sup>17</sup> Unlike the Sanhedrin, which is charged only with addressing individual criminal cases, the king carries the burden of maintaining a functional social order. For this reason, the king has license to take action to prevent any threat to this social order—specifically, the possibility of widespread murder.

### **Limits on the Power of the King**

How can a king know whether the acquittal of a murderer will lead to more murders? One modern response comes from Rabbi Isaac Herzog, who served as the Ashkenazic chief rabbi of British Palestine and Israel from 1937–1959, who counts on the king to assess the general ethical state of society:

Capital punishment falls under the authority and the role of the Sanhedrin, but even after the Sanhedrin has acquitted the accused, the king has the power—for the sake of *tikkun ha-olam*, and in accordance with the needs of the hour—to execute. But, this does not mean that the Israelite kings had a special law that was not in accordance with the Torah—for they judged in accordance with it, and appointed judges and confirmed witnesses in accordance with it. But, in the case of the laws of murder, the matter is turned over to the conscience of the king, and depends on the moral state of

the people. If there are very few murderers, and there is no danger that acquitting the accused will multiply murderers among Israel, the king need not do this at all.<sup>18</sup>

Herzog provides a significant check on the broad powers that Rambam confers on the king. As discussed earlier, the king must maintain a focus on *tikkun olam*, the protection of the societal order for the long term. Per Herzog, though, the king needs to develop a keen sense of the current state of society and of the likely effects of his policies. Thus, in a society rife with murderers, in which he believes that the release of a murderer will lead to *hash·hatat yishuvo shel olam* (i.e., the destruction of society), then the king may—or perhaps must—carry out capital punishment himself. If, however, the execution will have little or no discernible effect on murder rates, the king should not take this liberty.

One potential resolution for our contemporary unease with the image of a Jewish king singlehandedly convicting and executing probable murderers would be to note that capital punishment, in modern times, has little or no deterrence effect.<sup>19</sup> Regardless of how we define the moral state of our own society, the knowledge that widespread executions will not reduce murder should be enough to declare that the category of *tikkun olam* as understood by Herzog simply does not apply.

We could also argue that Rambam's philosopher-king has never existed and will likely never exist. While a perfect king might be able to make determinations of guilt on his own, none of the leaders we know from history or contemporary life approach this ideal. Instead, we are familiar with dictators who abuse their power to carry out widespread and unjustified murders of their citizens. We might also note that modern judicial systems do not require the level of proof that the rabbis demanded. In the United States, evidence “beyond reasonable doubt” suffices to convict. Rambam's case specifically addresses the situation in which there is evidence beyond reasonable doubt—but not beyond *any* doubt, per the criteria set out by *halakhah*.

For these three reasons, we can safely say that Rambam's permission for a king to carry out unilateral executions may not be taken literally or used in any way to justify capital punishment.

At the same time, those of us committed to understanding and integrating halakhic texts into our justice work must ask what, if anything, we can profitably adopt from Rambam's innovation in the use of the term *tikkun olam*. To address this question, I now turn to another problematic, if more benign, use of the term *tikkun olam*, this time from the Mishnah.

### ***Prozbul* and the Economic Order**

As mentioned earlier, the Mishnah uses *tikkun olam* to refer to instances of closing a loophole or changing a policy that threatens to destroy the social order. For example: several *mishnayot* eliminate practices that might lead to confusion about the validity of a *get*, thereby throwing a woman's marital status into question. This situation would have massive societal repercussions. A woman who erroneously believes herself to be divorced might remarry and produce children, who would then be *mamzeirim*, and neither they nor their descendants would be permitted to marry non-*mamzeirim*.<sup>20</sup> Or, a woman who does not believe herself to have received a valid *get* might refrain from marriage and subsequent child-bearing. Since "the world was only created to be populated,"<sup>21</sup> her unnecessary abstention from having children would also constitute *hash'hatat yishuvo shel olam*, the destruction of society.

It is beyond the scope of this article to go into depth about the reasons for each of the uses of *tikkun olam* in the Mishnah.<sup>22</sup> Rather, I will look closely at the most radical applications of this concept: as a justification for uprooting a stipulation of the biblical law of *sh'mittah*, the Sabbatical Year.



As laid out in the Torah, *sh'mittah* includes the forgiveness of debts. This provision allows those who have accumulated significant debts over the course of six years to start again from zero. This is not a wholesale redistribution of wealth, but rather a chance for those deep in debt to work their way out of poverty.

Even the Torah, though, notes a potential problem with this law. Few creditors will likely agree to lend money in the sixth year, knowing that the debt will likely not be repaid. For this reason, the Torah warns:

Beware lest you harbor the base thought, “The seventh year, the year of remission, is approaching,” so that you are mean to your needy kinsman and give him nothing. He will cry out to the Eternal against you, and you will incur guilt. Give to him readily and have no regrets when you do so, for in return the Eternal your God will bless you in all your efforts and in all your undertakings. (Deuteronomy 15:9–10)

It seems that neither the biblical threat of punishment nor the promise of divine reward was sufficient to persuade lenders to part with their money as the *sh'mittah* year approached. Thus, regardless of this biblical warning, it seems that potential lenders—quite understandably—resisted parting with their money in advance of *sh'mittah*. According to the Mishnah, the great rabbi Hillel “saw that people were avoiding lending to one another, and were transgressing what is written in the Torah.”<sup>23</sup> In response, “Hillel established *prozbul* for the sake of *tikkun ha-olam*.” This institution of *prozbul* allows the court to take control of debts and to collect these after *sh'mittah*, since the provision for forgiving debts applies only to those from a private lender.

In creating the institution of *prozbul*, Hillel simultaneously protected the system of lending and borrowing that allowed the economic system to function, and eliminated debt forgiveness

altogether. While the consequences of this decision may not be as immediately dramatic as Rambam's king executing murderers, both situations prioritize positive long-term outcomes over more difficult short-term ones. In the case of *prozbul*, individuals lose the chance to erase their debts, and they may therefore end up stuck in poverty, or even forced to become indentured servants. Hillel apparently determined that this possibility paled in comparison to the more dire prospect of an entire year, once in every seven-year cycle, in which no one would ever lend or borrow money. Similarly, Rambam assumed that a few executions were a small price to pay if it would lead to a world less plagued by murder. In both cases, the focus on *tikkun olam* leads to the abrogation of Torah law, rather than simply an elimination of loopholes, as in other cases of *tikkun olam*.

The concept of *tikkun olam* forces us to consider the long-term consequences of any action or legal stipulation. At the same time, *tikkun olam* does not permit for gross disregard of individual laws. For Rambam, the king does not have full power to enact laws, try cases, and carry out sentences. Instead, he has some specific—if problematic—leeway to act in cases in which the system of justice proves inadequate. As we have seen, later commentators see the danger in this permission, and restrict the power of the king even further. As for Hillel, he seems to have recognized *prozbul* as a necessary correction at a time when people were disregarding Torah law. This case parallels Herzog's permission to act differently according to the moral state of society.

In contemporary Jewish life, it has become popular to use the term *tikkun olam* to refer to everything from serving lunch in a soup kitchen to giving *tzedakah* to advocating for legislation. The difficult example of Rambam's king instead asks us to view *tikkun olam* as a challenge to keep our vision on long-term change, without going too far in ignoring short-term needs.

At first glance, Rambam's use of *tikkun olam* may offend those of us who oppose capital punishment and are distrustful of kings (or other

powerful rulers) to do what is best for society as a whole. Without letting go of these anxieties, we can acknowledge that Rambam's understanding of *tikkun olam* parallels that of the Mishnah: both cases force us to think about the effect of law on large social and economic structures, rather than simply consider the correct ruling in a given situation. The Sanhedrin and a *beit din*, as judicial bodies, can address only the presenting case. The king, who has the broad view, can and should consider long-term implications and act accordingly.

Today, we have no such figure as Rambam's king—a perfect ruler concerned only with the betterment of society. Perhaps no such leader has ever existed. We should not, therefore, engage with the text in question literally, as permission for our own rulers to carry out capital punishment. Instead, we might ask: What are the laws, policies, loopholes, or absences that lead to *hash·hatat yishuvo shel olam* today? How can we, like the ideal king, take the long view toward addressing these? What laws, policies, or structures must we put into place in order to achieve the state of *tikkun olam* to which both the Mishnah and Rambam aspire?

## NOTES

<sup>1</sup> For a more detailed overview of the history of the term *tikkun olam*, see Jill Jacobs, *There Shall Be No Needy: Pursuing Social Justice Through Jewish Law and Tradition* (Woodstock, VT: Jewish Lights Publishing, 2009), pp. 24–40.

<sup>2</sup> Rambam is Rabbi Moses ben Maimon, also known as Maimonides (1138–1204).

<sup>3</sup> M.T. Hilkhot Melakhim U-milḥ'moteihem 3:10.

<sup>4</sup> M.T. Hilkhot Rotzei'ah U-shemirat Nefesh 2:4.

<sup>5</sup> M.T. Hilkhot Rotzei'ah U-shemirat Nefesh 2:5.

<sup>6</sup> M. Makkot 1:11.

<sup>7</sup> For more on the concept of *tzelem Elohim*, see Yair Lorberbaum, *Tzelem Elohim: Halakhah Va-aggadah* (Jerusalem: Schocken, 2004). Much has been written on capital punishment in Judaism. See, for example, Beth A. Berkowitz, *Execution and Invention: Death Penalty Discourse in Early Rabbinic and Christian Cultures* (New York: Oxford University Press, 2006).

<sup>8</sup> For more on the institution of the *kippah*, see Jacobs, *There Shall Be No Needy*, pp. 204–208.

<sup>9</sup> *Ibid.*, pp. 28–34.

<sup>10</sup> For more on this, see Menahem Lorberbaum, “*Tikkun Olam Al-Pi Ha-rambam: Iyyun B'takliyyot Ha-halakhah*,” *Tarbiz* 64:1 (1998), pp. 65–82.

<sup>11</sup> The Ran is Rabbeinu Nissim of Gerona (1320–1376). His comments may be found in his sermon no. 11 in *Sh'neim Asar D'rushim L'ha-rav Rabbeinu Nissim* (ed. Warsaw, 1875), p. 38a.

<sup>12</sup> Y. Sanhedrin 6:6, 23b–c.

<sup>13</sup> See, for example, *Migdal Oz* on M.T. Hilkhot Melakhim U-milḥ'moteihem 3:10.

<sup>14</sup> Radbaz is Rabbi David ben Solomon ibn Abi Zimra (c. 1479–1573); see his comment on M.T. Hilkhot Melakhim U-milḥ'moteihem 3:10.

<sup>15</sup> Lorberbaum, “*Tikkun Olam Al-Pi Ha-rambam*,” *passim*.

<sup>16</sup> *Ibid.*, p. 69, my translation. There is a difference of opinion between Lorberbaum and Gerald Blidstein regarding the relationship between *din ha-malkhut* and the ordinary system of law. Blidstein argues that the existence of the king's law is a pragmatic approach to balancing the ideal law with the needs of society, whereas Lorberbaum sees *din ha-malkhut* as a built-in system that works alongside the regular legal system. See Yaakov (Gerald) Blidstein, *Ekront M'diniyim B'mishnat Ha-rambam: Iyyunim B'mishnato Ha-yyunit* (Ramat Gan: Bar-Ilan University, 1983), pp. 118–130; Lorberbaum, “*Tikkun Olam Al-Pi Ha-rambam*,” and *idem*, *Politics and the Limits of Law: Secularizing the Political in Medieval Jewish Thought* (Stanford, CA: Stanford University, 2001), pp. 51–61.

<sup>17</sup> Lorberbaum, *Politics and the Limits of Law*, p. 59.

<sup>18</sup> *T'hukkah L'yisrael al Pi Ha-torah* (Jerusalem: Mossad HaRav Kook, 1989), pp. 76–77.

<sup>19</sup> See, for example, Daniel S. Nagin and John V. Pepper, “Deterrence and the Death Penalty” (Committee on Law and Justice at the National Research Council, April 2012), available on the website of the National Academies Press ([www.nap.edu](http://www.nap.edu)); Jeffrey Fagan, “Death and Deterrence Redux: Science, Law, and Causal Reasoning on Capital Punishment,” in *Ohio State Journal of Criminal Law* 255 (2006), pp. 6–105.

<sup>20</sup> *Mamzeir* is the technical term for the offspring of two parents who could not licitly be married, generally the product of an incestuous union or of one between a married woman and a man other than her husband; it does not refer to someone simply born out of wedlock.

<sup>21</sup> M. Gittin 4:5.

<sup>22</sup> For such a discussion, see particularly the essay of Gail Labovitz elsewhere in this volume.

<sup>23</sup> M. Sheviit 10:3.

<sup>24</sup> M. Gittin 4:3.