

Strangers, Immigrants and the Eglah Arufah

Responsibility to the Stranger

THE JEWISH TRADITION places a strong emphasis on our duties towards the stranger. The Rabbis returned repeatedly to the injunction “you shall not oppress a stranger, for you know the feelings of the stranger, having yourselves been strangers in the land of Egypt”.¹ Rabbi Samson Raphael Hirsch elaborated on this teaching, explaining that there are no preconditions for receiving basic rights other than being human:

You shall not wrong or oppress a stranger, for you were strangers in the land of Egypt.”

Here it says simply and absolutely, “for you were strangers,” your whole misfortune in Egypt was that you were strangers there. As such, according to the views of other nations, you had no right to be there, had no claim to rights of settlement, home, or property. Accordingly, you had no rights in appeal against unfair or unjust treatment. As aliens you were without any rights in Egypt, out of that grew all of your bondage and oppression, your slavery and wretchedness. Therefore beware, so runs the warning, from making rights in your own State conditional on anything other than on that simple humanity which every human being as such bears within. With any limitation in these human rights the gate is opened to the whole horror of Egyptian mishandling of human beings.²

Rabbi Hirsch went further, noting the central role of the treatment of strangers to a just society:

Twenty-four times, whenever, and in every case, where the Torah lays

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down the law concerning rights of persons and things, the “stranger in the land” is placed under the special protection of the law. The degree of justice in a land is measured, not so much by the rights accorded to the native-born inhabitants, to the rich, or people who have, at any rate, representatives or connections that look after their interests, but by what justice is meted out to the completely unprotected “stranger.” The absolute equality in the eyes of the law between the native and the foreigner forms the very basic foundation of Jewish jurisdiction.³

Sodom, the paradigmatic evil society, is said to have been cruel to guests: “They issued a proclamation in Sodom saying, ‘Everyone who strengthens the hand of the poor and the needy and the stranger with a loaf of bread shall be burnt by fire’”⁴ The main crime of Sodom was that they did not sustain the needs of the stranger passing through their midst.

There does, of course, have to be some responsible protection for citizens and there is precedence for this in Jewish history. Many Jewish communities that needed to protect themselves, in the Middle Ages, created residence permits (*chezkat hayishuv*). The *Arukh HaShulhan*, Rabbi Yechiel Michal Epstein, taught that there was no basis in Jewish law for doing this: “for in what way did the current residents obtain ownership on dwelling in that town?”, yet it was done in certain communities for self-protection. “And the reason is that Jewish settlement then was very precarious, and ruthless nations exiled them from place to place. And the more the settlement of Jews increased, the more anarchy reigned and sorrows abounded,” (*Hoshen Mishpat*, 156:12). As these communities did, it is correct to protect one’s people in difficult times with appropriate immigration rules and regulations.

We Are All Strangers . . .

We learn that the stranger is not just the other. We are all strangers. “The land shall not be sold in perpetuity, for the land is mine; for you are foreigners and temporary dwellers with Me.”⁵ Not only were the Jewish people considered strangers; before God, all humans are like strangers: “For we are like foreigners before You, and like temporary dwellers, as were all of our forefathers—our days on earth are like a shadow, and there is no hope.”⁶ Further, we learn in the books of Psalms, “Hear my prayer, God, give ear to my outcry, be not mute to my tears; for I am a foreigner with You, a temporary dweller like all my forefathers.”⁷

There is a striking Midrash about how being human means there is no place on Earth that we do not belong:

God gathered the dust [of the first human] from the four corners of the world—red, black, white and green. Red is the blood, black is the innards and green for the body. Why from the four corners of the earth? So that if one comes from the east to the west and arrives at the end of his life as he nears departing from the world, it will not be said to him, “This land is not the dust of your body, it is of mine. Go back to where you were created”. Rather, every place that a person walks, from there he was created and from there she will return.⁸

To Feel Like a Stranger

Abraham was the first Jewish hero, willing to journey beyond his home for a higher purpose: “The Lord said to Abraham, ‘Go forth from your native land and from your father’s house to the land that I will show you’”.⁹ Rabbi Joseph Soloveitchik explains the nature of the unique heroism of the stranger:

Bondage to man excludes Divine friendship. The beloved must tear down all the social and political barriers that fence in the individual and imprison his initiative and liberty. The charismatic person is anarchic, liberty-loving; he frees himself from all the fixed formulas and rhythms of an urbanized civilization and joins a fluid, careless, roving nomad society. An ancient Egyptian document describes the nomads as follows: ‘Here is the miserable stranger. . . . He does not dwell in the same spot; his feet are always wandering. From times of Horus he battles, he does not conquer, and is not conquered’. The stranger is indomitable; he may lose a battle, yet had never lost a war. He will never reconcile with political subjection. Roaming, wandering, he will escape persecution and oppression. When the need arises, the nomad stands up and fights for his freedom and many a time proves superior in battle to the settled king. Abraham’s heroism on the battlefield is the best illustration.¹⁰

The Rabbis teach, “He who has not made good in one place and fails to move and try his luck in some other place has only himself to complain about”.¹¹ We should be slow to judge harshly those who leave all they have known to make a better life for themselves and their families, even though we cannot condone breaking the law. “Do not judge your fellow human until you stand in his place”.¹²

These words should resonate with us, as we consider the case of undocumented immigrants trying to make their way to and in the United States.

Immigration in America: The Historical Record

At its best, America has recognized that we are all strangers, and has prided itself on being a “Nation of Immigrants.” Our country has prospered as a gathering point for those who dared to leave their settled environments, and who became strangers in a new land to search for liberty and opportunity. In the 1630s, more than 20,000 Puritans left their native England to join the new Massachusetts Bay Colony. After a century of religious persecution from English monarchs, the Puritans welcomed a unique and unprecedented feature of the Massachusetts Charter: the absence of outside control from England. This allowed New England colonists the opportunity to form their own society and to combine monarchical rule with representative government, arguably forming the basis for American democracy.

After America gained independence, immigrants continued to make profound contributions toward the country’s economy. One might even say that America was made by immigrants. Charles Hirschman, a sociologist at the University of Washington, expounds on the benefits of immigration:

During the middle decades of the 19th century, immigrants from Germany and Scandinavia played a major role in settling the frontier. Irish immigrants worked as laborers in cities and were the major source of labor in the construction of transportation networks, including canals, railroads, and roads...immigrants have also played an important role in the transition to an urban industrial economy in the late 19th and early 20th centuries. Immigrant workers have always been over-represented in skilled trades, mining, and as peddlers, merchants, and laborers in urban areas.¹³

The Shameful History of American Xenophobia

Unfortunately, despite the many contributions of immigrants to American society, they have time and again encountered irrational hostility from existing citizens. Immigrants from German lands were derided by Benjamin Franklin, who regarded them as strangers because they spoke German instead of English: “Why should the *Palatine Boors* be suffered to swarm into our settlements and by herding together establish their Language and Manners to the Exclusion of ours?” Irish Catholic and Jewish immigrants encountered hostility because of religious differences. One nativist party advocated exclusionary policies against Irish immigrants, in order “to resist the insidious policy of the Church of Rome and all other foreign influence.”

In 1924, nativists helped pass an Immigration Act that made Jewish immigration to America almost impossible. During hearings on the Act, reli-

gious Jewish neighborhoods of the Lower East Side were cited as a primary example of “failed” immigration. The main historical legacy of this act is that Jewish refugees fleeing Hitler were barred entry to the United States. We can only imagine how different things might be today if the American government had heeded the maxim of the *Yalkut Shimoni* that “every place that a person walks, from there he was created and from there she will return.”

Contrary to popular perception, President Obama stepped up the detention of undocumented immigrants during his first term. In 2011, U.S. Immigration and Customs Enforcement removed nearly 400,000 undocumented immigrants from the country, and nearly 55% were convicted of felonies or misdemeanors; in 2012, ICE detained 410,000 undocumented immigrants. However, on January 29, 2013, President Obama acknowledged that this situation should not continue. He proposed a legal procedure by which undocumented Americans could register and, once passing a background check, gain provisional legal status, and eventually permanent resident status and citizenship. The one potential hold-up is border security issues: Republican leaders may insist that the borders be absolutely secure before implementing the policy, while the President wants to implement the procedure earlier.

Oddly, this is occurring at a time when immigration to the U.S. is decreasing. The Pew Hispanic Center announced in April 2012 that the net migration from Mexico to the United States has stopped and possibly even reversed. They note that from 2005 to 2010, about 1.4 million Mexicans immigrated to the United States while the same number of Mexican immigrants and their U.S.-born children moved from the United States to Mexico. Asians, not Latinos, are now actually the largest group of new arrivals in the United States.

While there is mostly speculation on the effect of undocumented Americans on employment, it has been shown that more than 50 percent of them pay taxes. As with other Americans, they pay sales tax (for a total of more than \$8 billion annually). In addition, in 2007 they and their employers were responsible for an estimated \$11.2 billion in Social Security and \$2.6 billion in Medicare contributions, in addition to other taxes and unemployment insurance payments. Since these workers use fake identification to obtain work, they can never receive unemployment insurance, Social Security, or Medicare, so they actually pay into our system without receiving benefits from it. In 2006, when Texas conducted the first comprehensive economic review of the impact of undocumented Americans, it was discovered that while these Americans produced \$1.58 billion of revenue, they only

received \$1.16 billion in state services, so Texas made \$462 million in profit from undocumented Texans.

Critics of immigration reform have used outlandish and false statements to justify their positions, echoing the bigotry against Italian and Jewish immigrants a century ago. Arizona Governor Jan Brewer said this in 2010: "The majority of the illegal trespassers that are coming into the state of Arizona are under the direction and control of organized drug cartels and they are bringing drugs in." On January 29, 2013, the influential conservative radio pundit Rush Limbaugh made this outrageous statement concerning Hispanic immigrants: "I've seen . . . research data which says that a vast majority of arriving immigrants today come here because they believe that government is the source of prosperity, and that's what they support."

No one has ever presented credible evidence to back either of these false claims. Most of these undocumented immigrants are from Mexico (59%, 6.8 million) and are fleeing poverty back home, yet most still live in poverty and insecurity here. About three million live in California and about 2 million in Texas, close to the border. Their life in the homeland they are fleeing is one of pain and sorrow and they must leave behind their families and all they know to try to survive. Their stories are tragic; at "My Immigration Story," you can read their stories of anxiety over coming to the United States at an early age, but still subject to being deported to a country they never knew; of trying to comply with, and work within, the legal framework but being stymied by decades of bureaucratic foot-dragging; of relatives separated by a border, of loved ones' burial places that cannot be visited.

Immigration in America Today

In the current age of globalization, we have opened our borders to international trade and finance, but restricted the entry of immigrants to the United States, especially from Latin America. Between 1970-2000, international financial investment has doubled as a percentage of U.S. output, and merchandise exports have nearly tripled. During this same period, the number of undocumented immigrants increased from fewer than 1 million to 8 million. Many immigrants entered the United States legally and became naturalized citizens.

Immigration has positive and negative effects on the economy. On the one hand, immigrants have expanded the wealth of the typical American. James Smith of the Rand Institute estimates that immigrants have increased total American output by \$10 billion a year. On the other hand, immigration

can drive down wages, especially for manual workers. Pia M. Orrenius and Madeline Zavodny, two researchers at the Federal Reserve, found that annual wages of low-skilled workers dropped 2.3% due to immigration. While immigrants use social services, they also pay taxes. Multiple studies have found that immigration actually creates jobs for Americans.

However, regardless of the economic effects of economic immigrants, we should recognize that their presence in the United States is a natural consequence of globalization. As George Hansen explains in a Council on Foreign Relations report, rising economic immigration is directly related to globalization: “During the past twenty years, Mexico has experienced several severe economic contractions, with emigration from the country spiking in the aftermath of each downturn. In terms of the economic benefits, this is exactly when one would want workers to move—when their labor productivity in the United States is highest relative to their labor productivity at home”.¹⁴

If we want to experience the benefits of globalization, we must also be willing to accept the entry of immigrants seeking economic opportunity. Yet American immigration policy allows no way for these economic migrants to enter the country legally, as Hansen explains: “Long queues for U.S. green cards mean there is little way for legal permanent immigration to respond to such changes in international economic conditions.”¹⁵ Because economic migration to the United States is closely connected to international trade and investment flows, restrictive government policies have failed to stop immigration from Latin America. All these policies have done is force economic immigrants to accept an undocumented status, to enter into situations of vulnerability, and, at times, to face mortal danger.

Immigration Raids: Destroying Communities

Immigration raids are a prime example of the dangers faced by undocumented immigrants. Since 2005, federal authorities have conducted large-scale raids of worksites suspected of employing undocumented immigrants. Tens of thousands of undocumented immigrants have been arrested as a result of these raids. These immigrants were not gangsters or criminals; they generally had no prior criminal history, and many had lived peaceably in the country for years. However, because immigration raids have occurred across the country, without warning, they have created a sense of fear among the entire immigrant population.

Sociologist Saskia Sassen has referred to long-term undocumented residents as “unauthorized yet recognized”: “Undocumented immigrants’ daily practices in their community—raising a family, schooling children, holding

a job—over time can earn them citizenship claims in just about all developed countries, including the United States. There are dimensions of citizenship, such as strong community ties and participation in civic activities that are enacted informally through these practices”.¹⁶ The recent spate of immigration raids has undermined this informal contract, sending a message that even if immigrants make years of contributions to the community, their good standing can disappear in a moment.

This message, in turn, undermines community, and for evidence we need not look far from home. In 2008, federal authorities conducted an immigration raid on the Agriprocessors meat processing plant in Iowa. The raid served an important purpose, as employees in the plant reported shocking stories of workplace abuse. But this abuse would have been reported sooner if workers had not feared deportation. Further, the raid caused untold damage to the Postville community, where the plant was based. Overnight, businesses closed down and hundreds of homes were abandoned. Many undocumented residents of Postville, who had lived in the town for years, fled in fear of capture, and were replaced by temporary workers who were less invested in the community. Four years later, Postville has yet to fully recover from the loss. The story of Postville has been repeated in towns and establishments across the nation. Undocumented immigrants who are recognized as productive members of the community—parents, talented scholars, and civic activists—are finding their community status erased after one encounter with police, and American society is the poorer for it.

Death at the Border: “Operation Gatekeeper”

The most notorious American immigration policy of recent years is “Operation Gatekeeper,” enacted in 1994 by the Clinton Administration. This ongoing policy has deployed troops, border fences, and surveillance near major population centers in an effort to deter economic migrants from crossing the U.S.-Mexico border. The policy has failed to slow immigration—between 2000-2008, the estimated undocumented population increased from 8 million to 12 million—but by forcing economic migrants to take more dangerous routes, Operation Gatekeeper has had tragic consequences. Between 1994 and 2009, at least 3,861 immigrants have lost their lives attempting to enter the United States from Mexico. While immigrant deaths occurred before Operation Gatekeeper, the Center for Immigrant Research has noted a marked increase in the number of deaths since 1994.

Some immigration opponents claim that high U.S.-Mexico border surveillance is needed for national security. While we must ensure terrorists do

not enter our country, mass migration from Latin America has historically not been a security risk. The Foreign Military Studies Office stated in 2002 that although there is frequent smuggling from Mexico, “no apparent link exists between the international smugglers and any terrorist organization.”¹⁷ In fact, the Office identified America’s northern neighbor Canada as a more likely base for terrorists to sneak in. We can prevent terrorist infiltration by working together with the Mexican government, just as we work with the Canadian government. There is no need for policies that place immigrants seeking economic opportunity in life-threatening situations.

The immigrant exists in a liminal space similar to what French psychoanalyst Jacques Lacan called the *nebenmensch*, the other who is both different and similar. The immigrant is the post-modern hero who transcends boundaries, defying categorization or clear belonging or labeling, calling upon others to respond to her social ambiguity. What should be the Jewish response to the vulnerability of undocumented immigrants? I suggest that it should incorporate the ethos of the *eglah arufah*.

Eglah Arufah and Collective Responsibility

In some fashion, this ritual can be revived. Modeled off of the *eglah arufah* ceremony, in February 2012, the Israeli Tzohar Association of Rabbis gathered to pray alongside the highway, on the spot where a female soldier was killed in a hit-and-run. The Torah’s case of the *eglah arufah* involves a corpse that is discovered between two settlements when no one knows who the murderer is. The priests and the elders of the nearest towns lead a unique ceremony and declare, “Our hands have not spilled this blood”.¹⁸

The 15th-century Portuguese Jewish philosopher Abravanel explains that the goal of the ritual is to jolt the residents from their normal routines to respond and take responsibility for the heinous crime that occurred. When murder occurs, life cannot go on as usual, as Nechama Leibowitz describes: “responsibility for wrongdoing does not only lie with the perpetrator himself and even with the accessory. Lack of proper care and attention are also criminal. Whoever keeps to his own quiet corner and refuses to have anything to do with the ‘evil world’, who observes oppression and violence and does not stir a finger in protest cannot proclaim with a clear conscience that, ‘Our hands have not shed this blood.’”¹⁹

The Gemara says that the leaders are responsible, since they failed to provide this wanderer with food and escort.²⁰ The 16th-century Jewish thinker, the Maharal of Prague, explains that the poor wanderer was hungry and was killed while trying to steal food. Even though the victim died while

committing an illegal act, the leaders who failed to feed him are responsible. Even though the town's leaders did not do any direct harm, they are held responsible for the death.

Just as the wanderer who was commemorated through the *eglah arufah* broke the law, so too undocumented immigrants today break the law. Nevertheless, the leaders who turn a blind eye to their needs are responsible for their suffering. In the case in Deuteronomy, the individual was guilty of theft, a sin condemned very strongly by Jewish law. Rav Ahron Soloveichik writes: "We assume that the person was starving and attempted an armed robbery in order to obtain food".²¹ This is all the more true with someone crossing international borders without documentation which is not an act condemned by Jewish law, and although we are bound by the law of the land, there is no reason why we should take less responsibility than in the case of the *eglah arufah*.

The idea that leaders are accountable for their generation is prevalent in Jewish thought. "As long as one is but an ordinary scholar, he has no concern with the congregation and is not punished [for its lapses], but as soon as he is appointed head and dons the cloak [of leadership], he must no longer say: 'I live for my own benefit, I care not about the congregation,' but the whole burden of the community is on his shoulders. If he sees a man causing suffering to another, or transgressing, and does not prevent him, then he is held punishable".²²

Once we accept the role of moral leadership, we are truly accountable for our community. But the Rabbis teach us that societal accountability is not granted solely to those who have been granted formal authority, but to all those of learning. "If a person of learning participates in public affairs and serves as judge or arbiter, he gives stability to the land. . . . But if he sits in his home and says to himself, 'What have the affairs of society to do with me? . . . Why should I trouble myself with the people's voices of protest? Let my soul dwell in peace!'—if he does this, he overthrows the world".²³ Responsibility does not just apply to the scholar. The Rabbis confirm that this responsibility is upon all of us. "Everyone who can protest the sin of his household and does not, is responsible for the people of his household; for the people of his city, he is responsible for the people of his city; for the whole world, he is responsible for the whole world".²⁴ There are many different ways to take responsibility and to fulfill the commandment, "You shall not stand idly by the blood of your neighbor!".²⁵ The world continues to exist because humans are responsible agents. When we give up our ability to hear the voices of protest and the cry of the sufferer, we bring the world to ruin.

In modern times, Rabbi Abraham Joshua Heschel explained it well in his 1971 “A Prayer for Peace”: “O Lord, we confess our sins; we are ashamed of the inadequacy of our anguish, of how faint and slight is our mercy. We are a generation that has lost its capacity for outrage. We must continue to remind ourselves that in a free society all are involved in what some are doing. Some are guilty, all are responsible.” We are not culpable for the deaths and the abuses of the immigrants in our country, but we are certainly responsible to change the situation.

The mitzvah of *eglah arufah* today must go beyond *leviyat orhim* (a few symbolic courtesy steps to walk our guests out from our homes). Most of us cannot relate to the fear that undocumented workers feel in America today. We have undocumented residents dying alongside the Mexican border, being detained by the U.S. Immigration and Customs Enforcement, and waiting in vain for adequate healthcare. More than 200 individuals die each year trying to cross the Mexico-United States border, and many of the survivors are sexually assaulted or abused on the way. The blood of these *gerim* (strangers) within our midst may be on all our hands.

In the spirit of the elders of the community who would “speak up and say: ‘Our hands have not spilled this blood.’” We should work to ensure that undocumented immigrants are treated fairly in our communities, restaurants and neighborhoods. Now is the time for the American Jewish community to speak up, and address the plight of strangers in our midst. Then, even if others are complicit in the neglect and marginalization of undocumented immigrants, we will at least be able to say, “Our hands have not spilled this blood.”²⁶

NOTES

1. Exodus 22:20
2. Samson Raphael Hirsch, *The Pentateuch: Translated and explained by Samson Raphael Hirsch, rendered into English by Isaac Levy* (Gateshead, 1999), ad loc.
3. Hirsch, (commentary on Exodus 1:14).
4. *Pirkei D’Rabbi Eliezer* 25.
5. Leviticus 25:23.
6. Chronicles 1:29:15.
7. Psalms 39:13.
8. *Yalkut Shimoni*, Genesis 1:13.
9. Genesis 12:1.
10. Joseph B. Soloveitchik, *The Emergence of Ethical Man*, ed. Michael S. Berger (New York 2005), 153.
11. Babylonian Talmud, *Bava Metsia* 75b.
12. *Avot* 2:4.

13. Charles Hirschman, "The Impact of Immigration on American Society: Looking Backward to the Future" (Washington, D.C.), http://www.soc.washington.edu/users/charles/pubs/Immigration_and_Future.pdf.
14. George Hansen, *The Economic Logic of Illegal Immigration* (New York 2007), 15-16.
15. Ibid.
16. Saskia Sassen, *Territory, Authority, Rights* (Princeton 2006), 294.
17. Glenn E. Curtis, John N. Gibbs, and Ramon Miro, *Nations Hospitable to Organized Crime and Terrorism: A Report Prepared under an Interagency Agreement by the Federal Research Division, Library of Congress, October 2003*. Excerpted in *Trends in Organized Crime*, 8:1 (Fall 2004), 5-23, 20.
18. Deuteronomy 21:7.
19. Nechama Leibowitz, *Studies in Devarim* (Jerusalem 1980), 207-8.
20. Babylonian Talmud, *Sotah* 38b.
21. Ahron Soloveichik, *Logic of the Heart Logic of the Mind* (Jerusalem 1991), 175.
22. *Shemot Rabba* 27:9.
23. *Midrash Tanhuma, Mishpatim* 2.
24. Babylonian Talmud, *Shabbat* 54b.
25. Leviticus 19:16.
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