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WHEN ONE MUST, AND WHEN ONE MUST NOT, LOOK AWAY

by Rabbi Aryeh Klapper

Dear Rabbi Klapper,

The US Defense Department recently announced plans to livestream the execution-by-firing-squad of Major Nidal Hasan. On November 5, 2009, at Fort Hood, Hasan shot and killed 13 people, including 12 unarmed US soldiers and 1 civilian, and wounded many others.

President Trump has now disavowed this specific plan. But the issue may reemerge. For the record, do you think Jews are required, encouraged, permitted, discouraged, or forbidden to watch such a livestream? Does your answer depend on whether you are opposed to the death penalty in this and other cases?

Sincerely,
Michel F.

Dear Michel,

Most condemnations of the livestreaming plan have used "medieval" as an epithet. But for Orthodox Jews, medieval, or "rishonic", can be a compliment. Our reverence for Rashi, Rambam, and so forth inoculates us to some limited extent against kneejerk progressivism. The fact that we haven't seen something done recently isn't evidence that it may not be done.

And yet, when I read your question, my thoughts turned immediately to a class I taught years ago in a pluralistic high school. An exhibit of preserved and posed skinless human cadavers was being heavily advertised, and earning critical praise for both its artistry and its conveyance of anatomical knowledge. I asked my students whether this exhibit was in accord with Jewish values; I had a visceral sense that it was not, and had thoughts of a class trip to picket the exhibit.

Only the Orthodox students shared my intuition. They raised issues such as *tzeniu* (bodies without skins!), the obligation of burial, and the prohibition of benefiting from the dead (even though visual benefit is generally not considered a violation). I think these were attempts to formalize intuition rather than intellectual sources of discomfort.

Livestreaming an execution seems to trigger a similar intuition, but the dividing line is not Orthodoxy or halakhah. I suspect that the difference is that the exhibit's subject was dead bodies, while the livestream's subject is death, specifically violent death. More sharply, my discomfort at the exhibition was not

about me – yes, I am squeamish, but that would be a motive to avoid the exhibit, not to picket it – but rather about the treatment of the bodies, whereas I think what disquiets me and many others about the potential livestream is that it makes us confront the killing.

Let's look at this distinction via Devarim 21:22-23, which obligates us to bury executed criminals, from which the obligation to bury everyone else is derived *kal vachomer*.

Should a man be convicted of a capital crime and executed
you must hang him up on a pole.

You must not leave his corpse up on the pole
rather you must certainly bury it that same day
because the curse of Elo'im is hung up
and you will not pollute your ground which Hashem your G-d is
giving you as homestead.

This verse commands the display of the executed body (*you must hang him*), and also forbids it (*you must not leave his corpse*). Sanhedrin 46b accordingly requires the execution to take place just before sunset, allowing the body to be displayed for only an instant before it must be taken down. I suggest that this publicizes the death while minimally exposing the body.

As Deborah Klapper¹ noted in a Facebook discussion of this issue, secret executions are almost certainly worse than public ones. Preventing people from verifying whether a person has been executed is a mechanism of terror, the stuff of evil, paranoid totalitarianism. Deborah's position may be anticipated by Rav Saadia Gaon to Bereishit 9:6. His fifth alternate/complementary translation of שֹׁפֵךְ דָּם הָאָדָם בְּאָדָם דָּמוֹ יִשָּׁפַךְ = *the shedder of human blood/ba'adam shall his blood be shed* is

בָּאָדָם = בגלוי, בין אנשים, שלא יהרגהו בסתר.
ba'adam = openly, that one must not kill him in secret.

Another rationale for publicizing executions emerges from the position of Rabbi Natan, cited in a beraita on Talmud Avodah Zarah 18b.

We ought not go to *itztadinin* because it is a *seating of unserious people*

Rabbi Natan permits because of two things

¹ What I actually said/meant was that, like everything else in the prison system, the fact that the average citizen can't see what is happening allows abuses of power and suffering that would never be tolerated if people were watching. – The Real Deborah Klapper

One – that he can scream and save (a potential executee)

Two – that he can testify to allow a widow's remarriage

Let's assume that *itzadinin* are stadiums for bloody contests involving humans and animals, that sometimes also function as legal penalties for the humans, who can sometimes be pardoned by authorities present at the spectacles.

Rabbi Natan gives practical grounds for his position. First, we are better off knowing who is to be killed (so that we can protest). I submit that this is true about patterns and not just about specific cases. Second, we are better off knowing with certainty who has been killed (so that the mourners can go on with their lives). It would be selfish for a potential witness to look away (and when it comes to freeing widows, halakhah vacates its ordinary rules about who can be a witness.) Consider also here the cruelty of Hamas regarding the hostages.

The efficient solution for freeing widows would have been for the Jewish community to buy tickets for exactly two valid witnesses to be present each day in the *itzadinin*. That would also remove the plight of widows as an excuse for anyone else to attend. But successful life-saving intercession might require a more robust number of supporters, and might be done more effectively by people who feel at home in the stands and have preexisting relationships with the authorities. So there might be a conflict between moral self-maintenance and communal interest. Consider here the question of who needs to watch the film of October 7 atrocities.

Or R. Natan pragmatically thought that the decree would not affect attendance. Since people would go anyway, he thought it better to provide positive purposes for what they would do anyway. On that precedent, I should try here to provide positive motives for watching, rather than addressing whether to watch.

By contrast, the anonymous first position offers a moralistic basis for its position – one should avoid the *itzadinin* because of the *letzim*, the *unserious people* who congregate there, because they will be bad influences, or simply because time spent with them is necessarily not spent studying Torah. I see this as a strong reason to oppose any display of the execution on communal screens, for example in bars, since just about everyone has access to a private screen.

However, the *moshav letzim* explanation for the anonymous first position appears only in the printed editions of the Bavli. The four manuscripts available on the Friedberg Jewish Manuscript site, as well as the first edition of the *Ein Yaakov* and the commentary of Rabbeinu Chananel, have some variant of

מפני שהם (חשודין על) שפיכות דמים

because they are (suspected of being) bloodshedders.

Here the issue seems to be *מחזק ידי עוברי עבירה* = strengthening the hands of sinners, i.e. giving them the impression that you

support their misdeeds, or else *חזק* = giving third parties the impression that you support these misdeeds.

This brings us to your question about the death penalty. Does watching the execution make us complicit in it?

I follow what I understand as Rav Aharon Soloveitchik's rationale for opposing it in the United States. Stated syllogistically:

A. The death penalty in a secular system is justified only as a deterrent. Execution of murderers is murder unless it can reasonably be expected to save more lives than it takes.

B. Deterrence must be balanced against the risk of judicial error/accidental homicide.

C. In the United States, the death penalty is not a sufficient deterrent to justify that risk, because we have alternative punishments that are almost as effective at deterrence, and we could not change that without significantly lowering the standard or evidence and procedure necessary for execution and thereby unacceptably increasing the risk of error.

I have no reasonable doubt that Major Hasan is guilty of mass murder. But I also don't think that executing him is likely deter anyone considering a similar action G-d-forbid. So I am concerned that if it were known that I watched the livestream, people would conclude that I supported the execution. However, anyone who honestly and on a reasonable basis believes that this execution will be a significant deterrent can make their own halakhic judgment accordingly.

I think there is at least one more important issue. My moral hackles were raised by the exhibit because it was for-profit, even if it didn't formally violate the prohibition against deriving benefit from the dead. I suggest that this sense of moral violation applies to political as well as financial benefit.

So here's how I would put it – if you believe that the United States is at risk of further treasonous murders by its own soldiers, and that this risk will be significantly mitigated by the livestreaming of Major Hasan's execution – then you are entitled to watch it, and to encourage others to watch it. But if you think that the motive for this livestreaming is political advantage, pandering to a sense of revenge, or for that matter if you believe the same deterrent effect could be achieved by other means that smack less of voyeuristic entertainment values – then you should be leery of associating yourself with the crowds and authorities of the *itzadinin*. At the same time, you must be very careful not to in any way suggest or enable the possibility of an execution that is not publicly known, fully accountable for its details, and absolutely verifiable in its outcome.

Thank you again for raising the question, although I'm very glad it seems not to be immediately practical.

With all best wishes,

Aryeh Klapper