

Stop and Frisk: A Jewish Perspective

As many New York City religious leaders, of all faiths and ethnic backgrounds, I am increasingly concerned with the stop and frisk policy of the New York Police Department. The policy has been dramatically expanded over the last decade in an effort to prevent crime. According to Police Department statistics, in 2011 there were 685,724 street stops—compared to about 100,000 ten years ago—although not all led to frisks. The disproportionate targeting of African-American and Hispanic individuals (85% of those stopped) suggests that race as well as reasonable suspicion is a factor in the decision to stop and frisk. The strong opposition of community leaders in high crime precincts, who supposedly benefit from this policy, raises more questions.

Judge Shira Scheindlin of Federal District Court in New York (and a Kane Street Synagogue member) recently issued a ruling strongly critical of the stop and frisk tactic, and granted class action status to a lawsuit challenging the Police Department. Days later, Police Commissioner Raymond Kelly announced measures to curtail abuses, including a renewed emphasis on existing departmental guidelines banning racial profiling, review of the curriculum taught about street stops and greater scrutiny of police work sheets completed after street stops.

As with all moral issues, personal and social, I view these realities through my “Jewish lens.” I weigh the facts not only as a New Yorker and an American citizen but also as a Rabbi and Jew whose personal and political judgments are guided by the values of Torah. This does not mean that Jewish ethics here or in any other matter clearly mandate one particular legislation or policy or party. Torah, Halacha (Jewish law), Mussar (Jewish ethics) and our Jewish historical experience do not tell us unequivocally whether to support or protest troop deployments in Afghanistan, or advocate for or against Obamacare, or vote Democrat or Republican. However, they do provide a context and foundation for moral deliberation. I “hear with a Jewish ear.”

What do I hear in the debate about stop and frisk? What values and lessons from Jewish history are relevant? Firstly, let us consider the basic values and concepts at stake. Judaism traditionally has a great regard for protecting personal privacy, not just as a practical matter but also for religious reasons. The Mishna (Sanhedrin 4:5) roots our individuality in our G-dliness because G-d in His creation (as opposed to human beings in their manufacture) created each human being with absolute and inviolable uniqueness. Privacy protects our G-d given individuality by guaranteeing our ability to keep most of our actions and most of our thoughts from public scrutiny and judgments. By protecting personal privacy, we safeguard the image of G-d in which we were created. Absent urgent, overriding imperatives, there is no justification for intruding into the physical or psychological space of another person.

Still, the right of privacy may be set aside when there is strong evidence that sharing information or some other intrusion may be necessary to protect other individuals or society. So, the Torah rules that a Jew must testify in court if he knows of any facts relevant to a case. In their ongoing expansion of the Biblical command, “do not stand idly by the blood of your neighbor” (Leviticus 19:16), the Talmudic Rabbis understood that Mitzvah to include not just positive rescue but also disclosing information necessary to protect others (Babylonian Talmud, Sanhedrin 73a). Therefore, and despite their anxiety about gossip and slander, the Rabbis permitted, indeed required sharing negative information about another (e.g. devious business practices) in order to avoid potential harm, physical or monetary to other people. This is also a telling example of Judaism’s essentially communitarian ethos, as compared to the American emphasis on individual rights. At times, concern for the community can outweigh the Jewish insistence on privacy. In Jewish law the evidentiary rules for proving a capital offense are very rigorous, so exacting that the Rabbis in the Talmud observe that capital punishment was almost never meted out. Still, Maimonides argued that some crimes so threaten the basic existence of the community that evidentiary rules may be weakened or waived.

In his law book, Mishneh Torah (Laws of Idolatry 5:3), Maimonides discusses the treatment of a man suspected of being a mesit or “seducer”, one who has enticed the majority of a Jewish community to idol worship. To bring him to justice,

Maimonides rules, the court may set aside normal restraints, including the requirement to warn the culprit before he commits the act, the prohibition of entrapment, and the plea for clemency. A person's privacy may be invaded if the basic life of the community is threatened. For the sake of our discussion of stop and frisk, we should note that in order to justify these exemptions, the case first had to be demonstrated to a court. The burden of proof, in other words, rests with the government to show why it must intrude upon people's privacy, and the final decision rests with an independent judicial overseer.

The individual, according to Torah, is created in the image of G-d. The society the Torah addressed was meant to be a "kingdom of priests and a holy nation". The rights of one party might be waived for the other, but only exceptionally, for compelling reasons and with judicial approval.

Shalom Uv'racha,
Rabbi Weintraub