

A Handbook for Jewish Communities Fighting
M A S S I N C A R C E R A T I O N

Edited by Rabbi Lev Meirowitz Nelson



Table of Contents

Introduction	3	Jewish Resources	95
Acknowledgements	3	GENERAL RESOURCES	95
Mass Incarceration: A Complicated and Dangerous System	4	Introduction	95
Why Jews Should Care About Mass Incarceration	5	Opportunities to Speak About Mass Incarceration Throughout the Jewish Year	96
Overview of Mass Incarceration	7	High Holiday Sermon Sparks	97
Basic Statistics	8	Lines from the Liturgy: Praying for an End to Mass Incarceration	98
A Brief History of T'ruah's Work on Mass Incarceration	9	POLICING AND RACIAL INJUSTICE	100
Definitions and Language Use	10	Police in Jewish Law: A Brief Overview	100
Race, Incarceration, and Racial Disparities	13	Text study: Policing in Jewish Law	102
International Comparisons	16	Text study: A Plan Devised Against Them - Oppression and Justice, Then and Now	108
Bipartisan Reform	17	INCARCERATION	110
Timeline of the Rise of the Modern American Prison System	18	Incarceration in Jewish Law	110
Before Incarceration	21	Text study: Jews Incarcerating Other Jews What Can We Learn?	113
Policing	21	Text study: Cities of Refuge	117
Drug War	27	Holding a Vision of Freedom	123
Militarization of Police	31	Poem: Joseph's Solitary Confinement	125
Civil Forfeiture	34	Text study: Jonah and Solitary Confinement	126
Poverty and Mass Incarceration	35	What Jonah Teaches Us About Repentance	130
People Convicted of Violent, Nonviolent, and Sex Offenses	39	TESHUVAH: RETURN	131
School to Prison Pipeline	42	Text study: The <i>Metzora</i> as a Model for Reentry	131
Restorative Justice and Victims' Rights	44	Using <i>Birkat HaGomel</i> as a Ritual of Reentry and Reconciliation	134
Mandatory Minimums	46	Crime Victims' Needs and Restorative Justice: Three Perspectives	137
Prosecutors and Plea	48	Text study: Victims and Perpetrators - <i>Teshuvah</i> and Restorative Justice	142
During Incarceration	50	Text study: Justice Among Brothers	147
Overcrowding, State Budgets, and the Rise of Private Prisons	50	CLOSING THOUGHTS	149
Private Prisons	53	Two Final Lessons The U.S. Could Learn from Jewish Criminal Law	149
Jails	55	Lesson Plan: Change the Conversation About Justice	150
Special Populations: Women, Youth, LGBT People, and People with Mental Illness	57	Take Action	154
Prison Labor	67		
Prison Rape	69		
Solitary Confinement	71		
Immigration Prisons: Operating in the Shadows	75		
Life without the Possibility of Parole	78		
The Families of the Incarcerated	80		
Outside the Prison Walls: Prison Towns	81		
After Incarceration	82		
Barriers to Reentry	82		
Parole	87		
Recidivism: A Slippery Problem	88		
Reentry Programs: What Works and What Doesn't	90		
Summing Up	93		

Acknowledgements

What is forgiveness? It is a reckoning with what has happened, so that the person who is harmed feels healed and that those who caused the harm are held accountable. For we who have strayed, it is a process of making right and contending with the harm we have done. As Jews, we struggle—especially on the High Holidays — with making whole that which we have broken. We begin Yom Kippur with the declaration after we recite *Kol Nidrei: VaYomer Adonai, Salakhti kidivarecha*, And God said, I have forgiven you as I said I would. Faced with the choice between justice and mercy, God chooses mercy for us every year, no matter how we have strayed. And in our interactions with our fellow human beings, we mirror God’s choice: we have an obligation to forgive others. An obligation to be merciful.

The United States today faces a deficit of *rachamim*, mercy. Our system of mass incarceration is deeply punitive (with no emphasis on rehabilitation), violent, and racially biased at its core. We have chosen strict justice, leaving families torn apart and communities decimated. Our system of justice is failing so many of us, and so we have an obligation to speak out in favor of mercy and of change. Now is a critical time for us to demand *rachamim* from the country we live in. We are obligated to speak about what is going wrong with our prison system and collectively pledge to take action to make it right.

In pursuit of this goal, T’ruah is honored to share our **Handbook for Jewish Communities Fighting Mass Incarceration**. It contains sermon sparks, Jewish sources, and critical background material on the facts and figures of the American system of mass incarceration, as well as concrete action steps for congregations and individuals. We are challenging rabbis and Jewish activists across the United States to speak out about ending mass incarceration from their pulpits, to call their public officials about pending legislation in their states, to volunteer with incarcerated persons and returning citizens, and to pursue restorative justice and healing for victims of crime.

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Thank you for joining us in the pursuit of human rights and justice,



Rabbi Rachel Kahn-Troster
 Director of Programs

Mass incarceration: A Complicated and Dangerous System

Today, the United States incarcerates more people—both per capita and total—than any other country in the world. This reality has major negative consequences for all of us. Those who are locked up do not participate in economic and communal life, and often have few options upon being released from prison. Prisons do little to help people develop life or career skills. Since prisons tend to be far away from the places that incarcerated people call home, family members often can't visit, and the relationships that would facilitate a transition back to society fray. Nor does prison end when someone is released. Parole systems, restrictions on returning citizens receiving certain public benefits (like food stamps and housing), and the stigma of admitting to jail time on a job application all conspire to prevent the formerly incarcerated from returning to normal life. Finally, prisons are expensive. We, as taxpayers, pay billions of dollars to keep people locked up, instead of investing in education and opportunity.

This deeply-entrenched situation results from a series of interlocking systems, including police practices that treat predominantly white communities differently than communities of color, the drug war, the lack of opportunity in low-income communities, the rise of for-profit prisons, and rhetoric that emphasizes being “tough on crime” and that exploits our deepest fears. Transforming this complicated system of mass incarceration will require changes in laws and

policies, conditions of imprisonment, and public opinion, as well as major improvements in educational and economic opportunity, and an unlearning of the systemic racism that pervades every aspect of our society.

Rabbi Hayyim David Halevy: Punishment of Incarceration in *Halakhah*

“By all opinions, punishment is not a goal unto itself. Rather, it is intended to return the criminal to doing right or “so that they will listen and fear”. What benefit is prison from this perspective? . . .

In addition to this, it also causes further harm after his release from prison, after he has completely cut off ties with his community—economic ties, social ties and the like—behold, he is abandoned and neglected in his community, and until he manages to reintegrate himself in the life from which he was cut off, there is serious concern that additional crimes will become his way, in the absence of any other choice. For this reason, the Torah established either banishment to the cities of refuge, or preservation of his life by his own powers, but either way, he can continue his life without disconnecting from his community.”

- *Aseh L'kha Rav* 3:57. Rabbi Halevy lived from 1924-1998 and served as Chief Sephardic Rabbi of Tel Aviv from 1973 until his death.

This all can feel overwhelming! But don't give up. We believe that together—as Jewish community members, rabbis, cantors, and professional leadership—and in partnership with other faith communities, community groups, legal organizations, and the incarcerated and formerly incarcerated themselves, we can begin to make significant change in this system. Thank you for taking a step toward being part of this transformation.

Part I of this handbook gives background on some of the major issues that we encounter when we talk about issues like prisons or the police. This is the place

to turn to understand the basics at a glance, and to know where to look for more information or to find partners.

Part II offers a wealth of Jewish resources that will help you and your community learn from millennia of Jewish wisdom on how we respond to crime and to criminals, to find inspiration in the texts of our tradition, and to mobilize Jewish communities around incarceration as a Jewish issue. Part III presents suggestions for concrete ways you, your family, your friends, and your community can take action to change our system of mass incarceration.

Why Jews Should Care About Mass Incarceration

We often hear the assertion that prison is not a “Jewish” issue. Many believe that few Jews spend time in prison, and that prison only serves to keep “our community” safer. As we’ll see, these assumptions are both false and dangerous.

Here are ten reasons that prison is a Jewish issue:

1. **The Torah** begins with the assertion that human beings are created *b’tzelem Elohim*—in the image of God. Jewish law and Jewish communities have spent millennia figuring out how to create a just society that treats both perpetrator and victim as creations *b’tzelem Elohim*, and in which we can all live safely. Part II of this handbook includes some core texts about criminal justice and incarceration in Jewish law.

2. **Teshuvah, repentance**, is one of Judaism’s core principles. Jews believe that people can always repent from their mistakes and bad choices, and that society should be structured to encourage that process. Mass incarceration reform is in part about asking how our government can facilitate *teshuvah* and healing, rather than

perpetuating cycles of violence. As Mariame Kaba of Project NIA, a Chicago-based organization that aims to end youth incarceration, says, “Hurt people hurt people.”¹

3. **Jews do get arrested** and spend time in jail and prison. (There are an estimated 12-15,000 Jews incarcerated in state

and federal prisons in the US. This figure doesn’t account for those held in local jails.)² Because of the widespread narrative that Jews don’t go to prison, the incarcerated, formerly incarcerated, and their **families feel significant shame** in discussing their experiences within their Jewish communities.

4. More and more members of our Jewish communities are **Jews of color**.³ A police officer who sees a black Jewish teenager hanging out with his friends on the street does not see a Hebrew High School graduate or a Jewish camp counselor, but rather a teen of color, who automatically attracts suspicion. Even for those of us who are, ourselves, white, our extended networks include people of color

whom we care about. These include our friends, colleagues, neighbors, romantic partners, and in-laws. Given the racial inequities of our criminal justice system, people of color are more likely to be arrested, charged, and convicted, as well as to fall victim to violence by police officers.



Koach Baruch Frazier, drummer and activist in the Ferguson Movement. Photo by Samantha Pergadia, used with permission.

¹ Quoted in Schenwar, Maya. *Locked Down, Locked Out: Why Prison Doesn’t Work and How We Can Do Better*. 2014, p. 140.

² <http://forward.com/news/186868/jews-in-prison-stick-with-faith-to-cope-with-flood/>

³ Based on data from 1990-2003, Be’chol Lashon—an organization dedicated to a Judaism that is global and diverse—estimates that as much as 20% of the American Jewish community is “racially diverse.” http://www.bechollashon.org/population/counting_color/counting_color.php

5. Mass incarceration has created a **“lost generation”**⁴ — of adults missing from society and of children growing up without their parents. This has direct, immediate impacts on our national economy, as well as long-term effects on the health of our communities.

6. By playing on fears about race, class, and violence, **mass incarceration maintains divisions in our society**. This makes it harder for groups who might otherwise be natural allies to form partnerships and to work together to solve societal problems.

7. The **taxpayer dollars** that are spent on mass incarceration are diverted away from other needed public goods, such as education, healthcare, environmental protection, and social services. Instead of educating and caring for children who will grow up to be productive, healthy, and happy members of society, we are investing in incarcerating their parents and in preparing for their own incarceration.



Photo by Krystian Olszanski, Creative Commons License

8. Policing priorities and corrections and sentencing practices ironically can **diminish public safety**, rather than strengthen it. A focus on quality of life infractions (often called “broken windows” policing) takes time and resources away from solving more serious crimes. Obstacles to reentry (including barriers to employment, education, and housing) increase

the likelihood that returning citizens will commit crimes again. Some evidence suggests that incarcerating those convicted of minor crimes alongside those who have committed more serious crimes can result in these low-level perpetrators becoming “criminalized.”⁵

9. The blurring of lines between policing and fighting terrorism threatens all of our **civil liberties**.

10. Our own **Jewish history** includes experiences of being **targeted by police violence** as recently as America in the early 20th century.⁶ We have experienced surveillance and have been discriminated against for not looking white. This historical memory creates a duty to have empathy for, and to work in alliance with, the people targeted today.

⁴ <http://www.psmag.com/politics-and-law/the-children-of-the-prison-boom>

⁵ See, e.g., Gates and Camp, “Unintended consequences: experimental evidence for the criminogenic effect of prison security level placement on post-release recidivism.” *Journal of Experimental Criminology*, June 2009. <http://link.springer.com/article/10.1007%2Fs11292-009-9070-z>

⁶ See, e.g., sources cited by Rabbi Michael Rothbaum in his 2014 Rosh Hashanah sermon, “Ferguson/Fargesn.” <http://rabbicreditor.blogspot.com/2014/10/rabbi-michael-rothbaum-fergusonfargesn.html>

Overview of Mass Incarceration

When we talk about mass incarceration, we talk about a system with many interlocking components. A law, policy, or institution that seems disconnected from mass incarceration may—upon closer examination—turn out to be deeply relevant for a person caught up in the system or to his or her family.

It's helpful to think of the system in three broad sections, divided chronologically.⁷

BEFORE INCARCERATION refers to everything that happens up until a person lands behind bars. This includes:

1. Policing practices, including:
 - Decisions about which neighborhoods are patrolled heavily and which lightly;
 - Formal policies such as New York City's "Stop and Frisk" (before it was overturned) and the War on Drugs;
 - Informal policies, like how police

decide whether to arrest a teenager for possessing a small amount of marijuana or just to give a warning.

2. Judicial proceedings including:
 - When a district attorney chooses to prosecute and what kind of plea bargains and bail or pre-trial holding options might be offered;
 - Funding for public defenders or other legal assistance for indigent defendants;

- Whether youngsters are tried in juvenile or adult court;
- A judge's decision to impose a certain sentence.

3. Laws that limit a judge's discretion or require long incarcerations including:
 - Mandatory minimum sentences;
 - Drug laws;
 - Three strikes laws.

DURING INCARCERATION encompasses a person's experience from the moment s/he arrives in jail or prison to the moment s/he leaves. This includes:

- The use of solitary confinement;
- The availability of educational,

substance abuse treatment, and other rehabilitative programs;

- The treatment of juveniles;
- Provisions for how family members, especially children, can keep up relationships with their incarcerated loved ones;
- Preparation for returning to society.

Prison conditions affect not only those incarcerated, but also correction officers and other support staff who earn a living from prisons. Unsafe conditions put everyone at both physical and psychological risk.

AFTER INCARCERATION—or, in many cases, after avoiding incarceration through accepting a plea bargain—returning citizens face a host of challenges. These include:

- The denial of the right to vote in many states;
- The denial of government benefits such as food stamps and affordable housing;
- Prohibitions against living in public

housing. This may mean not being allowed to move back in with parents or other family members;

- Losing access to the medical care that the person was receiving in prison.⁸ This can have devastating consequences for people struggling with drug addictions, mental illness, or any number of chronic health issues;
- Lack of access to jobs and other opportunities, especially since

many job applications ask about past felony convictions. Many formerly incarcerated people find themselves landing right back in the circumstances that first led to incarceration;

- Strict parole rules that can lead to the re-incarceration of a person solely for failing to make an appointment or hew to other conditions of parole.

SAMPLE PARTNER ORGANIZATIONS

Several of the major civil liberties organizations have significant national and statewide campaigns related to all aspects of mass incarceration:

- Advancement Project: <http://www.advancementproject.org/pages/mission#>
- American Civil Liberties Union (ACLU): <https://www.aclu.org/feature/smart-justice-fair-justice>

⁷ Researcher and advocate Marie Gottschalk concludes her book on mass incarceration, *Caught*, with four major policy recommendations (p.259 -260). The first three line up nicely with this chronological division. She calls for us to reform our sentencing system, sending fewer people to prison and for shorter sentences (BEFORE); to improve prison conditions so they don't violate human rights (DURING); and to end "civil death" for people with criminal records (AFTER). Her fourth major recommendation is to end the criminalization of immigration enforcement.

⁸ Under Obamacare, states that accepted the Medicaid expansion now also offer coverage to returning citizens, which researchers say may have huge impacts on long-term health and employment rates. See: <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2013/04/05/exfelons-are-about-to-get-health-coverage>

Basic Statistics

• Current state and federal prison population: More than 2.3 million or 1 in 100 adults on any given day⁹

• Annual jail population: Approximately 730,000¹⁰ on any given day, or a total of 13 million people annually¹¹

• Total under correctional control (including incarceration, probation, and parole): 6.9 million¹² or 1 in 31 adults¹³

• Current incarceration relative to US average from 1925-1970: 5x¹⁴

• Current incarceration relative to Western Europe: 6-8x¹⁵

• The incarceration rate for black males is about 4,700 per 100,000, or several times the rate at which South Africa was locking up black men just before apartheid ended.¹⁶

• Reduction needed to return incarceration rate to 1970 level: 80%.¹⁷ This means that even ending most or all prison time for non-violent drug offences will not provide sufficient reductions

in prison populations to get us back to where we were.

• U.S. share of world population of incarcerated people: 25%¹⁸

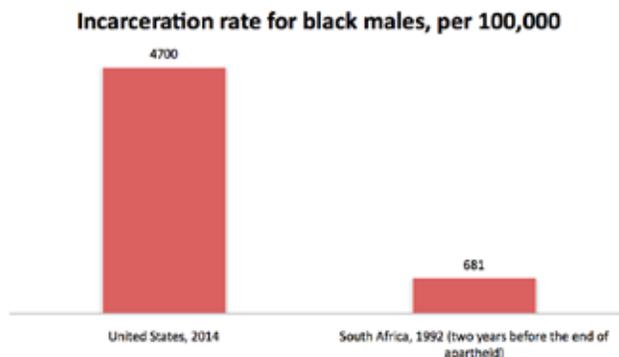
• U.S. share of world population of incarcerated women: 32.2%¹⁹

• Rates of drug use in black vs. white Americans: roughly equal, or slightly higher in white communities²⁰

• Rate of arrest for drug use in black vs. white Americans: more than 3x greater²¹

"...So the custom in Yiddish of counting negatively - *nit ein, nit zvei* - has deep roots in Jewish culture and consciousness. A fear of numbering prompts us to be circumspect. And I would dare to say that for Jews demography is not a value-free science. Our numbers are too small to be carefree or indifferent. For a vulnerable minority counting is always a matter of gravity."²³

**- Rabbi Ismar Schorsch, PhD,
Chancellor Emeritus of the
Jewish Theological Seminary**



It's important to note that aggregating statistics nationally obscures the "profound variations"²² from one jurisdiction to another across the country, including from neighborhood to neighborhood within one city. Ultimately, the issue of

mass incarceration is one that must be tackled state-by-state, as most incarcerated people are in state, not federal prisons.

⁹ <http://www.pewtrusts.org/en/research-and-analysis/reports/2008/02/28/one-in-100-behind-bars-in-america-2008>

¹⁰ <http://www.vera.org/sites/default/files/resources/downloads/incarcerations-front-door-report.pdf>

¹¹ <http://www.nij.gov/journals/270/pages/criminal-records.aspx>

¹² <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5177>

¹³ <http://www.pewtrusts.org/en/about/news-room/press-releases/0001/01/01/one-in-31-us-adults-are-behind-bars-on-parole-or-probation>

¹⁴ <http://faculty.washington.edu/matsueda/courses/587/readings/Western%20and%20Pettit.pdf>

¹⁵ <http://faculty.washington.edu/matsueda/courses/587/readings/Western%20and%20Pettit.pdf>

¹⁶ Gottschalk, p. 121

¹⁷ <https://www.themarshallproject.org/2015/03/04/how-to-cut-the-prison-population-by-50-percent>

¹⁸ <https://www.aclu.org/prison-crisis>

¹⁹ http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/wfil_2nd_edition.pdf

²⁰ http://www.huffingtonpost.com/2013/09/17/racial-disparity-drug-use_n_3941346.html, based on 2011 data from the

Substance Abuse and Mental Health Services Administration.

²¹ http://www.huffingtonpost.com/2013/09/17/racial-disparity-drug-use_n_3941346.html, based on 2009 data from Human Rights Watch.

²² Gottschalk, p. 266

²³ <https://www.jtsa.edu/prebuilt/ParashahArchives/5762/bamidbar.shtml>

A Brief History of T’ruah’s Work on Mass Incarceration

T’ruah’s first domestic human rights campaign, launched in 2004, opposed U.S. government-sponsored torture during the War on Terror. Even at that early stage, we recognized the role that torture played in America’s mass incarceration system. In our open letter to the Bush administration dated January 2005, signed by more than 800 rabbis and cantors, we wrote,

It is shocking to think that the prelude to Abu Ghraib may have been the treatment of our people in our own prisons. The demonstration of the administration’s commitment to human dignity must begin at home, to ensure that the same principles of human dignity we are urging the administration to adopt regarding foreign captives be equally applied to American prison inmates. Otherwise, we become what we claim to abhor.

Starting in 2011, we turned our attention to the use of practices classified as torture within U.S. prisons. Atul Gawande’s groundbreaking article “Hellhole,” (*New Yorker*, March 30, 2009²⁴) marked a turning point in the broader human rights community’s classification of solitary confinement as torture. We began educating our rabbis and our communities about solitary confinement, both in the U.S. and in Jewish thought, and to advocate for legislation that reduces the incidence of solitary confinement. Our rabbis visited Rikers Island, the main New York City jail, and met with prison officials. We began preparing an amicus brief in support of prisoners held in solitary at California’s Pelican

Bay Prison, who settled with the state in a major victory in September, 2015.²⁵ Some of them had been in isolation for twenty years or more.

But solitary confinement cannot fully be addressed without tackling the entire system of mass incarceration. In the fall of 2014, T’ruah reframed this campaign within a broader criminal justice reform program. In announcing the new campaign, we wrote:

The Torah insists that even the worst criminal is achicha, your brother. Even those guilty of crimes must be treated as we would want members of our own families treated. But the American criminal justice system too often throws people away—even people not convicted yet of a crime or convicted of a non-violent crime find themselves in inhumane conditions that violate the dignity of a creation b’tzelem elohim.



Our Jewish tradition insists that the goal of punishment is teshuvah, repentance. “Return my backsliding children’ (Jeremiah 3:14) means that any criminal who sinned then repented—we accept that person forever.” (Teshuvot HaRitva 159) The American system seeks only to punish; not to inspire teshuvah.

As a Jewish community, we must work in partnership with other communities to create a system based on justice, truth, and peace, and one that works towards teshuvah, not simply punishment.

²⁴ <http://www.newyorker.com/magazine/2009/03/30/hellhole>

²⁵ See, e.g., <https://ccrjustice.org/home/what-we-do/our-cases/ashker-v-brown>

Definitions and Language Use

Words create worlds. “Death and life are in the power of the tongue.” (Proverbs 18:21) The words we use have a profound effect on how we understand and approach an issue. A corrections officer might refer to the people under his or her care as “criminals,” which immediately conjures up a set of negative assumptions and understandings about who these people are and how they should be treated. A more neutral term might be “prisoners,” but this word still defines a person’s whole existence by the fact of his or her incarceration. The mass incarceration reform movement prefers the term “**incarcerated people**,” which accomplishes at least three things: it emphasizes their personhood, as a *tzelem Elohim*; it reminds us that some are being held before or during a trial and may yet be found innocent; and it emphasizes that their incarceration is not some accident or fact of nature, but rather that other human beings are incarcerating the person in question.

Here are some more definitions to help us in our conversation and in our work:

Mass incarceration

refers to the system of policing, courts, and jails and prisons that incarcerates 2.3 million Americans. It encompasses all of the ways that many Americans find themselves under some kind of correctional control and emphasizes the widespread nature of the system. Though synonymous with “criminal justice system,” this term directs our focus to the scale of American incarceration.

Jails, typically run by local counties, house people who have not yet stood trial, or who have been sentenced for terms of up to one year. People who cannot afford bail, or who are not offered bail, can spend years in jail while awaiting trial. Therefore, many or most people in jail may yet be proven innocent in a court of law. **Prisons**, operated by the state or federal government, house people who have been sentenced to more than one year’s incarceration.

Correctional control

refers to people who are under the official supervision of law enforcement in one of three ways. These people may be:

- 1) Serving time in a **prison** or **jail**.
- 2) On **probation**, which is an alternative to incarceration; it means they are not in prison or jail but must check in regularly with police and observe other rules.
- 3) on **parole**, which means they were in prison or jail but were released before the formal end of their sentence.

Bail vs. bond Between arrest and trial, a person may be released from jail, unless s/he is deemed a flight risk or a danger to society. **Bail** is an amount of money paid to the court to guarantee that the defendant will return

to stand trial. At the trial’s conclusion, the bail money is refunded. When the person cannot afford bail, **bond** may be posted instead. This refers to another kind of guarantee that the court is willing to accept. Sometimes commercial **bondsmen** front the money, in exchange for a hefty fee. Other times, a deed to property may be accepted. For low-level offenders, **signature bond** means that the defendant signs a contract agreeing to pay a certain sum if s/he does not appear for the trial.

Zohar 1:4b

“With every word of Torah that is made new through the mouths of humans, a new heaven is created.”

Morning Liturgy

“Blessed is the One who spoke and the world came into being.”

Sefat Emet 3:143

“It is written that ‘Death and life are in the hands of the tongue.’ (Proverbs 18:21) Because the power of language is so great, we have to take special care...”

- The Language of Truth,
Chasidic commentator,
translated by Rabbi Arthur Green

Returning citizen is the preferred term for a person who has been released from incarceration, as this term emphasizes the person's membership in the society. It's true that non-citizens are also incarcerated, leading some to propose "returning person" as an alternative, but the government uses "returning citizen" in official contexts (e.g., the Office on Returning Citizen Affairs, <http://orca.dc.gov/>). Advocates prefer it over "ex-offender" or "ex-convict" because of the emphasis on returning and reintegrating into society.

Solitary confinement is the practice of keeping an incarcerated person alone in a cell with few opportunities for exercise or social contact, generally for about 23 hours a day.

It goes by a wide variety of technical and slang terms: punitive segregation, administrative segregation, Secure or

Segregated Housing Unit (SHU), "the box," "the hole," etc.

The New Jim Crow is the title of a 2010 book, in which Michelle Alexander makes the case that the mass incarceration system represents a new form of racial control designed to replace the Jim Crow laws of the South. Supporters of Alexander's argument use the term as shorthand for the mass incarceration system itself.

The War on Drugs refers to the set of policies announced by President Nixon in 1971²⁶ to reduce drug use in the United States. These policies, and the associated approach to drugs as primarily a criminal justice issue, have continued with few changes to the present day. The War on Drugs gave rise to mandatory minimum sentences, codified racial disparities in sentencing, contributed to the militarization of the police, and has led to the incarceration of large numbers of non-violent offenders. Police have extremely large discretion to stop and search people on suspicion of drug possession. The definition of drug users as criminals has been accompanied by a lack of adequate funding for the treatment programs that might have better success in reducing drug use than prison will.

²⁶ <http://www.presidency.ucsb.edu/ws/?pid=3048>

²⁷ <http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/>

²⁸ Data reported by NYPD and aggregated by NYCLU: <http://www.nyclu.org/content/stop-and-frisk-data>

Broken Windows Policing is a theory of policing, first introduced in 1982²⁷, that emphasizes stopping minor "quality of life" crimes like graffiti, vandalism, and toll-jumping. This theory assumes that disorderly environments (like neighborhoods with lots of broken windows) breed more serious crimes. Advocates of reform argue that, instead, this method of policing merely applies harsh penalties to relatively minor infractions, with repercussions that reverberate through communities, cities, and the nation as a whole. The death of Eric Garner in 2014, approached on suspicion of selling single cigarettes, was one of the most public examples of the dangers of broken windows policing.

Stop and Frisk

policies allow police to stop any person on the street and search him or her if the officer has

Stop and Frisk Data ²⁸	Total	% Innocent	% White	% Black	% Latino
2012 (Stop and Frisk in place)	532,911	89	10	55	32
2014 (Stop and Frisk suspended)	46,235	82	12	55	29

reason to suspect that the person may be carrying a weapon or other illegal item. An overwhelming majority of those stopped and frisked are people of color. In 2013, a coalition of organizing groups in New York City succeeded in securing a court order to strike down this policy in the city. Despite arguments that Stop and Frisk prevented crime, crime has continued to decline, even as the numbers of street stops has gone from more than 500,000 to fewer than 50,000.

Civil Forfeiture allows police to confiscate property that they believe has been involved in a crime. The property's owners must petition a court to get it back, with the burden of proof lying on them rather than on the police. Property can be confiscated even if charges are never laid or a crime proven in court. In Jewish terms, this practice violates the principle of "*hamotzi miyad chavero, alav ha'rayah*" "The burden of proof is on the person who makes a claim on the property of another."

Recidivism describes the situation when a person who has been released from prison/jail comes back into contact with the criminal justice system. For more on this hard-to-define concept, see page 87.

Mandatory minimums refer to laws that require a judge to impose a certain minimum sentence for certain crimes, usually drug-related. The related **Three-Strikes Laws** significantly increase the penalty for a person's third felony conviction, usually to life in prison. Approximately half of US states²⁹ currently have a version of the three strikes law. These laws are often written and implemented in such a way as to force judges to impose harsh sentences even for non-violent offenders, eliminating judicial discretion in sentencing.

Truth-in-sentencing laws are laws that require an incarcerated person to serve a greater proportion of his or her prison sentence. These laws restrict options that shorten the effective sentence served, such as parole and "good behavior" credits.

"Patterns and practices" lawsuits are filed by the Department of Justice (DOJ)'s Civil Rights Division against a police department when the department is suspected of routinely using excessive force or violating people's civil rights. This authority comes from the 1994 Violent Crime Control and Law Enforcement Act. A **consent decree** is the ruling by which a government agency—in policing cases, usually the DOJ—compels an organization such as a police force to change its practices.³¹

Restorative Justice describes a specific protocol, as well as a more general approach, for addressing harm that one person has done to another. It focuses on holding accountable the person who caused the harm while also allowing the injured party, and the larger circle surrounding both, to heal and move forward. It stands in distinction to a system of **retributive justice**, such as the prevailing one in the United States, which focuses primarily on punishing the offender. See more on p. 44.

Victims' rights refers to the rights and needs of people who have been harmed by crimes. In the past, most victims' rights groups have positioned themselves as "tough on crime," but more recently some groups have called out the mass incarceration system for over-investing in punishing crime without addressing victims' true needs. See more on p. 44.

A **prosecutor** is the government lawyer responsible for presenting in court the case against someone accused of a crime. In the state or local courts, the prosecutor is called the **District**

Attorney or **State's Attorney** and is an elected official. In the federal court system, the prosecutor is called a US Attorney and is appointed by the President. A prosecutor is often referred to as "the people's lawyer" because s/he represents the public's interest in maintaining law and order.

An **indictment** is the official document that alleges that a person committed a certain crime. In some jurisdictions,

the indictment must be approved by a **grand jury**, which votes on whether or not the prosecutor has presented enough evidence to make the indictment credible. In other jurisdictions, the prosecutor may proceed without the grand jury. An **arraignment** is the formal reading in court of the indictment, at which time the accused person is asked to enter a plea (guilty, not guilty, or another specific plea).

Byrne Grant (formally, the Edward Byrne Memorial Justice Assistance Grant) is a federal program that gives grants to state and local agencies for fighting the war on drugs.

Acronyms:

DOJ = Department of Justice

BOP = Bureau of Prisons—part of DOJ, operates federal prison system

BJS = Bureau of Justice Statistics—part of DOJ, tracks and reports statistics about the prison system



²⁹ Three Strikes Project, Stanford Law School, personal communication, December 9, 2015. Because each state's laws evolve independently in complex ways, it is difficult to keep track of precisely how many have an active three strikes law.

³⁰ <http://www.natlawreview.com/article/three-strikes-out-johnson-v-united-states>

³¹ <http://www.thecrimereport.org/news/articles/2014-07-police-reforms-best-tool-a-federal-consent-decree>

Race, Incarceration, and Racial Disparities

A quick glance at the statistics makes it clear that America's mass incarceration system is not color-blind.

- One in every 106 white men age 18 or older in America is incarcerated.
- One in every 36 Hispanic men age 18 or older in America is incarcerated.
- One in every 15 black men age 18 or older in America is incarcerated.³²

• The figures for women are only slightly better and have the same approximate breakdown by race.³³

This might lead us to assume that racial minorities commit more crimes than white

Americans, but this is not necessarily so. For example, blacks are more than three times more likely to be arrested for drug crimes, even though whites use drugs at equal or slightly higher rates.^{34, 35}

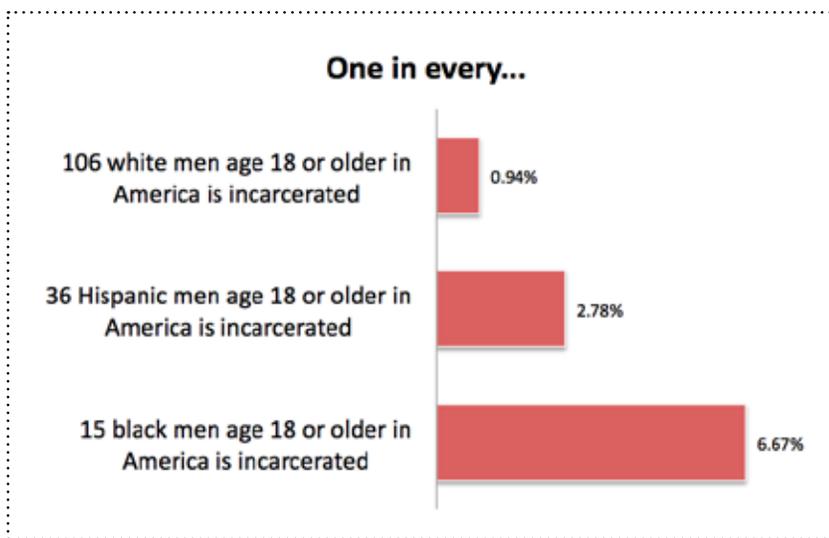
Poverty and related social issues also contribute to mass incarceration, in a way that is often entangled with race. The Baltimore Sun, in an editorial published in the wake of Freddie Gray's death in police custody on April 12, 2015, had this to say about the lived experience of poor, black, urban communities:

The neighborhood where [Gray] lived, Sandtown-Winchester, recently made news as the census tract that is home to more inmates in the Maryland correctional system than any other. But that is not the only way in which it is exceptional. Four years ago, the Baltimore Health Department issued a community profile of that neighborhood, and even in a city where poverty is widespread, it stands out. The unemployment rate there is about double the citywide average, and so is the poverty rate. Similarly, there are about twice as many liquor stores and tobacco outlets per capita in Sandtown-Winchester as in the city as a whole. Fully a

quarter of juveniles in that neighborhood had been arrested between 2005 and 2009. It had the worst domestic violence rate of any of the neighborhoods the health department analyzed and among the worst rates for non-fatal shootings and homicides. A quarter of the buildings are vacant, and the lead paint violation rate is triple

the city average. (Gray and his sisters suffered from lead paint poisoning as children.) The only metric the health department analyzed in which Sandtown-Winchester was the best in the city was in the density of fast food restaurants. Perhaps it's too poor to have any.³⁶

The cause of racial disparities in mass incarceration, however, is up for some debate.



³² <https://www.aclu.org/infographic-combating-mass-incarceration-facts>

³³ http://www.sentencingproject.org/doc/publications/cc_incarcerated_women_factsheet_sep24sp.pdf

³⁴ http://www.huffingtonpost.com/2013/09/17/racial-disparity-drug-use_n_3941346.html, based on 2011 data from the Substance Abuse and Mental Health Services Administration.

³⁵ http://www.huffingtonpost.com/2013/09/17/racial-disparity-drug-use_n_3941346.html, based on 2009 data from Human

³⁶ <http://www.baltimoresun.com/news/opinion/editorial/bs-ed-freddie-gray-20150425-story.html>

Michelle Alexander, in her book *The New Jim Crow*, makes the case that the mass incarceration system, with its sharp uptick in incarceration beginning in the early 1970's, was intentionally designed to replace the Jim Crow laws that had been finally struck down in the South. She writes in her introduction:

*To put the matter starkly: The current system of control permanently locks a huge percentage of the African-American community out of the mainstream society and economy. The system operates through our criminal justice institutions, but it functions more like a caste system than a system of crime control... Skepticism about the claims made here is warranted. There are important differences, to be sure, among mass incarceration, Jim Crow, and slavery... Many of the differences are not as dramatic as they initially appear, however; others serve to illustrate the ways in which systems of racialized social control have managed to morph, evolve, and adapt to changes in the political, social, and legal context over time... What this book is intended to do—the only thing it is intended to do—is to stimulate a much-needed conversation about the role of the criminal justice system in creating and perpetuating racial hierarchy in the United States.*³⁷

This argument has compelled and motivated many an activist since its publication in 2010. And it has had her

desired effect. To offer one small example, Alexander points out that the NAACP's website, as recently as May 2008, barely mentioned prisons; today, prisons appear in the first sentence under the Advocacy heading "Justice."

Alexander's argument has also generated controversy. Ta-Nehisi Coates, in a series of articles for *The Atlantic*, offers the following mixture of praise and criticism for Alexander's book:

"What's the public really scared of? If it's only crime, we could get out of this mess quickly. This is about race, this is about class, and we have to tackle those issues. The way you do that is by changing the way the public thinks about who is or was in prison."³⁸

- Glenn E. Martin, founder of Just Leadership USA

INTENDED VS. UNINTENDED CONSEQUENCES

Jewish law establishes a category known as *p'sik reisha*—unintended but predictable consequences. The name of this area of law comes from the example of a person who cuts off the head of a chicken on Shabbat in order to use the head for some purpose—but without wanting to kill the chicken. Obviously, though, the person could have predicted that cutting off the head would result in the death of the chicken.

The racial effects of policing could be viewed as unpredictable, unintended consequences, or as a case of *p'sik reisha*, where the consequences should have been obvious. How would you apply this teaching to the questions of race and policing?

*I think Alexander's insistence on pushing the envelope on actual racism is one of the book's most striking features. Liberals have largely retreated on this front. We prefer to talk about "inadvertent," or "unintentional" racial effects. Alexander is arguing for actual racism as a factor in every stage of the criminal-justice process.*³⁹

I still feel uncomfortable with the idea that masses of incarcerated white people are merely collateral damage on the way to controlling black people. I suspect something more nuanced at work. I use these words "suspect" and "unconvinced"

³⁷ Pp. 13-16.

³⁸ <https://www.themarshallproject.org/2015/03/04/how-to-cut-the-prison-population-by-50-percent>

³⁹ <http://www.theatlantic.com/politics/archive/2014/09/books-for-the-horde-the-new-jim-crow-chapters-3-and-4/380712/>

intentionally, for even as I write this, I am not so sure that Alexander is wrong. A brief historical note will explain why. In the '40s and '50s, African Americans and advocates of fair housing understood that some network of discrimination was at work. But they did not understand how far the network actually went until the discovery of redlining maps, which made it painfully clear that what they were seeing was not random mindless bias but federal policy.... I would not be shocked if one day [historians] discover the evidence that I found wanting in this book—evidence of intentionality, of direction, which shows that the carceral state really was, at its roots, an attempt to control black people...⁴⁰

Bits and pieces of new evidence are bubbling up in support of Alexander's claim. For instance, a 2005 study of drug arrests in Seattle found that racial bias drove policing and arrests; "in short, racial disparities might not be simply an unfortunate by-product of drug wars, but rather might be a constitutive component of those campaigns."⁴¹ Of course, the truth likely reflects a combination of these perspectives, with some policymakers acting with obvious

racist intent and others reacting out of ignorance or political expediency or inertia or bad science or media hype. Regardless of intent, the effect is cumulative.

WHAT'S WORKING: RACIAL IMPACT STATEMENTS

When local, state, or federal governments plan new programs, independent assessors must prepare financial and environmental impact statements. Three states—Connecticut, Iowa, and Oregon—have adopted laws requiring racial impact statements as well. These statements look at the effect of a given new policy on racial disparities.⁴³ As then-Governor Chet Culver of Iowa explained in 2008, the new law would provide lawmakers more information about how many people might end up in jail as a result of a new criminal statute, for how long, and according to what racial distribution.⁴⁴ At the time, 2% of Iowa's population was black, compared to 24% of its prison population. In addition to preventing the implementation of programs and policies that would have adverse effects on people of color, this practice places racial equality on par with budgets and environmental protection.

Pirkei Avot 4:27

Rabbi Meir says: do not look at the flask but what is in it. There are new flasks filled with old wine and old flasks which do not even contain new wine.

How is race in America a case of old wine in new flasks?

Reporter Arienne Thompson writes,

*We are exhausted. We are tired. We can't breathe. We can no longer bear the weight of seeing our men, our Americans, our husbands, fathers, brothers, uncles and cousins humiliated, profiled, emasculated, choked, dragged and shot, day in and day out..... Being Black in America is like walking through an ice storm: It's cold, isolating, and exhausting. You're not sure if you're gonna make it and you can't see what's coming for you.*⁴²

This is the lived experience that mass incarceration, with its racial disparities, creates.

In the "Take Action" section of this handbook, you'll find suggestions for opening up the conversation about race within your community.

40 <http://www.theatlantic.com/politics/archive/2014/10/books-for-the-horde-the-new-jim-crow-chapter-6/381330>
41 http://www.thestranger.com/images/blogimages/2010/10/28/1288284278-beckett_social_problems.pdf
42 <http://www.usatoday.com/story/life/people/2014/12/04/the-exhausting-task-of-being-black-in-america/19894223/>
43 http://www.sentencingproject.org/detail/publication.cfm?publication_id=570&id=
44 <http://www.npr.org/templates/story/story.php?storyId=90102924>

International Comparisons⁴⁵

The United States incarcerates more people than any other country in the world, both in absolute numbers and per capita (as a percent of total population). We may be surprised to hear that this holds true, even when we compare the U.S. to notorious human rights offenders, like Russia, China, and North Korea. Here are some statistics:

Absolute Number of Incarcerated People

More than 10.2 million people are held in prisons and jails throughout the world, mostly as pre-trial detainees or serving a criminal justice sentence. Almost half of these are in:

1. United States:
2.24 million
2. China:
1.64 million sentenced people
3. Russia:
680,000

In addition at least 650,000 are reported to be in pre-trial or 'administrative' detention in China and 150,000 in North Korea. If these were included, the world total would be more than 11 million and China would be on par with the US in total incarcerated people.

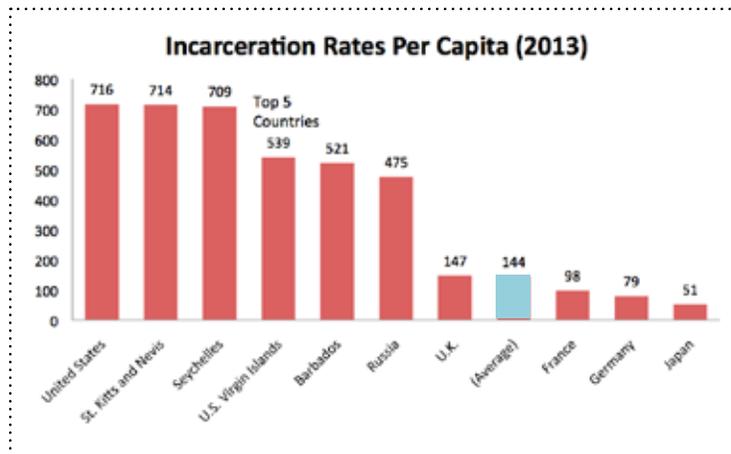
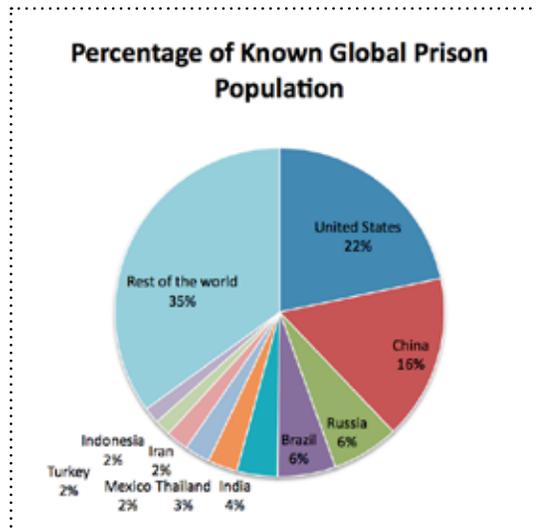
Highest Incarceration Rates Per Capita

Top 5 (incarcerated people per 100,000 people):

United States	716
St. Kitts and Nevis	714
Seychelles	709
U.S. Virgin Islands	539
Barbados	521

Russia comes in at 10th place with 475 incarcerated people per 100,000; China is much further down the list.

- More than half of the world's countries and territories (54%) have rates below 150 per 100,000.



- The world population at the beginning of 2013 was about 7.1 billion. If the world's incarcerated people were evenly distributed, the rate would be 144 people per 100,000.

For comparison with countries we see as peers:

United Kingdom	147
France	98
Germany	79
Japan	51

⁴⁵ Walmsley, Roy, "World Prison Population List (Tenth Edition)" (Kings College, London, England: International Centre for Prison Studies, 2013), p. 1. http://www.apcca.org/uploads/10th_Edition_2013.pdf

Bipartisan Reform

Mass incarceration reform has become a bipartisan issue. Nowhere is this more evident than the formation of the Coalition for Public Safety, a multimillion-dollar campaign backed by the conservative Koch Industries and Americans for Tax Reform and the liberal Center for American Progress and ACLU.⁴⁶ The left tends to see the issue as one of social justice and equal protection under the law; the right focuses on driving back big government and cutting costs.

These alliances have generated some controversy among progressives. Some argue that the goal of mass incarceration reform is so important that they will work with whatever partners are available. Others urge caution about the underlying goals of conservative groups and how these goals might influence the outcome of such partnership.

One concern about a focus on budgets is that, as the economic crunch recedes and state budgets expand again, the financial argument will falter. Even before complete economic recovery, some states (such as Arizona⁴⁷) prefer to spend money on more prisons even while slashing budgets in other areas like education.

Another possible concern raises the possibility that seemingly neutral reforms actually benefit private contractors. For instance, one organizer contends, “Right on Crime reforms are driven by a desire to have more people on supervision, paying for their own technological monitoring, reentry services, and probation and parole fees.”⁴⁸ (See p. 35 for more on this shift

towards “offender-funded justice,” exemplified most recently by the DOJ report on Ferguson, MO.) Moving people out of jails and onto the debt-collection rolls of private companies reduces government burden but doesn’t improve the situation of those trapped in the system.

Policies that require drug testing in conjunction with increased opportunities for returning citizens to work may similarly benefit private companies,

to whom workers must pay for the drug test (at a cost of approximately \$42 per test).⁴⁹

T’ruah does not take a position for or against such collaborations. We caution against making broad generalizations either in favor of or against such collaborations, which take many forms nationally and locally. We present the debate to help frame dynamics that may arise within the context of such a partnership.

SHOULD PROGRESSIVE GROUPS PARTNER WITH CONSERVATIVES ON MASS INCARCERATION REFORM?

Neera Tanden, president of the Center for American Progress: “We have in the past and will in the future have criticism of the policy agenda of the Koch brother companies, but where we can find common ground on issues, we will go forward.”⁵⁰

Marie Gottschalk, professor and author of *Caught*: “Hitching the movement against mass incarceration to the purported fiscal burden of the carceral state helps reinforce the premise that eliminating government deficits and government debt should be the top national priority.”⁵¹

46 http://www.nytimes.com/2015/02/19/us/politics/unlikely-cause-unites-the-left-and-the-right-justice-reform.html?smid=tw-share&_r=0

47 <http://www.motherjones.com/politics/2015/02/arizonas-new-governor-just-cut-education-funding-build-big-new-private-prison>

48 <http://qz.com/355849/prison-reform-is-making-life-inside-prison-worse-not-better/>

49 <https://www.aclu.org/drug-testing-public-assistance-recipients-condition-eligibility>

50 http://www.nytimes.com/2015/02/19/us/politics/unlikely-cause-unites-the-left-and-the-right-justice-reform.html?smid=tw-share&_r=0

51 Gottschalk, p. 21

Timeline of the Rise of the Modern American Prison System⁵²

- **1829** Eastern State Penitentiary, the first modern prison, opens in Philadelphia. It pioneers the use of solitary confinement, to give incarcerated people time for reflection and “penitence.”⁵³
- **1838** Debtors’ prisons, where people could be incarcerated for failing to pay their debts, banned under federal law. Bankruptcy law subsequently replaces debtors’ prisons.
- **1866** Convict leasing—the practice of leasing out incarcerated people (usually black men) to work for private individuals—begins.⁵⁴
- **1914** Congress passes Harrison Narcotics Tax Act, restricting the sale of opiates and cocaine, launching the country’s “first war on drugs.”⁵⁵
- **1927** The first federal women’s prison opens in Alderson, WV.⁵⁶
- **1928** Alabama becomes the last state to outlaw convict leasing.⁵⁷
- **1943** “Zoot Suit Riots” in LA and Detroit riots, two examples of racial violence that break out during and after WW2; this leads to calls for increased national attention to police brutality and misconduct. Before WW2, most criminal justice policy in the US was in the hands of local or state authorities.
- **1955** Deinstitutionalization of the mentally ill begins; closing of mental hospitals and reduction in overall state care for people with serious mental illness.⁵⁸ Jails and prisons eventually take up the slack.

DEUTERONOMY 32:7

Remember the days of old,
Consider the years of ages past;
Ask your father, he will inform you,
Your elders, they will tell you:

- **1960’s** US and most western countries experience dramatic increase in crime. From 1962-1972, the annual number of homicides more than doubles.⁵⁹ The homicide rate among blacks had been several times higher than whites since at least the 1930’s.⁶⁰
- **1963** Supreme Court — in *Gideon v. Wainwright* — rules that indigent criminal defendants have a right to a lawyer. The Court says nothing about how to pay for such counsel, leading to a rise in fees charged to defendants. (See more under “Poverty and Mass Incarceration,” p. 35.) In the 1960’s, a number of rulings by the Warren Court expand the rights of incarcerated people and people being policed, at the expense of police power.
- **1964** Goldwater campaign uses explicitly racial language to discuss crime. Conservatives conflate riots, street crime, and political activism.
- **1965** Johnson creates Office of Law Enforcement Assistance, with support from left and right. OLEA provides funding and programs to expand and improve state and local criminal justice systems.

⁵² Much of this timeline is drawn from chapter 4 of the National Academies report available at <http://www.nap.edu/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes>.

For another timeline from the Justice Policy Institute, see http://www.justicepolicy.org/uploads/justicepolicy/documents/jpi_poster_final.pdf

⁵³ <http://www.easternstate.org/learn/research-library/history>

⁵⁴ <http://www.pbs.org/tpt/slavery-by-another-name/slavery-timeline/>

⁵⁵ <http://www.theatlantic.com/magazine/archive/2015/10/the-black-family-in-the-age-of-mass-incarceration/403246/>

⁵⁶ <http://www.history.com/this-day-in-history/the-first-federal-prison-for-women-opens>

⁵⁷ <http://www.pbs.org/tpt/slavery-by-another-name/slavery-timeline/>

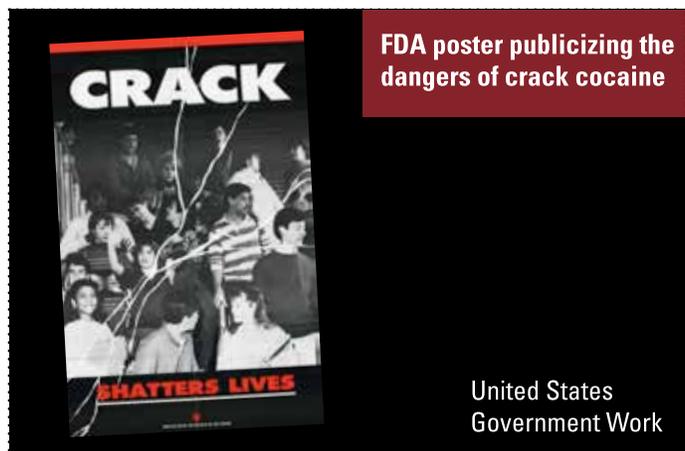
⁵⁸ <http://www.pbs.org/wgbh/pages/frontline/shows/asylums/special/excerpt.html>

⁵⁹ National Academies report, p. 335.

⁶⁰ National Academies report, p. 112.

- **1968** Johnson calls for “war on crime” in context of war on poverty and other root causes. Omnibus Crime Control and Safe Streets Act passes Congress, but with major modifications from conservatives that give most funding control to the states. Johnson considers a veto, but the assassination of Robert F. Kennedy dissuades him.
- **1971** Nixon declares War on Drugs.
- **1973** New York Governor Nelson Rockefeller enacts toughest drug laws in the nation, punishing possession of even small amounts of drugs with 15 years to life.
- **1970’s-mid 1980’s** General increased incarceration for lower-level felonies.⁶¹
- **Late 1970’s** Reported drug use peaks and begins to fall.
- **1982** Reagan recommits to War on Drugs.
- **1983** Supreme Court affirms that people cannot be incarcerated for failing to pay debts.
Corrections Corporation of America, the first and largest of contemporary private prison corporations, founded.⁶²
- **1984** Sentencing Reform Act prescribes mandatory minimums and eliminates judicial discretion.⁶³
- **1985** Reagan administration hires staff to publicize the emergence of crack cocaine.⁶⁴
- **1985-1992** “Heyday of the war on drugs.”⁶⁵

- **1986** Anti-Drug Abuse Act institutes 100:1 disparity—a minimum sentence of five years without parole for possessing five grams of crack cocaine (mostly used by blacks), and the same punishment for 500 grams of powder cocaine (used mainly by whites).
Polls show less than 2% of the public believe illegal drugs to be the most important problem facing the country.⁶⁶
LA Times reports that a national wave of crack-dealing-related murders actually followed the wave of media hype about crack. “Scare stories about an ‘instantly addictive’ and violence-provoking drug served to *spread* crack cocaine, not accurately describe its use in most of America.”⁶⁷ [emphasis added]
- **1988** Polls now show a majority believe illegal drugs are a leading problem.
Willie Horton ad helps George H. W. Bush defeat Michael Dukakis and become President. Horton was a black man serving a life sentence for murder in Massachusetts, where Dukakis was governor. Released for a weekend furlough, Horton did not return to prison as scheduled and subsequently committed assault, robbery, and rape. The ad blamed Dukakis.



61 Gottschalk, p. 128
 62 <http://grassrootsleadership.org/ccs-dirty-30>
 63 <https://www.aclu.org/sites/default/files/FilesPDFs/ACF4F34.pdf>
 64 The New Jim Crow, p. 5.
 65 Gottschalk, p. 128
 66 National Academies report, p. 120.
 67 Carl Hart, *High Price*, p. 186-7.

- **Early 1990's** National homicide rate begins steady, significant decline.⁶⁸
Reported drug use begins to climb again, but remains well below 1970's rates.
- **Early 1990's onward** Longer prison sentences mostly due to three-strikes and truth-in-sentencing laws.⁶⁹
- **1993** Washington State passes Initiative 593, the nation's first three-strikes law. California follows in 1994 with the nation's toughest and most-used three-strikes law.
- **1994** Clinton signs Violent Crime Control and Law Enforcement Act, the "largest crime bill in the history of the country," which is sponsored by then-Senator Joe Biden. Among its provisions are \$9.7 billion for prisons, funding for 100,000 new police officers, and the system of Byrne grants (see definitions, p. 12).⁷⁰ The act also bans incarcerated people from receiving Pell Grants for college. Additionally, it gives the DOJ the power to sue police departments for civil rights infractions.⁷¹ The Violence Against Women Act is part of the bill.
- **1996** Clinton signs welfare reform, increasing obstacles for people convicted of drug felonies to access the social safety net, and immigration reform, which increases deportation for non-citizens convicted of past and current crimes.
- **2001** 9/11 attacks prompt War on Terror, which increasingly is used as justification for intrusive policing in the name of homeland security and counterterrorism.
- **2002** US Immigration and Customs Enforcement (ICE) formed.
- **2004** In State of the Union address, George W. Bush calls for more investment in reentry.
- **2006** George W. Bush signs Adam Walsh Child Protection and Safety Act, severely increasing penalties and restrictions on sex offenders.
- **2008** New York State passes SHU Exclusion Law, beginning process of limiting who can be placed in solitary confinement.
George W. Bush signs Second Chance Act, which increases federal funding for reentry programs.⁷²
- **2010** Federal Fair Sentencing Act reduces 100:1 disparity between crack and powder cocaine to 18:1.
Michelle Alexander publishes *The New Jim Crow*.
Marc Levin founds "Right on Crime," the conservative group promoting mass incarceration reform.⁷³
- **2011** California institutes Public Safety "Realignment" to reduce state prison population, under Supreme Court order to reduce overcrowding. Shifts responsibility for people convicted of non-violent, non-serious, and non-sexual offenses from state prisons to local jails and probation.
- **2012** California passes Proposition 36, reforming Three-Strikes Law.
- **2013** Edward Snowden reveals the extent of US phone surveillance. 87% of wiretaps are used in cases where "drug offense" is the most serious suspected crime.⁷⁴
- **2014** Obama administration reverses its policy on asylum seekers, deciding that ICE will detain all arriving Central American families, even those judged to be fleeing a "credible threat" who will likely be granted asylum.
California voters pass Proposition 47, which reclassifies many non-serious, non-violent property and drug crimes as misdemeanors.
- **2015** Settlement reached in *Ashker vs. Governor of California*, dramatically reducing the number of people held in solitary confinement in California and setting limits on how and for how long people may be held.⁷⁵

68 National Academies report, p. 112.

69 Gottschalk, p. 128

70 <https://www.ncjrs.gov/txtfiles/billfs.txt>

71 <http://www.thecrimereport.org/news/articles/2014-07-police-reforms-best-tool-a-federal-consent-decree>

72 <http://famm.org/wp-content/uploads/2013/08/FAQ-Second-Chance-Act-5.4.pdf>

73 <http://www.motherjones.com/politics/2014/02/conservatives-prison-reform-right-on-crime>

74 <http://www.uscourts.gov/statistics-reports/wiretap-report-2013>

75 <http://www.latimes.com/local/lanow/la-me-ln-california-will-move-thousands-of-inmates-out-of-solitary-20150901-story.html>

Policing

From about 1960-1991, the US and Europe both experienced an increased crime rate, though the two places pursued different policing and incarceration strategies. Starting in 1991, the US's crime rate declined fairly sharply, as indicated below. A 2015 study concludes, "We do not know with precision what caused the crime decline, but the growth in incarceration played only a minor role, and now has a negligible impact."⁷⁶ In other words, crime rates have risen and fallen on their own accord, despite the draconian efforts by police departments.

The "holy grail" mode of policing is "community policing," where officers live in the community they protect and know the people who live there. This is, to a greater or lesser extent, the way white, more affluent communities are policed. Responding to higher crime rates in the 1970's and '80's, however, police departments adopted more aggressive broken windows policing in poor neighborhoods of color, and "solving crimes became secondary."⁷⁷ (The national "clearance rate" for solving homicides today is 64.1%, down from over 90% fifty years ago.)⁷⁸

Hilkhoh Sanhedrin Section 7

This function, of arresting a person and bringing him/her in front of the court, should not be assigned to someone who is not well-versed in law; s/he should know well the definition of transgression. It already happens many times that a person is arrested, and in the course of this person's arrest, it becomes clear that s/he didn't do anything wrong. Or, this person is brought before a court, and only there it becomes clear that s/he did nothing at all wrong. But in the meantime, much damage has been caused to this person, both materially and psychologically.

- Rabbi Hayyim David HaLevy, *D'var HaMishpat*

This shift created two related sets of problems. First, "broken windows" set up a confrontational dynamic between police and poor, minority communities. (And, as it turns out, "minority" is a more important factor than "poor"; well-off black people get stopped more often than poor white people.) In theory, broken windows could perhaps be

implemented without racial overtones and without escalating tension. In practice, when so much behavior is considered "disorderly" and grounds for a stop, a search, and likely an arrest, police-community relations inevitably go sour.⁷⁹

The ironic counterpart to racialized broken windows policing is that people of color are more likely to be victims of crimes than white people⁸⁰ — and yet police don't provide them the protection they need. They are "overpoliced for the small stuff and

underpoliced for the important stuff."⁸¹ This both further reduces the community's trust in police and makes it more likely that individuals will take the law into their own hands—either in the context of gangs or not—with the result of still more violence. A vicious cycle forms, which police can use to further justify their stereotypes of people of color as dangerous and criminal.

⁷⁶ <http://www.theatlantic.com/features/archive/2015/02/the-many-causes-of-americas-decline-in-crime/385364/>

⁷⁷ <http://www.npr.org/2015/03/30/395069137/open-cases-why-one-third-of-murders-in-america-go-unresolved>

⁷⁸ <http://www.npr.org/2015/03/30/395069137/open-cases-why-one-third-of-murders-in-america-go-unresolved>

⁷⁹ <http://www.thenation.com/article/191985/we-dont-just-need-nicer-cops-we-need-fewer-cops>

⁸⁰ "Bridging the Divide: A New Paradigm for Addressing Safety, Crime, and Victimization." Pat Clark et. al., 2014, p. 13.

<http://www.safetyandjustice.org/files/Bridging%20the%20Divide%20-%20Full%20Report.pdf>

⁸¹ <http://www.latimes.com/opinion/bookclub/la-reading-los-angeles-kennedy-ghettoside-20150404-story.html>

The effects of this sort of over-policing ripple out to entire cities. In addition to the person stopped by the police, each arrest affects a wide circle of people, including family members, community members, and onlookers. One out of 28 American children has a parent behind bars; in the black community the figure is one in nine.⁸² These children grow up without one parent, within a family financially and emotionally stressed as a result of the missing family members. “Depopulated and destabilized”⁸³ neighborhoods suffer from the imprisonment or premature deaths of a generation of young people (mostly men, some women)⁸⁴. The resulting discrepancy may affect family structures in the black community, according to some research.⁸⁵ Consider also the reputation such a neighborhood gets in the city and the disincentive for economic investment that might help break the vicious cycle.



Photo by Erin Miran, Creative Commons License

Modes of police training contribute to this situation. Police trainees learn to see threats all around them.⁸⁶ This is especially true when officers find themselves patrolling “dangerous” neighborhoods, where they have been instructed

to crack down on broken windows. Alternative training that created less of a hair-trigger, or more restrictive rules about probable cause, might lead to less confrontation, but the current combination has created the explosive mix that

we have seen combust in Ferguson, Baltimore, and other cities. A few departments have begun investing in training on de-escalation (Seattle)⁸⁷ and mental health (Phoenix, for a specialized team)⁸⁸, but such reforms are not sufficiently widespread.

Compounding the issues in the training of police officers, our society increasingly resorts to police as the main way of responding to an ever-greater number of social issues. The Baltimore Sun Editorial Board commented on this in the wake of Freddie Gray’s death:

*Baltimore police officers are not bad people, but they are put in an untenable position. They are sent to clean up communities like Sandtown-Winchester, where decades of social and economic devastation have left the drug trade as the only viable option for many, and their actions only make it more difficult for the people who live there to find legitimate jobs. The cycle self-perpetuates, and resentment builds until it blows over in a case like this one.*⁸⁹

82 <http://www.nij.gov/journals/270/pages/criminal-records.aspx>

83 Gottschalk, p. 257

84 <http://www.nytimes.com/interactive/2015/04/20/upshot/missing-black-men.html?abt=0002&abg=0>

85 Charles and Luoh, “Male Incarceration, the Marriage Market, and Female Outcomes.” The Review of Economics and Statistics. August 2010. http://www.mitpressjournals.org/doi/abs/10.1162/REST_a_00022?journalCode=rest#.VUzzKoWHXcu

86 http://www.nytimes.com/2015/05/01/us/no-sharp-rise-seen-in-police-killings-though-increased-focus-may-suggest-otherwise.html?_r=0

87 <http://www.justice.gov/opa/pr/justice-department-applauds-adoption-police-department-wide-tactical-de-escalation-training>

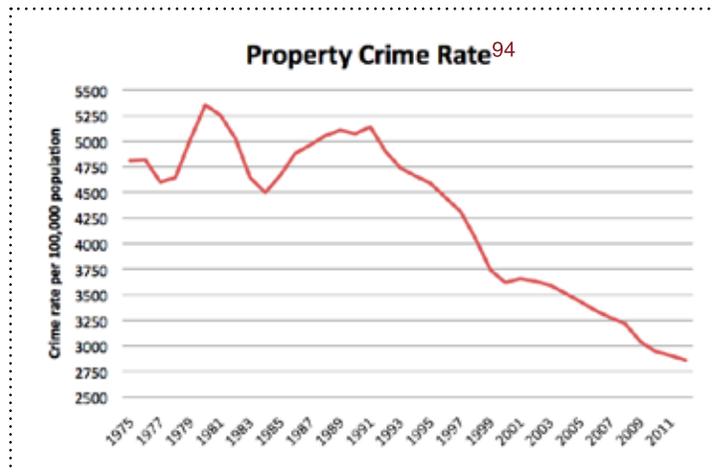
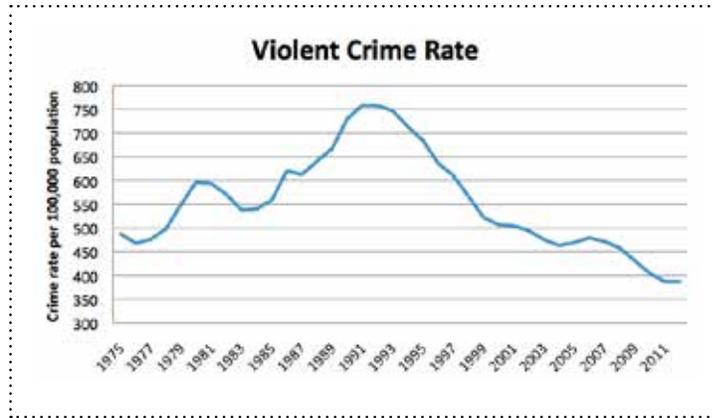
88 <http://www.azcentral.com/story/news/local/phoenix/2015/03/17/phoenix-police-assemble-dedicated-mental-health-squad/24886601/>

89 <http://www.baltimoresun.com/news/opinion/editorial/bs-ed-freddie-gray-20150425-story.html>

Another analyst comments, “[Police] are primarily equipped with the tools of arrest and physical coercion, which can be incredibly counterproductive when dealing with a person in crisis.”⁹⁰ Situations that call for social workers, educators, nurses, or other kinds of professionals to intervene get handled by police because that’s who’s available. Once police are primed to respond with force, there is greater potential for any given encounter to turn violent. Social psychologists have shown that the militarization of police forces, as discussed on p. 31, contributes to violence—through the “weapon effect,” where the presence of violent stimuli cause people to respond more violently; through masks and face shields that make it harder for a police officer to try to resolve a situation peacefully; and through the police’s own feeling of anonymity, which increases the bounds of what they will do.⁹¹ The statistics below document the high rates of police-involved violence in our society.

What can be done to increase oversight of police and to change policing practices? One popular position calls for

officers to wear body cameras. This will be an important step. We will also need to institute accountability measures to ensure access to the film after an incident. Many reformers have also called for the investigation and prosecution of police violence by independent prosecutors not attached to the District or State’s Attorney’s office. Since DA’s rely on police to do their jobs (and, often, for support in reelection bids⁹²), it is not surprising to find DA’s hesitant to “turn on” the rank and file. (For more on prosecutors, see p. 48).



Receding Crime Rates

From 1991-2015:⁹³

- Violent crime is down 51%.
- Property crime fell 43%.
- Homicides are down 54%.

⁹⁰ <http://www.thenation.com/article/191985/we-dont-just-need-nicer-cops-we-need-fewer-cops>

⁹¹ <http://nymag.com/scienceofus/2014/08/how-militarizing-police-can-increase-violence.html>

⁹² <http://www.nytimes.com/2015/05/06/us/police-struggle-with-loss-of-privileged-position.html>

⁹³ <http://www.theatlantic.com/features/archive/2015/02/the-many-causes-of-americas-decline-in-crime/385364/>

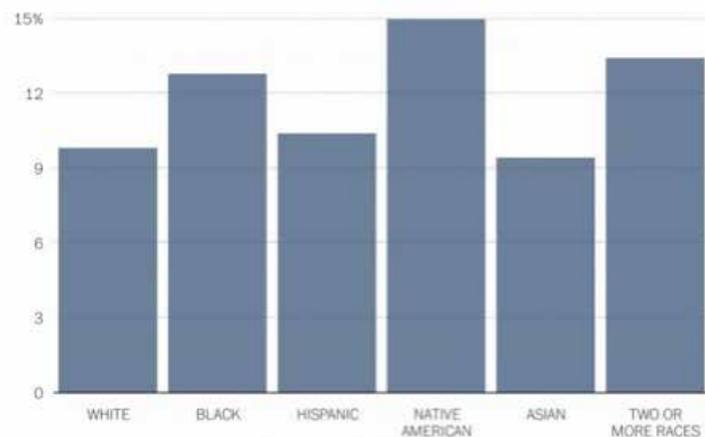
⁹⁴ <http://www.ucrdatatool.gov/Search/Crime/State/RunCrimeStatebyState.cfm> Note that the vertical axes of these two graphs use different scales. Property crime is much more prevalent than violent crime, so graphing them on the same scale makes it harder to see the trends in the latter.

Traffic Stops

- Nationwide, black drivers are 31% more likely to be pulled over than whites; once stopped, they are more than twice as likely to be subject to police searches. They are nearly twice as likely not to be given any reason for the traffic stop.⁹⁵
- A separate study focused on North Carolina found similar results, with the added discovery that black drivers were more likely to be stopped in situations where police officers have more discretion—seatbelts, vehicle registration, and equipment—whereas whites are more likely to be stopped for speeding or running red lights.⁹⁶

Driving while black?

Percent of drivers pulled over by police in 2011, by race

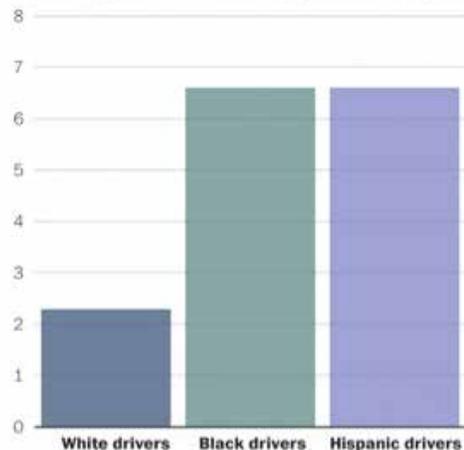


WASHINGTONPOST.COM/WONKBLOG

Source: "Police Behavior during Traffic and Street Stops, 2011," Bureau of Justice Statistics

White drivers significantly less likely to be searched

Percent of stopped drivers searched by police in 2011, by race



WASHINGTONPOST.COM/WONKBLOG

Source: "Police Behavior during Traffic and Street Stops, 2011," Bureau of Justice Statistics



Photo by CoolCaesar, Creative Commons License

95 <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/09/09/you-really-can-get-pulled-over-for-driving-while-black-federal-statistics-show/>

96 <http://www.charlotteobserver.com/news/local/crime/article18289739.html>

Arrest Rates

According to a USA Today analysis:⁹⁷

- At least 1,581 other police departments across the USA arrest black people at rates even more skewed than in Ferguson.
- At least 70 departments—in all regions of the country arrest black people at a rate 10 times higher than people who are not black.
- Only 173 of the 3,538 police departments examined arrest black people at a rate equal to or lower than other racial groups.

Police Shootings

1. We don't have good official federal data on police shootings. The volunteer-managed database Fatal Encounters (www.fatalencounters.org), drawn from news reports, recorded about 1,100 police related murders in 2014.⁹⁸
2. According to such non-federal databases, since 2013, blacks are three times more likely to be killed by police than whites, on a per-capita basis.⁹⁹
3. When looking just at youth aged 15-19 (this time from the federal data), the disparity jumps significantly: black teenagers are 21 times more likely to be killed by police than whites.¹⁰⁰
4. In 1985, the Supreme Court ruled that police could only use deadly force if the suspects posed a threat to the officer or others.
 - From 1980 to 1984, “officer under attack” was listed as the cause for 33% of deadly shootings.
 - From 2005 to 2009, “officer under attack” was cited in 62% of police killings.¹⁰¹
 - It seems likely that the increase is not due to dramatically different crime profiles, particularly as the national crime rate has dropped, but to a change in police reporting.

97 <http://www.usatoday.com/story/news/nation/2014/11/18/ferguson-black-arrest-rates/19043207/>

98 <http://www.nytimes.com/2015/05/01/us/no-sharp-rise-seen-in-police-killings-though-increased-focus-may-suggest-otherwise.html>

99 http://www.nytimes.com/2015/05/01/us/no-sharp-rise-seen-in-police-killings-though-increased-focus-may-suggest-otherwise.html?_r=0

That is, in total numbers, more whites are killed by police than blacks, but relative to their percent of the population, more blacks are killed.

100 <http://www.propublica.org/article/deadly-force-in-black-and-white>

101 <http://www.propublica.org/article/deadly-force-in-black-and-white>

102 <http://www.policemisconduct.net/statistics/2010-annual-report/>

Other Police Misconduct

The CATO Institute's 2010 National Police Misconduct Report found:¹⁰²

1. 4,861 “unique reports” of police misconduct involving 6,613 law enforcement officers and 6,826 victims.
2. Police agencies spent \$346,512,800 in civil judgments, settlements, and fees.
3. Top three offenses:
 - Excessive force: 23.8%
 - Sexual misconduct: 9.3%
 - Theft/fraud/robbery: 7.2%

Further Reading

“I'm a black ex-cop, and this is the real truth about race and policing,” by Reddit Hudson, Vox, May 28, 2015:
<http://www.vox.com/2015/5/28/8661977/race-police-officer>

Sample Partner Organizations

ACLU's Campaign for local, state and federal laws outlawing racial police profiling: <https://www.aclu.org>

National Coalition of Law Enforcement Officers for Justice, Reform, and Accountability:
<https://www.facebook.com/ncleo>

Chicago Cop Watch

THERE IS WIDE AGREEMENT, FROM MANY ANGLES, THAT THE PROBLEM LIES WITH THE SYSTEM RATHER THAN WITH INDIVIDUAL “BAD APPLES.”

Journalist

“A reform that begins with the officer on the beat is not reform at all. It’s avoidance. It’s a continuance of the American preference for considering the actions of bad individuals, as opposed to the function and intention of systems.”

- Ta-Nehisi Coates¹⁰³

Police Chief

Fixing this system will not be accomplished by investigating and charging bad cops or criminals after the fact. It can only be fixed by looking at how police are trained and led. My analysis is that it is the *system* that needs fixing and we are fooling ourselves if we look at these incidents singularly and not as a collective example of things gone terribly wrong and in need of immediate repair.

- Former Madison, WI police chief David Couper¹⁰⁴

Protesters

*“Indict, convict, send the killer cops to jail!
The whole damn system is guilty as hell!”*

Academic

I think it’s not just about individuals. That’s where this conversation has been for much of the last century. It’s been about cleaning house in a particular department, identifying rotten apples, and saying, “Now that’s we’ve removed those individuals, everything’s going to be ok.”

- Professor Khalil Gibran Muhammad, director of the New York Public Library’s Schomburg Center for Research in Black Culture¹⁰⁵



Photo by Julius Schorzman, Creative Commons License

103 <http://www.theatlantic.com/politics/archive/2015/04/the-myth-of-police-reform/390057/>

104 <http://www.washingtonpost.com/news/the-watch/wp/2015/03/18/were-asking-the-wrong-question-about-police-shootings/>

105 <http://www.npr.org/2015/03/13/392718524/ferguson-needs-to-be-model-for-systemic-change-professor-says>

Drug War

America’s war on drugs, now well into its fourth decade, is intimately linked with the rise of mass incarceration. It has shaped how police work is done, who is arrested and incarcerated and for how long, and how we think about illegal drug use. Even as the Obama administration claims to have ended the War on Drugs, we are still seeing its impact in our prisons and on our streets.

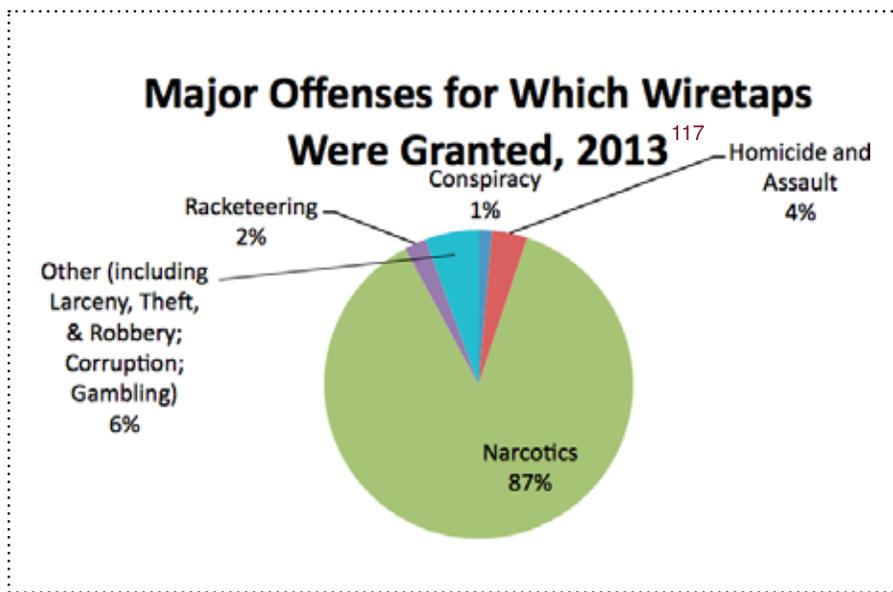
President Nixon officially launched the War on Drugs in 1971¹⁰⁶, as a part of his “southern strategy” to politicize crime in racially coded ways.¹⁰⁷ He backed away from the “root causes” approach of Johnson’s Great Society and laid the blame for drug

use on individual moral failings.¹⁰⁸ The opening salvo was a series of laws that increased police power, funding for fighting drugs, and sentences for drug use. Since then, every presidential administration save Carter’s has increased the divide between spending on prevention and drug enforcement.¹⁰⁹ President Reagan injected new life into the drug war, but over the decades politicians on both sides of the aisle have tried to show how tough they can be on crime, and drug crime in particular. For a longer discussion of this history, see the timeline on p. 18.

The effect on policing has been extensive and multifaceted. Police have gotten access to military equipment, as described on p. 31, and have been able to seize assets suspected of involvement in a crime, as described on p. 34. They have benefited from expanded means of gathering information—from wiretapping (87% of wiretaps in 2013 were for drug investigations)¹¹⁰ to warrantless searches. Michelle Alexander writes that there is a “virtual drug exception”

to the Fourth Amendment.¹¹¹ In the 1980’s, “[City Council] literally declared maybe a quarter to a third of inner city Baltimore off-limits to its residents, and said that if you were loitering in those areas you were subject to arrest and search.”¹¹² In Philadelphia¹¹³, New York City¹¹⁴,

and Atlanta¹¹⁵ — to name just a few examples—police have been caught lying on the stand, planting evidence, and falsifying records in order to protect drug informants. The FBI has even determined that, at times, it is appropriate to let innocent people be harmed rather than compromise a drug informant.¹¹⁶ The drug war has put in place overtime incentives for police to make drug arrests instead of more painstaking investigative work. This practice has distorted the system for promoting officers to higher ranks—and, in turn, affected how new officers are trained and supervised.¹¹⁷



106 <http://www.presidency.ucsb.edu/ws/?pid=3048>

107 Travis, Western, and Redburn, eds. *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. National Research Council, 2014. p. 166.

108 <http://www.theatlantic.com/health/archive/2012/03/the-war-on-drugs-how-president-nixon-tied-addiction-to-crime/254319/>

109 <http://www.theatlantic.com/health/archive/2012/03/the-war-on-drugs-how-president-nixon-tied-addiction-to-crime/254319/>

110 <http://www.washingtonpost.com/blogs/wonkblog/wp/2015/04/14/the-shared-roots-of-the-war-on-drugs-and-the-war-on-terror-in-one-chart/>

111 New Jim Crow, p. 60.

112 <https://www.themarshallproject.org/2015/04/29/david-simon-on-baltimore-s-anguish>

113 <http://citypaper.net/cover/the-price-of-perjury-the-story-of-one-lying-cop-in-phillys-wild-west-drug-war/>

114 <http://www.drugpolicy.org/news/2011/10/former-nypd-detective-testifies-police-regularly-plant-drugs-innocent-people-meet-arres>

115 <http://www.foxnews.com/story/2007/08/14/drug-war-crimes-kill-incarcerate-innocent/>

116 <http://www.foxnews.com/story/2007/08/14/drug-war-crimes-kill-incarcerate-innocent/>

117 <https://www.themarshallproject.org/2015/04/29/david-simon-on-baltimore-s-anguish>

118 <http://www.uscourts.gov/statistics-reports/wiretap-report-2013>

A focus on drugs may also be a contributing factor to the nation's declining "clearance rate," the percent of murders that end with an arrest; it now stands at 64.1%, whereas 50 years ago it was over 90%.¹¹⁹

In its early years, the drug war drove exploding incarceration rates. More recently, the drug war has played out very differently in the state and federal prison systems, as indicated by the statistics below. In state prisons, drugs are no longer the leading cause of incarceration¹²⁰, but the effects of the War on Drugs remain. These include policing and prosecution that focus disproportionately on black communities, and tougher sentences that have led to longer prison terms across the board. In federal prison, drug crimes are still the leading cause of incarceration, and

consequently of the aging of America's prison population. "Our federal prisons are starting to resemble nursing homes surrounded with razor wire," says the president and founder of Families Against Mandatory Minimums.¹²¹ Women have also been caught up in the drug wars in unprecedented ways—often forced by husbands or boyfriends to play small roles but then subject to the same harsh penalties. Women arrested for minor drug offenses are also less likely to have information to trade for an easier sentence, and therefore

end up with harsher punishments than the boyfriends and husbands for whom they were working.¹²²

Viewing drugs as a public health problem rather than a criminal one, and acknowledging the connections between drug use and poverty, shows us a different way forward. People use drugs at similar rates across social classes. In fact, poor people may actually use less often. Addiction, however—like other chronic illnesses—affects poor people

disproportionally, since it interacts with increased stress, poorer diets, unstable housing, and other associated factors.¹²³

Furthermore, wealthier people can afford expensive drug treatment programs that are out of reach for poorer people. And contrary to the popular image of drug lords rolling in cash, many street-level

dealers are barely getting by.¹²⁴ Although a body of research now shows that incentivizing people to stop using drugs is much more effective than punishing them, punishment remains our main tool and social approach.¹²⁵

Ending the war on drugs will not solve all of America's mass incarceration problem, but it would be a major step towards solving a Gordian knot of race, poverty, violence, and misspent public dollars.

Carl Hart, Columbia University's first tenured black professor in the sciences, has written a memoir whose title sums up the problems of the drug war: *High Price: A Neuroscientist's Journey of Self-Discovery That Challenges Everything You Know About Drugs and Society*. In the book, Hart combines his life story of growing up black and poor in Miami with the results of his research. He writes,

It is my hope that after reading this book, you will be less likely to think about drugs in magical or evil terms that have no foundation in real evidence. As you will see in these pages, this has led to a situation where there is an unreasonable goal of eliminating illegal drug use at any cost to marginalized groups (p. xii)... Briefly, we're too afraid of these drugs and of what we think they do. Our current drug policies are based largely on fiction and misunderstanding. Pharmacology—or actual drug effects—plays less of a role when policies are devised. (p. 326)

119 <http://www.npr.org/2015/03/30/395069137/open-cases-why-one-third-of-murders-in-america-go-unresolved>

120 BJS Prisoners in 2009, p. 7, table 7. Qtd in Gottschalk p. 128

121 <http://www.washingtonpost.com/sf/national/2015/05/02/the-painful-price-of-aging-in-prison/>

122 <https://www.aclu.org/sites/default/files/FilesPDFs/ACF4F34.pdf>

123 Hart, p. 272

124 http://www.huffingtonpost.com/2014/02/27/south-carolina-drug-war_n_4809299.html

125 Hart, p. 272-3

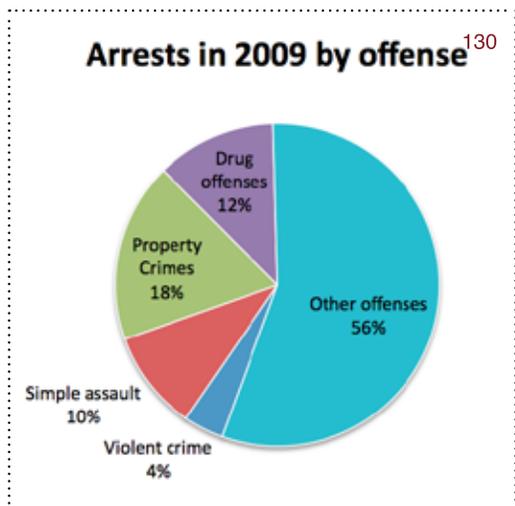
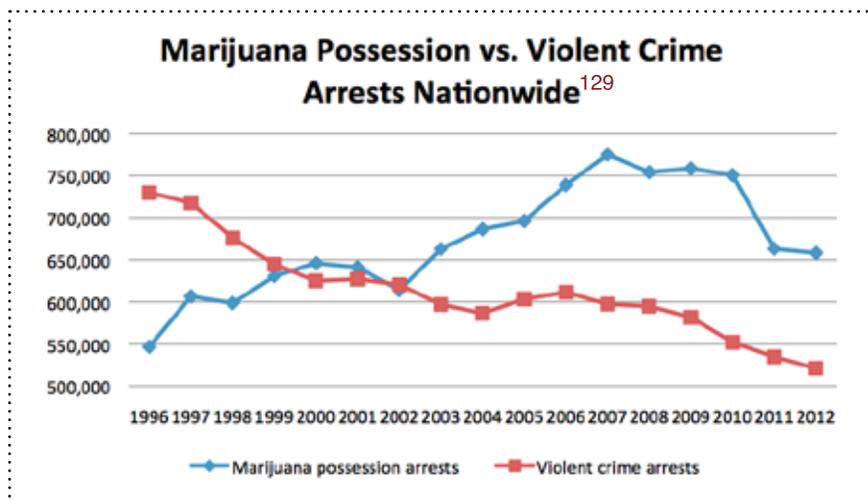
Facts and Figures

Arrests:

• From 2001 to 2010, police made more than 8.2 million marijuana arrests nationwide, almost 90% of which were for possession alone. In 2011, there were more arrests for marijuana possession than for all violent crimes put together.¹²⁶

• As of 2005, African Americans represented 12% of the country's drug-using population but more than 1/3 of those arrested for drug crimes and nearly half of those sentenced to prison for drug offenses.¹²⁷

• The ACLU has found that a black person is 3.73 times as likely as a white person to be arrested for marijuana use, despite equal rates of usage.¹²⁸



were convicted of drug offenses. At the end of fiscal 2013 (the most recent available data), 98,200 people (51% of the federal prison population) were imprisoned for possession, trafficking, or other drug crimes.¹³²

• Between 1986-1996, the number of women incarcerated for drug offenses jumped 888%.¹³³

Incarceration Rates:

• State Prison: People sentenced for drug crimes comprised 16% (210,200) of the total state prison population in 2012.¹³¹

• Federal Prison: Between 2001 and 2013, more than half of people serving sentences greater than a year in federal prisons

Sample Partner Organizations:

- Drug Policy Alliance
- ACLU
- Students for Sensible Drug Policy
- Legal Action Center
- Sentencing Project

“The drug war gives everybody permission to do anything. It gives cops permission to stop anybody, to go in anyone’s pockets, to manufacture any lie when they get to district court.”¹³⁴

- David Simon, former police reporter in Baltimore, creator of *The Wire*

¹²⁶ <http://www.nytimes.com/2014/07/29/opinion/high-time-the-injustice-of-marijuana-arrests.html>

¹²⁷ Gottschalk, p. 127

¹²⁸ <https://www.aclu.org/criminal-law-reform/war-marijuana-black-and-white-report>

¹²⁹ <http://www.drugwarfacts.org/cms/Marijuana#Total>

¹³⁰ <http://www.nij.gov/journals/270/pages/criminal-records.aspx>

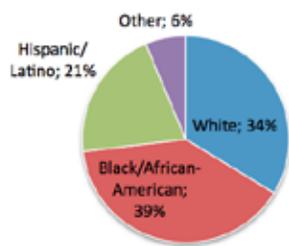
¹³¹ BJS, Prisoners in 2013, p. 15

¹³² BJS, Prisoners in 2013, p. 16

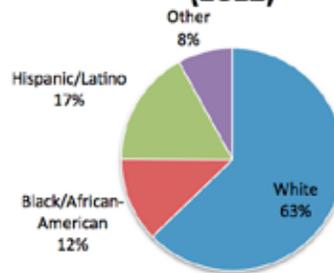
¹³³ <https://www.aclu.org/sites/default/files/FilesPDFs/ACF4F34.pdf>

¹³⁴ <https://www.themarshallproject.org/2015/04/29/david-simon-on-baltimore-s-anguish>

Prison Population for whom Drug or Public Order Violations are the Most Serious Offenses, by Race and Hispanic Origin (Dec. 31, 2013)



U.S. Population by Race and Hispanic Origin (2012)



American Violet

The 2008 movie *American Violet* dramatizes a drug bust that occurred in Hearne, TX in 2000. It focuses on Regina Kelly, a single mother of four, who was among 27 people wrongfully arrested on drug charges on the testimony of a confidential informant. With the help of the ACLU, Kelly was able to defend herself and have the charges—which were proved baseless—dropped. Her cellmate in the county jail, Emma Faye Stewart, was less lucky; unable to pay bail, she plead guilty—to a crime she did not commit—in order to return to take care of her children. Even though charges were dropped, her guilty plea remained on the record. She is unable to receive food stamps, public housing, or federal education grants, and she only recently got back her right to vote (two years after the end of probation). She owed the court \$1800 in fines and fees, which she was dunned to pay despite barely scraping by on her minimum-wage job.¹³⁵ In an interview, Kelly says the movie’s portrayal of her circumstances was 98% accurate.¹³⁶

What’s Working: Don’t Arrest The Small Fry

In South Carolina, US Attorney Bill Nettles is trying out a new approach to reducing drug crime. He identifies drug sellers and builds the evidence to arrest and prosecute them, and does so in the case of high-level actors. In the case of lower-level dealers, his team recruits other key stakeholders—family, community, and religious leaders—and involves them in confronting the accused with the evidence. The identified person has a choice: face prosecution or participate in a pilot program that helps with job placement, and that provides education, drug counseling, and transportation access. If a program participant fails to meet certain standards, or if police get a complaint from the community about a participant, that person is arrested. In North Charleston, the first city where the program was implemented (and, at the time, America’s seventh-deadliest city), 50% of those who went into the program successfully turned their lives around—without costing the US Attorney’s office any extra money. The greater success has been improving police-community relations dramatically. The effort has been expanded to three other South Carolina cities, and other states are watching eagerly to see how expansion goes before contemplating their own versions.¹³⁷

¹³⁵ <http://www.pbs.org/wgbh/pages/frontline/shows/plea/four/stewart.html>

¹³⁶ <http://womenandhollywood.com/2009/04/17/interview-with-regina-kelly-the-woman-behind-american-violet/>

¹³⁷ http://www.huffingtonpost.com/2014/02/27/south-carolina-drug-war_n_4809299.html

Militarization of Police

Photos like these—of heavily armed police confronting protesters in Ferguson, brought to American TV screens, newspapers, and web browsers—brought the militarization of American police forces crashing into the public consciousness in the summer of 2014.



Voices of America, Public Domain

In the 1940's and '50's, liberals wanted local police forces professionalized and trained so they would better protect blacks from white violence. Conservatives went along with this because they hoped to use police to curb "lawlessness" on the part of blacks protesting for civil rights. The 1968 Safe Streets Act gave block grants to the states for training and equipment, but left control of the funding almost entirely up to state governments. State politics and racial animus led to the almost universal direction of money towards riot control and militarization, rather than crime prevention and rehabilitation.¹³⁸



Photo by Jamelle Boule, Creative Commons License

The 1033 program, instituted in 1997, allows the Department of Defense to share equipment it no longer needs with state or local law enforcement agencies. This can include the range of items used by America's military—clothing and office supplies, tools and rescue equipment, vehicles, rifles, and other small arms.

There's no federal requirement for state or local lawmakers to approve or have oversight of the equipment transfers.¹³⁹ That's part of why "[critics] call it a shadowy program that lacks oversight and lets police request anything they want, regardless of whether they need it."¹⁴⁰ Nine states (California, Connecticut, Indiana, Minnesota, Montana, New Hampshire, New Jersey, Tennessee, and Vermont) have bills in process that would ban or cut back police militarization.¹⁴¹

¹³⁸ Gottschalk, p. 144-5, 147

¹³⁹ http://www.huffingtonpost.com/2015/03/24/states-police-militarization_n_6932576.html

¹⁴⁰ http://www.huffingtonpost.com/2015/03/24/states-police-militarization_n_6932576.html

¹⁴¹ http://www.huffingtonpost.com/2015/03/24/states-police-militarization_n_6932576.html

Another way the police have become militarized is in the increasing prevalence and use of SWAT (Special Weapons And Tactics) teams. Originally created to help police deal with hostage situations, active shooters, and the like, these are increasingly being used as part of the drug war—for instance, to execute ‘no-knock’ search warrants in the middle of the night. Police burst into a home with guns drawn, often forcing their way through the front door or window. The results are often chaotic and deadly.

Police respond that criminals now have access to more powerful weaponry, police too need better equipment in order to remain safe. (We would say that is an argument for better gun control.) Isolated examples in which police in rural areas have deployed heavy vehicles wisely¹⁴² do not, however, answer for the systemic problem. Use of military equipment by police scares citizens and creates a hostile

climate on the streets. This practice also can affect the approach of police officers. When you are dressed and armed like a soldier, you’re more inclined to think like one.¹⁴³

“In October 2014, I went to Ferguson with other T’ruah rabbis to stand in solidarity with local black communities facing systemic police violence. After spending 24 hours preparing for a clergy action, feeling strong and confident, I approached a line of police to explain the Jewish concept of *teshuvah*, asking for forgiveness, and to ask them to engage in the process. When I looked up at their stoic faces, though, and saw their bodies clad in riot gear, faces shielded with thick plastic, I felt a wave of terror I had never experienced in my life. My formerly stiff upper lip quivered with fear as tears began to stream down my cheek, and I realized I was getting just the tiniest glimpse into everyday life for the incredible young people I had come to support.”

- Rabbi Rachel Grant Meyer

In May 2015, President Obama announced steps to eliminate some of the most militarized equipment, but analyses of the 1033 program show that the new policy makes little difference in practice; the restricted categories made up a tiny percentage of the equipment that was previously released.¹⁴⁴

Further Reading

“War Comes Home: The Excessive Militarization of American Policing.” ACLU, June 2014. <https://www.aclu.org/sites/default/files/assets/jus14-warcomeshome-report-web-rel1.pdf>

¹⁴² http://www.mlive.com/news/grand-rapids/index.ssf/2015/04/west_michigan_police_beefing_u.html

¹⁴³ <http://nymag.com/scienceofus/2014/08/how-militarizing-police-can-increase-violence.html>

¹⁴⁴ <http://www.npr.org/sections/thetwo-way/2015/05/21/407958035/white-house-ban-on-militarized-gear-for-police-may-mean-little>

Facts and Figures

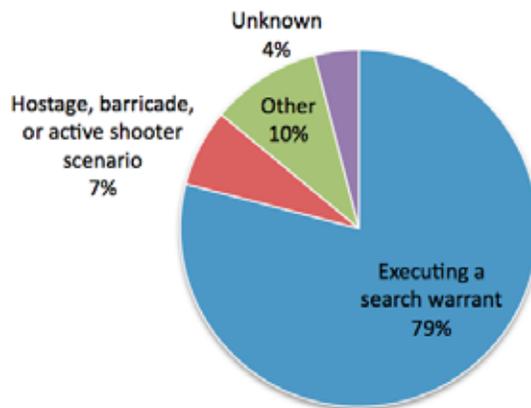
1033 Program:

- Since its inception, the 1033 program has transferred more than \$5.4 billion worth of property, including \$980 million in 2014—meaning the flow of supplies has accelerated.¹⁴⁶
- 60% of the United States is classified by the Drug Enforcement Agency as a “high-intensity drug trafficking area,” which means police there get priority for military tactical vehicles.¹⁴⁷
- In 2014, the San Diego Unified School District police department received an armored combat vehicle through the 1033 program.
- 184 police departments across the country have been suspended from 1033 for misplacing equipment, including assault rifles, shotguns, and Humvees.¹⁴⁸

No-Knock Warrants

18-month-old “Bou Bou” Phonesavanh was sleeping when a SWAT team burst into his aunt’s Georgia house, where his family was staying, in the middle of a spring night in 2014. Police were there under a “no-knock” warrant to arrest Bou Bou’s 30-year-old cousin for selling methamphetamine. They threw a “flashbang grenade”—a military diversionary tactic—that landed in Bou Bou’s crib, burning him severely and collapsing one of his lungs. The cousin was not in the house and, in fact, had not been seen for weeks. In the aftermath, the agent who secured the warrant resigned, the drug task force she worked on was disbanded, the judge who approved the warrant retired, and a grand jury called the investigation “sloppy” but did not recommend charges. The Phonesavanh family is over \$1 million in debt from medical bills. The flashbang grenade, introduced for special forces’ use in the 1970’s, transformed a deeply problematic police tactic—charging unannounced into a person’s home in the middle of the night—into a gut-wrenching, costly, near-deadly encounter.¹⁴⁵ For more on flashbang grenades, including 50 more profiles of Americans harmed by them, see <https://www.propublica.org/article/flashbangs>.

Use of SWAT deployments, 2011-2012¹⁵²



SWAT deployments were to execute search warrants.¹⁵¹

SWAT Teams:

- The number of SWAT teams nationwide has expanded dramatically, and smaller and smaller police departments are outfitting them. From the mid-1980’s to the late 1990’s, the number of SWAT teams in cities of over 50,000 almost doubled, to 89% of police departments. In cities of between 25-50,000 people, the rate soared from 20% in the mid-1980’s to over 80% by 2007.¹⁴⁹
- In 1980, there were about 3000 incidents of SWAT deployments nationwide. Today, the number is 50,000 annually.¹⁵⁰
- An ACLU study found that, from 2011-2012, 79% of

¹⁴⁵ <http://abcnews.go.com/US/family-toddler-injured-swat-grenade-faces-1m-medical/story?id=27671521>

¹⁴⁶ <http://www.dispositionservices.dla.mil/leso/pages/default.aspx>

¹⁴⁷ <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/08/14/the-pentagon-gave-nearly-half-a-billion-dollars-of-military-gear-to-local-law-enforcement-last-year/>

¹⁴⁸ <http://fusion.net/story/6371/fusion-investigates-how-did-americas-police-departments-lose-loads-of-military-issued-weapons/>

¹⁴⁹ <http://www.economist.com/news/united-states/21599349-americas-police-have-become-too-militarised-cops-or-soldiers>

¹⁵⁰ <http://www.economist.com/news/united-states/21599349-americas-police-have-become-too-militarised-cops-or-soldiers>

¹⁵¹ <https://www.aclu.org/sites/default/files/assets/jus14-warcomeshome-report-web-rel1.pdf>

¹⁵² <https://www.aclu.org/sites/default/files/assets/jus14-warcomeshome-report-web-rel1.pdf>

Civil Forfeiture

Civil forfeiture is a legal process by which police may impound property or money suspected of being involved in a drug crime. The threshold for “suspicion” is set extraordinarily low, and unlike in an arrest, there is no presumption of innocence; the burden of proof lies on the property owner to demonstrate that the money is not illicit. Police have taken to the practice to supplement their budgets; the procedures to reclaim seized property can be so complicated and expensive that many people give up. According to a Washington Post investigative report on the subject, the government has seized

more than \$2.5 billion since 9/11.¹⁵³

The history of forfeiture can be traced as far back as the 1600’s, but use of it stepped up considerably during the Drug War. Reform efforts are underway in some states, notably Georgia and New Mexico; Wyoming’s governor vetoed a reform bill in early 2015.¹⁵⁴ The outrage forfeiture engenders in those who learn of it for the first time, and the degree of corruption that has been documented, make it a prime target for legislative reform.

Three Stories of Forfeiture

Jennifer Boatright, her boyfriend Ron Henderson, and two young sons were driving to Linden, TX, near the Louisiana border, in 2007. This year, the annual trip—to hike among wildflowers and visit the boyfriend’s father—was intended to also buy a used car, so they brought their savings, \$6000 in cash. Instead, they were stopped by police in Tenaha, TX, who said they fit the profile of drug couriers. (No drugs were in the car, though the police claimed to have smelled pot.) Jennifer and Ron were given a choice: be arrested for money laundering and child endangerment, or sign over their cash to the police.¹⁵⁵

The Contemporary Art Institute of Detroit used to hold a monthly party. In May 2008, police officers in commando gear stormed the museum and ordered everyone present to the ground. Then they demanded everyone’s car keys and drove off with 44 vehicles. The museum apparently did not have the appropriate license to hold the party, and a Prohibition-era law made it illegal to be at such a party, even unwittingly. Each car owner was charged over \$1000 to retrieve the vehicles, which would become city property if the fees were not paid. When the ACLU filed suit, a district court ruled the practice unconstitutional, noting it was a “widespread practice.”¹⁵⁶

Mary Adams, 68, and her husband Leon, 70, had lived in their small house in Philadelphia since 1966. When their son was caught selling marijuana from the porch, police in riot gear executed a no-knock raid, busted down the front door, and took him away to prison. The following month, they returned one morning and told the Adamses they had ten minutes to vacate the house and take whatever they needed; it was being confiscated by the city. When an officer realized that Leon had pancreatic cancer and was quite ill, he allowed them to stay in the house while eviction proceedings went forward.¹⁵⁷ The case is still pending.¹⁵⁸

Talmud Bava Kamma 46b

Rabbi Shmuel bar Nachmani taught: From where do we learn the principle that the one who would take something from his fellow must bring the evidence? As the Torah says, “Whoever has a legal matter, approach them [the judges]” (Ex. 24:14)—approach them with proof. Rav Ashi challenges him: why do we even need a verse? This is simple logic. Let the one who has a pain go to the doctor’s office.

¹⁵³ <http://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/>

¹⁵⁴ <http://blogs.wsj.com/law/2015/03/25/legislation-to-curb-civil-forfeiture-advances-in-states/>

¹⁵⁵ <http://www.newyorker.com/magazine/2013/08/12/taken>

¹⁵⁶ <http://www.newyorker.com/magazine/2013/08/12/taken>

¹⁵⁷ <http://www.newyorker.com/magazine/2013/08/12/taken>

¹⁵⁸ <http://www.newyorker.com/magazine/2013/08/12/taken>

Poverty and Mass Incarceration

Race often takes center stage in discussions of mass incarceration, but poverty also plays a major role in shaping a person's encounter with the criminal justice system. The people most likely to face arrest and go through the courts are poor and marginalized: people who have not completed high school, people with mental illness, people with substance abuse problems or histories.¹⁵⁹ When the system charges them fees and fines, they are the least likely to be able to pay.

This leads to two kinds of injustice. First, it gives rise to a system in which poor people receive harsher treatment than wealthier people who commit identical crimes.¹⁶⁰ Poverty can lead to arrests for unpaid debt, to sitting in jail while those who can pay go free, to plea bargains with unintended consequences, and to crushing loads of debt imposed by the criminal justice system itself.

Second, "This new system of offender-funded law enforcement creates a vicious circle: The poorer the defendants are, the longer it will take them to pay off the fines, fees and charges; the more debt they accumulate, the longer they will remain on probation or in jail; and the

more likely they are to be unemployable and to become recidivists."¹⁶¹

The federal government banned debtors' prisons, where people would be incarcerated if they couldn't pay off a debt, in 1838. Instead, what we now know as bankruptcy law

came into place. Though still technically illegal, as upheld by the Supreme Court in 1983, courts have found ways to circumvent the law. An unpaid debt can result in a civil suit; if the debtor doesn't show up for court, or if the judge decides the person is "willfully" not paying (a loophole left open by the Supreme Court), s/he can be charged with contempt of court and arrested. This process is further complicated by the fact that indigent defendants have a right to counsel in criminal cases, but not in civil ones.

Deuteronomy 24:6,10-13

6 A handmill or an upper millstone shall not be taken in pawn, for that would be taking someone's life in pawn.

10 When you make a loan of any sort to your countryman, you must not enter his house to seize his pledge. 11 You must remain outside, while the man to whom you made the loan brings the pledge out to you. 12 If he is a needy man, you shall not go to sleep in his pledge; 13 you must return the pledge to him at sundown, that he may sleep in his cloth and bless you; and it will be to your merit before the Lord your God.

Once arrested, a person who is neither a flight risk nor a danger to society usually has bail set. People of means pay their bail money, which is refunded at the conclusion of their trials. But bail amounts can be set excessively high, and the commercial bail bonds industry, which will pay your bail for a fee, charges exorbitant rates.¹⁶²

¹⁵⁹ Sociologist Alexes Harris, University of Washington: <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>

¹⁶⁰ <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>

¹⁶¹ <http://www.nytimes.com/2014/08/27/opinion/thomas-edsall-the-expanding-world-of-poverty-capitalism.html>

¹⁶² The US and the Philippines are the only two countries in the world where commercial bail bond is legal. http://www.nytimes.com/2008/01/29/us/29bail.html?_r=2&

Poverty also affects people in the mass incarceration system through structurally incentivizing plea-bargains. A public defender, on whom many poor people must rely, usually lacks the time or resources for a lengthy trial. Similarly, a person who needs to be home taking care of family, or working to bring in needed money, can't afford to sit in jail during a trial—and likely can't afford bail either. Pleading guilty and accepting a suspended sentence or probation meets the immediate need of getting the person back to regular life, at the cost of a criminal record. See p. 82 for a discussion of why that can be damning for life.

This brings us to other court-related payments, apart from bail. These fall into three categories: fines, which are intended to be punitive (e.g., traffic fines); restitution, which is paid to the victim of a crime; and fees that fund the operation of the mass incarceration system.

While fines and restitution are as old as the Bible, fees are much newer, and there has been “mission creep” in their use. In 1965, California ordered reimbursements to crime victims. By the 1980s, states started billing criminal defendants to reimburse taxpayers for public expenses.

Michigan, in 1984, passed the first law to charge incarcerated people for some of the costs of their incarceration.¹⁶³

The progression is clearly alarming. And what do these fees include? “Jail book-in fees, bail investigation fees, public defender application fees, drug testing fees, DNA

testing fees, jail per-diem for pretrial detention, court costs, felony surcharges, public defender recoupment fees...”¹⁶⁴ “costs of imprisonment (billed to inmates in 41 states), and of parole and probation (44 states)...”¹⁶⁵ In one Michigan county, Allegan, a man was fined \$1000 in court fees. \$500 were for the public defender, and the other \$500:

...helped pay for the costs of running the county courthouse. Those costs include the salaries of court employees, for heat, telephones, copy machines and even to underwrite the cost of the county employees' fitness gym. “The only reason

*that the court is in operation and doing business at that point in time is because that defendant has come in and is a user of those services,” says Michael Day, the administrator for the Allegan County Circuit Court.*¹⁶⁶

Fines and Restitution in the Bible

When a man steals an ox or a sheep, and slaughters it or sells it, he shall pay five oxen for the ox, and four sheep for the sheep... But if what he stole — whether ox or ass or sheep — is found alive in his possession, he shall pay double. (Ex. 21:37, 22:3)

Tom Barrett was homeless and selling his plasma to a blood bank to supplement the food stamps he received. When he stole a \$2 can of beer, he turned down the public defender, because he couldn't afford the \$50 administrative fee. His 12-month sentence was initially deferred, but probation was expensive. Barrett owed more than \$400 a month, including fees to rent the electronic monitoring device he had to wear. His inability to pay was a violation of probation, and Barrett went to jail.¹⁶⁷

¹⁶³ <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>

¹⁶⁴ <https://www.themarshallproject.org/2015/02/24/debtors-prisons-then-and-now-faq#.0jjdjMZVX>

¹⁶⁵ <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>

¹⁶⁶ <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>

¹⁶⁷ <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>

And what is the cost of not being able to pay? That's a violation of many people's probation rules, which means more incarceration.

This issue, of course, came to the national stage when the Justice Department released its report on the Ferguson Police Department in March, 2015.¹⁶⁸ The findings from Ferguson, where the city relied on fees and citations for nearly a quarter of its general operating budget¹⁶⁹, may be extreme, but are by no means unusual.

What's driving these fees is the ballooning cost of the mass incarceration system—see p. 50 for a further discussion—combined with a sense (reflected by Mr. Day, above) that it's

fair for criminals to pay for their crimes. Some reforms are underway, as described in a New York Times "Fixes" column in 2015,¹⁷⁰ but what's needed is a larger shift in how we understand the purpose of a court system. Who is really the "user"—the defendant or the society at large?

Facts and Figures

Bail:

- According to a 2015 report by the Vera Institute of Justice, in

New York City in 2013, more than half of people held in jail during their trials were there because they could not afford bail of \$2,500 or less. Most of these were misdemeanor cases.¹⁷¹

- The average bail amount for felony defendants jumped 43% from 1992 to 2009.¹⁷²
- Watch this great, short video on commercial bail bond: <https://www.youtube.com/watch?v=UAYX27tJUkA#t=11>

Rabbi Hayyim David Halevy: The Arrest of Suspects According to Halakhah, and How to Avoid Arresting Those Innocent of Any Crime

We learn from the words of the Riba"sh (14th century Spanish rabbi) that one who is arrested for a crime that is likely to result in capital punishment, or any bodily crime, is not freed on bail until after his judgment is determined. From this we can learn that for all other crimes, for which the punishment is monetary, we let them go until the determination of the sentence.

- Aseh L'kha Rav 3:48. Rabbi Halevy lived from 1924-1998 and served as Chief Sephardic Rabbi of Tel Aviv from 1973 until his death.

The Cost of Fees:

- In Washington State, there's 12% interest on costs in felony cases that accrues from the moment of judgment until all fees are paid off in full. The average amount in felony cases

starts off at \$2,500. If someone paid a typical amount — \$10 a month — and never missed a payment, his debt would keep growing. After four years of faithful payments, the person would now owe \$3,000.¹⁷³

- A homeless person in Westminster, CO was fined \$165 for a traffic violation, which he could not pay. He was eventually arrested for nonpayment and sentenced to ten days in prison, at a cost to taxpayers of about \$70/day, according to the ACLU of Colorado.¹⁷⁴

168 <http://www.washingtonpost.com/news/post-nation/wp/2015/03/04/the-12-key-highlights-from-the-doj-s-scathing-ferguson-report/>
169 P. 10 of the DOJ report, qtd. In http://www.nytimes.com/interactive/2015/03/04/us/ferguson-police-justice-department-report.html?_r=0
170 http://opinionator.blogs.nytimes.com/2015/03/27/shutting-modern-debtors-prisons/?_r=0
171 <http://www.vera.org/sites/default/files/resources/downloads/incarcerations-front-door-report.pdf>
172 <http://www.vera.org/sites/default/files/resources/downloads/incarcerations-front-door-report.pdf>
173 <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>
174 <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>

• On an average day in Benton County, WA, in 2013, one in four people who were in jail for misdemeanor offenses were there because they had failed to pay their court fines and fees.¹⁷⁵

Supporting the System:

• By 1990, Texas reported that fees from offenders made up more than half the budget of the state's probation agencies.¹⁷⁶

• In fiscal 2015, Ferguson, Missouri expected municipal court fines to supply \$3.09 million of the city's projected \$13.26 million budget, or 23.3%.¹⁷⁷ In 2011, fines had accounted for only 12.3%.¹⁷⁸

Unpaid Fees and Fines Are Prevalent:

• In 2011, in Philadelphia alone, courts sent bills on unpaid debts dating back to the 1970s to more than 320,000 people — roughly 1 in 5 city residents. The median debt was around \$4,500.¹⁷⁹

• In New York City in 2014, there were 1.2 million outstanding warrants, many for unpaid court fines and fees.¹⁸⁰

• In 1991, 25% of people incarcerated in prisons said they owed court-imposed costs, restitution, fines and fees. By 2004, the last time the Justice Department did the survey, that number climbed to about 66%. A 2014 study estimates

that 80-85% of returning citizens leave prison with this kind of tab.¹⁸¹

What's Working: BAM! Behavioral Therapy with STYL

In Liberia, it works with unemployed young men whose lives were ravaged by 14 years of civil war. In Chicago, it works with teens at risk of dropping out of school. STYL (Sustainable Transformation of Youth in Liberia) and BAM (Becoming A Man) take people who would otherwise likely be involved in crime and/or drugs and offer them participation in an eight-week group cognitive behavioral therapy program. The curriculum helps them learn strategies for staying cool, making smarter decisions, and planning for the long term—emotional skills that many people with less-disrupted lives learn as young children. The results are astounding. In Liberia, for a cost of less than \$250 per person, violence and other negative behaviors dropped 20-50%. A year after the therapy, as many as half of the participants were living productive lives. Economist Chris Blattman would like to see similar programs rolled out and tried in other places. "Where jobs and jail haven't worked, skills for self control just might."¹⁸²

Sample Partner Organizations:

- ACLU
- Brennan Center for Justice
- Justice Policy Institute
- Pretrial Justice Institute
- Arnold Foundation
- Public Welfare Foundation

For Further Reading

"Charging Inmates Perpetuates Mass Incarceration," by Lauren-Brooke Eisner, Brennan Center for Justice, May 21, 2015. <http://www.brennancenter.org/publication/charging-inmates-perpetuates-mass-incarceration>.

¹⁷⁵ <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>

¹⁷⁶ <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>

¹⁷⁷ P. 10 of the DOJ report, qtd. In http://www.nytimes.com/interactive/2015/03/04/us/ferguson-police-justice-department-report.html?_r=0

¹⁷⁸ <http://www.nytimes.com/2014/08/27/opinion/thomas-edsall-the-expanding-world-of-poverty-capitalism.html>

¹⁷⁹ <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>

¹⁸⁰ <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>

¹⁸¹ <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>

¹⁸² <http://www.washingtonpost.com/blogs/monkey-cage/wp/2015/04/15/jobs-and-jail-might-not-keep-young-men-out-of-crime-but-how-about-therapy/>

People Convicted of Violent, Nonviolent, and Sex Offenses

Much of today’s public attention on mass incarceration reform focuses on reducing sentences for or releasing the so-called “non-non-nons,” the nonviolent, non-serious, non-sex offenders. While this works as a starting point, it is an insufficient premise for truly overhauling the system, both because of the assumptions built into it and because of the data it ignores.

The first problem with this premise is pure numbers. Fully 54% of people incarcerated in state prisons in the US are there for violent crimes, so cutting our incarceration rates in half would require releasing some “violent criminals.” In order to return to America’s incarceration rate of the early 1970’s—or what Western Europe has today—roughly

80% of incarcerated people would have to be let go.¹⁸⁴ Accomplishing that goal will require a full rethinking of how we approach crime and punishment.

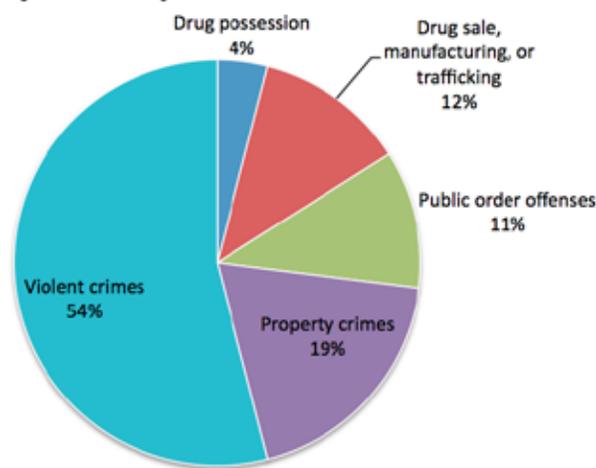
How do we decide who gets released? That brings us to the next problem: centering the debate on the “non-non-nons” frames it as being about those “good” people deserving of freedom and those “bad” people who should rot in prison. The “non-non-nons” may be the kind of low-hanging fruit that get a debate started and achieve short-term advocacy victories, but there is also a risk that enabling their release makes it much harder to move into the territory of the violent, serious, and sex offenders.

Finally, there are inherent problems in these classifications. For instance, the definition of a violent crime is constantly expanding. When the Bureau of Justice Statistics reports on crime, they use six seemingly clear-cut categories: murder, manslaughter, rape or sexual assault, assault, robbery, and “other.”¹⁸⁵ But civil rights activist Van Jones points out that anyone found carrying a gun while committing a crime, even if the gun never gets used, is automatically included in the

“violent” category.¹⁸⁶ In 2009, South Carolina legislators, as part of an omnibus crime bill, redefined 22 crimes as “violent” that qualify for enhanced penalties.¹⁸⁷ When it comes to federal immigration law and what violent crimes serve as cause for deportation, the net has been cast wider and wider. From 1988, when “aggravated felony” was defined solely as murder and drug or

weapons trafficking, today the category includes 20 different offenses. These include “moral turpitude,” possession of marijuana with intent to distribute, and petty theft with a prior jail term, as well as any attempt or conspiracy to commit any of the crimes on the list.¹⁸⁸ And that doesn’t begin to touch the concept of “aging out of crime”; studies have shown that criminal behavior is largely a feature of youth or early adulthood, so even someone who was violent at the time of incarceration is likely no longer a threat in middle age.¹⁸⁹ In short, not all “violent criminals” are created equal.

Why are People in State Prisons?



184 <https://www.themarshallproject.org/2015/03/04/how-to-cut-the-prison-population-by-50-percent>

185 BJS, “Prisoners in 2012.”

186 <https://www.themarshallproject.org/2015/03/04/how-to-cut-the-prison-population-by-50-percent>

187 Gottschalk, p. 167

188 Maureen Sweeney: “Fact or Fiction: The Legal Construction of Immigration Removal for Crimes,” *Yale Journal on Regulation*, 2010. http://digitalcommons.law.umaryland.edu/fac_pubs/708/

189 <http://www.nytimes.com/2015/03/22/sunday-review/too-old-to-commit-crime.html>

Similarly, the term “nonviolent offense” implies that these people pose no danger to anyone, but that is not necessarily the case. Four-fifths of people in state prisons serving time for a “nonviolent” offense meet at least one of the four

criteria that define a “serious” offender. In federal prisons, the number is 55%. Only ¼ of those incarcerated in federal prisons and 1/5 in states are serving time for a first offense. Much attention has been focused on the drug war and how it sweeps up many innocent people, a topic covered at greater length on p. 27. Even so, some scholars and law enforcement leaders believe that drug charges often serve as surrogates for more serious, violent crime where there wasn’t enough evidence to indict. By one

calculation, less than 6% of people held in state prisons and 2% in federal prisons are “unambiguously low-level drug offenders.” People in jail exclusively for possession,

without also being involved in sale or transport, make up just 4% of state and federal drug offenders and just 1% of all incarcerated people.¹⁹⁰ What this means is that any given “nonviolent offender” may or may not be a threat to public safety.

“[I]t is not the task of penal reform—or of the movement against the death penalty—to present to the public whatever it will accept. The task, rather is to argue for a punitive policy that is humane, feasible, and effective, whatever the crime and whoever the offender and regardless of the current climate of public opinion.”

- Hugo Adam Bedau, Professor of Philosophy and anti-death-penalty activist, died 2012.¹⁹⁸

And then there is the third “non,” the non-sexual offender. Sex crimes scare Americans; in a 2005 Gallup poll, more respondents said they are “very concerned” about child molestation (66%) than terrorism or violent crime.¹⁹¹ This has led to ballooning incarceration rates, lifetime registration requirements (with extensive associated restrictions in housing¹⁹², employment, and



Photo by Dr. Avishai Teicher, Creative Commons License

so on), and a legal ability to forcibly commit sex offenders to “civil treatment centers” indefinitely after the end of their prison terms¹⁹³. “No other industrialized democracy

¹⁹⁰ Gottschalk, p. 169.

¹⁹¹ <http://www.gallup.com/poll/16123/crystal-meth-child-molestation-top-crime-concerns.aspx>

¹⁹² <http://www.npr.org/2014/10/23/358354377/aclu-challenges-miami-law-on-behalf-of-homeless-sex-offenders>;
<http://www.oregister.com/articles/offenders-611517-sex-law.html>

¹⁹³ <http://csgjusticecenter.org/reentry/media-clips/a-system-that-is-clearly-broken/>

imposes such lengthy criminal sanctions on sex offenders or keeps them so ensnared long after they have completed their criminal sentences.”¹⁹⁴ But “sex crime” is an extremely broad category that runs the gamut from “making obscene phone calls to urinating in public to consensual sex between teenagers to the rape and murder of a child.”¹⁹⁵ This last is the fear that runs through any parent’s mind, but it is, in fact, exceedingly rare — “a thin sliver” of all sexual offenses committed in the United States.¹⁹⁶ Furthermore, most sex offenders do not reoffend.¹⁹⁷

All of which brings us back to our starting point: reducing sentences for the non-non-nons is a place to start, but it is not an end in and of itself—especially if it goes hand-in-hand with increasing penalties for violent, serious, and sex offenders.¹⁹⁹ Across-the-board reform calls for deep reflection on our society’s values, creativity, courage, and acting from data rather than from fear.

Facts and Figures

Sex Offenses: Crime and Punishment:

- Rape and sexual assault rates peaked in the 1980’s and have fallen since then, in line with national crime rates. Meanwhile, convictions for sex offenses increased by 400% between 1993 and 2000.²⁰⁰
- 10–20% of people in state prison are currently serving time for sex offenses, though in some states it’s almost 30%.²⁰¹

- The number of people serving time for possession of sexually explicit materials, usually child pornography, in federal prisons increased more than sixtyfold (6000%) between 1996 and 2010, compared to a 60% increase in drug offenses over the same period.²⁰²

Sample Partner Organizations

- JustLeadershipUSA
- Californians for Safety and Justice
- ACLU
- Brennan Center for Justice
- Human Rights Watch
- Amnesty International
- Justice Policy Institute
- Open Society Foundation



Photo by Bill Whitaker, Creative Commons License

¹⁹⁴ Gottschalk, p. 197

¹⁹⁵ Gottschalk, p. 197

¹⁹⁶ Eric Janus, *Failure to Protect: America’s Sexual Predator Laws and the Rise of the Preventive State*, 2006, p. 2.

¹⁹⁷ Gottschalk, p. 210-211

¹⁹⁸ Qtd in Gottschalk, p. 194.

¹⁹⁹ Such as the position laid out by Senate Judiciary Committee Chair Chuck Grassley in late April 2015, <http://freebeacon.com/issues/grassley-signals-openness-to-some-sentencing-reform/>

²⁰⁰ Qtd in Gottschalk, p. 194.

²⁰¹ Velazquez, “Pursuit of Safety,” Vera Institute. <http://www.vera.org/pubs/pursuit-safety-sex-offender-policy-united-states-0> Because of differences in how sex crimes are classified, it’s hard to compare these figures to the data above.

²⁰² Gottschalk, p. 199

School to Prison Pipeline

The “school to prison pipeline” refers to the alarming trend of so many youth being routed from school directly into the juvenile justice system.

In the past few decades, public schools increasingly began to adopt “zero tolerance” discipline models in response to fears about school safety.

Zero tolerance discipline has caused a dramatic increase in the use of out-of-school suspension and expulsion to punish even low level infractions. In one state a study found that only 5% of students who were suspended were for a “serious infraction.”²⁰³

These cultural trends have been reinforced by “tough on crime” education policy such as the Gun-Free Schools Act of 1994 requiring an entire year’s out-of-school suspension for any student who brings a weapon into a school. Many schools applied this punishment to pocket knives or even toy weapons, resulting in an education denied and a child outside of the system. These policies disproportionately affect children of color.

Another piece of legislation that has been linked to the school-to-prison pipeline is No Child Left Behind.²⁰⁴ The serious ramifications for schools that do not meet the law’s standards have prompted administrators to remove problematic students, thus presenting a more successful profile to the government. And when students return from

the juvenile justice system, administrators are reluctant to accept them, since they carry a risk of hurting the school as a whole.

The significant increase of Student Resource Officers (SROs), police officers based in schools, has contributed to criminalizing even minor discipline infractions. Though the intent may be student safety, evidence shows that the officers mostly respond to low-level discipline issues unrelated to safety. A report by the Justice Policy Institute found that schools with SROs were 500% more likely than schools without officers to

arrest students for the vague category of “disorderly conduct,” even controlling across school districts’ poverty level.²⁰⁵ Such school-related arrests are extremely racially skewed, with African American and Latino students accounting for 70% of the arrests and thus beginning the process of racially disproportionate incarceration.²⁰⁶

Jerusalem Talmud *Hagiga* 1:71

Rabbi Simeon Bar Yohai taught: If you see towns which have been uprooted from their original location in the Land of Israel, you should know that the inhabitants did not faithfully pay the fee of their scribes and teachers. What is the scriptural basis for this statement? It is written: “Why is the land ruined and laid waste like a wilderness, so that no one passes through? And the Lord says: Because they have forsaken My Torah which I set before them.” (Jeremiah 9:11-12)

[Translation by CAJE]



Photo by Backbone Campaign,
Creative Commons License

203 http://www.splcenter.org/sites/default/files/downloads/publication/Suspended_Education.pdf

204 <http://www.thenation.com/article/205129/states-are-required-educate-students-behind-bars-heres-what-really-happens>

205 <http://www.vox.com/2015/2/24/8101289/school-discipline-race>

206 http://b.3cdn.net/advancement/0d4633c0e97bcf061f_q4m6igky2.pdf

Instead of criminalizing students, school districts would do well to invest in guidance counselors, social workers, and training staff in alternative models of discipline and conflict resolution.²⁰⁷ Schools should be teaching children to effectively deal with problems in a healthy and effective manner rather than sending them to jail.

Sample Partner Organizations

- Dignity in Schools: Their work includes the National Week of Action Against School Pushout, Solutions Not Suspension Initiative, and a Model Code on Education and School Discipline. www.dignityinschools.org

- Advancement Project: <http://www.advancementproject.org/issues/stopping-the-school-to-prison-pipeline>

- ACLU: www.aclu.org/school-prison-pipeline

- Southern Poverty Law Center (SPLC): <http://www.splcenter.org/what-we-do/children-at-risk>

- Suspension Stories is a youth-led participatory action research project to understand the school to prison pipeline: <http://www.suspensionstories.com>. This initiative is the result of a collaboration between the Rogers Park Young Women's Action Team (www.rogersparkywat.org) and Project NIA (www.project-nia.org).

- Numerous local student-led organizations have released reports and led campaigns, such as Youth United for Change (YUC) in Philadelphia or Voices of Youth in Chicago Education (VOYCE).

The Peace Room

A few years back, a student leadership development organization called Umoja set out to confront [the school to prison pipeline] by establishing a program that carves out a little corner of Manley High School [Chicago's most violent school in 2007], the "peace room," as a home base for restorative justice practices... Nowadays, friends of kids who've been harmed or done harm or threatened to hurt someone or talked about fighting may bring them to the peace room—especially if those friends have experienced healing there themselves... The peace room aims to be a safe community, woven into the fabric of the school... a stark contrast to in-school suspension rooms, where kids are often punished by near-abandonment in a classroom free of teaching and learning, left to drift toward boredom and frustration... The circles and informal chats that happen here helped [Gloria] say her feelings out loud, to figure out why fights happen and what she can do to prevent them... [she] chimes in, "This room just safens things." ... That's why the room needs to be here every day, living inside the body of the school.

- Schenwar, Maya. *Locked Down, Locked Out: Why Prison Doesn't Work and How We Can Do Better*, p. 160-162, 171

Talmud, Sanhedrin 71a

Rabbi Shimon taught: Just because a boy ate a triens [about three ounces] of meat and drank half a log [about 1/4 liter] of Italian wine, should his father and mother take him out and stone him? Such a thing [a rebellious son] has never existed and will never exist.

²⁰⁷ See, e.g., <http://www.npr.org/blogs/ed/2014/12/17/347383068/an-alternative-to-suspension-and-expulsion-circle-up>

Restorative Justice and Victims' Rights

The victims' rights and restorative justice movements are working to reframe the criminal justice system to focus on forgiveness and on reintegrating the perpetrator into society. This approach mirrors the Jewish concept of *teshuvah*, a return to one's best self. In Jewish thought, *teshuvah* happens through a reconciliation with the person harmed, and through a commitment not to do the act again.

Someone who has experienced crime has a variety of needs ranging from the immediate to the long-term, the mundane to the profound. These may include medical attention, recouping financial losses, new locks on the doors of a house, satisfaction that the perpetrator has been punished, childcare, and rebuilding a sense of safety and trust in the everyday environment.

The "typical" victim's rights movement tends to be "tough on crime," white, and upper-class, and to work from the assumption that crimes are committed by poor people of color.²⁰⁹ The reality, however, is that people of color are more likely to be victims of crime than white people, and most crime is committed within racial groups rather than across them.²¹⁰ These understandings are not just rhetorical but are also built structurally into victims' services, rendering services inaccessible to many people who need them. For instance²¹¹:

Teshuvah

"Rabbi Abahu bar Ze'ira said: Great is *teshuvah*, for it existed in the world before Creation" (Genesis Rabbah 1:4). Commenting on this midrash, Rabbi Adin Steinsaltz (born Jerusalem, 1937) writes: "The implication of this remarkable statement is that *teshuvah* is a universal, primordial phenomenon...It is embedded in the root structure of the world...Before we were created, we were given the possibility of changing the course of our lives."²⁰⁸

- Services based in prosecutors' offices may not kick in if the crime is not solved, or may end when the trial ends.
- People of color may have less access to services offered through law-enforcement because of poor relationships between their communities and police.

• Services may be restricted to "innocent" victims, so if drugs or gang activity are suspected (a suspicion that can be leveled with little evidence), family members who themselves were not involved in the alleged crime may be barred.

- Domestic violence or rape crisis shelters may be unfriendly to women of color or LGBT women.
- No specialized structures exist to serve young men of color, the demographic most likely to be harmed by crime.

• Most crimes go unreported, and many victims don't even know that services are available.

Another shortcoming of the court system is that it does not incentivize accepting responsibility for harm or ameliorating it. The prosecutor's job is to punish the accused, while the defense attorney works to get him/her off, and if not that to minimize punishment.²¹² It is an adversarial, zero-sum system, not one designed to bring about any healing or reconciliation.

208 Quoted in *Kol HaNeshamah Machzor*, p. 8.

209 For a counter-example, see Californians for Safety and Justice, <http://www.safeandjust.org/>.

210 "Bridging the Divide: A New Paradigm for Addressing Safety, Crime, and Victimization." Pat Clark et. al., 2014, p. 13.

<http://www.safetyandjustice.org/files/Bridging%20the%20Divide%20-%20Full%20Report.pdf>

211 "Bridging the Divide," p. 10.

212 "Bridging the Divide," p. 15.

Restorative justice offers an alternative. The term is used variously to refer to specific protocols and to the general approach. Restorative justice starts by believing that three groups need to be served after a crime has been committed (or after harm has been caused—some groups steer away from the word “crime” because it is defined narrowly and technically by the criminal code and misses many kinds of harm that one person can cause another). The person harmed has new needs that must be met.

The person who caused the harm needs to be held accountable. And the public, which was the context for the harm, needs to be made whole. The process—which relies on the willingness of the injured party to participate—brings together these constituents with a trained facilitator,

who helps them reach a series of agreements about how the harm is to be rectified. Most restorative justice programs operate only on nonviolent crimes; the organization Common Justice, in Brooklyn, NY, is currently the only one in the US that also works on violent offences.

Another example of a restorative justice approach—COSA, Circles Of Support and Accountability—works to help sex offenders not reoffend. Pioneered in Canada in 1993, it is being implemented in California²¹³, and is also a formal part of Vermont’s criminal justice system. Through COSA,

volunteers meet on a regular basis with the returning citizen to discuss all aspects of his life and support pro-social behavior. Though the research is a little spotty, it suggests that COSA can reduce sexual recidivism by 60-80%. More anecdotally, one minister who has run 60 COSA’s in California has only had a single man reoffend, and that was after he left his group.²¹⁴



Victim Support Services

Moving to more restorative justice models, which embrace a wider view of how to address social harms, enables society to hold offenders accountable in more humane, sustainable, and effective ways, while also better meeting the needs of crime victims.

Sample Partner Organizations

- Murder Victims’ Families for Human Rights
- Many local groups—for instance:
 - Philadelphia—Mothers in Charge
 - Oregon—Partnership for Safety and Justice
 - Albany—Urban Grief
 - San Francisco—Healing 4 Our Families & Our Nation

²¹³ <http://www.psmag.com/health-and-behavior/after-a-child-molester-has-been-set-free-where-does-he-go>

²¹⁴ <http://www.psmag.com/health-and-behavior/after-a-child-molester-has-been-set-free-where-does-he-go>

Mandatory Minimums

Mark Weller, a 28-year-old from Iowa, grew up with a mother suffering from alcohol dependence and mental illness. Mark began using drugs and alcohol at the age of 12. For a while, he pulled his life together, graduated from high school, and held onto a job for six consistent years. Everything fell apart when his wife left him. Caught with 223 grams of meth, he was arrested and charged with trafficking drugs across state lines (read: having it in his car)—a federal offense. His pre-sentencing report indicated he had no criminal history, his crime had no victim, and he was remorseful. But because of mandatory minimums, federal Judge Mark Bennett had no choice but to send him to prison for ten years—ten years that the judge was confident would do nobody a bit of good.²¹⁵

In nearly all cases, once a jury has found someone guilty of a crime, it is up to the judge to impose the punishment. (The exception is capital cases, where the jury must find



grounds for the death sentence before it can be applied.) Starting in the late 1980's, Congress passed dozens of laws instituting mandatory minimum sentences for certain crimes, usually drug-related.²¹⁵ These laws effectively tie the hands of judges by requiring them to hand down long sentences, even when the judge believes that mitigating circumstances mean a different response would be more effective and fair.

Drashot HaRan 11, 14th century Spain

“There is no doubt that, from any sort of legal matter, two possibilities will arise: one to find a person guilty and punish him according to the true law, and the other not to punish him according to the true and just law. [The judge] will have to rule according to the well-being of the body politic and the needs of the moment.”

In addition to mandatory minimum sentences, federal truth-in-sentencing laws require a convicted person to

serve at least 85% of his or her sentence, leaving no room

²¹⁵ <http://www.washingtonpost.com/sf/national/2015/06/06/against-his-better-judgment/>

²¹⁶ <https://www.themarshallproject.org/2015/03/04/how-to-cut-the-prison-population-by-50-percent>

for time off for good behavior.²¹⁵ Long prison terms have significantly contributed to America's booming prison population, as well as to the aging of that population (see articles linked at the bottom of the Washington Post article, note 215).

Mandatory minimums have also affected sentencing in non-drug crimes. For example, Mark's two counts of distributing methamphetamine carry a mandatory minimum sentence of ten years.²¹⁵ In Europe today, a ten-year sentence for murder is considered severe.²¹⁶ But with ten years set as the benchmark for small-scale drug trafficking, more serious offenses call for steeper sentences.

Drisha on Tur: Choshen Mishpat 1:2

I would interpret their intention, in writing "the essential truth of the law," is to judge according to the place in time, so as to reach the truth of the matter. That is to rule out slavishly following the Torah, for sometimes a judge must go beyond the letter of the law, according to the time and the situation. When he does not do so, he may hand down "true law," but it is not "the essential truth." As our rabbis have taught: Jerusalem was destroyed because they appointed judges who ruled based on literal Torah and not beyond the letter of the law (Talmud, Bava Metzia 30b). Regarding this the Torah says (Deut. 17:11), "Do not deviate from all that they teach you, left or right." And the rabbis interpret: Even if they tell you that right is left and left is right (Sifrei Deut. 154). The *Akedat Yitzchak* (Rabbi Isaac Arama, Spain, 1420-1494, Shmot gate 43) interprets this to mean when a judge tells you sometimes that the law inclines this way and then rules the opposite. This is a "right [decision]" that does not take the circumstances into consideration.

"If he had been an aircraft hijacker, he would have gotten 24 years in prison. If he'd been a terrorist, he would have gotten 20 years in prison. If he was a child rapist, he would have gotten 11 years in prison. And now I'm supposed to give him a 55-year sentence? I mean, that's just not right."²¹⁷

- Retired Federal Judge Paul Cassell, discussing the case of 24-year-old Weldon Angelos, convicted of three marijuana sales

"Our federal prisons are starting to resemble nursing homes surrounded with razor wire."

- Julie Stewart, Founder and President of Families Against Mandatory Minimums

Sample Partner Organizations

- Families Against Mandatory Minimums
- ACLU

Facts and Figures

- Due to mandatory minimums, people leaving prison in 2009 had served an average of 36% longer sentences than those released in 1990.²¹⁸
- Almost 40% of people held in federal prisons in 2010 had been subject to a mandatory minimum at sentencing.²¹⁸
- Of people who receive a mandatory minimum sentence, nearly 32% had little or no prior criminal record.²¹⁸

Further Reading

<http://www.theatlantic.com/politics/>

[archive/2016/02/one-judge-makes-the-case-for-judgment/463380](http://www.theatlantic.com/politics/archive/2016/02/one-judge-makes-the-case-for-judgment/463380)

²¹⁷ http://www.huffingtonpost.com/2015/02/19/judge-regrets-weed-sentence_n_6713568.html Judge Cassell's 57-page testimony to the House Subcommittee on Crime, Terrorism, and Homeland Security, on behalf of the Judicial Conference of the United States, is available at http://www.constitutionproject.org/pdf/Cassell_Testimony_on_Sentencing_6.26.07.pdf.

²¹⁸ <http://famm.org/the-facts-with-sources>

Prosecutors and Pleas

Prosecutors—known on the county level as District Attorneys or State’s Attorneys—have been called the “gatekeepers of America’s criminal justice system”²¹⁹ and “arguably the most powerful officials in the US criminal justice system and the least understood and least transparent”²²⁰. The discretion they exercise on whether to charge an arrested person with a crime has a huge effect on the resolution of the case. In fact, according to one study, the strongest driver of incarceration since 1994 has been prosecutors filing more charges.²²¹ This

may have been an unintended consequence of mandatory minimums; with judges’ discretion limited, the prosecutors’ discretion became more important.²²²

The power of the prosecutor is compounded by the fact that 98% of criminal cases are settled in a plea deal, before the case reaches a trial.²²³ Prosecutors can use the threat of heavy sanctions, as well as the economic hardship of being

held in jail, to scare people into accepting these deals. People accepting pleas may avoid time in prison, but they still end up with a felony record, which carries with it all of the barriers discussed on p. 82.

As elected officials, prosecutors must keep an eye on reelection, and campaign rhetoric tends to focus on being tough on crime.²²⁴

The Responsibility of the Court

In a court of three [the lowest level of Jewish court]...each of the judges should have these seven characteristics: wisdom, humility, fear of God, distaste for wealth, love of truth, respect from the people, and good character. (Maimonides Hilchot Sanhedrin 2:7)

In any properly-constituted Jewish court, the Shechinah [God’s Presence] is present. Therefore, the judges must sit in fear and reverence, with modest dress and appropriate seriousness. They may not speak lightly or idly, or jest in the court; they must speak only words of Torah and wisdom. (Maimonides Hilchot Sanhedrin 3:7)

Many advocates have called for violence by police to be prosecuted by special prosecutors who are not part of the ordinary criminal justice system (see, for instance, this editorial by the *Washington Post*²²⁵). Advocates have also called for the hiring of more black attorneys in prosecutors’ offices.



219 <https://www.themarshallproject.org/2015/03/16/the-gatekeepers>

220 Gottschalk, p. 266

221 <http://readingroom.law.gsu.edu/cgi/viewcontent.cgi?article=2700&context=gsulr> see Figure 7B, p. 14.

222 <http://www.theatlantic.com/magazine/archive/2015/10/the-black-family-in-the-age-of-mass-incarceration/403246/>

223 <http://www.bjs.gov/content/pub/pdf/fdluc09.pdf> table 21

224 <https://www.themarshallproject.org/2015/03/16/the-gatekeepers>

225 http://www.washingtonpost.com/opinions/police-abuse-cases-need-special-prosecutors/2014/12/06/fc57e28-7cd6-11e4-b821-503cc7efed9e_story.html

You Shall Not Judge Unfairly

You shall appoint magistrates and officials for your tribes, in all the settlements that the Lord your God is giving you, and they shall govern the people with due justice. You shall not judge unfairly; you shall show no partiality; you shall not take bribes, for bribes blind the eyes of the discerning and upset the plea of the just. (Deuteronomy 16:18-19)

The Role of Witnesses

It is a positive commandment to examine the witnesses in depth, to ask many questions and be very specific, to help them from one topic to the next in the course of questioning so that they will fall silent or recant if their testimony has any falsehood in it...for such examination is the essence of the testimony and the grounds for conviction or acquittal...We even examine the witnesses at length about matters which are not at the core of the testimony and on which the case does not rely...and the more one dwells on these matters, the more praiseworthy. (Maimonides Hilchot Edut, 1:4-6)

What's Working: "Conviction Integrity Units"

Fifteen prosecutors' offices across the country have opened "conviction integrity units" charged with reviewing prosecutions and convictions after the fact and correcting mistakes.²²⁶ Ideally, our criminal justice system would root out mistakes before putting people in prison. In the meantime, a built-in independent investigator serves as a first step.²²⁷



Photo by SalFalko, Creative Commons License

²²⁶ <http://www.politico.com/magazine/story/2015/03/good-prosecutors-116362.html>

²²⁷ <http://www.thecrimereport.org/news/inside-criminal-justice/2014-03-wrongful-convictions-can-prosecutors-reform-themselv>

Overcrowding, State Budgets, and the Rise of Private Prisons

Despite a decades-long prison-building boom, America's prison systems are still vastly overpopulated, and have been for decades. Combined with efforts to rein in spending on prisons, this has led to increasing ratios of incarcerated people to staff. The same budget pressures have reduced much spending on programming in prisons. These factors have both led to more dangerous, less rehabilitative prison conditions.

The decision to cut programming and overcrowd prisons stems from largely political considerations. Many state lawmakers prefer to cut spending per incarcerated person rather than reducing the population in prisons.²²⁸ These cuts do little to reduce the incarcerated population—or save much money—but they do render life in prison and life after prison tougher for those who serve time.²²⁹

Another driver of overcrowding has been increased sentence length, in the wake of the drug war. As researcher Mark A.R. Kleiman puts this, “The insanely long sentences really started in the drug era. Once you were giving somebody 15 years for a coke deal, seven years for armed robbery wasn’t enough. The drug sentences dragged everything else behind them.”²³⁰

“This prodigious rate of incarceration is not only inhumane, it is economic folly.”²³²

- Nobel laureate economist Joseph Stiglitz

...The Torah did not give permission to place someone in a prison that is cramped, for prisons are only for keeping a person to ensure he doesn't escape. . . Even more so, we should not place him in a prison that's soiled, where he will not be able to study Torah or to keep the mitzvot. For even if the Torah gave us permission, since even though he has sinned and must be imprisoned in a prison, he has not ceased to be a Jew.”

**- Rabbi Chaim Palagi, 19th century Turkey,
*Shu't Hik'kei Lev II: Hoshen Mishpat 5***

Governments have responded to overcrowding in large part by transferring incarcerated people to privately-run prisons. The rise of for-profit prison corporations in the 1980's coincided with many states and municipalities being under new court orders to improve conditions in their severely overcrowded prisons.²³¹

²²⁸ See Gottschalk, p. 40 for examples.

²²⁹ Gottschalk, p. 26.

²³⁰ Mark Kleiman, in http://www.washingtonpost.com/blogs/wonkblog/wp/2015/03/19/how-prisons-without-bars-could-cut-the-cost-of-prison-and-keep-people-from-coming-back/?tid=sm_tw

²³¹ Gottschalk, p. 66.

²³² <http://www.theatlantic.com/features/archive/2015/02/the-many-causes-of-americas-decline-in-crime/385364/>

Facts and Figures

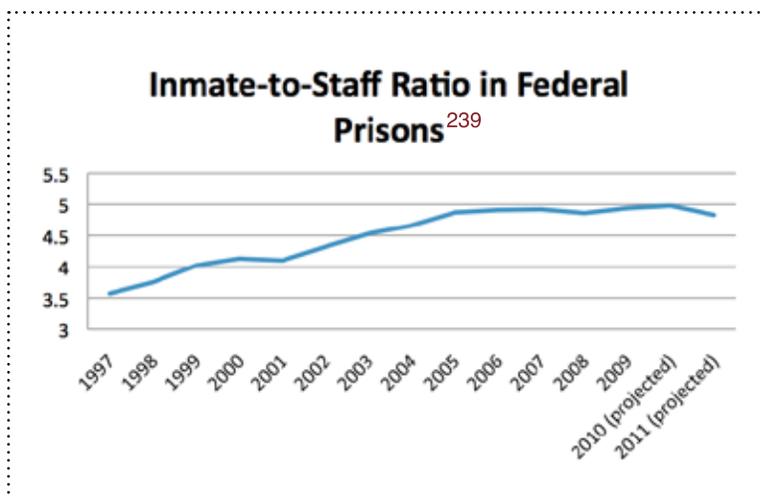
Overcrowding:

• As of late 2011, at least half of states were operating prison systems above design capacity, some grossly over.²³³ Based on 2012 data, federal prisons are operating between 38-53% above design capacity, depending on the security level.²³⁴

• Many states are adjusting how they measure capacity to present an impression of reduced overcrowding. Illinois is one example; in 2011, it changed the benchmark from the number of cells to the number of beds that could be crammed in. This raised its “rated capacity” from 33,373 to 51,000. According to one reform advocate, this is like “claiming a three-bedroom home can actually sleep 25 people if beds are placed in living rooms, laundry rooms and storage spaces.”²³⁵

Staffing ratios:

• In federal prisons, inmate-to-staff ratios (ISR) grew from 3.6:1 in 1997 to 5:1 in 2011. For comparison, it is about 3:1 in the largest state prison systems.²³⁷



• Rigorous research by the BOP shows that higher ISR leads to greater levels of “serious violence among inmates.”²³⁸

Expenditures per incarcerated person:

• The mean state corrections expenditure per incarcerated person was \$28,323 in 2010, although a quarter of states spent \$40,175 or more.²⁴⁰

• Indiana spends just over \$14,000 per year.²⁴¹

• New York State spends about \$60,000, while New York City annually spends about \$168,000 per person incarcerated in city jails.²⁴²

• Greater expenditures don’t necessarily translate to better prison conditions.

²³³ Gottschalk, p. 41.

²³⁴ Gottschalk, p. 42.

²³⁵ http://qctimes.com/news/local/illinois-could-face-california-style-prison-meltdown-experts-say/article_c3390cb4-cebe-11e0-b9c3-001cc4c03286.html

²³⁶ <http://www.bjs.gov/content/pub/pdf/p11.pdf>, p. 31

²³⁷ U.S. Department of Justice Federal Prison System FY 2011 PERFORMANCE BUDGET, <http://www.justice.gov/sites/default/files/jmd/legacy/2013/09/19/fy11-bop-se-justification.pdf>

²³⁸ U.S. Department of Justice Federal Prison System FY 2011 PERFORMANCE BUDGET, <http://www.justice.gov/sites/default/files/jmd/legacy/2013/09/19/fy11-bop-se-justification.pdf>

²³⁹ <http://www.justice.gov/sites/default/files/jmd/legacy/2013/09/19/fy11-bop-se-justification.pdf>

²⁴⁰ <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4556> State Corrections Expenditures, Dec. 2012

²⁴¹ Gottschalk p. 39-40.

²⁴² Gottschalk p. 39-40.

“Although it is by no means the only cause of the deprived and dangerous conditions that prevail in many of the nation’s prisons or sole reason that many prisoners continue to be exposed to the degrading and harmful treatment, overcrowding is a central and critical issue that must be effectively addressed if these other problems are to be solved. . . . Many prisoners now lack any form of effective programming or meaningful work during incarceration. Under conditions of unprecedented overcrowding, unheard-of levels of idleness and, in an era where prisons became devoted to punishment rather than rehabilitation, prison administrators still lack positive incentives to manage the inevitable tensions and conflicts that fester behind the walls.”²⁴³

– Dr. Craig Haney



“Few conditions compromise [prison] safety more than idleness.”²⁴⁴

– Vera Institute of Justice

Photo by California Department of Corrections, Public Domain

²⁴³ Abstract, “The Wages of Prison Overcrowding: Harmful Psychological Consequences and Dysfunctional Correctional Reactions.”

Washington University Journal of Law & Policy: http://openscholarship.wustl.edu/law_journal_law_policy/vol22/iss1/22/

²⁴⁴ http://www.vera.org/sites/default/files/resources/downloads/Confronting_Confinement.pdf, p. 12

Private Prisons

Private prisons for adults were virtually non-existent until the early 1980s. Between 1990 and 2009, the number of people incarcerated in private prisons increased by approximately 1600%.²⁴⁵

Operators of private prisons play an extensive role in drafting and lobbying for the passage of laws that increase incarceration, such as “three strikes” and “truth in sentencing.”²⁴⁶ Private prisons regularly build minimum occupancy requirements into their contracts, meaning that when crime and incarceration rates fall, the government still must pay for a set number of beds.

Similar issues emerge from the reliance on private parole management companies. A

February 2014 report by Human Rights Watch on private offender services found that more than 1,000 courts in various states give power to companies with “little meaningful oversight or regulation,” sometimes only because the person must pay off fines and fees. “In some of these

cases, probation companies act more like abusive debt collectors than probation officers, charging the debtors for their services.”²⁴⁷

Finally, private prisons lack some of the oversight crucial to the operation of public prisons. Prison records are not available under the Freedom of Information Act.²⁴⁸

Government prison regulations don’t apply, or at least are not applied, as evidenced by one warden at a CAR (immigration) prison who “denied the ACLU’s request for attorney visitation with a curt letter demanding to know why our meetings with prisoners ‘might be appropriate’ and asserting that the Bureau of Prisons’ policies allowing confidential attorney visits ‘do not apply at this facility.’”²⁴⁹

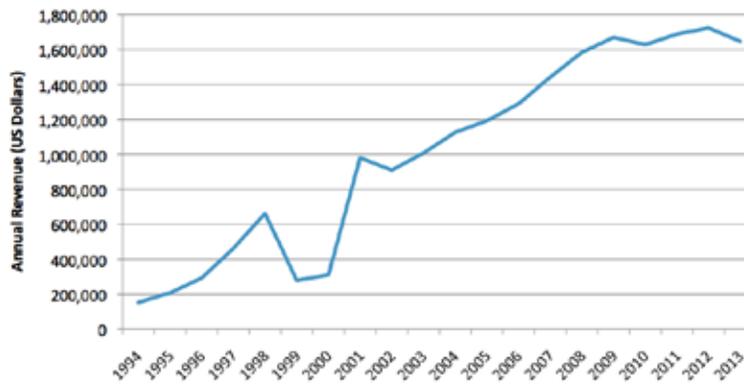
The ACLU writes, “The private prison industry helped to create the mass incarceration crisis and feeds off of this social ill. Private prisons cannot be part of the solution — economic or ethical — to the problem of mass incarceration.”²⁵⁰

Profiting from Another’s Misfortune

“How could you gaze with glee on your brother that day, on his day of calamity!...How could you enter the gates of My people on its day of disaster, gaze in glee with the others on its misfortune on its day of disaster, and lay hands on its wealth on its day of disaster!”

- Obadiah 1:12-13

Annual Revenue of Corrections Corporation of America²⁵¹



245 <https://www.aclu.org/prisoners-rights/banking-bondage-private-prisons-and-mass-incarceration>

246 <http://www.motherjones.com/mojo/2013/09/private-prisons-occupancy-quota-cca-crime>

247 <http://www.nytimes.com/2014/08/27/opinion/thomas-edsall-the-expanding-world-of-poverty-capitalism.html>

248 <http://interactive.fusion.net/shadow-prisons/>

249 <https://www.themarshallproject.org/2015/02/24/a-most-unsurprising-riot>

250 <https://www.aclu.org/prisoners-rights/banking-bondage-private-prisons-and-mass-incarceration>

251 <http://www.cca.com/investors/financial-information/annual-reports> and <http://www.getfilings.com/comp/k0001070985.html>

Facts and Figures

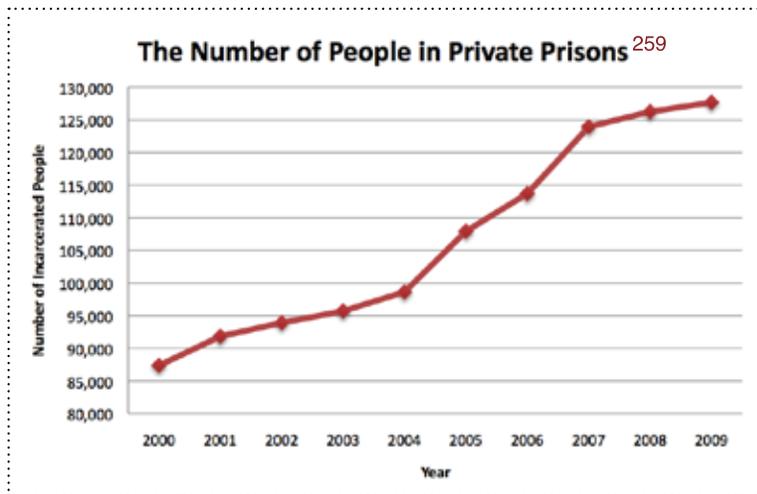
- As of 2011, for-profit companies are responsible for approximately 6% of people incarcerated by the states, 16% of the federal population, and, according to one report, nearly half of all immigrants detained by the federal government.²⁵²

- Private prison companies charge between \$50-75 per day for each immigrant, at a profit rate of 20-30% a head. From 2009-2014, the two largest prison companies (Corrections Corporation of America and GEO) have made nearly \$2 billion in revenue. Bureau of Prisons funnels more money to private contractors than to facilities run by Immigration and Customs Enforcement.²⁵³ CCA, the nation's largest owner of private prisons, has seen its revenue climb by more than 500 percent in the last two decades.²⁵⁴ CCA is the country's fifth-largest prison operator, after the federal government, California, Texas, and Florida.²⁵⁵

- As a single example of the “revolving door,” Harley G. Lappin served as Director of the Bureau of Prisons from 2004-2011. He is now Executive VP and Chief Corrections Officer

at CCA, where he earns more than eight times his previous government salary.²⁵⁶

- Corrections Corporation of America has spent about \$7 million since 2007 successfully lobbying against legislation that would have subjected its prisons to the same federal open records obligations as BOP-operated prisons.²⁵⁷



- A 2013 report by In the Public Interest, an anti-privatization group, reviewed 62 contracts for private prisons operating around the country at the local and state level. 41 of those contracts included occupancy requirements mandating that local or state government keep those facilities between 80 and 100 percent full.²⁵⁸

Selling the Needy for a Pair of Shoes

“Thus saith the LORD: For three transgressions of Israel, Yea, for four, I will not reverse it: Because they sell the righteous for silver, And the needy for a pair of shoes.” (Amos 2:6)

Rashi: “Because they sell the righteous for silver”—Judges would sell out the innocent party in a lawsuit for bribe money that they would receive from the other party. “And the needy for a pair of shoes”—Targum Jonathan [an ancient Aramaic translation] in two places reads ‘In order to inherit,’ and I agree that this is the meaning. They would influence the sentence of a poor person so that he would have to sell the field that he owned that was amidst and surrounded by the judges’ fields. Then they would buy it from him for little money so that they could fence and padlock their own fields without a break in the middle.

Sample Partner Organizations

- Grassroots Leadership
- ACLU

For Further Reading

“Gaming the System,” a 2011 report from the Justice Policy Institute,

available at http://www.justicepolicy.org/uploads/justicepolicy/documents/gaming_the_system.pdf

²⁵² <https://www.aclu.org/prisoners-rights/banking-bondage-private-prisons-and-mass-incarceration>

²⁵³ <http://interactive.fusion.net/shadow-prisons/>

²⁵⁴ <http://www.motherjones.com/mojo/2013/09/private-prisons-occupancy-quota-cca-crime>

²⁵⁵ Gottschalk, p. 58

²⁵⁶ <http://interactive.fusion.net/shadow-prisons/> Other examples available in this article.

²⁵⁷ <http://thinkprogress.org/justice/2014/06/11/3447208/how-these-prisons-for-noncitizens-compound-all-the-problems-with-us-incarceration/> For more detailed information on lobbying by private prison companies, see http://www.justicepolicy.org/uploads/justicepolicy/documents/gaming_the_system.pdf

²⁵⁸ <http://www.motherjones.com/mojo/2013/09/private-prisons-occupancy-quota-cca-crime>

²⁵⁹ <http://www.bjs.gov/content/pub/pdf/pim09st.pdf>

Jails

On any given day, 731,000 people sit in America's more than 3,200 jails, all administered on the local (county or municipal) level.²⁶⁰ Almost 13 million people cycle through the nation's jails annually²⁶¹.

The short duration of people's stays contributes to the higher level of violence in jails than in prisons. Jails are "volatile" places, because their detainees haven't had a chance to get accustomed to a routine. Many have just experienced trauma or violence, are detoxing or cut off from needed medications, or are driven crazy by boredom—jails tend to

offer few diversions or activities. In 2012, the suicide rate in jails was 40 per 100,000 people, more than three times the national rate of 12.6.²⁶²

²⁶⁰ <http://theweek.com/articles/540725/how-local-jail-became-hell-investigation>

²⁶¹ <http://www.nij.gov/journals/270/pages/criminal-records.aspx>

²⁶² <http://theweek.com/articles/540725/how-local-jail-became-hell-investigation>

²⁶³ <http://www.vera.org/sites/default/files/resources/downloads/incarcerations-front-door-report.pdf>

²⁶⁴ <http://theweek.com/articles/540725/how-local-jail-became-hell-investigation>

²⁶⁵ <http://theweek.com/articles/540725/how-local-jail-became-hell-investigation>

Facts and Figures

Who ends up in jails?

- Seventy-five percent of people in jail are detained for

nonviolent misdemeanors, such as small-scale drug possession, petty theft, or minor property damage.²⁶³

- Sixty-two percent of them have not yet been proven guilty.²⁶⁴

- Some 34% are held simply because they cannot afford to pay bail (for more on bail, see p. 35).²⁶⁵

Rabbi Hayyim David Halevy: The Arrest of Suspects According to *Halakhah*, and How to Avoid Arresting Those Innocent of Any Crime

One who makes an arrest is dealing with a person who, according to the law, is still innocent—this is before the person has stood in judgment, and before his guilt has been proven. For this reason, the arrest is a violation of the freedom of a person, who is presumed innocent. But in order to allow for the interrogation of the suspect, and for bringing him to court, we have to permit his arrest. But there are boundaries on this allowance, both in regard to the nature of the arrest, and in regard to the amount of time that a person may be held without trial. And above all, the obligation to release the person until trial. All of this comes from the fundamental right of human freedom, and the prohibition against detaining him and taking away his freedom. . .

- *Aseh L'kha Rav* 3:48. Rabbi Halevy lived from 1924-1998 and served as Chief Sephardic Rabbi of Tel Aviv from 1973 until his death.

Why New York City Pre-Trial Detainees Are in Jail (2013 Data)²⁶⁶

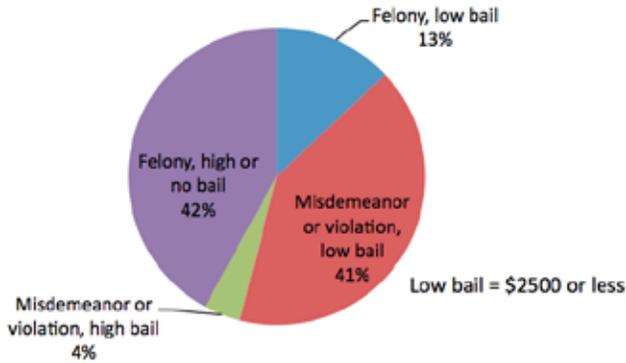
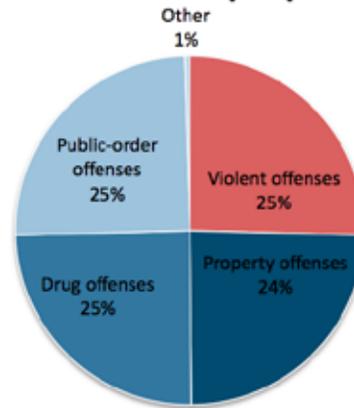


Photo by Adam Jones, Creative Commons License



Photo by Daniel Schwen, Creative Commons License

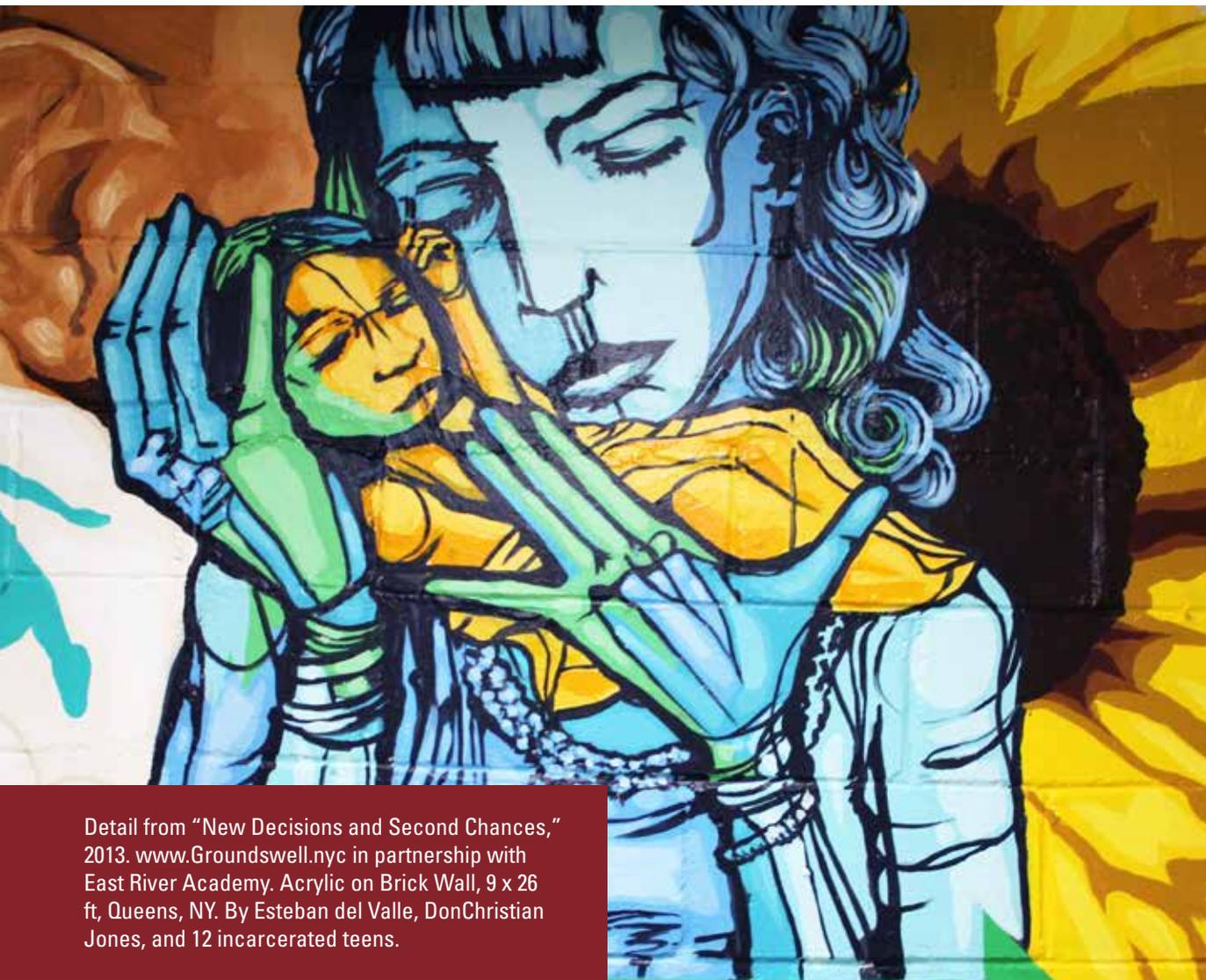
Most serious offense of people in jail, 2002²⁶⁷



266 <http://www.vera.org/sites/default/files/resources/downloads/incarcerations-front-door-report.pdf>
 267 <http://www.vera.org/sites/default/files/resources/downloads/incarcerations-front-door-report.pdf>

Special Populations: Women, Youth, LGBT People, and People with Mental Illness

While all people in prison deserve humane treatment and living conditions, certain populations have particular needs or characteristics that make them more vulnerable within the system of mass incarceration. While we distinguish these categories below for ease of organization, it rapidly becomes obvious that they overlap in a multitude of ways.



Detail from “New Decisions and Second Chances,” 2013. www.Groundswell.nyc in partnership with East River Academy. Acrylic on Brick Wall, 9 x 26 ft, Queens, NY. By Esteban del Valle, DonChristian Jones, and 12 incarcerated teens.

SPECIAL POPULATIONS
Women

The United States incarcerates almost 1/3 of the 625,000 women and girls confined to jails and prisons worldwide²⁶⁸, and women's incarceration has grown faster than men's since the 1970s²⁶⁹. This is largely due to the War on Drugs, which sweeps women up as accomplices or accessories to drug crime, even without their direct involvement. According to one perspective, "Although ending the war on drugs would not make a major dent in the overall prison population, it could reduce considerably the number of incarcerated women, especially African-American women."²⁷⁰

Women often come to prison with complex issues. According to the superintendent of Massachusetts' women's prison, "Women offenders are more challenging to manage [than men] because of their mental health and medical issues, histories of trauma, and responsibilities as primary caretakers of children."²⁷¹

An estimated one in twenty-five of the roughly 98,000 women incarcerated in state prisons at any given time report that they were pregnant when admitted.²⁷² Giving birth in prison presents its own set of absurd challenges; for instance,

in 30 states, it is legal to shackle women while they are in labor.²⁷³ Many consider this a form of torture. The federal government only restricted this practice in immigration detention centers in 2014.²⁷⁴ In Minnesota, which in 2014 passed a fairly progressive law improving the treatment of pregnant incarcerated women²⁷⁵, a doula may be present during labor but can only touch her client during childbirth and

the three hours immediately following²⁷⁶. And then there is the question of how long mother and baby may remain together. This ranges from a high of almost three years in Washington State to as little as two days in Minnesota (three for a C-section birth).²⁷⁷ Only about eight prison nurseries, where babies can remain with their mothers, currently operate in the US.²⁷⁸

Exodus Chapter 2: Women's Leadership

¹ A certain man of the house of Levi went and married a Levite woman. ² The woman conceived and bore a son; and when she saw how beautiful he was, she hid him for three months. ³ When she could hide him no longer, she got a wicker basket for him and caulked it with bitumen and pitch. She put the child into it and placed it among the reeds by the bank of the Nile. ⁴ And his sister stationed herself at a distance, to learn what would befall him.

⁵ The daughter of Pharaoh came down to bathe in the Nile, while her maidens walked along the Nile. She spied the basket among the reeds and sent her slave girl to fetch it. ⁶ When she opened it, she saw that it was a child, a boy crying. She took pity on it and said, "This must be a Hebrew child." ⁷ Then his sister said to Pharaoh's daughter, "Shall I go and get you a Hebrew nurse to suckle the child for you?" ⁸ And Pharaoh's daughter answered, "Yes." So the girl went and called the child's mother. ⁹ And Pharaoh's daughter said to her, "Take this child and nurse it for me, and I will pay your wages." So the woman took the child and nursed it.

268 <http://www.vera.org/sites/default/files/resources/downloads/incarcerations-front-door-report.pdf>

269 Walmsley, "World Female Imprisonment List," http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/wfil_2nd_edition.pdf

270 Gottschalk, p. 122.

271 Gottschalk, p. 5

272 <http://www.cjinvolvedwomen.org/innovator-massachusetts-correctional-institution-at-framingham>

273 <https://www.themarshallproject.org/2015/04/15/hard-labor>

274 As of September 2014: http://colorlines.com/archives/2014/09/minnesota_law_provides_birth_doulas_for_incarcerated_women.html

275 <https://www.aclu.org/blog/immigrants-rights-reproductive-freedom/end-near-shackling-pregnant-women>

276 http://colorlines.com/archives/2014/09/minnesota_law_provides_birth_doulas_for_incarcerated_women.html

277 <https://www.themarshallproject.org/2015/04/15/hard-labor>

278 <http://www.chicagotribune.com/news/local/ct-decatur-prison-nursery-met-20150501-story.html#page=1>

Facts and Figures

1. Women's incarceration has grown faster than men's, thanks largely to the war on drugs:²⁸²

- From 1974-2001, a woman's chances of being sent to prison increased sixfold; a man's, only threefold.

- From 1970-2012, the proportion of women in federal and state prisons increased from 3% to 7%.

2. Women have higher rates of mental health problems than men do in prisons.²⁸³

- State prisons: 73% of women compared to 55% of men

- Federal prisons: 75% of women compared to 63% of men

3. Women tend to be primary caretakers for their children before being incarcerated (77% of mothers, in both federal and state prison).²⁸⁴

- 42% of mothers in state prisons lived in a single-parent household prior to their incarceration.

- In federal prison, the number was 52%.

Sample Partner Agencies

- Women+Prison: A Website Installation and Zine Created Entirely from the Work and Life of America's Incarcerated Women (<http://womenandprison.org/>)

- Women's Prison Association: <http://wpaonline.org>

- The Prison Birth Project: www.theprisonbirthproject.org

- Chicago Books to Women in Prison is a volunteer

collective that distributes paperback books free of charge to people incarcerated in women's prisons nationwide: <http://chicagobwp.org/>

- California Coalition for Women Prisoners: <http://womenprisoners.org>

Bedford Hills Correctional Center, an hour north of Manhattan, operates the nation's oldest prison nursery (it opened in 1901.)²⁷⁹ It's brightly painted and contains the usual paraphernalia of parenting—bottles, diapers, plastic toys. Mothers get their own rooms (though they double up when the unit gets crowded) with a crib, where they and their babies can stay until the age of 18 months. Entrance requirements are fairly strict—nobody convicted of violent crimes or crimes involving children is admitted—but the argument is that these moms deserve a chance to be parents. In addition to prison chores, mothers get parenting classes and the opportunity to bond with their children. That may really pay off for the family as well as for society. Housing each child costs \$24,000 per year, but mothers who participate in nursery programs are more than three times less likely to return to prison than those who are separated from their kids.²⁸⁰ Amortize that extra cost over the years of not paying for reincarceration (at \$30,000 per year for Mom²⁸¹) and the investment pays for itself.

279 <http://www.psmag.com/politics-and-law/the-rise-of-prison-nurseries-even-a-prison-cannot-ignore-biology>

280 <http://abcnews.go.com/US/babies-born-raised-bars-mothers-returning-prison/story?id=22413184&singlePage=true>

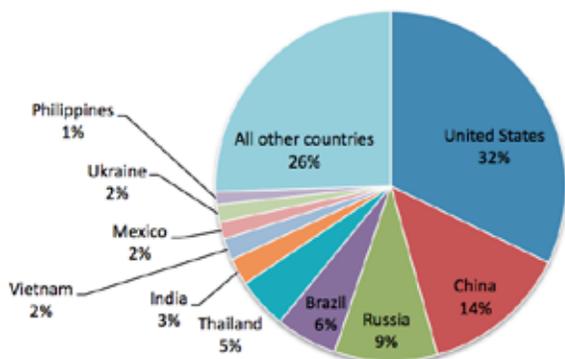
281 <http://abcnews.go.com/US/babies-born-raised-bars-mothers-returning-prison/story?id=22413184&singlePage=true>

282 Gottschalk, p. 122.

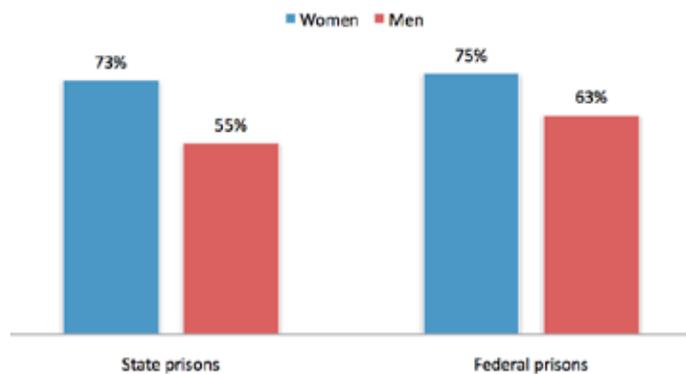
283 <http://www.bjs.gov/content/pub/pdf/mhppji.pdf>

284 BJS 2008 p. 5: <http://www.bjs.gov/content/pub/pdf/pptmc.pdf>

Global Female Imprisonment List²⁸⁵



Rates of mental health problems, 2005²⁸⁶



What's Working: Trauma-Informed Care

Lynn Bissonnette, Superintendent of Massachusetts's women's prison in Framingham, has transformed the prison she runs into a trauma-informed facility. She says, "Whereas in the past we would see negative behavior as simply a management issue, now we are looking more closely at the root causes of negative behavior."²⁸⁷ This has had implications for staff training, operational procedures, and support systems the prison offers. For instance, the state waived the usual procedure of strip-searching incarcerated women who were working in the solitary confinement unit, because Bissonnette knew many of them had a history of being sexually assaulted and the procedure would do more harm than good. To reduce the caseload of overburdened mental health clinicians, the prison instituted a peer-support system, where women who aren't having a crisis but do need someone to talk to can get appropriate help. This thinking is part of a nascent movement supported by the National Center for Trauma-Informed Care, which "seeks to change the paradigm from one that asks, 'What's wrong with you?' to one that asks, 'What has happened to you?'"²⁸⁸ It isn't rocket science, but if it becomes a mainstream part of corrections thinking, it could improve conditions for all incarcerated people.

²⁸⁵ Walmsley, "World Female Imprisonment List," http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/wfil_2nd_edition.pdf

²⁸⁶ <http://www.bjs.gov/content/pub/pdf/mhppji.pdf>

²⁸⁷ <http://cjinvolwedwomen.org/massachusetts-correctional-institution-at-framingham/>

²⁸⁸ <http://www.samhsa.gov/nctic/about>

SPECIAL POPULATIONS
Youth

The United States confines a much higher proportion of its youth than other developed nations—336 per 100,000 American youths. South Africa comes in a distant second, at 69 per 100,000 youth.²⁸⁹ Reforms²⁹⁰ to juvenile justice have slowed the rate of arrest and improved prison conditions for many young people, but youth continue to be processed through the system at the same high rates.²⁹¹

Judges have always been able to transfer a case from juvenile court to the criminal system, but rarely did so before 1970. From the 1970's to the 1990's, however, states adopted a variety of laws that reduced judicial discretion and increased the number of cases that were automatically tried in adult court.²⁹² State-by-state reporting is spotty, so we have no idea exactly how many children under age 18 are tried in adult courts²⁹³; one estimate, however, put the number in 2007 at 175,000.²⁹⁴ Fourteen states have no minimum age for trying children as adults, and children as young as eight have been prosecuted as adults.²⁹⁵

What happens when children are tried in adult court? The data are not conclusive, but most studies have shown that adult courts are more likely to incarcerate than juvenile courts, and for longer sentences. For murder and weapons offenses, juveniles transferred to criminal court may even be

sentenced more harshly (for longer time, and with less likelihood of receiving probation instead of incarceration) than adults.²⁹⁶ Trying juveniles in adult court has, by and large, not reduced juvenile crime, and may even increase recidivism.²⁹⁷

Federal law usually prohibits incarcerating children with adults but provides an exception if the child is being tried as an adult. Across the country, about 10,000 children are incarcerated with adults.²⁹⁸ Forty-eight states allow juveniles awaiting trial in criminal court to be held with adults in jail, and 14 of them mandate it in at least some circumstances.²⁹⁹

When children are held in adult jails, they are five times more likely to be sexually assaulted³⁰⁰ and 36 times more likely to commit suicide³⁰¹ than if they were in a juvenile detention facility.

**“Not Feeling Cared For”³⁰²
by a 16-year-old young woman in juvenile detention**

**I feel alone
Like a deer that's just been born
But its mom died
Like the only flower
In a field
Like a pool of water
In the middle of the desert**

**I feel deserted
Like an open piece of candy on the shelf
That nobody wants to buy
Like a box of kittens
And I'm the last one in the litter to be picked
Like an un-ironed pair of pants
That nobody wants to wear**

**I feel the need for love
A squeeze of lemon in my glass of water
A breeze on a warm summer's eve
A whisper in my ear that tickles**

289 <http://jjie.org/hub/community-based-alternatives/>
290 <http://www.eji.org/node/820>
291 <http://www.thenation.com/article/205129/states-are-required-educate-students-behind-bars-heres-what-really-happens>
292 <https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf> p. 8-9
293 <https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf> p. 12-21
294 <https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf> p. 21
295 <http://www.eji.org/childrenprison>
296 <https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf> p. 24
297 <https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf> p. 26
298 <http://www.eji.org/childrenprison>
299 <https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf> p. 22
300 http://www.justicepolicy.org/images/upload/97-02_rep_riskjuvenilesface_jj.pdf; see also extensive reporting at: <https://www.themarshallproject.org/2015/02/25/a-boy-among-men>
301 <http://www.eji.org/node/820>
302 Written and published through the Pongo Publishing Teen Writing Project: <http://www.yesmagazine.org/issues/learn-as-you-go/pongo-teen-writing-project>

Incarcerated juveniles also lose out on education. In a national survey, only half of incarcerated youth reported “good” education programs, and only 45% spent a full day (at least six hours) in classes. The survey also found a third of these children had a learning disability, a rate seven times higher than the national public school rate, and less than half of those received appropriate educational services. Perhaps most enlightening, 70% of those surveyed reported experiencing some kind of trauma in their lives. When students are able to overcome all of these barriers and complete some classes, they often face a rude surprise when they are released: their credits don’t follow them out of prison.³⁰³

The bottom line is that, in the vast majority of cases, youth and society are both better served by diverting children from prison and meeting their diverse needs in other ways.

The Cry of a Child³⁰⁵

When Rabbi DovBer of Lubavitch was a young man, he lived in the same house as his father, Rabbi Schneur Zalman. Rabbi DovBer and his family lived in the ground floor apartment, and Rabbi Schneur Zalman lived on the second floor.

One night, while Rabbi DovBer was deeply engrossed in his studies, his youngest child fell out of his cradle. Rabbi DovBer heard nothing. But Rabbi Schneur Zalman, who was also immersed in study in his room on the second floor, heard the infant’s cries. The Rebbe came downstairs, lifted the infant from the floor, soothed his tears, replaced him in the cradle, and rocked him to sleep. Rabbi DovBer remained oblivious throughout it all.

Later, Rabbi Schneur Zalman admonished his son: “No matter how lofty your involvements, you must never fail to hear the cry of a child.”

It can cost as much as \$148,767 to incarcerate a single child for one year.³⁰⁴ Surely we could provide housing, food, education, medical care, and counseling for less than that.

Facts and Figures

Who are the kids we lock up?³⁰⁶

- Only 34% of those in juvenile detention are there for violent crimes.
- More than 20% are there for technical violations or offenses such as disobeying parental orders, running away, truancy, or missing curfew. Anecdotally, we know that many of these kids are escaping from violence or abuse at home.



Photographer Richard Ross takes pictures and records the stories of girls in jail. View some of his work at http://www.slate.com/blogs/ behold/2015/04/26/richard_ross_photographs_girls_in_the_juvenile_ justice_system_in_his_book.html

³⁰³ <http://www.thenation.com/article/205129/states-are-required-educate-students-behind-bars-heres-what-really-happens>

³⁰⁴ http://www.politico.com/magazine/story/2015/03/criminal-kids-juvenile-justice-sentencing-reform-incarceration-116065_Page3.html#ixzz3ZHyne6bA

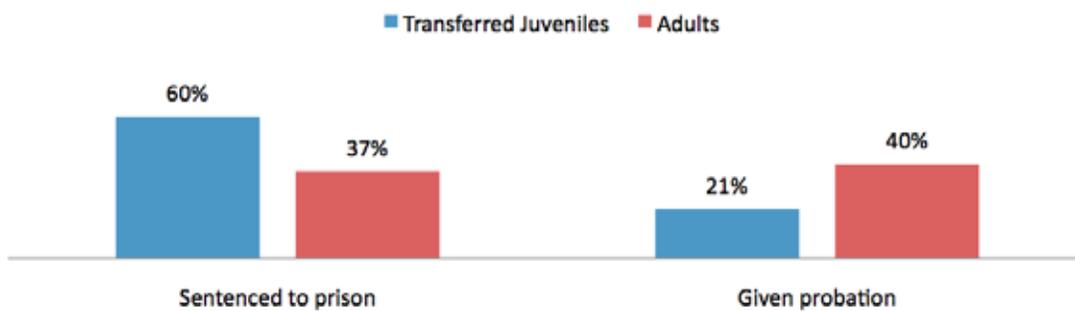
³⁰⁵ Retold at http://www.chabad.org/library/article_cdo/aid/115281/jewish/The-Cry-of-a-Child.htm

³⁰⁶ <http://www.nybooks.com/blogs/nyrblog/2010/jan/07/the-crisis-of-juvenile-prison-rape-a-new-report/>

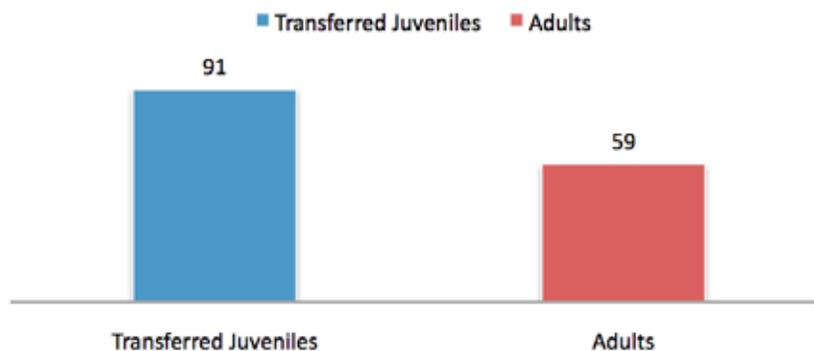
Sample Partner Organizations

- Equal Justice Initiative: www.eji.org
- National Juvenile Justice Network: www.njjn.org
- Southern Poverty Law Center: <http://www.splcenter.org/what-we-do/children-at-risk>
- Project NIA is an advocacy, organizing, popular education, research, and capacity-building center with the long-term goal of ending youth incarceration: www.project-nia.org
- Center for Juvenile and Criminal Justice (California): <http://www.cjcj.org>
- Pennsylvania Lawyers for Youth assists reintegrating youth with re-enrollment in school when they return home from their juvenile detention placements: <http://www.palawyersforyouth.org>

Sentencing for Adults and Juveniles Transferred into Adult Criminal Courts³⁰⁷



Mean maximum prison sentence length (in months)³⁰⁸



³⁰⁷ <https://www.ncjrs.gov/pdffiles1/ojdp/232434.pdf>

³⁰⁸ <https://www.ncjrs.gov/pdffiles1/ojdp/232434.pdf>

SPECIAL POPULATIONS

Lesbian, Gay, Bisexual, Transgender

Gays and lesbians in jails and prison face all sorts of harassment and violence; for instance, LGBT people are ten times more likely to be sexually assaulted by another incarcerated person than heterosexual people, and more than twice as likely to be assaulted by correctional staff.³⁰⁹ Transgender people generally face even more serious conditions though with a few bright spots. The vast majority of state facilities require people to be incarcerated according to their gender-assigned-at-birth.³¹⁰ Cook County Jail³¹¹ (Chicago), New York State juvenile detention facilities³¹², and a small handful of others allow transgender people to be housed according to their gender expression.

Incarcerated transgender people are 13 times more likely than other incarcerated people to be sexually assaulted; almost 60 percent reported being raped, compared to 4 percent of

cis-gender incarcerated people.³¹³ In many jurisdictions, they may be placed in solitary confinement “for their own protection,” which is merely a different form of violence.³¹⁴

Most states deny hormone treatment to transgender inmates. One major exception is California, which provides a full range of treatment. Other states allow access in theory, but place numerous bureaucratic obstacles in the way. Many others deny access to hormones as “unnecessary,” or allow only whatever regimen a person was taking at the time of incarceration. The Justice Department successfully argued that such policies are unconstitutional “because they do not provide for individualized assessment and treatment.”³¹⁵

In two cases to date—one in Massachusetts, the other in California—a judge has ordered a prison system to provide an incarcerated person with sex-reassignment surgery.³¹⁶ In California, the judge wrote that this should be done “as promptly as possible” and that failing to was being “deliberately indifferent to her serious medical need.”

In Her Own Words

“I’m trying to relax after being degraded on a daily basis for several years. In prison, I was a toy for the boys and a jester for the staff.”

“People think I’m upset because I was denied a nail polish or a fingernail file [while in prison], that it was about vanity. But anybody who’s known me my whole life knows this is not a costume I slip in and out of. It’s my identity, and when my outside doesn’t match my soul, I suffer.” – Ashley Diamond, a black transgender woman, released from Georgia state prison in August, 2015³¹⁷

The Southern Poverty Law Center has produced a short video containing segments that Ashley recorded in prison and then smuggled out: https://youtu.be/ho_RRiuLjY

Caring for the Body

“A kind man benefits himself” (Proverbs 11.17) This is Hillel. When Hillel the Elder left his disciples, they asked him, ‘Rabbi, where are you going?’ He said to them, ‘To perform a commandment.’ They said to him, ‘And what then is this commandment?’ He said to them, ‘To bathe in the (public) bath.’ They said to him, ‘And is this a commandment?!’ He said to them, ‘Yes. If the man who is appointed to take care of the images of kings, which (the gentiles) set up in their theatres and circuses, scours them and rinses them, and [the state] provides his livelihood, and not only that but he occupies an important place among government officials, then we, who are created in the image (*tzelem*) and in the likeness (*demut*) (of God) ... all the more so! Shammai did not teach so, he rather said: one should fulfill his duties from this body.’³¹⁸ (Leviticus Rabbah 34:3)

309 <http://www.nytimes.com/2015/05/13/us/push-to-end-prison-rapes-loses-earlier-momentum.html>

310 <https://www.themarshallproject.org/2015/04/21/what-care-do-prisons-owe-transgender-inmates>

311 <http://www.nbcchicago.com/news/local/cook-county-jail-transgender-inmates-119516094.html>

312 http://usatoday30.usatoday.com/news/nation/2008-06-19-transgender_N.htm

313 <https://www.themarshallproject.org/2015/04/21/what-care-do-prisons-owe-transgender-inmates>

314 <http://solitarywatch.com/2014/08/07/transgender-women-in-new-york-state-prisons-face-solitary-confinement-and-sexual-assault/>

315 <https://www.themarshallproject.org/2015/04/21/what-care-do-prisons-owe-transgender-inmates>

316 <https://www.themarshallproject.org/2015/04/21/what-care-do-prisons-owe-transgender-inmates>

317 <http://www.nytimes.com/2015/09/25/us/ashley-diamond-transgender-inmate-out-of-prison-but-not-fully-free.html>

318 (Shammai’s view appears only in Avot de-Rabbi Nathan b 39 [Schechter ed., p. 66])

SPECIAL POPULATIONS

People with Mental Illness

Ten times as many people with diagnosed mental illness are in prisons and jails than in state psychiatric hospitals.³¹⁹

Prisons often provide meager mental health care, with slow response times. In one survey, only one in three people in state prison with mental illness, and one in six in jails, had

received mental health treatment since their admission.³²⁰

In two recent Mississippi cases, it took nine years for two incarcerated people with severe mental illness to be transferred to a psychiatric hospital.³²¹

Unsurprisingly, incarceration can exacerbate mental illness.³²²

Many states dedicate special units to incarcerating and treating people with mental illness, but what is designed to be “humane and safe” can often be chilling. Oregon State Penitentiary’s Behavioral Health Unit, for instance, more closely resembles solitary confinement than it does mental

health care.³²³ In addition to this, which we might call “passive violence,” people with mental illness suffer active violence at the hands of prison staff. For instance, a new report by Human Rights Watch indicates overuse of pepper spray in prisons, particularly against incarcerated people with

mental health problems.³²⁴ This is particularly troubling given that such uses of force are less effective on people with mental illness and may even exacerbate a psychotic episode.

The lack of sufficient mental health care outside of prisons and jails leads to more people being incarcerated. The lack of sufficient

mental health care inside prisons and jails contributes both to poor conditions of incarceration (for both the mentally ill and their neighbors) and increased recidivism.³²⁵ On both sides of the bars, the need to improve services is dramatic.

Treating Each According to Her Needs

Rabbi Pereida had a pupil whom he would teach four hundred times and [only] then he would learn it. On a certain day he was invited to attend to a religious matter, and he taught him, but the pupil did not learn the subject. He said to him, “What is different today?” He said, “From the moment Master was told that there was a religious matter to be attended to, my mind wandered. I said to myself ‘now Master will get up’ or ‘now Master will get up.’” He said, “Give me your attention and I will teach you.” He taught him another four hundred times and he learned it. A divine voice issued forth and asked him, “Would you prefer that four hundred years be added to your life or that you and your generation merit a share in the world to come?” He said, “I wish that I and my generation merit a share in the world to come.” The blessed Holy One said, “Give him both.” (Talmud Eruvin 54b)

319 <http://www.usnews.com/news/articles/2015/05/06/counties-examine-police-training-in-encounters-with-mentally-ill>
 320 <http://webarchive.urban.org/UploadedPDF/2000173-The-Processing-and-Treatment-of-Mentally-Ill-Persons-in-the-Criminal-Justice-System.pdf>
 321 <http://www.clarionledger.com/story/news/2015/05/01/long-wait-jail-men-waiting-mental-hospital/26738359/>
 322 http://www.huffingtonpost.com/dustin-demoss/prison-mental-illness_b_6867988.html
 323 http://www.oregonlive.com/pacific-northwest-news/index.ssf/2015/05/inmates_in_oregons_behavioral.html
 324 <https://www.themarshallproject.org/2015/05/12/adding-pepper-spray-to-the-prison-arsenal>
 325 <http://webarchive.urban.org/UploadedPDF/2000173-The-Processing-and-Treatment-of-Mentally-Ill-Persons-in-the-Criminal-Justice-System.pdf> p.12

Facts and Figures

Mental Illness in America³²⁶

1. One in four adults—approximately 61.5 million people—experiences mental illness in a given year.

- The total rate of mental illness is 20-40% higher for women than men in any given year.³²⁷

2. One in 17 adults—about 13.6 million—live with a serious mental illness such as schizophrenia, major depression, or bipolar disorder.

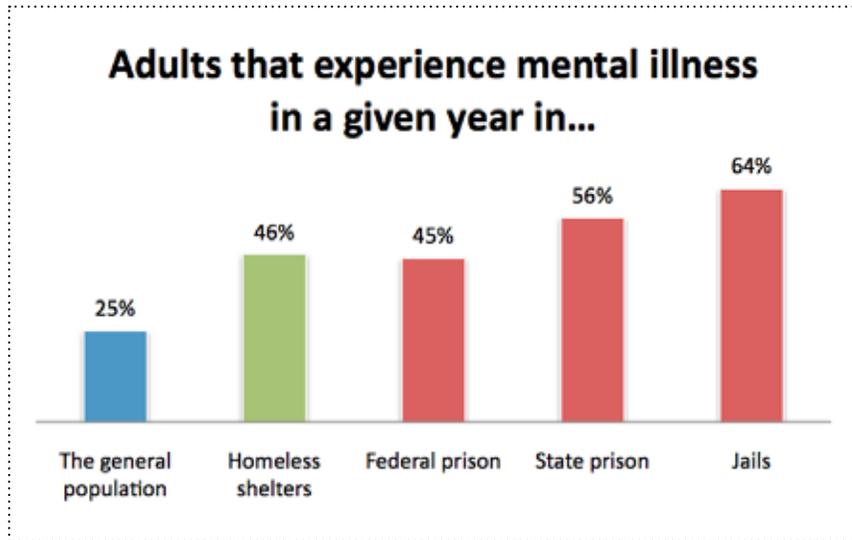
3. Approximately 20% of youth ages 13 to 18 experience severe mental disorders in a given year.

4. About 9.2 million adults have both mental health and addiction disorders.

- Only 7.4% receive treatment for both conditions and more than half get no treatment at all.³²⁸

5. Approximately 46% of homeless adults staying in shelters live with severe mental illness and/or substance use disorders.

Compare those numbers to these figures on the prevalence of mental illness among incarcerated Americans:³²⁹



- Federal prison: 45%
- State prison: 56%
- Jails: 64%

More than 40 percent of people with a serious mental illness have been arrested at some point.³³⁰

Cost³³¹

- Less than \$100 per day for treating people with mental illness in a community setting.

- More than \$400 per day to treat them while incarcerated.

³²⁶ http://www.huffingtonpost.com/dustin-demoss/prison-mental-illness_b_6867988.html

³²⁷ <http://ideas.time.com/2013/07/18/its-not-just-sexism-women-do-suffer-more-from-mental-illness/>

³²⁸ <http://www.usnews.com/news/articles/2015/05/06/counties-examine-police-training-in-encounters-with-mentally-ill>

³²⁹ <http://webarchive.urban.org/UploadedPDF/2000173-The-Processing-and-Treatment-of-Mentally-Ill-Persons-in-the-Criminal-Justice-System.pdf>

³³⁰ <http://theweek.com/articles/540725/how-local-jail-became-hell-investigation>

³³¹ <http://chicago.suntimes.com/news-chicago/7/71/618900/psychologist-hired-run-cook-county-jail>

Prison Labor

For as long as the United States has had modern prisons, it has had prison labor. First implemented at Auburn Prison in New York State in the 1820's, prison labor³³² has taken different forms including convict-leasing, chain gangs (which were originally intended as a reform, since they were run

by the state and not private individuals)³³³, and prison factories. While the image of prisoners in black-and-white stripes breaking rocks with sledgehammers may seem anachronistic, it is in fact not far from today's

reality. Chain gangs saw a brief resurgence in Alabama in the mid-1990's³³⁴, and Arizona Maricopa County Sherriff Joe Arpaio is proud to run chain gangs for men, women, and juveniles who have been convicted as adults to this very day—in the county jail, where many people are held pre-trial^{335, 336}.

About half of all people in federal and state prisons have a work assignment³³⁷, and all able-bodied people incarcerated

in federal prisons are required to work³³⁸. The most common jobs are those involved in running the prison; after that come public works, like park and road maintenance, followed by prison industries. One in six prisons places incarcerated people in agricultural work. Prison labor

produces a wide range of products sold on the commercial market—including, surprisingly, hormone-free tilapia sold at Whole Foods.³³⁹

In all fields, people “labor largely outside

the workplace protections that shield civilian workers in the United States and elsewhere.”³⁴⁰ Herein lies the real problem. Giving incarcerated people real jobs, where they can learn skills and feel useful—“meaningful work”³⁴¹ — helps make prison more tolerable. Unfortunately, most prison labor takes advantage of the people it “employs” and gives them back little of value, along the lines of the workfare model described in the section on Reentry.

Protecting Workers

“The purpose [of Jewish labor laws] is to protect the weaker side in these relationships—the worker who is exposed to injustice and exploitation by the stronger party—the employer. We can say that the labor laws attempt to correct the socio-economic discrimination that exists in society against workers by instituting a legal discrimination against employers.”

– Rabbi Shillem Warhaftig, contemporary expert on work in *halacha*, *Dinei Avodah b'Mishpat ha'Ivri* vol. 1, p. 2

332 http://www.salon.com/2012/04/19/21st_century_chain_gangs/

333 <http://www.pbs.org/tpt/slavery-by-another-name/themes/chain-gangs/>

334 <http://www.nytimes.com/1995/03/26/us/chain-gangs-to-return-to-roads-of-alabama.html>

335 <http://www.usatoday.com/story/news/nation/2013/05/09/state-highlight-florida/2148733/>

336 <http://www.cnn.com/2003/US/Southwest/10/29/chain.gang.reut/>

337 Gottschalk, p. 57

338 <http://www.prisonpolicy.org/prisonindex/prisonlabor.html>

339 <http://www.governing.com/topics/public-workforce/working-prisoners-saves-taxpayers-money.html>

340 Gottschalk, p. 60

341 <http://www.jfa-associates.com/publications/srs/UnlockingAmerica.pdf>, p. 17

Prison labor also often falls short of its alleged rehabilitative goals. Formerly known as Federal Prison Industries, Inc, UNICOR is a government-held corporation that employs people in federal prisons and sells goods and services mainly back to the government. UNICOR's website boasts of

*[providing] offenders the opportunity to develop the work and life skills needed to secure stable, adequate sources of income after prison... The very cornerstone of our existence – a strong work ethic – is ingrained in our culture... This foundation is often absent or limited for those who enter the prison system.*³⁴²

Despite this lofty assertion, only 24% of those who had worked for UNICOR during their time in prison were employed within two years of release.³⁴³

342 <http://www.unicor.gov/Anniversary.aspx>
343 http://www.unicor.gov/FAQ_General.aspx
344 <http://www.prisonpolicy.org/prisonindex/prisonlabor.html>
345 http://www.bop.gov/inmates/custody_and_care/work_programs.jsp
346 http://www.unicor.gov/FAQ_General.aspx#4
347 <http://www.prisonpolicy.org/prisonindex/prisonlabor.html>
348 Gottschalk, p. 38.

Facts and Figures

1. An estimate from 2000 puts the annual value of US prison industries at over \$2 billion.³⁴⁴

2. Average earnings behind bars:

- Federal prison, maintenance: between 12-40 cents per hour³⁴⁵
- UNICOR: Between \$0.23 \$1.15 per hour³⁴⁶
- State prisons, average daily wage, maintenance: \$0.93³⁴⁷

3. UNICOR is now advertising itself as an alternative to overseas outsourcing, with all the

benefits of domestic labor at offshore prices. See for yourself: <https://firstlook.org/theintercept/2015/04/17/prison-labor-company-features-promo-video-touting-best-kept-secret-outsourcing/>

“The rabbis who work for the Department of Corrections consult an outside halachic authority that makes halachic rulings for the system. There is a ruling that says matzah qualifies fulfilling the mitzvah of challah. The state prefers this ruling because it’s cheaper. If they have to give every inmate a challah roll, as opposed to matzah, it’ll cost them more. The inmates know they are eating *lechem oni* [bread of affliction]. They know that what they’re getting is *lechem oni*, and it’s so psychically messed up, I can’t tell you what it does to them. They see how enslaved they are every Friday night when they look at that matzah. The women at Bedford Hills get paid slave wages, cents per hour, for their work. Slave labor—the Constitution allows it—and then they get matzah for Shabbos? And there’s nothing to be done about it.”

**– Rabbi Joanna Katz, Jewish Chaplain,
Bedford Hills Correctional Facility for Women**

“The interstate commerce in prison-made goods...is more tightly regulated than the business of exporting and importing prisoners between states.”³⁴⁸

Prison Rape

The term ‘prison rape’ has become sufficiently established in American pop culture that it appears in a nearly endless list of movies, television shows, and jokes. Yet the prevalence and long-term impact of prison rape is anything but funny. “Every sickness and pathology in American life—misogyny, homophobia, a legacy of racism and slavery—is amplified in patterns of prison sexual violence.”³⁴⁹

Perhaps as chilling as Americans’ blasé acceptance of prison rape is that people incarcerated in federal and state prisons

and local jails report more instances of victimization by staff than by fellow incarcerated people.³⁵⁰ Furthermore, widespread reports testify to prisons and jails retaliating against incarcerated people who report sexual assaults, such as placing them in solitary confinement “for their own protection.”³⁵¹ If society mandates incarceration, we have a minimum responsibility to keep incarcerated people safe.

Sexual assault and rape affect the health—both mental and physical—of individuals and communities post-incarceration. Most reentry programs focus on job skills, not psychological healing. As one commentator notes, “What sort of stable

sexual culture can we hope to produce in communities already unduly affected by the carceral system when former inmates are re-introduced without any source of treatment for sexual trauma?”³⁵²

Researchers have demonstrated post-traumatic stress disorder among people leaving prison—with exacerbated rates for

victims of sexual assault—which often goes unrecognized and untreated.

On the physical health front, prison rape can have grave

ramifications for the spread of HIV. The stigma around sexual assault can dissuade people from reporting the assault or seeking treatment. Upon release, many don’t know their HIV infection status, and therefore may place future partners at risk.³⁵³ This is one more issue to take into account when considering the effects of mass incarceration on poor neighborhoods and communities of color.

Congress did pass the Prison Rape Elimination Act (PREA) in 2003, but its implementation has been excruciatingly slow, and many advocates believe the law includes too little in the way of enforcement mechanisms to be very effective³⁵⁴

Talmud, *Sukkah* 29a

[One of the sins that causes a solar eclipse is] if a betrothed woman [being raped] cries out in the city, and no one pays attention to her.

349 <http://www.thenation.com/article/199361/why-americans-dont-care-about-prison-rape>

350 <http://www.thenation.com/article/199361/why-americans-dont-care-about-prison-rape>

351 See reports, e.g., from Florida (<https://www.themarshallproject.org/2015/03/30/florida-s-record-on-rape>) and New Jersey (<http://www.trentonian.com/general-news/20150330/mercer-inmate-suing-county-claims-sexual-assault-routinely-ignored>)

352 <http://www.thenation.com/article/199361/why-americans-dont-care-about-prison-rape>

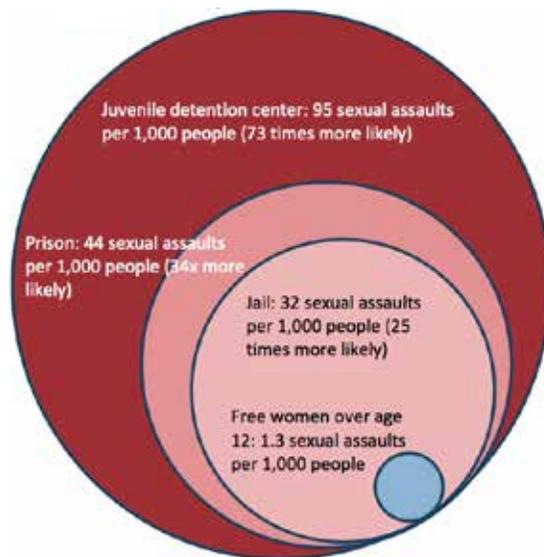
353 <http://www.thenation.com/article/199361/why-americans-dont-care-about-prison-rape>

354 <http://www.nytimes.com/2015/05/13/us/push-to-end-prison-rapes-loses-earlier-momentum.html>

Facts and Figures

A senior statistician at the Bureau of Justice Statistics, confirmed that nearly 200,000 people total were sexually violated in American detention facilities in 2011.³⁵⁵

Population	Number of sexual assaults per 1,000 people ³⁵⁶	Likelihood of assault relative to free population
Jail	32	25 times more likely
Prison	44	34 times more likely
Juvenile detention center	95	73 times more likely
Free women over age 12	1.3	--



Responsibility to Protect the Incarcerated

“The son of the Israelite woman pronounced the Name in blasphemy, and he was brought to Moses...and he was placed in custody (*MiShMaR*), until the decision of the Lord should be made clear to them. (Leviticus 24:11-12)

“And YHWH God took the human and put him in the garden of Eden to work it and to watch over it (*LeShoMRaH*).” (Genesis 2:15, translation by Dr. Richard Elliot Friedman)

“...to work it and keep it.” (Genesis 2:15, translation JPS 1917)

The Hebrew root shin-mem-resh (Sh-M-R), used in Leviticus for the temporary “holding cell” where the blasphemer is incarcerated until God renders a verdict, means both to guard and to protect, as indicated by the two translations of the verse in Genesis. Incarceration may operate to protect society from an individual, but it must also protect the individual being incarcerated.

³⁵⁵ <http://www.nybooks.com/articles/archives/2013/oct/24/shame-our-prisons-new-evidence/?pagination=false>

³⁵⁶ Data from BJS survey, 2011-2012.

Solitary Confinement

Solitary confinement refers to incarcerating people alone in small cells, often only 6x9 feet, for 22-24 hours per day. In the US, solitary confinement exists in every possible site of detention: prisons, jails, and immigration detention centers; federal, state, and local sites; public and privately run institutions. Those living in solitary confinement have extremely limited access to human contact. Time out of the cell is limited to showers and one hour per day of “recreation,” in a small fenced-in area. People returning from solitary tell stories of corrections officers offering recreation only in the middle of the night; if you were asleep, you missed your chance for the day. People in solitary have limited access to reading material, restricted access to medical care and mental health care, no access to classes or drug treatment programs, and can meet visitors only through a thick pane of glass.

Genesis Rabbah 24:7

No one should say: “Because I have been dishonored, let my fellow person be dishonored.” Rabbi Tanhuma taught, “If you do thus, know that the person you have dishonored was created in the image of God.”

The debilitating long-term effects of solitary confinement on both physical and mental health are well documented.³⁵⁷ These include depression, withdrawal (to the point, in extreme cases, of catatonia), mood swings, anger management problems, anxiety, violence, self-mutilation, and suicidality. These can manifest even after “short, defined periods in extreme isolation.”³⁵⁸ In an article for the *New Yorker*, Physician Atul Gawande compared the permanent psychological impairment of people in long-term solitary to that incurred by traumatic brain injury.³⁵⁹ In August, 2011, UN Special Rapporteur on Torture Juan Mendez issued a scathing report defining solitary as a form of torture.³⁶⁰

His report set an international standard for what constitutes prolonged solitary confinement, defining it as isolation that lasts more than 15 days.

In the popular imagination, solitary confinement is reserved for the worst, most violent offenders, but the reality is otherwise. First, solitary is usually not part of a sentence handed down by judge or jury, but is rather imposed by prison officials. “Punitive segregation,” for violation of prison rules, can last from days to years; “administrative segregation” can last the full duration of an incarcerated person’s sentence, stretching into decades.³⁶¹ Prisons may use solitary for “involuntary protective custody,” keeping minors, LGBT people, or the mentally ill there “for their own good.” Sometimes people languish in solitary because there is no other available bed in the facility.³⁶²

The category of “punitive segregation,” while seeming reasonable at first glance, breaks down upon close examination into a Kafkaesque series of regulations. Five Mualimm-ak, who spent years in solitary in New York State before being cleared of all charges, describes one of the times he was sent to solitary. “I had been transferred from one prison to another, and they hadn’t fed me. At my next meal, I was so hungry I ate the whole apple, seeds and all. Well, apple seeds have a tiny bit of cyanide in them, so they gave me a ‘ticket’ for attempted suicide. The next day, they brought me an apple with my meal and I didn’t touch it—I was afraid of what might go wrong. So they gave me another

³⁵⁷ See e.g., Stuart Grassian & Nancy Friedman, *Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement*, 8 INT’L J.L. & PSYCHIATRY 49 (1986); Craig Haney & Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 NEW YORK UNIVERSITY REVIEW OF LAW AND SOCIAL CHANGE 477-570 (1997); Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 CRIME & DELINQ. 124 (2003).

³⁵⁸ *Boxed In*, NYCLU, p. 27. http://www.nyclu.org/files/publications/nyclu_boxedin_FINAL.pdf

³⁵⁹ <http://www.newyorker.com/magazine/2009/03/30/hellhole>

³⁶⁰ The Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman, and degrading treatment or punishment, Interim Report, 15, delivered to the General Assembly, U.N. Doc. A/66/268 (Aug. 5, 2011).

³⁶¹ <http://solitarywatch.com/facts/faq/>

³⁶² <http://solitarywatch.com/2014/09/22/reports-condemn-healthcare-and-solitary-confinement-in-arizona-state-prisons/>

‘ticket,’ for refusing to eat. You can’t win.”³⁶³ The California prison system used to employ a coercive process called debriefing to encourage people to identify gang members in prison. It almost goes without saying that snitching on other gang members can put a person’s life in danger, but “refusal to engage in the debriefing process supposedly proved [the incarcerated person] was a gang member, and worthy of administrative segregation.”³⁶⁴ The 2015 settlement in *Ashker vs. Governor of California* ended this practice, but similar logic continues to prevail in other states.

The introduction of reform efforts in a number of states suggests that the United States may be reaching a tipping point on reversing the solitary confinement trend—see the sidebars for some examples.³⁶⁵

In the fall of 2014, the United States was up for a periodic review before the UN Committee Against Torture. T’ruah was the only Jewish organization to submit a “shadow report”³⁶⁶ to the UN, in addition to the US government’s official report on its progress. T’ruah’s report focused on solitary confinement as a violation of human rights. We wrote:

As rabbis and members of the Jewish community, we feel compelled to speak out against this form of torture. The very first two chapters of our Torah teach us that every human being is created in the image of God, and that no human being should be

alone... As rabbis, many of us have visited congregants in prison, or served as prison chaplains. These pastoral experiences have taught us the degradation prisoners feel, the loneliness of being in prison, and the desperation of those unable to maintain normal human relationships while living in isolation... The rabbis of the Talmud understand that solitary confinement for any significant period of time will be lethal.³⁶⁷ There is no reason to believe that solitary confinement was ever used in the Talmudic period; rather, it seems to be a theoretical punishment for the worst criminals.

Psalm 118:5

“From the narrow place, I called to God.”



Photo by T’ruah

The shadow report ended by making the following recommendations:

- Limit the use of solitary to a maximum of 15 days, communicate clearly to the incarcerated person the length of his/her stay in solitary, and guarantee a fair and meaningful process prior to being sent into isolation.
- Ban the use of solitary for certain populations (minors, mentally ill people, pregnant women, pretrial detainees, and immigrants held in civil proceedings).
- Guarantee access by people in solitary to the full range of rehabilitative services offered to people in the facility’s general population, including mental health care, counseling, and religious services.
- Develop standards to ensure that people are not placed in solitary for discriminatory reasons, including for challenging the conditions of incarceration.

³⁶³ Personal communication.

³⁶⁴ <http://solitarywatch.com/2011/07/18/who-are-the-hunger-strikers-how-prisoners-land-in-pelican-bays-shus/>

³⁶⁵ <https://www.themarshallproject.org/documents/1687520-fathi>

³⁶⁶ <http://www.ushrnetwork.org/sites/ushrnetwork.org/files/31-prisons-rabbinic.pdf>

³⁶⁷ Talmud, Sanhedrin 81b.

Facts and Figures

- The United States currently detains between 80,000-100,000 people in solitary confinement on any given day.³⁶⁸ This number does not include people held in jails, juvenile detention, or immigration detention facilities, making the total number higher by an unknown amount.
- From 2007 to 2011, New York issued more than 68,100 sentences to extreme isolation for violations of prison rules. The average sentence was five months, although many people are held in extreme isolation for years.³⁶⁹
- “According to the California Code of Regulations, Title 15, Section 3315, there are 23 ‘serious rule violations’ that can send an inmate to an SHU for a determinate time. These include ‘acquisition or exchange of personal or state property amounting to more than \$50.... tattooing or possession of tattoo paraphernalia.... possession of \$5 or more without authorization.... refusal to work or participate in a program as assigned.... acts of disobedience or disrespect’ or the perceived ‘threat to commit’ a disruption or breach of security, including the ‘threat’ to ‘possess a controlled substance.’”³⁷⁰
- Over 95% of all people currently incarcerated, including those in solitary confinement, will eventually be released.³⁷¹ Some are released directly from solitary to the street.³⁷² With none of the transitional preparation that people in general population receive, they have even less chance of succeeding after their release.



³⁶⁸ Angela Browne, Alissa Cambier, Suzanne Agha, *Prisons Within Prisons: The Use of Segregation in the United States*, 24 *FED’L SENTENCING REPORTER* 46 (2011)

³⁶⁹ NYCLU, *Boxed In*, p. 1.

³⁷⁰ Activist Jeff Kaye, quoted in <http://solitarywatch.com/2011/07/18/who-are-the-hunger-strikers-how-prisoners-land-in-pelican-bays-shus/>

³⁷¹ <https://fas.org/sgp/crs/misc/RL34287.pdf>

³⁷² *Boxed In*, p. 5.

Mississippi

Mississippi's Unit 32 was a "supermax" prison containing 1,000 solitary confinement cells. After the ACLU brought a lawsuit challenging conditions there, the state closed the entire facility in 2010. State Department of Corrections Commissioner Christopher Epps commented,

I often say, "You have to decide who you are afraid of and who you are mad at" when making decisions on the use of administrative segregation in prison... Corrections professionals and the criminal justice system must be careful not to use administrative segregation in prison to manage those who we are mad at because this is an expensive option that takes away resources from important government areas such as education, human services, healthcare, etc., which are the services most needed to make a better society.

Mississippi has other solitary confinement facilities, and conditions there remain problematic, but closing an entire prison dramatically reduced the population in solitary.³⁷³

Maine

Maine once had some of the harshest policies for people held in solitary, but reform efforts initiated in 2010 by state Corrections Commissioner Joseph Ponte have led to immense changes. Prison staff now employ solitary as a measure of last resort, rather than a go-to solution. Instead, prison staff have been trained to deescalate confrontations that, previously, would have led straight to solitary. Those few who do end up in solitary have greater access to services and group activities, which are aimed at helping them return to general population as quickly as possible. In less than three years, the solitary population dropped by more than half. In March of 2014, Ponte was appointed Corrections Commissioner in New York City, where he faces the challenge of bringing similar reforms to a much larger, more urban jail system.³⁷⁴

³⁷³ <https://www.themarshallproject.org/documents/1687520-fathi>, p. 170-171.

³⁷⁴ <https://www.themarshallproject.org/documents/1687520-fathi>, p. 171-172.

Immigration Prisons: Operating in the Shadows

Immigration reform and mass incarceration may seem like different worlds, but they get entangled when it comes to detaining immigrants. The numbers are staggering—in 2012, the federal government detained twice as many people in facilities overseen by ICE (Immigration and Customs Enforcement, housed in the Department of Homeland Security) as in BOP (Bureau of Prisons, part of the Department of Justice). The magnitude of the system, its reliance on private prisons, and the fact that it incarcerates many people whose only crime is entering the US illegally combine to make immigration prisons a source of great concern.

Most people held by ICE are in the midst of civil (non-criminal) proceedings to determine whether they have a right to stay in the United States. Using what is called a “detainer,” ICE officers can ask that any person in police custody be held for 48 extra hours to allow an ICE investigation, simply on the grounds that ICE has opened an investigation.³⁷⁵ If found to be undocumented, immigrants are transported and detained. In the criminal justice system, accused people are presumed innocent until proven guilty and are entitled to certain protections. The detainer system moves a person accused of non-criminal, administrative offenses into the immigration court system, which does not extend these protections.³⁷⁶

In addition to the impact on the detained person and his/her family, who may now be separated by thousands of miles, this policy also makes immigrants afraid of going to police,

even when they are victims of crimes, which decreases overall public safety.³⁷⁷

A 2009 report written for ICE contains the following disturbing observations about the agency’s detention operations:

With only a few exceptions, the facilities that ICE uses to detain aliens were built, and operate, as jails and prisons to confine pre-trial and sentenced felons. ICE relies primarily on correctional

incarceration standards designed for pre-trial felons and on correctional principles of care, custody, and control. These standards impose more restrictions and carry more costs than are necessary to effectively manage the majority of the detained population.

ICE is comprised primarily of law enforcement personnel

*with extensive expertise performing removal functions, but not in the design and delivery of detention facilities and community-based alternatives.*³⁷⁸

A third system, bridging the gap between ICE’s detention facilities and federal prisons, is the “criminal alien requirement” (CAR) prisons, which the ACLU refers to, in a 2014 report, as a “shadow private prison system.”³⁷⁹ Thirteen of these prisons nationwide house around 25,000 people, who fall mainly into two categories: immigrants convicted of drug offenses and immigrants who have reentered the US illegally after being deported previously.³⁸⁰ The CAR system was set up in 1999. Since then, “without a single vote in Congress, officials across three administrations: created a new classification of federal prisons only for

**“You shall have one law for stranger and for the citizen, for I am the ETERNAL your God.”
 (Leviticus 24:22)**

Rashi: “I am the ETERNAL your God”—The God of all of you. Just as I make My name One for you, I make My name One for strangers.

³⁷⁵ Though the 2012 Supreme Court ruling that struck down most of Arizona’s law on immigration policing has somewhat restricted ICE’s powers. Various cities and counties, and four states—California, Illinois, Massachusetts, and New York—have also passed laws curbing or eliminating cooperation with ICE without a proper judicial warrant. For a 2013 list, see <http://lawprofessors.typepad.com/immigration/2013/12/resistance-to-secure-communities-continues-to-growking-county-washington-passes-ordinance-restrictin.html>

³⁷⁶ Hernandez, David Manuel. “Pursuant to Deportation: Latinos and Immigrant Detention,” *Latino Studies*, 2008: <http://www.palgrave-journals.com/1stjournal/v6/n1/full/1st20082a.html>

³⁷⁷ ?

³⁷⁸ <http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>

³⁷⁹ <https://www.aclu.org/warehoused-and-forgotten-immigrants-trapped-our-shadow-private-prison-system>

³⁸⁰ <https://www.themarshallproject.org/2015/02/24/a-most-unsurprising-riot>

immigrants; decided that private companies would run the facilities; and filled them by changing immigration enforcement practices.”³⁸¹

Conditions in these prisons include a variety of abuses not unique to CAR: poor food, inadequate medical care, harassment by corrections officers, and poor maintenance and cleanliness. The Bureau of Prisons has itself acknowledged, “Contractor is unable to successfully achieve their own

plans of action to correct deficient areas” and “Lack of healthcare has greatly impacted inmate health and wellbeing”; nevertheless, contracts have consistently been renewed.³⁸² Contract provisions incentivize filling CAR facilities to 115% of design capacity and call for at least 10% of housing to be in solitary

confinement—double the rate at ordinary prisons.³⁸³ For more on issues unique to private prisons, see page ___.

some updated weekly, about the federal prison population, at <http://www.bop.gov/about/statistics/>. In contrast, while ICE documents its annual number of removals from the country, statistics about detention are far harder to find.

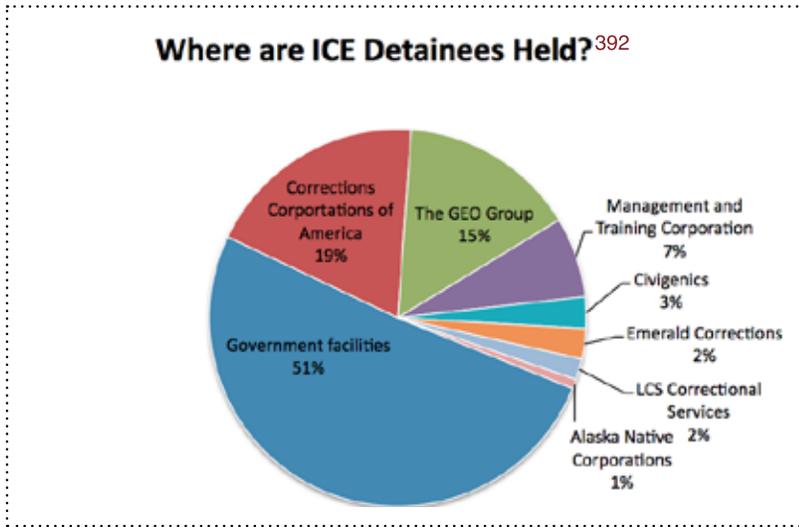
• Current U.S. legislation is read by some members of Congress to require that at least 34,000 immigrants be held in detention beds at all times at a cost of \$2 billion annually.³⁸⁶ If laws or contracts mandate a certain number

of beds be filled, it is not hard to understand how standards for filling them might be relaxed.

• From 2007-2013, the number of detainees issued by ICE increased from less than 15,000 to some 250,000 per year, as a result of the Secure Communities³⁸⁷ program.³⁸⁸ With the

program’s cancellation by President Obama in November 2014, it remains to be seen how these numbers will change.

• In December 2014, the Department of Homeland Security opened the nation’s largest immigrant detention facility, in Dilley, TX, to house 2,400 women and children. Previously, the largest permanent center for migrants was in Pennsylvania, with about 100 beds.³⁸⁹ The facility is operated by Corrections Corporation of America, which has a documented history of abuses.³⁹⁰ Conditions at Dilley have been compared to the internment camps to which Japanese Americans were sent during World War II.³⁹¹



Facts and Figures

Numbers of People Incarcerated

• In 2012, federal prisons held 196,600 people.³⁸⁴ The same year, the US detained approximately 400,000 immigrants, in a variety of settings.³⁸⁵

• BOP makes it fairly easy for the public to access statistics,

³⁸¹ <http://interactive.fusion.net/shadow-prisons/>

³⁸² <http://thinkprogress.org/justice/2014/06/11/3447208/how-these-prisons-for-noncitizens-compound-all-the-problems-with-us-incarceration/>

³⁸³ <https://www.themarshallproject.org/2015/02/24/a-most-unsurprising-riot>

³⁸⁴ <http://www.bjs.gov/content/pub/press/cpus12pr.cfm>

³⁸⁵ <http://www.detentionwatchnetwork.org/resources>

³⁸⁶ http://www.huffingtonpost.com/azadeh-shahshahani/living-nightmare-for-deta_b_6208916.html

³⁸⁷ Secure Communities was the program that required local law enforcement to send the fingerprints of every person they arrested to ICE, giving federal agents a chance to detain any undocumented immigrants. It has been replaced by the Priority Enforcement Program, which seeks to focus only on suspected terrorists, gang members, and people convicted of violent crimes.

³⁸⁸ <http://www.immigrationpolicy.org/perspectives/faulty-legal-arguments-behind-immigration-detainers>

³⁸⁹ <http://www.nytimes.com/2014/12/16/us/homeland-security-chief-opens-largest-immigration-detention-center-in-us.html>

³⁹⁰ <http://www.newsweek.com/operators-americas-largest-immigrant-detention-center-have-history-inmate-293632>

³⁹¹ <https://www.themarshallproject.org/2015/05/21/the-south-texas-family-residential-center-is-no-haven>

³⁹² <http://www.detentionwatchnetwork.org/privateprisons>

What's Sending Them There?

- In 2009, only 11% of ICE detainees were found to have committed a violent crime.³⁹³

- From 2008-2012, immigration cases made up the largest sector of federal criminal cases. In 2013 (the most recent year for which data are available), drug cases just barely edged immigration out, each taking up 31.2% of cases.³⁹⁴ Prosecutions have spiked since the 2005 beginning of Operation Streamline, which requires the federal government to bring criminal charges against everyone who crosses the US southern border illegally.

- When looking only at federal cases brought against immigrants, immigration-related offenses are a clear majority, comprising 67% of primary convictions. Drugs come in second at 22%.³⁹⁵

Costs and Alternatives

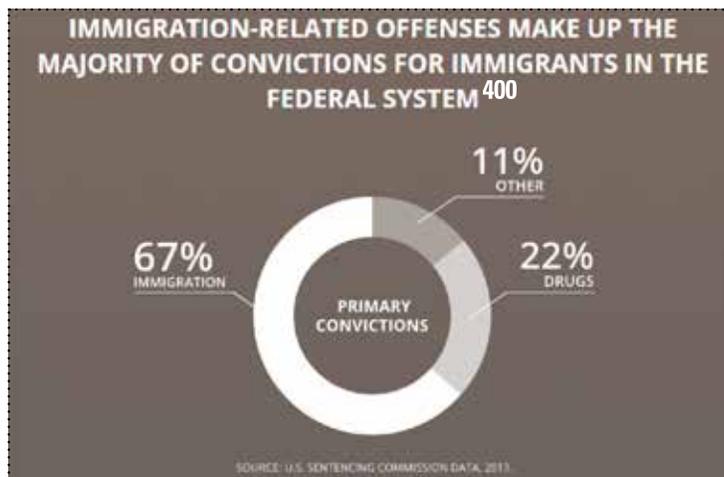
- ICE reports it spends \$119 per day to support each detained person, but it acknowledges this figure underreports

real costs. Factoring in operating expenses, a more realistic figure is \$159.³⁹⁶

- The 2013 immigration reform bill, which passed the Senate but died in the House, allocated \$46 billion to secure America's southern border. This is roughly equal to what all 50 states combined spend annually on corrections, or seven times the federal Bureau of Prisons' budget for one year.

“Central American toddlers and mothers [are] the new face of mass detention... ICE's misguided effort to build child-friendly prison camps repeats the inhumanity that the U.S. government inflicted on Japanese-American families during World War II.”³⁹⁹

- Carl Takei, ACLU



- Alternatives to Detention can include electronic monitoring, telephonic and in-person reporting, curfews, and home visits.³⁹⁷

- Existing alternatives range in cost from as low as 0.17 cents up to \$17 dollars a day per individual. In 2012, the average per-person cost for alternative measures was \$5.94.³⁹⁸

Sample Partner Organizations

- ACLU, particularly in states that house CAR prisons (Georgia, Mississippi, New Mexico, North Carolina, Oklahoma, Pennsylvania, and Texas)
- Grassroots Leadership
- Detention Watch Network

³⁹³ <http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>

³⁹⁴ http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2014/FY13_Overview_Federal_Criminal_Cases.pdf

³⁹⁵ <http://interactive.fusion.net/shadow-prisons/>

³⁹⁶ <http://immigrationforum.org/blog/themathofimmigrationdetention/>

³⁹⁷ <http://immigrationforum.org/blog/themathofimmigrationdetention/>

³⁹⁸ <http://immigrationforum.org/blog/themathofimmigrationdetention/>

³⁹⁹ <https://www.themarshallproject.org/2015/05/21/the-south-texas-family-residential-center-is-no-haven>

⁴⁰⁰ <http://interactive.fusion.net/shadow-prisons/>

Life without the Possibility of Parole

Approximately 160,000 people are serving life sentences in the US. Of these, about one-third are serving life without the possibility of parole.⁴⁰¹

Before the 1970's, this sentence was "virtually nonexistent." Today, 49 states have it in some form⁴⁰², and the population subject to it has increased one hundredfold.⁴⁰³ The result is that prisons are becoming "maximum security nursing homes,"⁴⁰⁴ which has consequences both for the incarcerated person and for the taxpayer; elderly patients are much more expensive to incarcerate, owing to their medical needs.

The idea of long sentences is not inevitable. In Europe, a 10 year sentence for murder is considered severe.⁴⁰⁵ By contrast, in 2000 the average prison sentence for murder in the US was 20 years, eight months.⁴⁰⁶

Who is serving these sentences?

Repentance in Old Age

...Even if one sinned all her days and repented on the day of her death, dying having atoned, all of her sins are pardoned, as it says, [Remember your Creator...] Before the sun, and the light, and the moon, and the stars, are darkened, and the clouds return after the rain" (Ecclesiastes 12:1-2)—which is the day of death. As long as she has remembered her Creator and repented before she dies, she is forgiven. (Maimonides *Hilchot Teshuvah* 2:1)



Photo by Jeffrey M. Levine MD, used with permission

*The life-sentenced population in the United States is extremely heterogeneous. It includes not only drug offenders but also middle-aged serial killers, getaway drivers in convenience store robberies gone awry, aging political radicals from the 1960's and 1970's, women who killed their abusive partners, third-strikers serving twenty-five years to life for trivial infractions such as stealing two slices of pizza, and men who, as teenagers decades ago, killed their girlfriends in a fit of jealous rage.*⁴⁰⁷

The Supreme Court forbade sentencing juveniles to life in prison—except in cases of homicide—in 2010.⁴⁰⁸ Indeed, the nonpartisan American Law Institute

recommends that juvenile lifers be eligible for parole after

401 Gottschalk, p. 170

402 Nellis, "Life Goes On," p. 3. http://www.sentencingproject.org/detail/publication.cfm?publication_id=514

403 Appleton and Grover, p. 600. "THE PROS AND CONS OF LIFE WITHOUT PAROLE" http://www.cj-resources.com/CJ_Corrections_pdfs/pros%20and%20cons%20of%20life%20without%20parole%20-%20Appleton%20et%20al%202007.pdf

404 Gottschalk, p. 171

405 <https://www.themarshallproject.org/2015/03/04/how-to-cut-the-prison-population-by-50-percent>

406 <http://www.bjs.gov/content/pub/ascii/Fssc00.txt>

407 Gottschalk, p. 178.

408 <http://www.washingtonpost.com/wp-dyn/content/article/2010/05/17/AR2010051701355.html>

10 years.⁴⁰⁹ Advocates have often invoked new findings in brain science—that the parts of the brain responsible for impulse control and long-term planning don’t mature until the mid-twenties—in these arguments. Others, however, point out that doing so implies that adults who commit serious crimes should have known better and deserve life sentences.⁴¹⁰

Similarly, the anti-death penalty movement has embraced life without parole as a humane alternative to execution. Advocates for mass incarceration reform who take a wider lens have called this argument a false choice. In particular, the *Other Death Penalty Project*, founded in 2008 and composed exclusively of incarcerated people, has called for the end of this characterization. Kenneth E. Hartman, the group’s founder, is serving life without parole for killing a man in a drunken fistfight when he was 19 years old.⁴¹¹ He describes a life sentence as an “execution in the form of a long, deliberate stoning that goes on for as long as I draw breath.”⁴¹²

409 Gottschalk p. 176

410 Gottschalk, p. 180

411 <http://www.kennethehartman.com/about.htm>

412 <http://www.theotherdeathpenalty.org/our-founding-document/>

413 <http://www.nytimes.com/2015/12/28/opinion/when-dying-alone-in-prison-is-too-harsh-a-sentence.html>

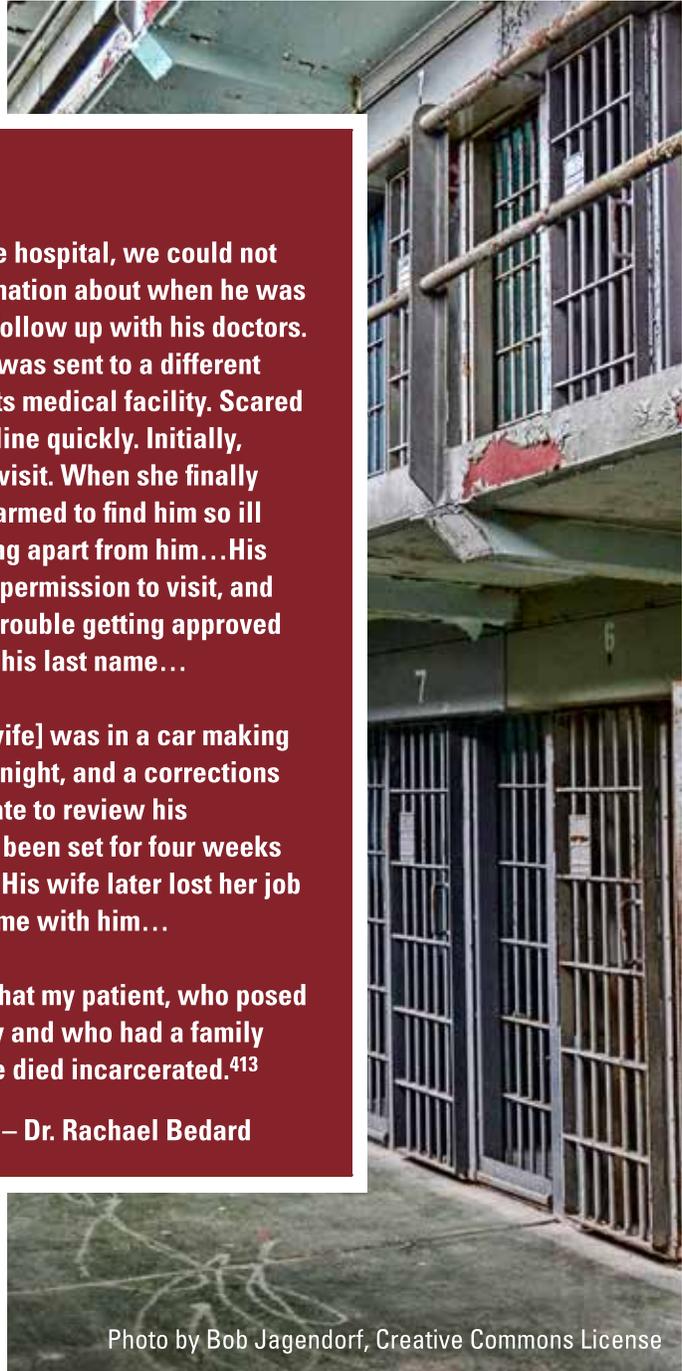


Photo by Bob Jagendorf, Creative Commons License

Dying in Prison

While my patient was in the hospital, we could not provide him with any information about when he was leaving or when he would follow up with his doctors. After being discharged, he was sent to a different prison and was housed in its medical facility. Scared and alone, he began to decline quickly. Initially, his wife wasn’t allowed to visit. When she finally got permission, she was alarmed to find him so ill and she struggled with being apart from him... His children had to get special permission to visit, and his daughters initially had trouble getting approved because they did not share his last name...

When his time came, [his wife] was in a car making the long drive home for the night, and a corrections officer was at his side. A date to review his application for release had been set for four weeks after the night that he died. His wife later lost her job for having spent so much time with him...

It shouldn’t be acceptable that my patient, who posed no danger to the community and who had a family who loved him, should have died incarcerated.⁴¹³

– Dr. Rachael Bedard

The Families of the Incarcerated

The families of incarcerated people suffer as well, both financially and psychologically.

Here are some of the ways in which imprisonment affects families:

- The loss of an income strains the family's finances.

- Mental health and child development suffer. Boys whose fathers are imprisoned become more physically aggressive. Spouses of incarcerated people become more susceptible to depression.⁴¹⁴

- The physical health of the community may deteriorate. Epidemiologists have connected higher incarceration rates with more common STD infections, including HIV, and teen pregnancy. One explanation is that more men are incarcerated, leaving a gender imbalance in society; as a result, women may have less leverage to convince their partners to be monogamous or practice safe sex.⁴¹⁵

- Poverty nationwide may have increased because of America's experiment with mass incarceration. One pair of

researchers estimates that the poverty rate would have been 20% lower in America were it not for mass incarceration. This research looks both at the lost wages and human capital as well as the government money spent on incarceration rather than other social programs.⁴¹⁶

Social conservatives love to blame poor communities and communities of color for the number of single-parent families, but the carceral system has much to do with creating those conditions.⁴¹⁷

Conversely, tackling income inequality may be impossible without reducing mass incarceration, which one researcher

calls "the greatest contribution our state makes to income inequality."⁴¹⁸

Eicha Chapter 5

- 1 Remember, O LORD, what has befallen us; behold, and see our disgrace.**
- 2 Our heritage has passed to aliens, our homes to strangers.**
- 3 We have become orphans, fatherless, our mothers are like widows.**
- 4 We must pay to drink our own water, obtain our own kindling at a price.**
- 5 We are hotly pursued; exhausted, we are given no rest.**
- 6 We hold out a hand to Egypt, to Assyria, for our fill of bread.**
- 7 Our fathers sinned and are no more; and we must bear their guilt.**

Breshit Rabbah 100:7

A community and a family are like a stone archway. If you remove one stone, the whole collapses.

414 <http://www.nytimes.com/2013/02/19/science/long-prison-terms-eyed-as-contributing-to-poverty.html>

415 <http://www.nytimes.com/2013/02/19/science/long-prison-terms-eyed-as-contributing-to-poverty.html>

416 eFina, Robert H. and Hannon, Lance, The Impact of Mass Incarceration on Poverty (February 23, 2009). Crime and Delinquency, February 12, 2009. Available at SSRN: <http://ssrn.com/abstract=1348049>

417 <http://www.nytimes.com/2013/02/19/science/long-prison-terms-eyed-as-contributing-to-poverty.html>

418 <http://www.nytimes.com/2013/02/19/science/long-prison-terms-eyed-as-contributing-to-poverty.html>

Outside the Prison Walls: Prison Towns

The majority of America’s prisons sit in rural areas, a change from before the 1980’s.⁴¹⁹ When talk turns to closing prisons, we often hear the objection, “But what about the people who work there?” This is, indeed, a problem: entire communities have grown up around rural prisons, and the shuttering of the prison can create unemployment. The benefit to these communities, however, is not so open-and-shut.

A 2003 report by The Sentencing Project did a rigorous statistical analysis of economics in seven rural counties in New York State that are the sites of state prisons, as compared to seven equivalent counties that did not have prisons.⁴²⁰ Their major findings were that the counties with prisons gained neither employment nor per capita income. The authors suggest a number of reasons for this, including residents lacking the skills or education for the job, local businesses not being set up to provide the resources needed by the prisons, and people already working for the Department of Corrections wanting to transfer to work upstate.

Beyond a lack of benefits, prison construction can leave small towns in the lurch, especially when it comes to private prisons. According to a researcher at the ACLU, “A private prison company promises this very attractive deal and then towns take on financial risks they don’t fully understand. [They] only figure out what they’ve signed when something goes very wrong and the town is left holding the bag.”⁴²¹

In addition to no discernible economic advantage and potential for risk, there are also emotional and communal deficits. The New York Civil Liberties Union report *Boxed In* offers this portrait:

Monsignor Dennis Duprey, pastor of St. Peter’s Church in Plattsburgh, served as Upstate’s chaplain from the day it opened in 1998 until 2003. He knows the toll that extreme isolation takes on COs: “A system that asks Correctional Officers to walk into a place for eight hours a day at a minimum, where the people they look after ... do not trust a single word they say, or a single action they do – that’s not a wonderful way to conduct human relationships. When they go home, officers have trouble with their own relationships, with their sons and daughters; they treat them like inmates.”⁴²²

Distressed rural counties deserve government assistance to help them flourish, both economically and as communities, but not on the backs of the people incarcerated in those prisons or the communities they leave behind.

Facts and Figures ⁴²³

- There are about 500,000 corrections officers in the United States.
- One study found that 34% of corrections officers suffer from PTSD. Among military veterans, the number is 14%.
- Corrections officers have a suicide rate twice that of police officers and the general public.
- The national average wage for a corrections officer is \$44,910.

419 <http://www.prisonpolicy.org/scans/building.html>

420 http://www.sentencingproject.org/doc/inc_bigprisons.pdf p. 2-3

421 <http://fusion.net/story/115888/texas-town-strikes-private-prison-deal-then-it-all-goes-wrong/>

422 http://www.nyclu.org/files/publications/nyclu_boxedin_FINAL.pdf p.6

423 <http://www.theguardian.com/us-news/2015/may/20/corrections-officers-ptsd-american-prisons>

Barriers to Reentry

Portrait of a Returning Citizen

In February 2010, Louis Sawyer, a 49-year-old black man, was released from federal prison in Pennsylvania after spending more than half his life behind bars for murder.⁴²⁴

His application to live with family was denied, and he was directed to a for-profit halfway house, Hope Village, in Washington, DC. Despite the blizzard underway, he had until midnight to arrive, or he would be considered an escapee. Sharing a two-bedroom apartment there with seven roommates, he set out to look for work and a permanent place to live. The clock was ticking: after four months, he'd be evicted and could end up homeless.

Louis began signing up for classes. One taught him about the internet, which he had never encountered. Hope Village threw up obstacles, though: the computer lab was reserved mostly for a GED course, not job searches, and cell phones and laptops were not allowed. (Remarkably, Xboxes and DVD players were allowed.) Another training

program rejected him because there was a nursery school in the building where it met. He read through the 253-page directory of services produced by DC's Public Defenders office, but most of its offerings repeated classes he'd taken while in prison.

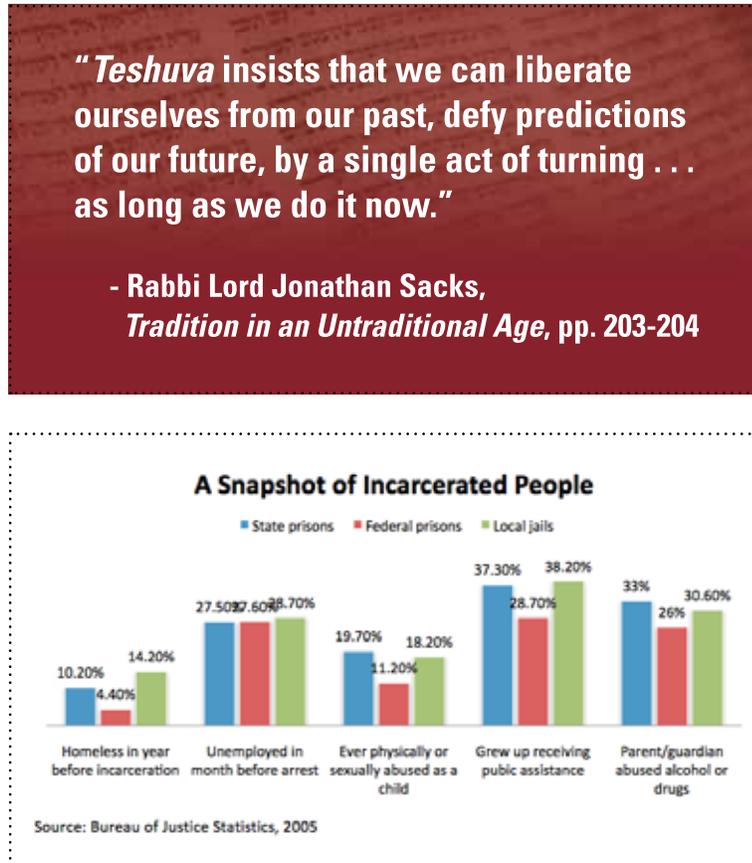
"Teshuva insists that we can liberate ourselves from our past, defy predictions of our future, by a single act of turning . . . as long as we do it now."

**- Rabbi Lord Jonathan Sacks,
Tradition in an Untraditional Age, pp. 203-204**

His job applications were rejected, one after another, because he had to check "the box" indicating he had a criminal record. He went to city jobs fairs, though he soon learned that most of the organizations represented there did not hire returning citizens—"window dressing," he called the whole operation.

Louis testified in a Congressional hearing about the conditions affecting returning citizens. Because the invitation had arrived only the night before, he hadn't had time to get

permission from his case manager. As a result, Hope Village put him under a movement restriction, which almost made him miss an interview for a transitional home where he could live more permanently.



⁴²⁴ This account is condensed from <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/14/AR2011011405709.html>

Louis was accepted into the transitional home and eventually did land a job, more than six months after leaving prison, through a contact he made at church. He works as a peer advocate for returning citizens, which he says is like a dream job. Nevertheless, it cannot be that the only jobs that will hire returning citizens are those related to prison reform or providing services for returning citizens; that's not sustainable or fair. Moreover, Louis was in many ways a "model returning citizen." He doesn't drink or use drugs, he is deeply religious and attends church regularly, he was able to develop marketable skills while in prison, and he is healthy (in particular, he has good teeth). So many returning

Release Is Only the Beginning

We tend to think of release from prison as the end of the story. We want to believe that those who go home reunite with their families, find jobs, learn from their mistakes, and build new lives. But the reality usually doesn't live up to these ideals.

For most incarcerated people, their struggles do not start when they enter prison. By and large, members of this group faced serious barriers to success even before incarceration. Incarcerated people experience high rates of drug addiction, mental illness, and trauma, and often lack high school degrees

or job experience within the mainstream economic system. With prison education programs on the chopping block, we should not expect people leaving prison to be more successful than they were before incarceration.

How do we facilitate *teshuvah*?

There was once a [thief] who wanted to do *teshuvah*. His wife said to him: idiot, if you do *teshuvah*, you won't even have a belt left [because all your belongings are stolen!] [This] prevented [him] and he did not do *teshuvah*. At that time they decreed: thieves and usurers who return [their ill-gotten gain], one is forbidden to accept money from them [lest they be reminded of all they owe], and one who does accept money from them makes the sages ill at ease. (Talmud *Bava Kamma* 94b)

Obstacles Facing Incarcerated People			
	State and Federal Prisons	Jails	General Population
Any disability ⁴²⁵	31.6%	39.9%	~10% ⁴²⁶
Cognitive disability ⁴²⁷	19.5%	30.9%	4.8%
Ever had a chronic condition ⁴²⁸	43.9%	44.7%	~29%
Ever had a serious infectious disease ⁴²⁹	21%	14.3%	~4.7%
History of homelessness ⁴³⁰	15%	7.5-11.3x more than general population	5%
Did not complete high school ⁴³¹	Men: 40% Women: 37%		15% 14%

citizens struggle or must overcome obstacles on these and other fronts. Our society does not make their lives any easier.

⁴²⁵ <http://www.bjs.gov/content/pub/pdf/dpji1112.pdf>, 2011-2012

⁴²⁶ Due to statistical measures, the rate of prevalence in the general population may be slightly different when comparing prison and jail populations. For simplicity, we have combined the two data sets into this single chart. Data marked with ~ indicate an approximate combination of two data points.

⁴²⁷ <http://www.bjs.gov/content/pub/pdf/dpji1112.pdf>, 2011-2012

⁴²⁸ <http://www.bjs.gov/content/pub/pdf/mpsfji1112.pdf>, 2011-2012

⁴²⁹ <http://www.bjs.gov/content/pub/pdf/mpsfji1112.pdf>, 2011-2012; includes Tuberculosis, Hepatitis A and B, and STDs; excludes HIV/AIDS.

⁴³⁰ http://www.nhchc.org/wp-content/uploads/2011/09/infocus_incarceration_nov2013.pdf, 2013

⁴³¹ https://www.census.gov/hhes/socdemo/education/data/acs/Ewert_Wildhagen_prisoner_education_4-6-11.doc, 2009 data; this source combines data from jails and prisons.

On top of these challenges, returning citizens face a range of legal barriers. Some states prevent people convicted of certain crimes to receive food stamps or to live in public housing. Nationwide, the American Bar Association has documented 46,523 statutes that impose collateral consequences on people convicted of crimes.⁴³² Many states bar people with past felony convictions from jobs that require licenses—that can include nursing, hair dressing, cosmetology, and plumbing.

Even in professions not bound by such restrictions, returning citizens find it difficult to get hired. Many employers are reluctant to hire people with criminal records.

A person who checks the box indicating that s/he has a prior felony conviction rarely can expect a call back. Studies indicate that having a criminal record reduces the likelihood of a job callback or offer by approximately 50%.⁴³³

When returning citizens do gain employment, they rarely earn a living wage. According to one study, "...having a below-living wage job creates more problems for them, perpetuating cycles of poverty and incarceration."⁴³⁴ And

this doesn't just affect those who served time; simply having an arrest record can affect an employer's decision-making. Nearly one-third of American adults have been arrested by age 23⁴³⁵, yet approximately one-third of arrests do not lead to a conviction⁴³⁶. Nevertheless, these people technically now have a criminal record. This statistic is further complicated by the fact that the FBI—the gold standard of background checks—is

Nowhere is it written in statute or discussed in a court of law that the lifelong, extrajudicial punishment for crime should be the forfeiture of one's humanity. If these men can't gain employment, education, or enfranchisement, many times because of a mistake made in their youth, the damage is not singular; the collateral impact threatens an entire race and the ideals of America.⁴³⁹

A return to status quo ante

An answer to those who ask if a Kohen who sinned and did *teshuvah* may offer the priestly blessing and have the first aliyah: I am inclined to say yes... since he did *teshuvah*, behold he is just like his brothers the Kohanim... (*Machzor Vitry* 125)

missing data on the end-result of arrest for about half its records. These discrepancies disproportionately affect African Americans.⁴³⁷ A similar study found that federal background checks erroneously reported a felony conviction in 42% of cases.⁴³⁸

432 The database is searchable, state-by-state, at <http://www.abacollateralconsequences.org/map/>

433 <http://www.nij.gov/journals/270/pages/criminal-records.aspx>

434 Dill, LeConté J. "I Want A Second Chance," American Journal of Men's Health, Feb. 10, 2015.

<http://www.theatlantic.com/education/archive/2015/02/a-second-chance-educations-role-in-reversing-mass-incarceration/386168/>

435 Brame et. al., "Cumulative Prevalence of Arrest From Ages 8 to 23 in a National Sample" Exit Notice, Pediatrics (January 2012): 21–27.]

436 <http://www.nij.gov/journals/270/pages/criminal-records.aspx>

437 "Wanted: Accurate FBI Background Checks for Employment," Madeline Neighly and Maurice Emsellem, National Employment Law Project, 2013. <http://www.nelp.org/page/-/SCLP/2013/Report-Wanted-Accurate-FBI-Background-Checks-Employment.pdf?nocdn=1>

438 <http://www.nytimes.com/2015/03/01/business/out-of-trouble-but-criminal-records-keep-men-out-of-work.html>

439 <http://www.theatlantic.com/education/archive/2015/02/a-second-chance-educations-role-in-reversing-mass-incarceration/386168/>

In an effort to give returning citizens an equal shot, fourteen states and DC, plus 100 cities and counties, have signed on to “Ban the Box” policies, according to the National Employment Law Project.⁴⁴⁰ This campaign prevents employers from asking candidates to indicate on a job application if they have ever been arrested, at least until they have had an initial interview. The United States might learn something from European countries, which restrict the availability of arrest records out of a concern for privacy and for successful reintegration.⁴⁴¹ We know from research that finding and keeping a job is an important foundation for returning citizens’ success.⁴⁴²

Many returning citizens also face voter disenfranchisement. Only thirteen states currently allow people to resume voting upon leaving prison, and only Maine and Vermont allow people to vote while in prison.⁴⁴³ Beyond the symbolic importance

of voting as a basic right of citizenship, the denial of voting means that returning citizens cannot vote for the people who will make the policies that affect them, and that candidates for public office do not need to address the concerns of this population.

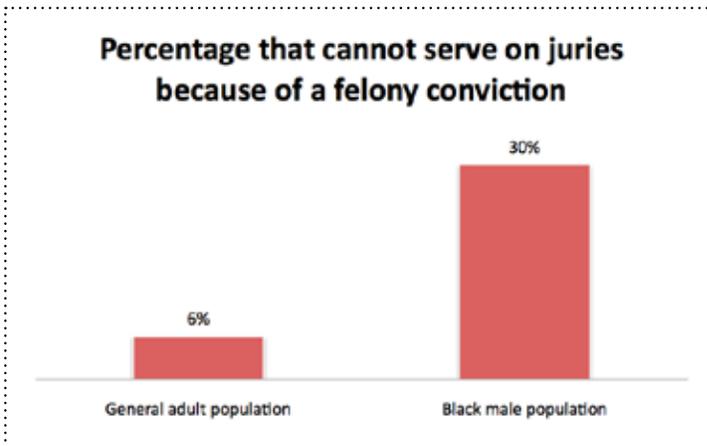
In thirty-one states and in the federal court system, people with felony convictions lose another basic right of citizenship—the right to serve on a jury. This restriction compounds the treatment of black people in the courts, who have a harder time receiving “a trial by their peers.”

The list of restrictions goes on. About 20 states prohibit unemployment assistance if a person loses a job due to drug use, and more than 12 restrict welfare for anyone convicted of a drug felony.⁴⁴⁴ Eligibility for federal aid for higher education is severely limited⁴⁴⁵, though the Obama administration has relaxed rules about aid

for kids incarcerated in juvenile detention facilities and is exploring further expansions⁴⁴⁶. An entire household may be

Why Ban the Box Matters

Michael Mirsky was making a six-figure living as a phone-line technician until he lost his job. As he searched for new work, including training as an HVAC technician, he fell behind on child support payments, which meant a warrant was automatically issued for his arrest. He didn't know that had happened until the police showed up to arrest him. He struggled with them and was charged with resisting arrest. After pleading guilty to a single felony charge, Michael was off mostly scot-free, just \$411 in court costs—and a criminal record. Until his state “banned the box” in 2014, that felony on his record made it virtually impossible for him to get a new job.⁴⁴⁷



440 http://www.washingtonpost.com/local/womans-criminal-record-upends-her-life-25-years-later/2015/03/30/4cb95966-ccf5-11e4-8a46-b1dc9be5a8ff_story.html?hpid=z4

441 Gotschalk, p. 243

442 <http://www.nij.gov/journals/270/pages/criminal-records.aspx>

443 http://www.slate.com/articles/news_and_politics/crime/2015/03/why_can_t_ex_cons_vote_the_surprisingly_complicated_politics_behind_felon.html

444 <http://www.thenation.com/article/173654/gops-drug-testing-dragnet#>

445 <https://studentaid.ed.gov/eligibility/criminal-convictions>

446 <http://www.pbs.org/newshour/rundown/prisoners-might-get-access-pell-grants-first-time-two-decades/>

447 Condensed from <http://www.nytimes.com/2015/03/01/business/out-of-trouble-but-criminal-records-keep-men-out-of-work.html>

evicted from public housing if any member of the household is arrested for any reason, even if the arrest ultimately leads to exoneration.⁴⁴⁸ Public Housing Authorities cast a similarly wide net when considering applications; in addition to the applicant and anyone who currently does, or might in the future, live with the applicant, the PHA runs a criminal background check on “Any biological parent of any children who will be living in the household, even parents who do not plan to live with you and are not part of the public housing application.”⁴⁴⁹ In late 2013, the New York City Housing Authority (NYCHA) announced a two-year pilot program that would allow 150 people returning from prison or jail to live in public housing with their families.⁴⁵⁰

“The real question is about fear. And I think it invades the political process.”

– Senator James Webb (D-VA), 2008⁴⁵¹

Genesis Rabbah 84:5

Why does the section “And Jacob dwelt” (Gen. 37:1) immediately follow the history of the kings of Edom (Gen. chapter 36)? Rabbi Choniya said: This may be compared to one who was walking along the way and saw a pack of dogs, and was afraid of them, and went to sit among them. When our father Jacob saw Esau and his generals, he was afraid of them, and he went to dwell among them.

Sample Partner Organizations

- Ban the Box—ACLU and NAACP
- Public Housing—Vera Institute of Justice

⁴⁴⁸ <http://www.bronxdefenders.org/housing-and-arrests-or-criminal-convictions/>

⁴⁴⁹ <http://www.bronxdefenders.org/housing-and-arrests-or-criminal-convictions/>

⁴⁵⁰ <http://www.nyc.gov/html/nycha/html/residents/re-entry-program.shtml>

⁴⁵¹ http://www.hamiltonproject.org/events/from_prison_to_work_overcoming_barriers_to_reentry/

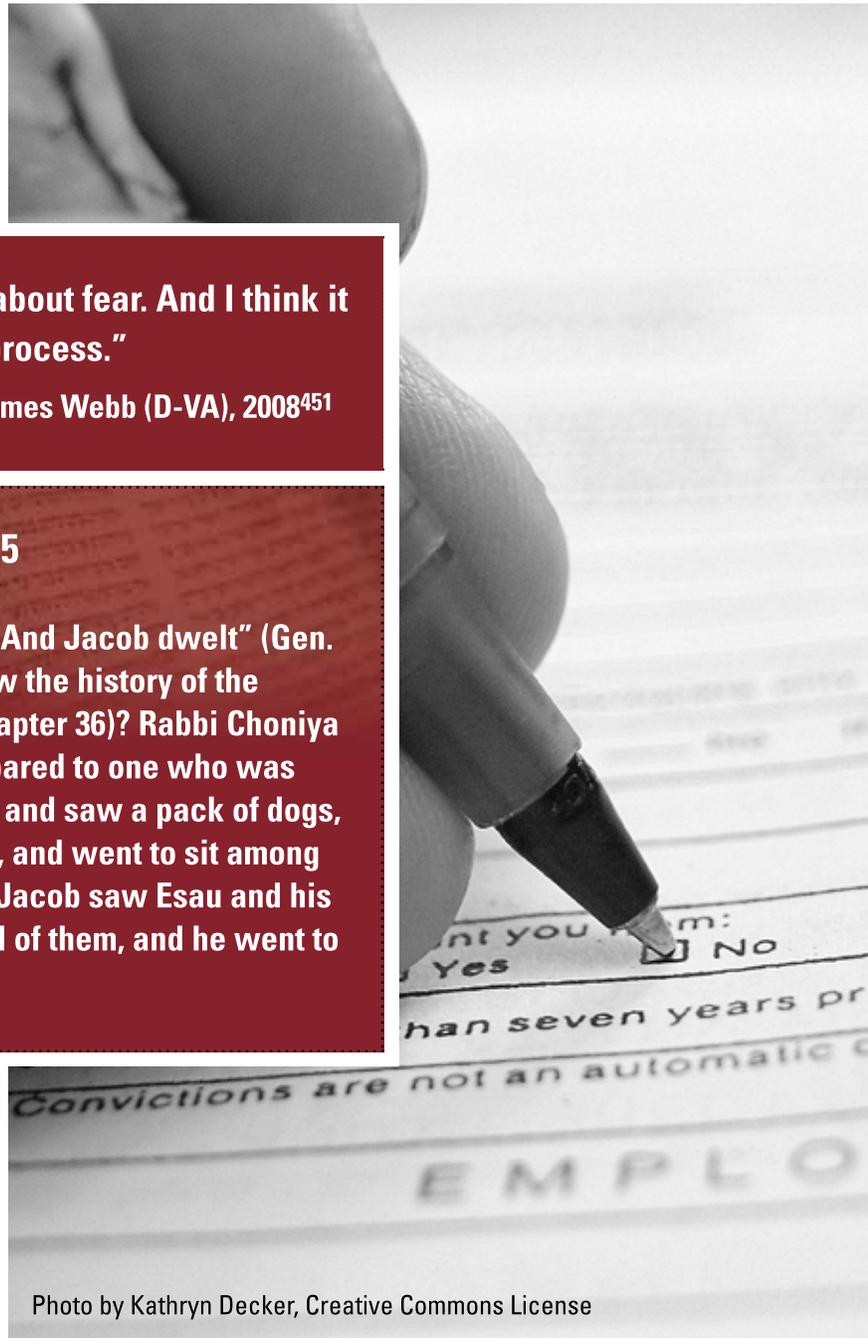


Photo by Kathryn Decker, Creative Commons License

Parole

Parole allows incarcerated people to be released, under police supervision, after serving a minimum portion of their sentences. The rationale is that the person has behaved well in prison, indicating a readiness to be released early; the fear is that someone who seems ready in a parole board hearing may once again be a danger to society upon release.

The process is fraught in a number of ways. First of all, parole is at the discretion of the state parole board, who are not necessarily experts nor impartial. “States almost always staff [parole] boards with political appointees, who are extremely vulnerable to the wrath of public opinion... Two-thirds of the states have no professional qualifications for parole board membership.”⁴⁵²

A person granted parole still faces obstacles. Any violation of the often strict parole rules can result in return to jail or prison. For instance, in New York State, people under parole must report any contact with law enforcement to their parole officers. In 2012, Brendan Cochrane, who had successfully turned his life around after serving a prison term for attempted murder, found himself back in prison for six months when he failed to report three traffic tickets.⁴⁵³

Other rules commonly bar parolees from associating with other people of known criminal histories. This can mean that getting together with family might be reason for being sent back to prison. Sex offenders, who face strong restrictions on where they may reside, often end up in the Catch-22 of having no place to live other than with other sex offenders, with whom they are not permitted to associate.⁴⁵⁴

Finally, a look at the allocation of correctional dollars raises questions about how our system supports returning citizens. The majority of people under correctional control are on parole or probation, and not in prison, yet the majority of money goes to prisons. In a study of eight states, the Pew Center on the States found that prisons accounted for one-third of growth in correctional control from 1983 to 2008, but absorbed 88% of new spending on corrections.⁴⁵⁵ This means spending more money on locking people up while spending relatively much less to support and

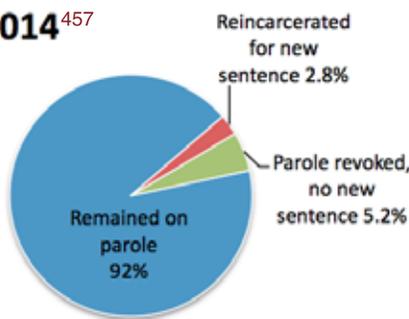
supervise people who could be rebuilding their lives on the outside. Shrinking budgets for parole supervision have left parole officers managing much larger caseloads than reasonable, which means that each officer has less time and attention for each person on his or her docket.⁴⁵⁶

Early Release

[On whether to shorten the sentence of someone who has been excommunicated for a crime, but seems ready to do *teshuvah*] If by cancelling it, he will return to being good, and will accept the punishment of *kaparah* [restitution] as is appropriate, you may lift the decree which you have decreed upon him so that he may do *teshuvah*, and so he will not go astray to a life of evil—neither him nor others on his behalf. For in the case of all sinners who sinned and then repented, we accept them forever, as it says “Return my backsliding children.”

- Ritva 159 (Rabbi Yom Tov Ishbili, Spain c. 1250-1330)

People on Parole in 2014⁴⁵⁷



⁴⁵² Gottschalk, p. 190

⁴⁵³ <http://cityroom.blogs.nytimes.com/2012/01/05/rating-a-parolees-risk-before-a-return-to-prison/>

⁴⁵⁴ <http://www.thenewyorkworld.com/2015/03/18/housing-unwanted/>

⁴⁵⁵ <http://www.pewtrusts.org/en/about/news-room/press-releases/0001/01/01/one-in-31-us-adults-are-behind-bars-on-parole-or-probation>

⁴⁵⁶ See, e.g., <http://www.latimes.com/local/lanow/la-me-ln-parole-agents-caseloads-20141105-story.html>

⁴⁵⁷ <http://www.bjs.gov/content/pub/pdf/ppus14.pdf> p. 7. These are national aggregate data, which obscure variations from state to state.

For a look at conflicting opinions about parole-revocation rates and public safety, see this 2011 analysis from the Boston Globe:

http://www.boston.com/news/local/massachusetts/articles/2011/06/19/paroled_lifers_pose_high_risk_of_new_crimes/?page=1

Recidivism: A Slippery Problem

We have seen a recent spate of attention to recidivism, or crimes committed by formerly incarcerated people (more on this definition momentarily). Attorney General Eric Holder went so far as to tell the American Bar Association in 2009, “Most crimes in America are committed by people who have committed crimes before.”⁴⁵⁸ But a closer look yields a different story. “Reducing the recidivism rate now dominates all discussions of...

penal policy... It has displaced broader public safety goals and more encompassing visions of how to improve the quality of life in the neighborhoods and communities that have borne the brunt of the carceral state.”⁴⁵⁹

Recidivism is “a notoriously slippery concept that is difficult to operationalize and reliably measure.”⁴⁶⁰ It can be used to mean re-arrest, reconvict, or return to prison, often creating

cases of comparing apples and oranges. Thus, for instance, many people toss around the figure “two-thirds of returning citizens recidivate within three years,” but that only says how many were arrested, not what the outcome of their arrest. It encompasses both the released murderer who kills again and the released marijuana user who is picked up for a burglary, held overnight, and then released because they had the wrong guy.

The statistics on recidivism can be especially confusing because so many people who return to prison do so for parole violations, and not for committing another crime. Parole laws can be complex and often self-defeating. For instance, holding down a job is often a requirement of parole⁴⁶¹, but we know (and detail on p. 82) the obstacles standing between returning citizens and employment. A person

who misses a meeting with his or her parole officer—whether out of negligence, depression, lack of understanding of the rules, lack of access to transportation, or another reason—may return to prison.

The focus—what one researcher calls an “obsession”—on recidivism echoes inside prisons: “...Programs that improve the quality of life for offenders while they are in prison and once they are released have lost political

standing... For example, the report on the first national justice reinvestment summit... declare[d], ‘If a program doesn’t reduce recidivism, agencies are wasting their investments in these efforts.’”⁴⁶² It also narrows the way policymakers interpret the world, in troubling ways. For example, a 2015 government report study⁴⁶³ includes the following:

Encouraging *Teshuvah*

There were hooligans in Rabbi Meir’s neighborhood who harassed him greatly, and Rabbi Meir would pray for their death.

His wife, Beruriah, said to him: What are you thinking? The verse says, “May sins disappear” (Psalm 104:35)—does it say “sinners”?! It says “sins”! Go to the end of the verse—“and the wicked be no more.” If sins disappear, will the wicked be no more? Rather, pray that they do teshuvah—and they will no longer be wicked.

He prayed for them and they did *teshuvah*.

458 <http://www.justice.gov/opa/speech/attorney-general-eric-holder-2009-aba-convention>

459 Gottschalk, p. 101

460 2010, qtd in Gottschalk p. 102

461 Gottschalk, p. 84

462 P. 107

463 The BJS report described below.

Compared with the average American, ex-offenders are less educated, less likely to be gainfully employed, and more likely to have a history of mental illness or substance abuse—all of which have been shown to be risk factors for recidivism.⁴⁶⁴

While accurate, this observation misses the point that these are all risk factors for a difficult life deserving of public services and compassion, not just a laser-like focus on recidivism.

What’s the takeaway?

We do need to acknowledge and address recidivism. Some people certainly spend their lives cycling in and out of prisons and jails. But the size of this group is much smaller than media hyperbole would have us believe. Solving the problems of those who cycle in and out of prison requires a much larger lens than incarceration alone. We also need to look at mental health care, employment, and housing.

Facts and Figures

1. Periodically, the BJS releases a report that tracks the recidivism of people released from prison in a given year for the next five years. The most recent such report covers people released in 2005.⁴⁶⁵ It indicates:

464 <https://fas.org/sgp/crs/misc/RL34287.pdf>

465 <http://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf> p. 9

466 Percentages won’t sum to 100% because people may be arrested for more than one charge at a time. Overall, however, the data show that “recidivists” are a heterogeneous group and not necessarily dangerous.

467 <http://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf> p. 15

468 http://articles.philly.com/2009-01-28/news/25279407_1_parole-system-high-risk-offenders-john-s-goldkamp

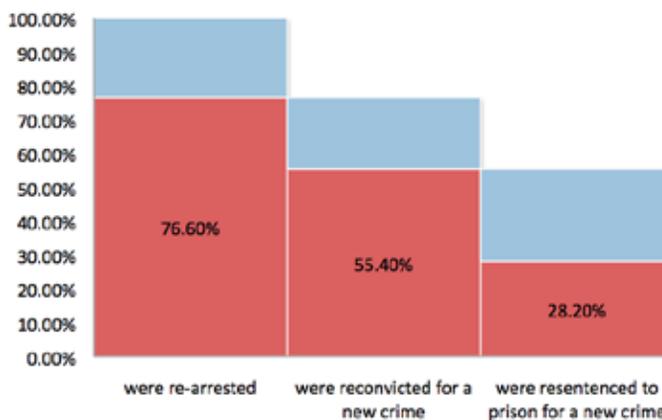
469 Rosenfeld, Richard, Joel Wallman, and Robert Fornango. (2005). The contribution of ex-prisoners to crime rates. In Jeremy Travis and Christy Visher (Eds.), *Prisoner reentry and crime in America* (pp. 80-104). New York: Cambridge University Press. P. 88. Qtd in Gottschalk p. 105.

470 <http://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf> p. 15

- Arrest rates

- 76.6% were re-arrested
- 28.6% were re-arrested for a violent crime, of which murder comprised 0.9% and rape or sexual assault 1.7%
- 38.8% were re-arrested for a drug crime, of which possession accounted for 26.8%
- 58%⁴⁶⁶ were arrested for a public-order violation, which includes parole or probation violations.

Selected Outcomes of Recidivism of People Released from Prison in 2005⁴⁷⁰



- Conviction and reincarceration⁴⁶⁷

- 55.4% were convicted of a new crime — which means nearly 45% were cleared of the new charges
- 28.2% were given a new prison term (as opposed to a jail term) — which suggests that approximately half of those convicted served a light sentence or no new sentence at all

2. In Pennsylvania, 96% of the people released on parole between 2005-2007 were not convicted of a new crime while under supervision. Of the 4% who were convicted of a new offense, less than 0.4% were convicted of a new violent offense.⁴⁶⁸

3. One team of researchers concludes that the share of crime committed by returning citizens is “nontrivial but small.”⁴⁶⁹

Reentry Programs: What Works and What Doesn't

We have already noted some of the difficulties of returning from prison to society. Reentry programs try to smooth this transition. As with all well-intentioned programs, some of these efforts succeed, and many fail.

The 2008 Federal Second Chance Act has made grant money available to government agencies and non-profit organizations that help returning citizens to avoid recidivism by creating new and successful lives for themselves.

But reentry can mean many things. These days, the term tends to refer to a specific, limited set of programs rooted in a particular ideological understanding of why returning citizens struggle.

The model in vogue since the 1970s begins with the assumption that returning citizens lack certain basic “life skills”—positive attitude, mainstream personal grooming and appearance, social skills,

interview skills—and that these deficits led to their earlier criminal acts. Reentry programs tend to focus on teaching

these skills in a series of short workshops, rather than investing in more expensive and more intensive educational programs. A person who fails to get a job, or who reenters prison, is understood to have failed, as a result of his or her personal shortcomings.⁴⁷¹

This approach ignores the “enormous structural obstacles that stand between ex-offenders and full economic, political, and social membership in the United States.”⁴⁷² These include all the barriers to reentry discussed on page __. As Marie Gottschalk bluntly quips, “Many former offenders never got a first chance, let alone a second one,”⁴⁷³ because of poor education, mental health problems, and structural changes in the economy that have predominantly affected

poor communities and communities of color.

Returning to the Camp⁴⁷⁴

In America today, one in one hundred people are living “outside the camp,” behind bars, in city, state and federal prisons... [Parashat Metzora] begins with a discussion of the rehabilitation of the [person with “leprosy,” who has been temporary exiled]. The community’s challenge is how to integrate this person upon his return. The integration proceeds in stages... By the end of the extensive and elaborate proceedings, the formerly stigmatized person is declared ritually pure. The Torah suggests that there are times when a community must protect itself by excluding from society those it deems dangerous. It also suggests that the stigma should last as long as necessary, but not longer. Restoring individuals to the dignity that is their birthright seems to be a concern, alongside protecting society from those who could harm it. When returning citizens are barred from jobs or required to share their criminal record with prospective employers, or when digital databases make that information easily accessible, a question of human rights emerges: When does society’s valid interest in protection come up against a person’s right to be a full and dignified member of society?

– Rabbi Nancy Fuchs Kreimer

⁴⁷¹ Gottschalk, p. 82

⁴⁷² Gottschalk, p. 80

⁴⁷³ Gottschalk, p. 81

⁴⁷⁴ <http://truah.org/resources-91356/divrei-torah/561-reintegration.html>

This is not at all to say that prison programming is unimportant—on the contrary. According to one report,

*There is no question that providing meaningful work, education, and self-development programs to prisoners promotes more human [sic.] and safer prisons. And a growing body of research...suggests that prisoners who seriously take advantage of well-administered rehabilitative services and complete the programs are more likely to succeed in achieving satisfying conventional lives after prison than persons who do not receive these services.*⁴⁷⁵



Detail from “New Decisions and Second Chances,” 2013. www.Groundswell.nyc in partnership with East River Academy. Acrylic on Brick Wall, 9 x 26 ft, Queens, NY. By Esteban del Valle, DonChristian Jones, and 12 incarcerated teens.

programs to improve their quality of life or their ability to contribute meaningfully to the community inside of prison.

If we really want to help returning citizens reintegrate into society, we must look beyond the individual to also address the larger structural problems that make reentry so

challenging. The following profiles offer pictures of three reentry programs that are succeeding.

Who’s working on it?

- The Center for Returning Citizens (<http://trcrphilly.org/>)

But they must be the right programs. The authors go on to caution that “the danger of relying on treatment and programs to solve America’s imprisonment crisis is that when recidivism isn’t reduced, imprisonment will be regarded as the only viable answer to the crime problem.”⁴⁷⁶ Additionally, when prison programming focuses solely on reentry, people sentenced to life without parole or the death penalty—who are not expected to reenter society—may find themselves without

- Legal Action Center offers this guide to reentry disenfranchisement in your state:

<http://www.lac.org/roadblocks-to-reentry/main.php?view=law>

- The Brennan Center for Justice at NYU offer this U.S. map of voting disenfranchisement: <http://www.brennancenter.org/sites/default/files/analysis/RTV%20Map%2010%2016%2013.pdf>

⁴⁷⁵ <http://www.jfa-associates.com/publications/srs/UnlockingAmerica.pdf>, p. 17

⁴⁷⁶ <http://www.jfa-associates.com/publications/srs/UnlockingAmerica.pdf>, p. 15

What's Working

Ready4Work⁴⁷⁷

Operation New Hope's Ready4Work in Jacksonville, FL is a national leader in reentry programs. Since 1999, the program has found jobs for 2,500 returning citizens, 70% of whom were still in them a year after placement. Recidivism among participants stands at 15%, compared to the over 70% national average rate. Part of the success can be attributed to the partnerships Ready4Work develops with local businesses, though it must also be noted that the program does not take returning citizens who were convicted of violent or sexual crimes. Ready4Work begins with a 4-6 week career development course—a relatively long investment—and then follows clients for the first year, providing a case manager, job coach, and often a life coach. The cost for a year of services is approximately \$4,500, \$1,000 more than a year of probation but as much as one-tenth the cost of a year's incarceration.⁴⁷⁸

Center for Employment Opportunities⁴⁷⁹

Getting a job when you've been in prison, especially for a violent crime, can be nearly impossible. So the Center for Employment Opportunities (CEO)⁴⁸⁰, a reentry program in New York City, gives its clients their first job. After a week of training, clients are assigned to a 5-7 person team and get up to 75 days of temporary work, cleaning courtrooms and doing maintenance on city buildings. They also receive ongoing counseling and job-search assistance, and the work team functions as a support system. Sam Schaeffer, CEO's executive director, says the normalcy helps people adjust. "You're earning a daily paycheck, and all of a sudden you're getting on the subway, with that metro card that you couldn't afford two weeks ago and you're reading the paper, and you're sort of like, 'Yea, I can do this,'" he said. Charles Russel, who spent 25 years in prison for second-degree murder, being back at work after so long "is humbling. It keeps you out of trouble and gives you some money to eat with." CEO is part of a "Pay for Success" venture, in which private investors partner with government agencies to fund programs and create accountability. The initial benchmark for CEO's success was to reduce recidivism by 8% and increase employment by 5%. A 2012 review found that, in fact, recidivism was down by 16-22%.

Women's Prison Association

Meet Vivian, one of the women whose lives have been touched by the Women's Prison Association (WPA)⁴⁸¹. Founded in New York in 1845, WPA is the nation's oldest organization working with criminal justice-involved women. Today, it provides a variety of programs, from alternatives to incarceration to services for women in prison and jail to reentry programs. Vivian writes:

I grew up in the foster care system, and by my mid-20's, I had four children of my own. My life was never stable, and I started using drugs. I got sent to jail, and I lost my parental rights while I was locked up. When I got out, I found that the process of regaining custody of my children was even more difficult and painful than being incarcerated. In WPA, I had a coach and partner for the journey to reunify with my children. I moved into the Sarah Powell Huntington House [WPA's transitional residence for women reunifying with their children] and in less than a year, I won full custody of my children. I was so happy to have my children back, but being together was not easy. My children had been in foster care for two years; they were angry and hurt. WPA helped us to heal and to build a new, strong family bond. In 2006, I earned my BA in Social Science and am currently pursuing a Master's in Mental Health. I am most proud that all of my children are attending college. My journey to sobriety and parenting was tough, and WPA was there to assist me every step of the way.⁴⁸²

WPA enables its clients to succeed by looking at them as whole people and helping them with multiple needs, rather than focusing narrowly on job placement.

477 <http://operationnewhope.org/ready4work/>

478 https://www.doleta.gov/pri/pdf/mentoring_ex_prisoners_a_guide.pdf, p. 1.

479 <http://www.theatlantic.com/business/archive/2015/12/reducing-recidivism/421323/>

480 <http://ceoworks.org/>

481 <http://www.wpaonline.org/>

482 <http://www.wpaonline.org/about/success-stories/vivian>

Summing Up

The mass incarceration system intersects and interlocks with issues that include mental and physical health, housing, education, employment opportunities, family and community circumstances, and race. At times, it can feel like this work cannot possibly move forwards without a total reworking of American society.

And yet, Gottschalk warns us not to succumb to this thinking. She opens her conclusion as follows:

We need to resist the belief that the only way to raze the carceral state is to tackle the “root causes” of crime... If the aim is to slash the country’s incarceration rate and undo its harmful collateral consequences over the next few years, not the next few decades, the root causes approach to progressive penal reform, however well-intentioned, is shortsighted. Four decades ago, the United States had many of the same structural problems it has today—though not to the same degree—but it did not have such an expansive penal system.⁴⁸³

We can understand this focus—on specific policy issues, rather than getting bogged down in the whole morass of social ills—through the lens of Torah. Regarding the seven-year cycle of releasing debts (*shmita*), the book of Deuteronomy (chapter 15) offers us what looks like a contradiction:

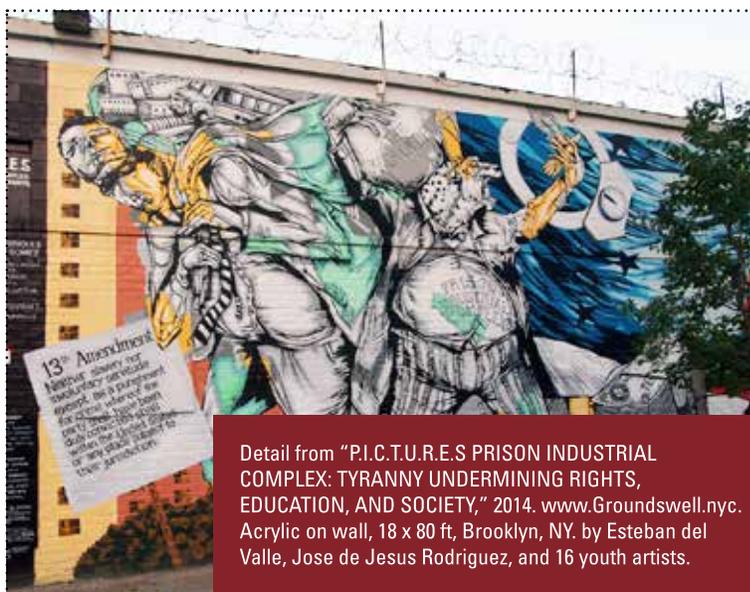
⁴⁸³ Gottschalk, p. 258.

1 Every seventh year you shall practice remission of debts... 4 There shall be no needy among you — since the Lord your God will bless you in the land that the Lord your God is giving you as a hereditary portion — 5 if only you heed the Lord your God and take care to keep all this Instruction that I enjoin upon you this day. 6 For the Lord your God will bless you... 7 If, however, there is a needy person among you, one of your kinsmen in any of your settlements in the land that the Lord your God is giving you, do not harden your heart and shut your hand against your

needy kinsman. 8 Rather, you must open your hand and lend him sufficient for whatever he needs... 11 For there will never cease to be needy ones in your land, which is why I command you: open your hand to the poor and needy kinsman in your land.

How can it be that both “There shall be no needy among you” and “There will never cease to be needy ones in

your land”? Perhaps this text teaches that there will always be injustice of one sort or another in our society—that is simply the nature of our broken world. That, however, does not absolve us from pursuing specific advocacy goals that can reshape society in tangible, concrete ways with benefits for all of us, incarcerated and not. If we do as much as we are able to take the “mass” out of mass incarceration—to bring American policies back in line with the rest of the western world—perhaps we will earn God’s blessing and be taken the rest of the way.



Detail from “P.I.C.T.U.R.E.S PRISON INDUSTRIAL COMPLEX: TYRANNY UNDERMINING RIGHTS, EDUCATION, AND SOCIETY,” 2014. www.Groundswell.nyc. Acrylic on wall, 18 x 80 ft, Brooklyn, NY. by Esteban del Valle, Jose de Jesus Rodriguez, and 16 youth artists.

There are many ways to get involved in changing our mass incarceration system, as an individual, or by involving your community. In the Take Action section of this handbook, you will find a variety of ways to jump in, including volunteering, advocacy, and more.

As clergy, rabbis and cantors can play a particular role in reframing the public discourse around mass incarceration in such a way that allows for a broad coalition of people to work toward change. Here are some of the ways in which we can draw on our Jewish wisdom to help change the narrative:

- Move the conversation away from “how do we punish” to “how can we facilitate *teshuvah*?”
- Break down the false dichotomy between victims and perpetrators; acknowledge that all of us may be both at one point or another in our lives, and that society must protect all of us.
- Have honest conversations within your communities, in interfaith groups, and in public about race and its impact on incarceration.

- If you’ve visited congregants or other people in prison, or served as a prison chaplain, talk about these experiences (without sacrificing confidentiality, of course). Help your community see incarcerated individuals as creations *b’tzelem Elohim*—in the divine image.

- Talk about the ways in which other societal issues that your community may encounter through your social action work can have an impact on imprisonment, or can be affected by imprisonment.

- Speak openly about mental illness. This will both make your community feel safer for members living with mental illness or dealing with mentally ill family members, and will also allow for conversations about the relationship between mental illness and incarceration.

- Offer a prophetic vision of what could be. Don’t let people wallow in despair—show a vision of how we can move forward.



GENERAL RESOURCES
Introduction

Pirkei Avot 5:26

“Ben Bag-Bag says: Turn [the Torah] over and over, for everything is in it.”

We turn to Torah for many different kinds of wisdom and inspiration.

Sometimes, our goal is to place a particular issue in the context of the sacred. When we discuss any social topic in the synagogue or the beit midrash and find its points of intersection with Jewish texts, we bring a different sensibility to the discussion: one informed by spiritual and emotional sensitivities, that seeks to galvanize rather than simply analyzing. We hope the suggested opportunities to speak about mass incarceration over the course of the year serve that purpose.

Sometimes, we turn to Jewish law to learn directly from *halakha* and how we can apply

our own legal tradition to th contemporary manifestations of this issue. The essay that follows on incarceration in Jewish law is an example of such a turning.

Sometimes we read traditional sources not for the specifics of *halakha* but for the value concepts embedded therein. These help us look at an issue with “Jewish eyes,” and help us to ask good Jewish questions. This is our intent for the following essay on policing in *halakha*.

Sometimes, we look at Jewish text as a mirror, hoping that by analogy it can help us see something about ourselves that was previously obscured. The commentary on leprosy and reentering the camp that follows is offered in that mode.

Wherever your inquiry and study lead you, we hope Torah will be one of your starting points.

GENERAL RESOURCES

Opportunities to Speak About Mass Incarceration Reform throughout the Jewish Year

Rosh Hashanah

Judgment and mercy, and/or the world created anew

Yom Kippur

Repentance and forgiveness

Pesach

Freedom, liberation

MLK Weekend

Mass incarceration as the civil rights struggle of our day

Breshit

Creation in God's image; it is not good for human to be alone

VaYera

Sodom and Gomorrah models a society that does not care about the welfare of other people

VaYeshev

Joseph in the pit and in jail can spark conversation on prison conditions, since Joseph thrives in prison through contact with other people and meaningful work.

Mishpatim

System of criminal and civil law; public safety; prohibition on charging interest (talk about debtors' prisons)

VaYikra

4:13, "If the entire community sins..."

Metzora

The ritual of returning a person with *tzara'at* to the camp as a model for thinking about returning citizens

Kedoshim

19:15, "Do not commit corruption in justice"

Emor

24:22, "You shall have one law for the citizen and the sojourner..." opportunity to talk about race or about immigration prisons. Also 24:10-12, the story of the blasphemer, who is put under "*mishmar*," guard, while Moses asks God what to do with him. It's the closest the Torah comes to describing incarceration.

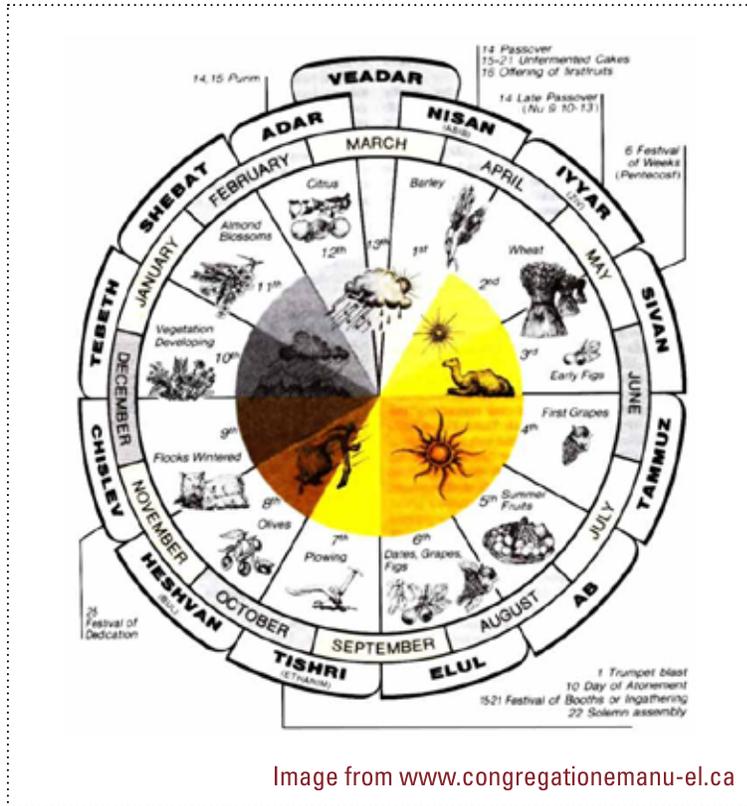


Image from www.congregationemanu-el.ca

Shlach Lecha

15:32 tells the story of

the man found gathering firewood on Shabbat. This is the other instance of *mishmar*.

Masei

The Cities of Refuge create an opening for a discussion of vengeance, punishment, rehabilitation, and mercy.

Shoftim

Police and court systems. Also, Cities of Refuge redux.

GENERAL RESOURCES

High Holiday Sermon Sparks

The essential theme of the High Holidays is the shift from justice to mercy. On Rosh Hashanah (*Yom HaDin*, the Day of Judgment), we blow shofar to awaken our own sleeping selves and to convince God to leave the throne of strict justice and take up the throne of mercy. During the season of repentance, we ask forgiveness of each other and try to set aside our own harsh interpersonal judgments in favor of extending the mercy we hope, in turn, to receive. This process reaches its climax on Yom Kippur, when we recall how God forgave the Israelites after the sin of the Golden Calf and pray to be forgiven in the same way.

The move from strict justice to mercy offers a paradigm for ending mass incarceration. We need national *teshuvah*—a process of replacing systems of discrimination and oppression with systems of accountability and good governance that fairly ensure the safety of all the people in this country.

Within this broad framework, you have leeway to focus on any particular piece of the mass incarceration system, depending on current events, pressing issues on the local scene, and the priorities and interests of your community. The approach can be personal and spiritual, neighborhood-oriented, theological, policy-based—you as the spiritual leader know your own people and how best to reach them.

Many of the Jewish resources in the following pages can serve as the building blocks of a sermon. For instance:

- The essay and accompanying text study on policing can be the basis of a sermon about what ideal policing would look like. You have the opportunity to honor the police leadership you know and trust while calling for change to the damaging structures of policing that lead to violence and mistrust.

- The idea of *tzelem Elohim*, which flows so naturally from the themes of Rosh Hashanah, calls for everyone to be treated equally. Rabbi Michael Rothbaum’s text study on race and policing shows how, both in the ancient past and today, this

has not been the case. How do we account for racialized differences in how society treats us, and how do we move towards healing?

- The essay and accompanying text study

on incarceration in Jewish law, along with Rabbi Nancy Wiener’s sources on the Cities of Refuge, offer an opportunity to reflect on prisons and the purpose of incarceration. How can we transform not just our physical and legal structures but our very manner of thinking to a more Jewish, more redemptive paradigm? How does Rabbi Avi Killip’s interpretation of Jonah help us understand the need for a change?

- What is the role of *teshuvah* in a justice system? What are our responsibilities to each other as members of a community—whether that is defined by a synagogue, a city, a nation, or a species? The text study “Justice Among Brothers” offers a variety of sources for exploration.

Genesis Rabbah 12:15

If I create the world with mercy (*rachamim*), its sins will be numerous; with judgment (*din*), how will the world stand? Rather, I will create it with judgment and with mercy, and oh! That the world might stand!

אם בורא אני את
 העולם במדת הרחמים
 הוי חטייה סגיאין, במדת
 הדין היאך העולם יכול
 לעמוד, אלא הרי אני בורא
 אותו במדת הדין ובמדת
 הרחמים, והלואי יעמוד.

GENERAL RESOURCES

Praying for an End to Mass Incarceration⁴⁸⁴

Traditional Jewish services are full of lines—sometimes whole paragraphs—about freedom and redemption. When read with an eye towards mass incarceration, many hitherto unremarkable lines jump out at us, clamoring for attention. We offer the following selection from the morning service as an invitation for meditation and contemplation, study and preaching, or song and chanting. We hope these—and others like them—find a use in the synagogue, the classroom, and out on the streets.

These lines from *birkot hashachar* take on new meaning when imagined in the mouth of a returning citizen:

Blessed are you ETERNAL, Master of time and space:	בְּרוּךְ אַתָּה ה' אֱלֹהֵינוּ
...who made me free.	מֶלֶךְ הָעוֹלָם
...who releases the imprisoned.	שֶׁשָּׁנִי בֶן-חֹרֵין:
...who lifts up the bent-over.	מִתֵּיר אֲסוּרִים:
...who provides for all my needs.	זוֹקֵף כְּפוּפִים:
...who supports a person's steps.	שֶׁשָּׂשָׂה לִי כָּל צְרָכָי:
...who gives strength to the weary.	הַמְּכִין מִצְעָדֵי גֶבֶר:
	הַנוֹתֵן לַיָּעֵף כֹּחַ:

Psalm 30, said at the transition from *birkot hashachar* to *pesukei dezimra*, uses the same word (*bor*, pit) that the Torah uses twice about Joseph—when his brothers throw him in a literal pit (Gen. 37:24) and when his Egyptian master imprisons him (Gen. 40:15). There is hope both for the currently incarcerated and for our society as a whole:

ETERNAL, you lifted my soul up from the depths, made me live from out of the pit...tears may linger for a night, but joy comes with the dawn. (v. 4, 6b)	ה' הֶעֱלִיתָ מִן שְׂאוֹל נַפְשִׁי, הֵיטַתָּנִי מִיַּרְדֵי בּוֹר: בְּעָרֵב יָלִין בְּכִי וְלִבְקֹר רִנָּה:
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From the paragraph immediately preceding *Mi Chamocha*:

Exalted and High, Mighty and Awesome, You bring low the proud and lift up the fallen; You free the imprisoned, redeem the humble, and help the poor.	רָם וְנִשְׂאָ, גָדוֹל וְנוֹרָא, מִשְׁפִּיל גָּאִים וּמִגְבִּיָּה שְׁפָלִים, מוֹצִיא אֲסוּרִים וּפּוֹדֵה עֲנוּיִם וְעוֹזֵר דָּלִים.
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⁴⁸⁴ Thanks to Rabbi Roni Handler and Cantor Lauren Levy for their help compiling these texts.

We sometimes speak of “civil death” for returning citizens, who are barred from voting, serving on juries, and receiving many government benefits. What does it mean for God to help us return them to civil life? Alternatively, *Mechaye hametim* is the blessing one says upon seeing a dear friend or family member that one has not seen in over a year (*Shulchan Aruch Orach Chayim 225:1, Talmud Berachot 58b*). How else might these lines from the second paragraph of the Amidah be applicable?

[God] supports those who fall, heals the ill, frees the imprisoned, and keeps faith with those who sleep in the dust... Blessed are You ETERNAL, who restores the dead to life.

סוּמָךְ נוֹפְלִים וְרוֹפֵא חוֹלִים וּמְתִיר
 אֲסוּרִים וּמְקִיָּם
 אַמּוּנָתוֹ לִישְׁנֵי עֶפְרָא...
 בְּרוּךְ אַתָּה ה', מְחַיֶּה הַמֵּתִים:

Several blessings from the middle of the weekday Amidah take on new significance in the context of mass incarceration. Consider those for *teshuvah*, redemption, the blessing of the year, and justice. In *Mishkan Tefilah*, the Reform siddur, the following line from Psalm 85 (verse 12) appears as part of the blessing for hastening of the messianic age:

May truth spring up from the ground; may justice look down from heaven.

אַמֶּת מֵאָרֶץ תִּצְמַח וְצֶדֶק
 מִשָּׁמַיִם נִשְׁקֶף.

The last paragraph of Tachanun speaks to us as a society:

[God] who delights in mercy and is moved by our pleas, delight in and be moved by this poor generation, for we have no one else to help. Our Parent, our Sovereign, have mercy and answer us, for we have no [good] deeds [on our record]. Deal with us in righteousness and love, and redeem us. For we do not know what to do. Remember Your mercy, ETERNAL, and your love, for they are eternal. May Your love be upon us, for we put our hope in You. Do not recall for us our earlier sins; meet us quickly with Your mercy, for we are very low.

מִתְרַצֶּה בְּרַחֲמִים וּמִתְפִּיֵּס בְּתַחֲנוּנֵינוּ, הַתְּרַצֶּה
 וְהַתְּפִיֵּס לְדוֹר עָנִי, כִּי אֵין עוֹזֵר:
 אֲבִינוּ מֶלֶכְנוּ, חֲנֻנוּ וְעִנְנוּ, כִּי אֵין בְּנוּ מַעֲשִׂים:
 עֲשֵׂה עִמָּנוּ צְדָקָה וְחֶסֶד וְהוֹשִׁיעֵנוּ:
 וְאַנְחֵנוּ לֹא נִדַּע מָה נַעֲשֶׂה כִּי עָלֶיךָ עֵינֵינוּ:
 זְכֹר רַחֲמֶיךָ ה' וְחֶסְדֶּיךָ כִּי מֵעוֹלָם הֵמָּה:
 יְהִי חֶסְדֶּךָ ה' עֲלֵינוּ כַּאֲשֶׁר יִחַלְנוּ לָךְ:
 אַל תִּזְכֹּר לָנוּ עֲוֹנוֹת רֵאשׁוֹנֵינוּ, מִהֵרָ יִקְדָּמוּנוּ
 רַחֲמֶיךָ כִּי דְלוּנוּ מְאֹד:

Psalm 130 (*MiMa'amakim kraticha...*), which is part of *Tachanun*, can be imagined in the mouths of returning citizens and of society at large.

POLICING AND RACIAL INJUSTICE

Police in Jewish Law: A Brief Overview

Based on sources compiled by Rabbi Jill Jacobs

Police play an integral role in society. That much is clear, going back as far as the Torah: “You shall appoint *shoftim* and *shotrim* for your tribes, in all the settlements that the Lord your God is giving you, and they shall govern the people with due justice.” (Deuteronomy 16:18) *Shoftim* are judges; the meaning of *shotrim* (singular: *shoter*) is less clear from context, but in modern Hebrew it is used to mean police. Of course, for much of history, Jews were in no position to have their own police forces, so most of the rabbinic interpretation of this verse is more theoretical than practical. Still, with the establishment of the State of Israel, there is such a thing in the world as a Jewish police force, and it has led modern rabbis to consider the functions of police—and the limitations society should place on them.

The rabbis seem to understand *shotrim* as a sort of executive branch, corresponding to the more clear-cut role of the judiciary. We can tease out five distinct, though perhaps overlapping, roles:

1. Police maintain public order and morality. “The court is obligated to appoint *shotrim* on the festivals to rove around and search in the gardens, in the orchards, and by the rivers to make sure that men and women are not gathering there to eat and drink, and to enter into sin.” (*Shulchan Aruch, Orach Chayim* 529:4; 16th century) We can think of this as the cop on the beat, who by his or her presence reminds people to obey the law.



Photo by Ryan Johnson, Creative Commons License

2. *Shotrim* rove the marketplace inspecting weights, measures, and prices to ensure they are **fair and comply with local ordinances**. (Maimonides, Laws of Theft 8:20; Laws of the Sanhedrin 1:1; 12th century) This is analogous to our government’s various inspectors—OSHA, EPA, food safety, and so on.

3. When a crime has been committed, police *initiate the process of judgment that will end in a courtroom*, by arresting suspects and bringing them in for interrogation. (Rabbi Hayyim David Halevi, *Aseh L’kha Rav* 3:48⁴⁸⁵, 20th century)

4. When a judge has rendered a decision, the ***shotrim* enforce it**. (Rashi [11th century], commenting on Deut. 16:18, writes that they do so by physical force; *Midrash Tanhuma, Shoftim* 2:17 [Medieval], is more elliptical and

writes, “When a person is obligated by the court to pay another...the *shoter* extracts it from him.”)

5. *Shotrim* are the **“leaders of the community.”** This language is initially used by *Midrash Tanhuma* (see above) and is picked up and amplified by Rabbi HaLevi, writing in 20th century Israel: “That is to say that the job of police officers is not restricted just to carrying a baton and a belt and to the punishment of criminals, rather they are the leaders of the generation. For a leader and a judge are sources of authority, and fields which border upon each other, sometimes they call him judge, and sometimes leader.” (*D’var HaMishpat Hilkhot Sanhedrin* Section 7)

485 Translated by Rabbi Jill Jacobs and Rabbi Dr. Aryeh Cohen

While earlier sources seem to have no qualms or doubts about justice and wisdom of police, contemporary sources express concerns about the abuse of power and take pains to set limits on police. Rabbi HaLevi emphasizes the following limitations:

- **Innocent until proven guilty:** “One who makes an arrest is dealing with a person who, according to the law, is still innocent—this is before the person has stood in judgment, and before his guilt has been proven. For this reason, the arrest is a violation of the freedom of a person, who is presumed innocent. But in order to allow for the interrogation of the suspect, and for bringing him to court, we have to permit his arrest.” (*Aseh L’kha Rav* 3:48)
- **High burden of evidence for arrest:** “How is it possible to prevent distress and pain to those who are innocent, on whom suspicion falls, in cases in which it eventually becomes clear that there was no basis for this suspicion?... The requirement of police personnel of a stronger base for their suspicion is very just—it is exceedingly clear that this is something that depends on very careful consideration, and also on legal knowledge.” (*Aseh L’kha Rav* 3:48)
- **Bail/habeas corpus:** “But there are boundaries on this allowance [to arrest], both in regard to the nature of the arrest, and in regard to the amount of time that a person may be held without trial. And above all, the obligation to release the person until trial [in non-capital cases].”⁴⁸⁶ (*Aseh L’kha Rav* 3:48)

- **General exhortation to morality:** “The personality of Jewish police officers must be of the highest ethical order, so that they themselves will serve as a good example of following law and living a pure ethical life. And they will merit to see a society based on the foundations of purity and divine sanctity as promised in the Torah: ‘God commanded us to follow all of these laws and to fear God for our good always, that God might keep us alive, as is the case today.’ (Deut. 6:24) (*D’var HaMishpat Hilkhhot Sanhedrin* Section 7)

As we formulate a Jewish approach to police and policing, we would also do well to remember centuries of being the target of police violence—and not just in Czarist Russia or under the Crusades but in the United States as well. As recently as 1902 on New York’s Lower East Side, police attacked the funeral procession of a prominent rabbi.⁴⁸⁷ According to one newspaper account, “Men were flung down, women were dragged out by arms and shoulders and pushed headlong down the street”; another reported, “[The words] ‘Lynch them! Those animals! Those dogs!’ [could be] heard from all sides.” We have experienced both sides of the coin, and our memory should shape our attitude towards present and future police practices.

⁴⁸⁶ For a discussion of capital vs. non-capital cases, see “Incarceration in Jewish Law: A Brief Overview.”

⁴⁸⁷ As recounted by Rabbi Mike Rothbaum in his 2014 Rosh Hashanah sermon, “Ferguson/Fargesn”: <http://rabbicreditor.blogspot.com/2014/10/rabbi-michael-rothbaum-fergusonfargesn.html>

POLICING AND RACIAL INJUSTICE

Text Study: Policing in Jewish Law

1

Deuteronomy 16:18

דברים טז:יח

¹⁸You shall appoint judges (*shoftim*) and officers (*shotrim*) for your tribes, in all the settlements that the Lord your God is giving you, and they shall govern the people with due justice.

שֹׁפְטִים וְשׁוֹטְרִים תִּתֶּן-לָךְ בְּכָל-שְׁעָרֶיךָ
אֲשֶׁר ה' אֱלֹהֶיךָ נֹתֵן לָךְ לְשִׁבְטֶיךָ וְשֹׁפְטוּ
אֶת-הָעָם מִשְׁפָּט-צְדָק

Discussion Question

Based on this biblical text, what if anything can we say about the definition of officers (*shotrim*)?

2a

Rashi (France, 1040-1105) on Deuteronomy 16:18

רש"י דברים טז:יח

"*Shoftim* and *shotrim*"—" *shoftim*" refers to judges who decide on the law. And "*shotrim*" are the ones who force the people to follow their commandments. For they hit and force them with a stick and a whip until they accept upon themselves the decision of the judge.

שופטים ושוטרים - שופטים, דיינים הפוסקים את הדין. ושוטרים, הרודין את העם אחר מצותם. שמכין וכופתין במקל וברצועה עד שיקבל עליו את דין השופט:

2b

Midrash Tanhuma, *Parshat Shoftim* 2:17

מדרש תנחומא פ' שופטים ב:טז

"*Shoftim* and *shotrim*"—" *shoftim*" are the judges. "*Shotrim*" are the leaders who lead the community. Rabbi Elazar said, "If there is no *shoter*, there is no *shofet*." How is this? When a person is obligated by the court to pay another, if there is no *shoter* to extract it from him after he has left the judge, the judge does not have the capacity to do anything to him, unless the judge delivers him to the *shoter* and the *shoter* extracts it from him.

שופטים ושוטרים שופטים אלו הדיינים שוטרים אלו הפרנסים שמנהיגין את העדה, רבי אלעזר אומר אם אין שוטר אין שופט כיצד כיון שנתחייב אדם בבית דין לחבירו אם אין שוטר שיוציא ממנו כיון שפורש מן הדיין אין ספיקה ביד הדיין לעשות לו כלום אלא אם כן מוסרו ביד השוטר והשוטר מוציא ממנו

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2c

Rambam (Spain/Egypt c. 1135-1208), *Mishneh Torah* Laws of Theft 8:20

The court is obligated to appoint *shotrim* in every city, and in every district, that they should go around to the stores and check the scales and the measures and to set the prices. If someone is found to have a weight or a measure that is lacking, or defective scales, the *shotrim* have permission to beat him according to his ability [to tolerate the beating], and to fine him according to what the court finds to be appropriate to enforce the matter. And if someone overcharges and sells at too high a price, we inflict corporal punishment on that person and force him to sell at market price.

רמב"ם הלכות גניבה פרק ח:כ

חייבין בית דין להעמיד שוטרים בכל מדינה ומדינה ובכל פלך ופלך שיהיו מחזרין על החנויות ומצדקין את המאזנים ואת המדות ופוסקין את השערים, וכל מי שנמצא עמו משקל חסר או מדה חסרה או מאזנים מקולקלין רשות יש להן להכותו כפי כחו ולקנסו כפי ראות בית דין לחזק הדבר, וכל מי שמפקיע את השער ומוכר ביוקר מכין אותו וכופין אותו ומוכר כשער השוק

2d

Rambam, *Mishneh Torah*, Laws of the Sanhedrin 1:1

...“*Shoftim*” are the judges who remain in the courthouse, and litigants come before them. “*Shotrim*” have a stick and a whip and stand before the judges [and] who roam around in the marketplaces and the streets, and who go into stores to set prices and measures, and to inflict corporal punishment on transgressors. And all of their deeds are governed by the judges, and whenever they see a transgression, they bring that person to the court where he can be judged according to his deed.

רמב"ם הלכות סנהדרין א:א

שופטים אלו הדיינים הקבועין בבית דין ובעלי דינין באים לפניהם, שוטרים אלו בעלי מקל ורצועה והם עומדים לפני הדיינין המסבבין בשווקים וברחובות ועל החנויות לתקן השערים והמדות ולהכות כל מעוות וכל מעשיהם ע"פ הדיינים וכל שיראו בו עוות דבר מביאין אותו לבית דין ודנין אותו כפי רשעו

2e

Joseph Karo (Spain/Palestine, 1488-1575) *Shulchan Arukh Orach Chayim* 529

The court is obligated to appoint *shotrim* on the festivals to rove around and search in the gardens, in the orchards, and by the rivers to make sure that men and women are not gathering there to eat and drink, and to enter into sin.

שולחן ערוך אורח חיים סימן תקכט

חייבים ב"ד להעמיד שוטרים ברגלים, שיהיו משוטטים ומחפשים בגנות ובפרדסים ועל הנהרות שלא יתקבצו שם לאכול ולשתות אנשים ונשים, ויבואו לידי עבירה

Discussion Questions

What are some of the roles of *shotrim* according to these commentaries?
 Which, if any of these, seem akin to the role of modern-day police officers?

3

Talmud *Yevamot* 86b

Rabbi Hisda said: At first, they would only appoint *shotrim* from among the Levites, as it says "The *shotrim* of the Levites before you" (II Chronicles 19:11). Now, we only appoint *shotrim* from among Yisrael, as it says "*shotrim* over you should come from the majority." (This verse is not actually in *Tanakh*.)

תלמוד בבלי מסכת יבמות דף פו עמוד ב

אמר רב חסדא: בתחלה לא היו מעמידים שוטרי' אלא מן הלויים, שנאמר: השוטרים הלויים לפניכם, עכשיו אין מעמידין שוטרים אלא מישראל, שנאמר: ושוטרים הרבים בראשיכם

Discussion Questions

The Levites were the only Israelite tribe that had special ritual duties and did not own land. Why do you think there might have been a shift from appointing *shotrim* from among the Levites to appointing *shotrim* from the rest of the community? Does this raise any parallel for you in discussions about policing today?

4

Synod of Castilian Jews of 1432 in Rabbi Louis Finkelstein, *Jewish Self Government in the Middle Ages*

New York: Jewish Theological Seminary, 1924, 361

We ordain that no judge shall order a Jew or Jewess to be seized bodily, except by order in writing signed by himself and witnesses; and that when the crime for which the person is apprehended is not defamation or a capital crime, the reason shall be stated in the writ.

Discussion Questions

Why do you think this communal enactment rejects so strongly the possibility of bodily seizure? What restrictions does this agreement make on the right to arrest? Why do you think it might make these enactments?

Rabbi Hayyim David HaLevi, *D'var HaMishpat Hilkhoh Sanhedrin* Section 7

Translated by Rabbi Jill Jacobs and Rabbi Aryeh Cohen
 (Rabbi Hayyim David HaLevi, 1924-1998, was Sephardic Chief Rabbi of Tel Aviv)

This function, of arresting a person and bringing him/her in front of the court should not be assigned to someone who is not well-versed in law, and who knows well the definition of transgression. It already happens many times that a person is arrested, and in the course of this person's arrest, it becomes clear that s/he didn't do anything wrong. Or, this person is brought before a court, and only there it becomes clear that s/he did nothing at all wrong. But in the meantime, much damage has been caused to this person, both materially and psychologically, and all of this is because it seemed to the officer or the police that this person had broken the law, and therefore, even short-term arrest is not permissible except by the authority of the judges who walk around with the police.

It's true that we haven't found anywhere judges who walk around in the markets and in the streets accompanying the police, and what I wrote above is only an interpretation of the language of Maimonides. But, it is also possible to say that the police officers charged with the responsibility of maintaining the public order, extending to the authority of arresting a person and bringing that person to the seat of judgment, are also called "*dayyanim*"—judges. Even though it is not their job to really judge, arrest is essentially the beginning of judgment, and for that reason, they are called judges.

It's no surprise that the police officers of the people are also called judges, for they carry out judgment by imposing the social order on the people. . . and it is in their authority to arrest criminals and to bring them to court. . . for this reason, the verse "you shall appoint judges [*shoftim*] and officers [*shotrim*]" is interpreted to mean "the *shoftim* are judges. The officers/*shotrim* are the leaders who have responsibility for the community." That is to say that the job of police officers is not restricted just to carrying a baton and a belt and to the punishment of criminals, rather they are the leaders of the generation. For a leader and a judge are sources of authority, and fields which border upon each other, sometimes they call him judge, and sometimes leader.

It is clear in any case that the appointment of police officers in our time is a *mitzvah*. And their position is honored and exalted, for they are appointed to protect the public order, and additionally to preserve moral behavior, laws and ordinances as has already been explained, and without them, people would transgress against one another. . . for this reason, the personality of Jewish police officers must be of the highest ethical order, so that they themselves will serve as a good example of following law and living a pure ethical life. And they will merit to see a society based on the foundations of purity and divine sanctity as promised in the Torah "God commanded us to follow all of these laws and to fear God for our good always, that God might keep us alive, as is the case today." (Deuteronomy 6:24)

תפקיד זה של מעצר אדם והבאתו בפני בית הדין אינו הדין שימסר למי שאינו בקי בדינים ויודע היטב עבירה מה היא, וכבר קורה פעמים רבות שאדם נעצר ובמעצרו מתברר שלא חטא, או שאף הוא מובא בפני בית הדין, ורק שם מתברר שלא חטא כל עיקר, אך בינתיים נגרם לו נזק רב הן חמרי והן נפשי, וכל זה משום שהשוטר או המשטרה, נדמה היה להם שאיש זה חטא, ולכן אפילו מעצר זמני לא היה מותר אלא על פי הדיינים המסבבים יחד עם השוטרים...

הן אמת שלא מצאנו בשום מקום דיינים שהיו מסבבים בשווקים וברחובות בליווי שוטרים ומה שכתבנו אינו אלא השערה, מתוך דקדוק לשונו של רבינו. אבל יתכן עוד לומר, שאותם שוטרים שנמסר בידם תפקיד אחראי לשמירת חיי הברה סדירים עד לסמכות של עצירת אדם והבאתו בפני כס המשפט, נקראו גם בשם דיינים. ואף שלא היה תפקידם שיפוט ממש, עצם המעצר הוא התחלת שיפוט, ולכן בשם דיינים יקראו...

אין תימה אם שוטרי העם אף הם בשם דיינים יקראו, שכן גם הם עושים דין בכפייתם את הסדר החברתי על העם ובסמכותם לעצור פושעים ולהביאם בפני בית הדין. ואולי שזה שבאו רבותינו בתנחומא לישב, דכיצד נאמר על השוטרים, ושפטו את העם בכל עת? ולכן דרשו: "שופטים ושוטרים, שופטים אלו הדיינים, שוטרים אלו הפרנסים שמנהיגים את העדה." כלומר שאין תפקיד השוטרים מצטמצם בהחזקת מקל ורצועה בלבד, והעגשת פושעים, אלא שהם פרנסי הדור. . . דפרנס ודיין הם סמכויות ותחומין שגובלין זה בזה, ופעם קראו דיין ופעם פרנס.

ברור על כל פנים שהעמדת שוטרים בזמנינו מצוה היא. ונכבד ונעלה הוא תפקידם, שהם הממונים לשמירת סדרי החברה ותקנותיה חוקיה ומשפטיה כמו שכבר נתבאר, ובלעדיהם איש את רעהו חיים בלעו. נוסף על כך גם שמירת המוסר בחברה הוא תפקיד המוטל על המשטרה, וכמו שפסק רבינו בהלכות יום טוב (פרק ו' הלכה כ"א) "חייבים בית דין להעמיד שוטרים ברגלים שיהיו מסבבין ומחפשים בגנות ובפרדסים ועל הנהרות כדי שלא יתקבצו לאכול ולשתות שם אנשים ונשים ויבואו לידי עבירה." ולכן אישיותם של שוטרי ישראל היא אישיות מוסרית נעלה, שבעצמם מהיום הם דוגמה נאה לשמירת החוק וחיי מוסר טהורים. והי"ת יזכנו לראות חיי חברתנו מושתתים על יסודות הטהרה והקדושה של תורה"ק, כמאמר הכתוב (דברים ו' כ"ד) וַיִּצְוֵנו ה' לַעֲשׂוֹת אֶת-כָּל-הַחֻקִּים הָאֵלֶּה, לְיִרְאָה אֶת-ה' אֱלֹהֵינוּ לְטוֹב לָנוּ כָּל-הַיָּמִים, לְחַיֵּתנוּ כְּהַיּוֹם הַזֶּה.

6

Hayyim David Halevy, *Aseh L'kha Rav 3:48: The Arrest of Suspects According to Halakhah, and How to Avoid Arresting Those Innocent of Any Crime*

It is completely clear that arrest is the beginning of the process of judgment. For this reason, we will begin with an elucidation of this topic in *halakhah*, which incidentally is one of the most difficult problems that has occupied us recently. How is it possible to prevent distress and pain to those who are innocent, on whom suspicion falls, in cases in which it eventually becomes clear that there was no basis for this suspicion. Let's take this case as an example: A person respected in his neighborhood and among his peers, whom the police suspect per information that has been given to them. This person is arrested and brought to court, and an arrest warrant issued against him. In the end, it is proven that there was no basis for suspicion, and the person is released. But he complains bitterly—and rightly so: Should a person be arrested on the basis of information such as this? Smearing his name and causing incalculable damage! Is it possible to repair this type of burden?

There have been two important proposals to prevent mistakes like this: 1) Forbidding the publication of the names of suspects 2) Requiring the police to establish more strongly a basis for suspicion before arresting someone—and even the more so before bringing them to court and lengthening their detention.

In my humble opinion, this is not enough. The prohibition on publishing the names of suspects may ease the severity of the burden, but it is not enough to repair it. For the arrest of a person attracts much attention among his neighbors, acquaintances, and friends—and obviously within his family—even without being publicized in the media, and this too causes great damage. The requirement of police personnel of a stronger base for their suspicion is very just—it is exceedingly clear that this is something that depends on very careful consideration, and also on legal knowledge...

There is an additional role assigned to police officers, and that is the most important responsibility—and this is the one central to our discussion: Arresting suspects in order to bring them to judgment.

ברור ביותר, שהמעצר, הוא ראשית הליכי הדין. ולכן נפתח בבירור נושא זה בהלכה, שאגב, הנו אחת הבעיות הקשות שהרבו להעסיק אותנו לאחרונה. כיצד ניתן למנוע עגמת נפש וצער מאנשים חפי פשע, הנופל עליהם חשד, שמתברר לבסוף שלא היה לו כל יסוד. נקח לדוגמא מעשה שהיה: אדם נכבד בשכונתו ובחברתו, החשד ע"י המשטרה בעקבות מידע שנמסר לה. האיש נעצר, והובא לבית המשפט, ואף הוצאה נגדו פקודת מעצר. לבסוף הוכח כי לא היה שום יסוד לחשד והאיש שוחרר. אך הוא קובל במרירות ובצדק רב: האם על סמך מידע כזה עוצרים אדם, מכפישים שמו וגורמים לו נזק בל ישוער, האם ניתן בכלל לתקן עול מסוג זה.

הוצעו שתי הצעות חשובות למניעת טעויות מעין אלה. (א) לאסור פרסום שמות חשודים. (ב) לתבוע מהמשטרה לבסס את חשדותיה ביתר שאת בכל מקרה בו היא עוצרת אדם, וכל - שכן וקל - וחומר לפני הבאתם בפני בית המשפט להארכת מעצרים.

לעניות דעתי אין די בכך. איסור פרסום שמות חשודים, יש בו כדי להקל בלבד מחומרת העול, אך אין בו כדי לתקן, כי מעצר אדם מקבל פרסום גדול בקרב שכניו ידידיו וחבריו, ואצ"ל בני משפחתו, גם ללא פרסום בכלי התקשורת, וגם בכך הנזק הוא כבד. התביעה מאנשי משטרה לבסס חשדותיהם ביתר שאת, היא מאד מוצדקת, אך ברור ביותר שזה דבר התלוי בשיקול דעת מעמיק וגם במדת השכלה משפטית.

תפקיד נוסף נועד לשוטרים, והוא האחראי והחשוב ביותר, והוא העומד במרכז שיחתנו: מעצר חשודים לשם הבאתם לדין.

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One who makes an arrest is dealing with a person who, according to the law, is still innocent—this is before the person has stood in judgment, and before his guilt has been proven. For this reason, the arrest is a violation of the freedom of a person, who is presumed innocent. But in order to allow for the interrogation of the suspect, and for bringing him to court, we have to permit his arrest. But there are boundaries on this allowance, both in regard to the nature of the arrest, and in regard to the amount of time that a person may be held without trial. And above all, the obligation to release the person until trial. All of this comes from the fundamental right of human freedom, and the prohibition against detaining him and taking away his freedom. . .

The police officers who are charged with fining or arresting a person and with bringing this person before the court themselves belong to a certain tier of judgment, albeit lower than that of the judges who sit in the court. Per the language of Rashi, they are “general judges,” and not real judges.

For this reason, *halakhah* assures us that no person will be arrested without cause, whether for a serious crime or a minor one such as those related to prices and measures and such things, and those who are charged with making arrests are in the realm of judges, with legal knowledge.

It also seems that the conditions of our times could learn from our early sources, and to entrust the right of arrest to judges only, obviously in such a way as not to disturb the peace of the community.

המעצר מתיחס לאדם שבעיני החוק הוא עדיין זכאי, היות וטרם עמד לדין וטרם הוכחה אשמתו. ולכן, הרי הוא פגיעה בחירותו של אדם שהוא בחזקת חף מפשע, אלא שכדי להבטיח חקירתו של החשוד והבאתו בפני בית הדין, יש הכרח לאפשר מעצרו. אבל קיימות הגבלות בחוק הן לגבי עצם המעצר והן לגבי הזמן שאפשר לעצור אדם ללא משפט, ומעל לכל החובה לשחרר החשוד עד למשפט. הכל נובע מזכות יסודית של חירות האדם והאיסור לכליאתו ושליטת חירותו.

וזו ראייה גדולה ומכרעת לסברתנו דלעיל, שהשוטרים שהיו מוסמכים לקנוס או לעצור אדם ולהביאו בפני בית - הדין, היו הם עצמם בדרג מסויים של שיפוט, אף כי נמוך מדרג הדיינים הקבועים בבית - הדין. וכלשון רש"י שהעתקנו לעיל ממסכת קידושין "דיינים בעלמא", ולא דיינים ממש.

כך הבטיחה ההלכה, שלא יפגע שום אדם במעצר בלתי צודק, בין בעבירות חמורות, ובין בעבירות קלות כהפקעת שיערים ומדות וכדומה, והמוסמכים לעצור אדם היו בדרג דיינים עם השכלה משפטית.

נראה שגם בתנאי זמנינו ניתן ללמוד ממקורותנו הקדומים, ולהפקיד את זכות מעצר אדם בידי שופטים בלבד, כמובן בצורה שלא יפגע הדבר בשלום החברה.

Discussion Questions

How does HaLevy define the role of police? How does he build on and reinterpret the earlier texts that you (and he) have seen? Why do you think that he understands *shotrim* as a type of judge? What would be the impact on our contemporary policing if we were to expect police to act like judges? How else might HaLevy's requirements confirm or challenge current policing practices?

Text Study: A Plan Devised Against Them - Oppression and Justice, Then and Now

The “Black Friday 14” were a group of Black Lives Matter activists who chained themselves to a BART [Bay Area subway] train on Black Friday 2014 to protest police violence. They were brought up on criminal charges and asked to pay \$90,000 in restitution. As part of a clergy protest, I did a teach-in connecting Shemot to the fight against racial injustice, in part using this commentary. The good news is that the county agreed to drop the charges against the activists. The bad news is that state violence against people of color continues unabated in our nation. May our timeless wisdom spur us to challenge this injustice — not just on a case by case basis, but throughout all the systems that perpetuate and sustain it.

- Rabbi Michael Rothbaum, Congregation Beth El, Berkeley

Exodus 1:22

And Pharaoh charged all his people, saying, “Every son who is born you shall throw into the river, and every daughter you shall let live.”

וַיִּצַו פַּרְעֹה לְכָל־עַמּוֹ לֵאמֹר כָּל־בֶּן־הַיְלֹד
הַיְאֲרָה תִשְׁלִיכוּהוּ וְכָל־בַּת־תְּחִיּוֹ:



Members of the “Black Friday 14”, Creative Commons License

Commentary of Rabbi Yaakov Culi, 18th c. Turkey/Spain, *Meam Loez*

(Translated from the original Ladino by Rabbi Aryeh Kaplan)

“Throw into the river.” Pharaoh’s decrees became harsher and harsher. Soon he decided that throwing the infants into the Nile was not sufficient... If a man did not make his quota of bricks on a given day, he was given a ghastly choice: Either he or his child would have to be placed in the structure to make up for the missing bricks...

Many Israelites were mortared into the walls of the structures while still alive. They screamed and begged for mercy, but no one would take pity on them. Many infants were also thrown into the fire.

Throughout all this, the Israelites did not know that this was a plan devised against them by Pharaoh. They were led to believe that such ghastly acts were being done by individual Egyptians on their own initiative. Many Israelites even complained to the authorities, and were told that if proper witnesses would be brought, the perpetrators would be punished.

Eventually, of course, the Israelites discovered the truth.

Deuteronomy 4:9

But take utmost care and watch yourselves scrupulously, so that you do not forget the things that you saw with your own eyes and so that they do not fade from your mind as long as you live. And make them known to your children and to your children’s children.

רַק הַשְּׁמֹר לָךְ וְשָׁמֹר נִפְשְׁךָ מְאֹד פִּרְתִּישְׁכָּח אֶת־
הַדְּבָרִים אֲשֶׁר־רָאוּ עֵינֶיךָ וּפְרִיסוּרוֹ מִלְּבָבְךָ כֹּל
יְמֵי חַיֶּיךָ וְהוֹדַעְתָּם לְבָנֶיךָ וּלְבָנֵי בָנֶיךָ:

A reform that begins with the officer on the beat is not reform at all. It’s avoidance. It’s a continuance of the American preference for considering the actions of bad individuals, as opposed to the function and intention of systems.

- Ta-Nehisi Coates, “The Myth of Police Reform,” *The Atlantic*, April 2015.

INCARCERATION

Incarceration in Jewish Law: A Brief Overview

Based on sources compiled by Rabbi Jill Jacobs and Rabbi Jonathan Crane, PhD

The Torah describes a judicial system with several punishments at its disposal: fines, lashes, and the death penalty. Incarceration is not normally among them.

There are two instances in the Torah where a person has committed a crime whose punishment is not clear—the blasphemer in Lev. 24:10 and the man gathering wood on Shabbat in Num. 15:32. In both cases, he is put in “*mishmar*”—temporary custody—until Moses can ask God how to handle him. The closest modern analog seems to be “lockup,” the cell where an arrested person is held until s/he is brought before a judge or released.

A few biblical characters end up in prison after angering a powerful leader. In Egypt, Joseph’s master throws him into the dungeon on suspicion of having seduced the master’s wife.

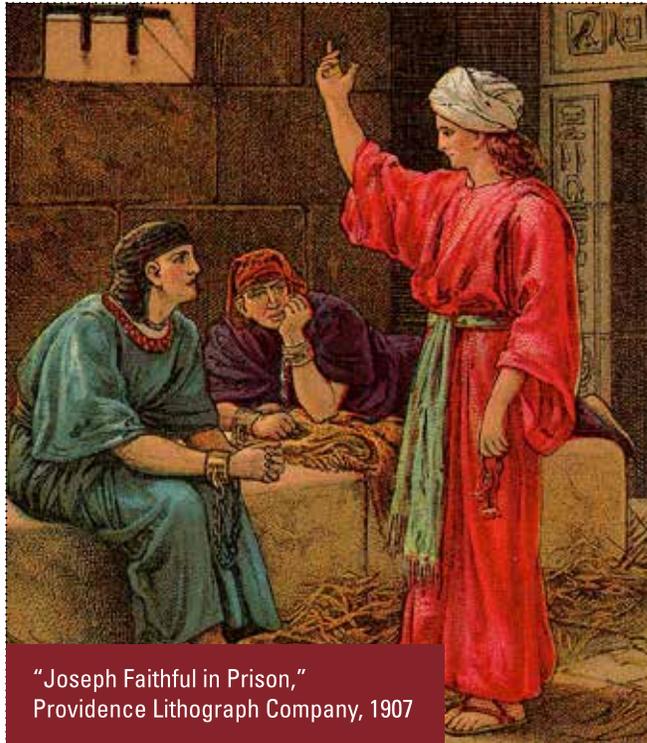
The prophets Jeremiah and Micaiah receive prison time for offering prophecies that the king dislikes. In all of these cases, it’s clear that the Bible sides with the prisoner.

Early rabbinic texts make only passing reference to prisons, which were not a mainstream part of the judicial system.

The Jerusalem Talmud (compiled by about the year 400 CE, roughly 100 years before the more frequently cited Babylonian Talmud) specifically mentions a Jew imprisoned by other Jews (*Mo’ed Katan* 81c), in a discussion of who may break the usual ban on shaving during a holiday. While

the circumstances of incarceration are not clear from this reference, it is obvious that those held in Jewish jails/prisons had finite sentences and could expect to be released. The three categories of people who say the *gomel* blessing, giving thanks for emerging from a life-threatening event, are those who have survived a serious illness, returned from a long

journey, and come home from prison. The latter probably assumes a prison run by non-Jews, from which a Jew could not necessarily expect to be released. One very specific case considers a situation in which a person is arrested for assault before it is clear whether the victim will live or die. The perpetrator remains in jail until the victim either dies or recovers, so that the court can determine whether it is judging a case of murder or of injury. The one form of imprisonment the rabbis do describe formally is called the *kippah* (*Tosefta Sanhedrin* 12:4, BT *Sanhedrin* 81b). This is a small cell in which certain



“Joseph Faithful in Prison,”
Providence Lithograph Company, 1907

people are confined and fed a harsh diet until they die. The Talmud restricts use of the *kippah* to murderers who can not be executed because of technicalities of judicial process, or to those who sin, are punished by a court with lashes, and then repeat the sin several times. Later commentaries further reduce the use of this punishment to murderers acquitted on the smallest of technicalities. Two elements of the *kippah* are significant: that it is used rarely, for a very particular set of extremely serious offenders, and that it is used with clear purpose—punishment to the point of death. No false claim is made here about rehabilitation. There is no evidence that the *kippah* was actually ever used.

In the centuries between the Talmud and the modern era, rabbinic authorities and practices varied, some allowing incarceration, others ruling against it⁴⁸⁸. This excerpt from a responsum by the 14th century Spanish rabbi known as the Riba”sh demonstrates this ambivalence. He first rules against incarcerating a Jew who could not pay off a debt and argues that the general principle of “*dina demalchuta dina*” (the law of the kingdom is the law) does not apply in this case, but then he writes:

The truth is, in my own city, the judges’ custom is to imprison a person who is liable in this manner, according to an act of the community. And they further enacted that even without being found guilty, any person can be held over a lawsuit, unless they pay collateral, and they call this a ruling of the court. I did not want to allow this act to stand, because it is not in accordance with our Torah’s law. And they said to me: this is in accordance with the “marketplace act” [a principle allowing new rules that make commerce smoother], because of swindlers, and so as not to bar the door in the face of borrowers. And I allowed their custom to stand. (484)



Photo by J. Geller, Creative Commons License

society and operated a modern prison or judicial system; rather, they were exerting communal authority on a local level, usually in civil matters.

This brings us to the modern era, when Jews do once again control a judicial and carceral system in the State of Israel. Let us examine the response of two great rabbis addressing these questions. In a 1953 responsum, Rabbi Meshulam Rath (d. 1963) cites many of the types of imprisonment we have

covered, concluding:

In general, I am hesitant about the agreement of the rabbis regarding imprisonment of five or three years as punishment for sin, for nothing like this is present in our halacha—rather, we have only temporary imprisonment in order to force compliance... (Kol Mevasser 1:83)

Rabbi Haim David HaLevy, who died in 1998 while serving as Chief Rabbi of Tel Aviv-Yafo, seems even more strongly opposed to incarceration, writing at length on the subject. Here are some excerpts from his *teshuvah* (legal response) on the topic:

By all opinions, punishment is not a goal unto itself. Rather, it is intended to return the criminal to doing right or “so that they will listen and fear.” What benefit is prison from this perspective? The punishment of prison has existed in different forms forever. And experience proves that imprisonment does not rehabilitate the criminal...In addition to this, it also causes further harm after his release from prison...there is serious concern that additional crimes will become his way, in the absence of any other choice...

Although the Riba”sh recognizes imprisonment as alien to Judaism and strongly condemns it, he acknowledges other halachic principles that give a rabbinic court leeway. If they find incarceration to be an important tool for maintaining the community, he can’t forbid it outright. Whichever sources we look at from this period, we must be cautious in using them as precedents for understanding incarceration today. The Jews of the Middle Ages never controlled an entire

⁴⁸⁸ For a list of sources on either side of this debate, see note 23 in Lipskar, Rabbi Sholom D., “A Torah Perspective On Incarceration As a Modality of Punishment and Rehabilitation .” <http://www.jlaw.com/Articles/PrisonerRightsNotes.html#23>

But we have brought this to learn the foundation of the holy Torah's perspective on human freedom and the social nature of the human being, created in the image of God, that no other person has the right to confine the human spirit, or his freedom of movement, or his freedom, which are holy of holies among all creations in the image of God⁴⁸⁹, and in each generation, we must devise appropriate punishments for criminals that are consistent with the Torah's outlook and with the conditions of life.

One of the great legal minds of our generation said, "It is our obligation to be concerned about just law; more than that, it is our obligation to be concerned about the criminal himself; more than that, it is our obligation to be concerned with the dignity of humanity."

And we will add, in the spirit of our holy Torah: The greatest of our obligations is to be concerned with the tzelem Elohim [divine image] which is in humanity, "for in the image of God, God created humanity." (Aseh L'kha Rav 3:57)

In a slightly earlier responsum, however, HaLevy does allow short-term incarceration under select circumstances:

There is no question that in the case of a transgressor where there is a concern that he will be punished with capital punishment, that the court is obligated to hold the person and to imprison him in a jail⁴⁹⁰ until it is clear to them that there will not be capital punishment, but only monetary punishment. And we don't let him out on bail, for if the person sees that he will be sentenced to capital punishment, he will flee... And also, in the case of one who has committed a crime and there is a concern of capital punishment, it's not appropriate that this person should go walk around in the marketplace while the court deliberates about his sentence...

We learn from the words of the Riba"sh [not necessarily the text quoted above] that one who is arrested for a crime that is likely

to result in capital punishment, or any bodily crime, is not freed on bail until after his judgment is determined. From this we can learn that for all other crimes, for which the punishment is monetary, we let them go [on bail] until the determination of the sentence. (Aseh L'kha Rav 3:48)

In other words, people accused of crimes who are flight risks or a danger to the public may be detained during a trial, but otherwise, they should be free.

When our society does decide that it will incarcerate someone, against the grain of *halachic* argument (like the Riba"sh's community), what should that incarceration look like? The 19th century Turkish rabbi Chaim Palagi seems to address something resembling a modern prison system when he writes:

It seems that even so, the Torah did not give permission to place someone in a prison that is cramped, for prisons are only for keeping a person to ensure he doesn't escape. . . Even more so, we should not place him in a prison that's soiled, where he will not be able to study Torah or to keep the mitzvot. For even if the Torah gave us permission, since even though he has sinned and must be imprisoned in a prison, he has not ceased to be a Jew⁴⁹¹. (Shu't Hik'kei Lev II: Hoshen Mishpat 5, published 1849)

We can learn three principles from Palagi's words. First of all, incarceration may be a permissible consequence for sin/crime. However, secondly, the purpose of incarceration is to keep a person from escaping, not as a form of punishment. (We are left to deduce whether the person is being held until trial is completed, as in the Torah's *mishmar*, or until restitution is made, as in the Riba"sh's community, or for some other purpose and length of time.) And finally, conditions inside a prison should enable an incarcerated person to live a life of dignity, meaning, and even holiness.

⁴⁸⁹ We can juxtapose Rabbi HaLevy's argument with these words penned by law professor Jane McAdam in 2011: "[T]he notion of freedom of movement ...[is] a fundamental element of personal liberty... The right to freedom of thought and expression, especially the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers', also depends on the right to free movement for its full realisation." "An Intellectual History of Freedom of Movement in International Law: The Right To Leave As A Personal Liberty" Melbourne Journal of International Law, Vol 12, 2011.

⁴⁹⁰ Rabbi HaLevy does not distinguish linguistically between "jail" and "prison," but in this context he must be referring to jail, where people are detained pre-trial or for short sentences.

⁴⁹¹ "a Jew"—which we, today, would understand as "a human being, a full member of society."

Text study: Jews Incarcerating Other Jews - What Can We Learn?

In the Torah:

1a Leviticus 24:10-12

¹⁰There came out among the Israelites one whose mother was Israelite and whose father was Egyptian. And a fight broke out in the camp between that half-Israelite and a certain Israelite. ¹¹The son of the Israelite woman pronounced the Name in blasphemy, and he was brought to Moses — now his mother’s name was Shelomith daughter of Dibri of the tribe of Dan — ¹²and he was placed in custody, until the decision of the Lord should be made clear to them.

(י) וַיֵּצֵא בֶן-אִשָּׁה יִשְׂרָאֵלִית וְהוּא בֶן-אִישׁ מִצְרַיִם בְּתוֹךְ בְּנֵי יִשְׂרָאֵל; וַיִּנְצוּ בַּמַּחֲנֶה בֶן הַיִּשְׂרָאֵלִית וְאִישׁ הַיִּשְׂרָאֵלִי. (יא) וַיִּקַּב בֶּן-הָאִשָּׁה הַיִּשְׂרָאֵלִית אֶת-הַשֵּׁם וַיִּקְלַל וַיִּבְיֵאוּ אֹתוֹ אֶל-מֹשֶׁה; וְשֵׁם אִמּוֹ שְׁלֹמִית בַּת-דִּבְרִי לְמִטֵּה-דָן. (יב) וַיִּנְיְחוּהוּ בַּמִּשְׁמֶר לְפָרֶשׁ לָהֶם עַל-פִּי ה'.

1b Rashi on verse 12 (11th c. French commentator)

“He was placed”--alone; they did not confine the one gathering [wood on Shabbat] with him, for both of these incidents were at the same time. They knew that gathering [wood on Shabbat was punishable] by death, as it says (Ex. 31:14) “whoever violates [Shabbat] shall surely die,” but it had not been explained which form of capital punishment to apply. Therefore it says (Num. 15:34) “For it had not been explained what was to be done to him.” But regarding the blasphemer, [God] only said to separate from them, and they did not know if he required the death penalty or not.

ויניחוהו - לבדו, ולא הניחו מקושש עמו, ששניהם היו בפרק אחד. ויודעים היו שהמקושש במיתה, שנאמר (שמות לא יד) מחלליה מות יומת אבל לא פורש להם באיזו מיתה, לכך נאמר (במדבר טו לד) כי לא פורש מה יעשה לו. אבל במקלל הוא אומר לפרוש להם, שלא היו יודעים אם חייב מיתה אם לאו:

1c Exodus 21:12, 18-19

¹²He who fatally strikes a man shall be put to death...
¹⁸When men quarrel and one strikes the other with stone or fist, and he does not die but has to take to his bed —
¹⁹if he then gets up and walks outdoors upon his staff, the assailant shall go unpunished, except that he must pay for his idleness and his cure.

(יב) מִכָּה אִישׁ וָמוֹת יוֹמֵת: (יח) וְכִי-יִרְיֹבּוּ אַנְשִׁים וְהִכָּה-אִישׁ אֶת-רֵעֵהוּ בְּאֶבֶן אוֹ בְּאֶגְרֹף וְלֹא יָמוּת וְנָפַל לְמִשְׁכָּב: (יט) אִם-יָקוּם וְהִתְהַלֵּךְ בַּחוּץ עַל-מִשְׁעָנָתוֹ וְנָקָה הַמִּכָּה רַק שְׂבִיתוֹ יִתֵּן וְרִפְאוֹ יִרְפֵּא:

continues on next page...

1d

Rashi on verse 19

“Upon his staff” --under his own health and strength.
“The assailant shall go unpunished” --Lest you think that this one, who has not killed, should be killed. Rather, this teaches that we imprison him until we see if the victim recovers. This is the significance of “when he gets up and walks upon his staff” --then the assailant is cleared, but until the victim gets up the assailant is not cleared.

על משענתו - על בוריו וכחו:
ונקה המכה - וכי תעלה על דעתך שיהרג
זה שלא הרג, אלא למדך כאן שחובשים
אותו, עד שנראה אם יתרפא זה, וכן
משמעו כשקם זה והולך על משענתו אז
נקה המכה, אבל עד שלא יקום זה לא
נקה המכה:

Discussion Questions

1. What similarities and differences do you see between the first two texts and the second two? Can you think of any parallels between these texts and contemporary forms of incarceration?
2. What principles for when, how, and why to incarcerate do you learn from these passages?

2

In the Rabbinic Period:

Mishnah Moed Katan 3:1 (codified c. 200 CE)

These are the ones who may shave during *chol hamoed* [the intermediate days of the holiday]: one who returns from the [distant] lands of the sea, and from captivity, and one who leaves prison...

ואלו מגלחין במועד הבא ממדינת
הים ומבית השביה והיוצא מבית
האסורין...

Jerusalem Talmud Moed Katan 81c (codified c. 400 CE)

...and regarding the one who leaves prison, we would have surmised that it means when he was imprisoned by non-Jews [who would forbid shaving altogether as a luxury], but if he was imprisoned by Jews [who would ordinarily allow him to shave], he may not [shave during the holiday; he should have shaved before his release]. [The Mishnah therefore] comes to teach that, on the contrary, [he may shave during the holiday] even if he was imprisoned by Jews, because it is not appropriate for a man to shave in prison.

והיוצא מבית האסורין הויגן...
סברין מימר כשהיה חבוש אצל
הגויים אבל אם היה חבוש אצל
ישראל לא. אתא מימר לך ואפילו
חבוש אצל ישראל אינו ערב לאדם
לגלח בבית האסורין

Mishnah Berurah 731 (early 20th century Russia/Poland)

“by Jews” --he would not shave [in prison] because he was sorrowful.

ביד ישראל - דכיון שהיה בצער
לא גילח:

Background

Going unshaven is a sign of mourning, and so it is customary to shave before a holiday. The act of shaving itself, however, is considered a form of work and thus prohibited on the festival days themselves (*yom tov*). On the intermediate days of Pesach and Sukkot, many forms of work are permitted but not all. The underlying logic here is that a man ought to shave before the holiday starts. If he didn't because he was lazy or neglectful, he bears the burden, but under extenuating circumstances outside his control, he may shave during *chol hamoed*.

What do you learn from these sources about incarceration, and about being released from incarceration?

3

In the Middle Ages: Riba”sh 484 (14th century Spain/North Africa)

The Torah says, “A handmill or an upper millstone shall not be taken in pawn, for that would be taking someone’s life in pawn.” (Deut. 24:6) So how shall he be seized bodily, such that he will have to beg for bread in the markets and streets? What Shimon the lender [in this case] claims--that the law of the land is the law--has no bearing here whatsoever. **For there is no law of the land, nor even a law of the king, that a person should be imprisoned over borrowing...**

The truth is, in my own city, the judges’ custom is to imprison a person who is liable in this manner [not repaying a loan], according to an act of the community. And they further enacted that even without being found guilty, any person can be held over a lawsuit, unless they pay collateral, and they call this a ruling of the court. I did not want to allow this act to stand, because it is not in accordance with our Torah’s law. And they said to me: this is in accordance with the “marketplace act” [a principle allowing new rules that make commerce smoother], because of swindlers, and so as not to bar the door in the face of borrowers. And I allowed their custom to stand.

אמרה תורה: לא יחבול רחים ורכב, כי נפש הוא חובל. ואיך ימשכננו בגופו, שצריך לבקש פרנסתו, בשוקים וברחובות? ומה שטען שמעון המלוה בזה: דדינא דמלכותא דינא; אינו ענין לזה כלל. שאין דינא דמלכותא, ואף לא דינא דמלכא: שיהיה אדם נתפס בעד הלואה...

והאמת, כי בעירנו זאת, נוהגין הדיינים לתפוש הלואה בגופו, כשנתחייב כן, והוא מצד תקנת הקהל. ועוד תקנו הקהל: שאף בלא חיוב, יתפש כל אדם, על כל תביעה שיתבעוהו; או יתן ערבים על התביעה, הנקרא: קיום ב”ד. ואני רציתי למחות בידם, על התקנה ההיא, באשר היא שלא כדין תורתנו. ואמרו לי: כי זו תקנת השוק, מפני הרמאין. ושלא לנעול דלת בפני לוויין. והנחתים על מנהגם.

Discussion Questions

1. Why does the Riba”sh oppose debt bondage?
2. Although he opposes debt bondage in principle, the Riba”sh ultimately allows his own city to continue their custom of imprisoning people who do not repay their loans. Why do you think he does so?
3. There has been increased attention over the past few years to instances of debt bondage in the U.S.—often people unable to pay an accumulation of fines and tickets who find themselves in jail or prison. How might the Riba”sh respond to this phenomenon? What is your response?

In the Modern State of Israel:

4a Meshulam Rath (*Kol Mevasser* 1:83) (1875-1962, Poland/Israel)

In general, I am hesitant about the agreement of the rabbis regarding imprisonment of five or three years as punishment for sin, for nothing like this is present in our *halacha*—rather, we have only temporary imprisonment in order to force compliance or guard/protect [the individual]...

ובדרך כלל לבי מהסס נגד חוק בהסכמת הרבנים למאסר קצוב של חמש או שלש שנים בתור עונש על חטא שעבר שלא נמצא כזה בחוקי ההלכה שלנו, רק מאסר זמני בתור אמצעי שלכפייה או שמירה.

4b Hayyim David Halevy *Aseh L'kha Rav* 3:48 (1924-1998; Sephardi Chief Rabbi of Tel Aviv, 1973-1998)

We learn from the words of the Riba"sh [responsum 236] that one who is arrested for a crime that is likely to result in capital punishment, or any bodily punishment [e.g., lashes], is not freed on bail until after his judgment is determined. From this we can learn that for all other crimes, for which the punishment is monetary, we let them go [on bail] until the determination of the sentence.

למדנו מדברי הריב"ש [סימן רל"ו] שהעצור בעבירה שעלול להתחייב עליה מיתה, או כל עונש גופני אחר, אין משחררים אותו בערבות עד לבירור דינו. ומכאן שבעד כל עבירה אחרת, שחייב עליה ממון משחררים אותו עד בירור הדין.

4c Rabbi Hayyim David Halevy, *Aseh L'kha Rav* 3:57

By all opinions, punishment is not a goal unto itself. Rather, it is intended to return the criminal to doing right or "so that they will listen and fear." What benefit is prison from this perspective?...

לדעת הכל אין העונש מטרה לעצמה, הוא בא להחזיר את הפושע למוטב, או "למען ישמעו וייראו" ומה תועלת המאסר מבחינות אלה?...

But we have brought this to learn the foundation of the holy Torah's perspective on human freedom and the social nature of the human being, created in the image of God, that no other person has the right to confine the human spirit, or his freedom of movement, or his freedom, which are holy of holies among all creations in the image of God, and in each generation, we must devise appropriate punishments for criminals that are consistent with the Torah's outlook and with the conditions of life.

אבל הבאנו את זה כדי ללמוד את יסודות השקפת תורת ה' על חירותו האישית ומעמדו החברתי של האדם הנברא בצלם אלקים, שאין זכות בידי הזולת לכלוא את רוח האדם, את חופש תנועותיו וחירותו, שהם קודש קדשים של כל הנברא בצלם, ושיש לתאם בכל דור ותקופה את עונשי פושעי החברה ברוח השקפת תורת ה' בהתאם לתנאיה חיים.

Background

These texts are all written by modern rabbinic authorities in the State of Israel, in response to the challenge of creating a new and just state. Although Israeli civil law was based on British common law, not Jewish law, rabbis writing around the formation of the state and in the decades following grappled often with the question of how Jewish civil law might play out in a modern state.

1. How do these modern writers characterize incarceration? How do these views compare with your own?
2. What might a criminal justice system based on the principles articulated in these texts look like?

INCARCERATION

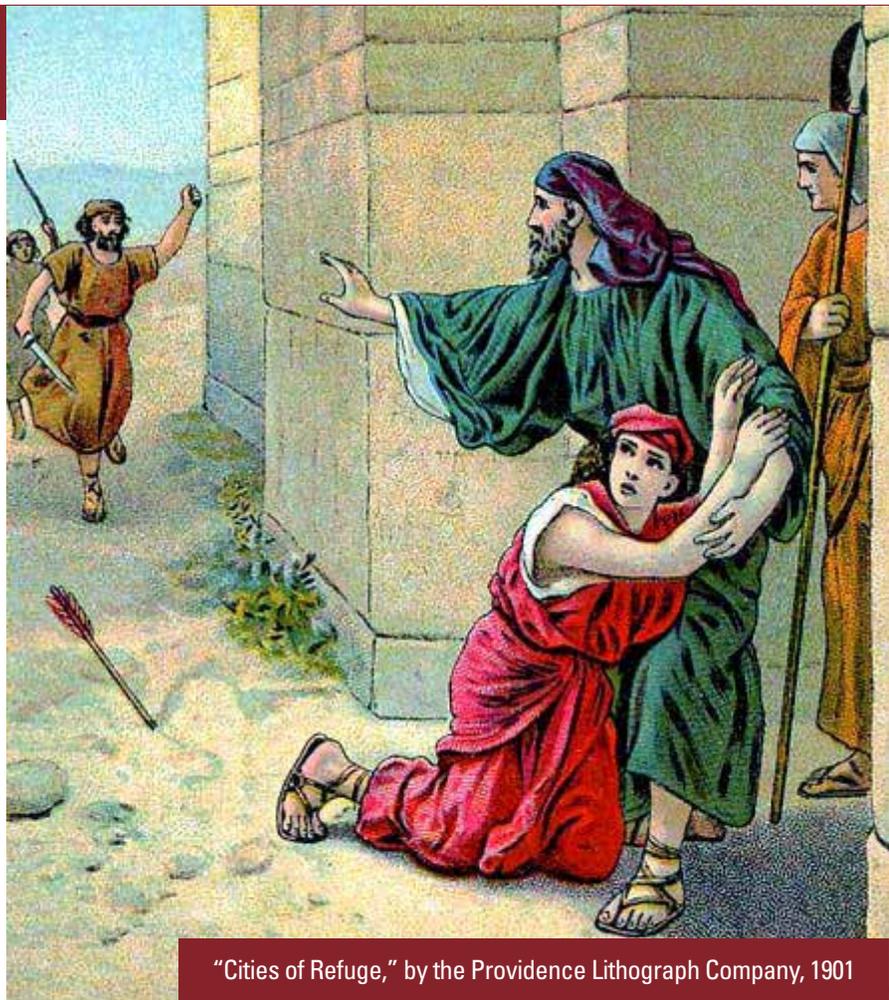
Text Study: Cities of Refuge

By Rabbi Nancy Wiener, D.Min., T’ruah board member

The Torah mandates the establishment of “cities of refuge” to which manslaughterers (those who kill unintentionally) may flee and settle. The narrative in Numbers (repeated in Deuteronomy 4 and 19) provides us with a spare but interesting description of these places, to be established after the Israelite wandering in the desert ends. This description laid the groundwork for subsequent generations of rabbis to reflect upon the nature of sites in which those who committed a serious crime would spend time. Through studying these texts, we can grapple with age-old issues related to criminal justice and communal responsibility that still have resonance for us today.

Questions to Consider Throughout

1. What are the characteristics of the cities of refuge? How do these evolve over time?
2. What obligations does the entire Israelite community have regarding cities of refuge and their inhabitants? What messages do these obligations send to those who live in the cities of refuge?
3. How might the cities of refuge inform our own thinking about how prisons are used, and what prisons look like?



“Cities of Refuge,” by the Providence Lithograph Company, 1901

1

Torah:

Numbers 35 (Translation: NJPS)

²Instruct the Israelite people to assign, out of the holdings apportioned to them, towns for the Levites to dwell in; you shall also assign to the Levites pasture land around their towns...⁶The towns that you assign to the Levites shall comprise the six cities of refuge that you are to designate for a manslayer to flee to, to which you shall add forty-two towns...

¹⁰Speak to the Israelite people and say to them: When you cross the Jordan into the land of Canaan, ¹¹you shall provide yourselves with places to serve you as cities of refuge to which a manslayer who has killed a person unintentionally may flee. ¹²The cities shall serve you as a refuge from the avenger, so that the manslayer may not die unless he has stood trial before the assembly.

¹³The towns that you thus assign shall be six cities of refuge in all. ¹⁴Three cities shall be designated beyond the Jordan, and the other three shall be designated in the land of Canaan: they shall serve as cities of refuge. ¹⁵These six cities shall serve the Israelites and the resident aliens among them for refuge, so that anyone who kills a person unintentionally may flee there.

¹⁶Anyone, however, who strikes another with an iron object so that death results is a murderer; the murderer must be put to death.

במדבר לה

(ב) צו אֶת־בְּנֵי יִשְׂרָאֵל וְנָתַנוּ לְלוֹיִם מִנַּחֲלַת אַחֲזָתָם עָרִים לְשִׁבְתָּ וּמִגְרָשׁ לְעָרִים סְבִיבֹתֵיהֶם תִּתְּנוּ לְלוֹיִם: ... (ו)
וְאֵת הָעָרִים אֲשֶׁר תִּתְּנוּ לְלוֹיִם אֵת שְׁש־עָרֵי הַמִּקְלָט אֲשֶׁר תִּתְּנוּ לְנֶס שְׂמֵהּ הָרֶצַח וְעֲלֵיהֶם תִּתְּנוּ אַרְבָּעִים וּשְׁתַּיִם עִיר...
וְהָעָרִים לְמִשְׁפָּט:

(י) דַּבֵּר אֶל־בְּנֵי יִשְׂרָאֵל וְאָמַרְתָּ אֲלֵהֶם כִּי אַתֶּם עֹבְרִים אֶת־הַיַּרְדֵּן אַרְצָה כְּנָעַן: (יא) וְהִקְרִיתֶם לָכֶם עָרִים עָרֵי מִקְלָט תִּהְיֶינָה לָכֶם וְנֶס שְׂמֵהּ רֶצַח מִכַּה־נֶפֶשׁ בְּשִׁגְגָה: (יב) וְהָיוּ לָכֶם הָעָרִים לְמִקְלָט מִגֹּאֵל וְלֹא יָמוּת הָרֶצַח עַד־עֲמֹדוֹ לִפְנֵי הָעֵדָה לְמִשְׁפָּט:

(יג) וְהָעָרִים אֲשֶׁר תִּתְּנוּ שְׁש־עָרֵי מִקְלָט תִּהְיֶינָה לָכֶם: (יד) אֵת שְׁלֹשׁ הָעָרִים תִּתְּנוּ מֵעֵבֶר לַיַּרְדֵּן וְאֵת שְׁלֹשׁ הָעָרִים תִּתְּנוּ בְּאֶרֶץ כְּנָעַן עָרֵי מִקְלָט תִּהְיֶינָה: (טו) לְבְנֵי יִשְׂרָאֵל וְלִגֵּר וְלַתּוֹשָׁב בְּתוֹכָם תִּהְיֶינָה שְׁש־הָעָרִים הָאֵלֶּה לְמִקְלָט לְנוֹס שְׂמֵהּ כָּל־מִכַּה־נֶפֶשׁ בְּשִׁגְגָה:

(טז) וְאִם־יִבְכְּלֵי בְרוֹזַל הִכְּהוּ וַיָּמוּת רֶצַח הוּא מוֹת יוֹמֵת הָרֶצַח:

Discussion Questions

1. Why do you think the cities of refuge are all located in the territories designated for the priests?
2. Whom are the cities of refuge designed to protect?

2

Mishnah (codified c. 200 CE)

Mishnah Makkot Chapter 2

משנה מכות ב

4 To where are [manslayers] banished? To the Cities of Refugee--three on the far side of the Jordan River and three in the land of Canaan, as it says, "Three cities shall be designated beyond the Jordan, and the other three shall be designated in the land of Canaan..." Until the three in the land of Israel are selected, the three on the far side of the Jordan are not in effect, as it says, "be six cities of refuge in all"--until all six are in effect as one.

ד. להיכן גולין לערי מקלט לשלש שבעבר הירדן ולשלש שבארץ כנען שנאמר (במדבר ל"ה) את שלש הערים תתנו מעבר לירדן ואת שלש הערים תתנו בארץ כנען וגו' עד שלא נבחרו שלש שבארץ ישראל לא היו שלש שבעבר הירדן קולטות שנאמר (שם / במדבר ל"ה) שש ערי מקלט תהיינה עד שיהיו ששתן קולטות כאחד:

5 There were paths leading from one to the other, as it says, "You shall prepare the way and divide into three" (Deut. 19:3). [The manslayer] would be accompanied by two students of the sages, so they would speak to the [blood-avenger] lest he kill [the manslayer] on the way. Rabbi Meir says he speaks on his own behalf, as it says, "This is the matter/word of the manslayer." (19:4)

ה. ומכוונות להן דרכים מזו לזו שנאמר (דברים י"ט) תכין לך הדרך ושלשת וגומר ומוסרין להן שני תלמידי חכמים שמא יהרגנו בדרך וידברו אליו ר' מאיר אומר אף הוא מדבר על ידי עצמו שנאמר (שם) וזה דבר הרוצח:

Discussion Question

What do you think is the impact of the second half of mishnah 4?

3

Talmud (codified c. 600 CE)

Talmud Makkot 10a

These cities--we do not make them either tiny hamlets or large metropolises but medium-sized cities. We only situate them in a place where there is water, and if there is no water, we bring water there. We only situate them in a place of markets.

We only situate them in a place that has workers. If the population of workers diminishes, we add to them. If the number of residents diminishes, we bring there priests, Levites, and Israelites.

We do not sell there weapons or hunting equipment, according to Rabbi Nehemia. The Sages permit this, but they agree that we do not set traps in them, nor spread out ropes in them, so that the blood avenger will not have reason to be there.

Rabbi Yitzchak asks: what is the scriptural basis for this? "He shall flee to one of these cities and live" (Deut. 4:42)--we do for him something/anything¹ so that he can live there. We have a teaching: A student who is banished--his rabbi is exiled with him, as it says, "And he shall live"--we do for him something/anything so that he can live there.

¹Ambiguous in original Aramaic.

Talmud Makkot 10a (cont'd)

Rabbi Simlai interpreted: why does the Torah say, "Then Moses separated out three cities on the far side of the Jordan, towards sunrise" (Deut. 4:41)? The Holy Blessed One said to Moses: Make the sun shine upon manslayers.

תלמוד מכות י עמ' א

ערים הללו, אין עושין אותן לא טירין קטנים ולא כרכין גדולים אלא עירות בינוניות; ואין מושיבין אותן אלא במקום מים, ואם אין שם מים - מביאין להם מים; ואין מושיבין אותן אלא במקום שווקים;

ואין מושיבין אותן אלא במקום אוכלוסין, נתמעטו אוכלוסיהן - מוסיפין עליהן, נתמעטו דיוריהן - מביאין להם כהנים ליום וישראלים;

ואין מוכרין בהן לא כלי זיין ולא כלי מצודה, דברי רבי נחמיה, וחכמים מתירין; ושזין, שאין פורסין בתוכן מצודות, ואין מפשילין לתוכן חבלים, כדי שלא תהא רגל גואל הדם מצויה שם.

א"ר יצחק: מאי קרא? ונס אל אחת מן הערים האלו וחי, עביד ליה מידי דתהוי ליה חיותא. תנא: תלמיד שגלה - מגלין רבו עמו, שנאמר: וחי, עביד ליה מידי דתהוי ליה חיותא.

תלמוד מכות י עמ' א

דרש רבי שמלאי, מאי דכתיב: או יבדיל משה שלש ערים בעבר הירדן מזרחה [שמש]? אמר לו הקב"ה למשה: הזרח שמש לרוצחים.

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Talmud Makkot 10b (cont'd)

תלמוד מכות י עמ' א-ב

“Paths leading” and so on--Rabbi Eliezer ben Yaakov says: at the crossroads was written “Refuge” [on signs], so that the manslayer would know [the way] and turn there.

ומכוונות להם דרכים וכו'. תניא, ר' אליעזר בן יעקב אומר: מקלט היה כתוב על פרשת דרכים, כדי שיכיר הרוצח ויפנה לשם.

Discussion Questions

1. Based on these texts, what are society’s goals for the manslayer who gets resettled in a city of refuge?
2. The Aramaic word *midi* can mean ‘something’ or ‘anything.’ How does its meaning in this text shape your understanding of society’s responsibility to the manslayer?



In modern Hebrew, *Miklat* (Refuge) means “bomb shelter.” Signs like this, indicating the direction to the nearest shelter, are common. In this photo, a graffiti artist has added directions to *Emet* (Truth) and *Ahavah* (Love). Photo by T’ruah.

4

Maimonides (12th century)

Maimonides' Laws of Manslayers, Chapter 8

Halacha 5

The courts must direct the roads to the Cities of Refuge and repair them and widen them. They must remove all obstacles and obstructions from them. They do not leave any mountain or valley or river [in their way]—rather, they build a bridge over them so as not to delay the one who is fleeing there, as it says (Deut. 19:3), “You shall prepare the way.” The width of a road to a City of Refuge shall not be less than 32 cubits, and “Refuge Refuge” shall be written at the crossroads so that manslaughterers may know [the way] and turn there.

Halacha 6

On the 15th of Adar each year, the court sends out messengers to repair the roads, and every pace that they find damage they repair. A court that is negligent in this matter is considered to have spilled blood.

רמב"ם הלכות רוצח פרק ח

הלכה ה

וחייבין בית דין לכוין הדרכים לערי מקלט ולתקן אותם ולהרחיבן ומסירין מהן כל מכשול וכל תקלה ואין מניחין בדרך לא תל ולא גיא ולא נהר אלא עושין עליו גשר כדי שלא לעכב את הבורח לשם שנ' +דברים י"ט ג' + תכין לך הדרך, ורוחב דרך ערי מקלט אין פחות משלשים ושתים אמות, ומקלט מקלט היה כתוב על פרשת דרכים כדי שיכירו הרצחנים ויפנו לשם.

הלכה ו

בחמשה עשר באדר בכל שנה בית דין מוציאים שלוחים לתקן הדרכים וכל מקום שמצאוהו שנתקלקל מתקנים אותו, ובית דין שנתרשלו בדבר זה מעלה עליהן הכתוב כאילו שפכו דמים.

Discussion Question

The 15th of Adar is the day after Purim. Why might Maimonides have selected this day?

Looking back at all these texts...

1. What do the cities of refuge teach us about the relationship between incarcerated people and the rest of society?
2. How does this view of prisons differ from our modern, American view?
3. The cities of refuge only protected manslaughterers—murderers were subject to capital punishment. The rabbis then went on to make capital punishment nearly impossible to carry out. Why do you think the Torah makes this distinction? What does this distinction suggest to you about how different crimes should be treated today?

INCARCERATION

Holding a Vision of Freedom

By Rabbi Ari Lev Fornari

One of the hardest things about working as a prison chaplain is leaving. Each week, I exit the series of controlled locked doors and reload the contents of my locker back into my pockets - cell phone, keys, wallet, water bottle, and usually random paper with scribbled to-do lists. I walk out of the jail and get into my car (or onto my bike) and re-enter the free world, leaving behind the incarcerated men whom I serve.

My role as a prison chaplain is to be a non-judgmental presence who believes in each of their capacity to make *teshuvah*, to return to their lives, to be free and whole. What I have learned is that this is most possible when I bring a big vision of what freedom means.

I recently received a letter from Mordechai, one of my students in jail. He is an older, cisgender⁴⁹² Jewish man with an Israeli accent, who is currently completing an eight year sentence.

Mordechai wrote:

During my stay in county jails and state prisons, I developed a treatment program based on the quote: "Life is not finding myself. Life is about creating myself." The idea that I lost my freedom is a story; it limits and prevents me from taking effective action. The fact is that I am in prison, and facing facts is always empowering. It is here in the wilderness, in the desert areas of my life, separated from the Tree of Life (my loved ones), that God commanded me to build a sanctuary in my heart, where that God might dwell in it, and I did it. This was the beginning of my transformation.

I wrote him back: "Mordechai, the idea that you lost your freedom *is* your story, but it is not just *your* story. It is *our* story. It is one of the foundational stories of the Jewish people."

The Exodus story gives us the radical notion that oppression can end. Liberation is possible.



Detail from "P.I.C.T.U.R.E.S PRISON INDUSTRIAL COMPLEX: TYRANNY UNDERMINING RIGHTS, EDUCATION, AND SOCIETY," 2014. www.Groundswell.nyc. Acrylic on wall, 18 x 80 ft, Brooklyn, NY. By Esteban del Valle, Jose de Jesus Rodriguez, and 16 youth artists.

Michael Walzer, in his book *Exodus and Revolution*, argues that the Exodus story has served as a "paradigm of revolutionary thought" around the world, from the American Revolution to Latin America to the African-American freedom struggle.

Exodus is not only a political narrative but a central spiritual paradigm. Rabbi Nachman of Braslav said: "The Exodus from *Mitzrayim* occurs in every human being, in every era, in every year and even on everyday." Mordechai's letter shows how the two, the political and

the personal, are so deeply intertwined in the symbolism of leaving Egypt.

This helped crystallize an insight for me. I have never been incarcerated, but very early in my first week-long meditation retreat, I had this visceral sense that these retreats must be what prison feels like. I have suffered greatly within the confines of a silent retreat, where there is no escape from the realities of my mind and the present moment. And, in those confined moments, I have felt imprisoned and felt the possibility of liberation from the chaos and obsessions of the mind.

⁴⁹² Cisgender describes people whose experiences of their own gender identity agree with the sex they were assigned at birth.

Now, I know, that a voluntary meditation retreat is certainly not prison—but I have witnessed this same truth in the men I serve. I have felt, in a room full of incarcerated men, the pulse of liberation permeate the air as we discuss goals for real self-transformation. I have facilitated name change rituals for former gang leaders as part of their *teshuvah* processes [see Rambam's *Hilchot Teshuvah* 2:4]. I have led Passover Seders where we discuss what freedom might truly mean for them, when they cannot follow me out the controlled, locked door at the end of the day.

I have been teaching Jewish spirituality in prisons nearly every week for the past two years. I often teach a series of classes based on Rabbi Arthur Green's book *Judaism's 10 Best Ideas*. The first three times I taught the book, though, I skipped the first chapter, entitled, "Simchah: Joy as a Religious Precept." I could not muster the courage to talk about joy in prison. It seemed like rubbing salt in the wounds of men longing to see the faces of their young children, literally starved for joy.

In the fall of 2015, I started working at a new facility. The first program that I ran was a Chanukah party. Mordechai—the same fellow who wrote me the letter above—walks in with a handful of other rather beefy older men who had likely never been to a Chanukah party before. I am playing some cheesy songs on an old boombox. The jail cook made some rather decent latkes and bimuelos [fried dough balls, a Sephardi Chanukah treat], and there is a banner that says Happy Chanukah hanging on the wall. We begin by lighting candles and invoking the presence of loved ones, and then we proceed to play the most competitive game of dreidel I have ever been part of. When the game ended, there were a few minutes left and Mordechai looks at me and says, can we dance the *hora*?

I figured, who am I to deny him a hora!?

Mordechai broke out into song, and before we knew it we were all singing Oseh Shalom at the top of our lungs and

swinging each other. The room got sweaty, round and round, in and out, louder and louder. These men, who moments ago would not even share half a chocolate coin with one another, were hugging, and teary - and so was I.

It was the best Chanukah party I had ever been to. And in that moment I understood the words of Khalil Gibran:

A woman said, "Speak to us of Joy and Sorrow."

And he answered:

Your joy is your sorrow unmasked.

And the selfsame well from which your laughter rises was oftentimes filled with your tears.

And how else can it be?

The deeper that sorrow carves into your being, the more joy you can contain.

The next time I saw them, all the men told me that party stayed with them all week. For the first time, I had the courage to teach the chapter about joy. I finally understood that joy and suffering are inseparable parts of a spiritual path—the path to freedom.

The Exodus narrative leads us to experience an everlasting and pervasive sense of possibility. This is both the beginning and the purpose of our individual and collective transformation. This is Jewish Liberation Theology.

On a meditation retreat, each sit is dedicated to the liberation of all beings. What I might, in my own language, call our collective liberation. It is the knowing in our bones that our freedom is bound up with the freedom of every other person on this planet. When I walk into a jail or prison, my goal is to support the people I serve on their own path to liberation. And when I step back out, my goal is to help liberate all of us by ending the system of mass incarceration that keeps all of us—incarcerated and incarcerators—in chains.

May all beings be free.

INCARCERATION

On Joseph and Solitary Confinement

By Rabbi Rachel Barenblat

When Joseph was jailed, wrongly accused
of seducing his master's wife, what did he feel?

Did he remember his first stint in solitary,
the pit where his brothers threw him –

empty of water but crawling with scorpions,
empty of Torah but reeking with resentment?

Each time he prepared to start over
life cast him down someplace worse.

But he knew all along that God was with him
and that God meant everything for good.

And those imprisoned today – in what
can they trust? Not in our nation's justice

when black men receive longer sentences
than white though their crime is the same;

not in police who choose to stop and frisk
dark skin though addiction knows no color.

Compassionate One, Judge of Truth: rouse us
from slumber in which we let injustice pass.

Wake us to the nightmare of our prison system.
Goad us to create change. For the sake of children

who learn that no one cares how violent
their streets, how broken their lives;

for the sake of our own souls, damaged
every time we look away.

INCARCERATION

Text Study: Jonah and Solitary Confinement

Facilitator Goals

1. Increase participants' awareness of solitary confinement as a human rights issue.
2. Build empathy for people held in solitary confinement.
3. Use lessons from solitary confinement as an exegetical tool for better understanding Jonah's anger in chapter 4.

Background

An estimated 80,000 -100,000 people are held in long-term solitary confinement in the United States. Solitary (known by a variety of terms, including SHU, for secure or segregated housing unit) is not a punishment handed down by a court; rather, it is an administrative status ordered by prison authorities, often in response to a violation of prison rules. Despite the widespread perception that solitary is reserved for the most violent prisoners, the majority of those placed in solitary have committed non-violent offenses, such as refusing to return a cafeteria tray, flooding their cells with sink water, or even attempting suicide. Some land in solitary after being accused of gang affiliation. Solitary is sometimes used to protect prisoners vulnerable to attack—this includes juveniles sentenced to an adult facility, people with non-conventional gender expression, or even Jews. Prisoners in solitary generally remain alone in their cells for 23 hours a day, with one hour of exercise—also alone. They do not have access to many benefits that other prisoners enjoy, including educational programs, opportunities to work, reasonable mental health care, or contact visits with family, and are permitted very few phone calls.

T'ruah's work on solitary confinement grew out of our decade-long campaign against torture; mental health professionals commonly view solitary as a form of mental torture. We also recognize that solitary confinement is but one aspect of the much larger issue of mass incarceration, a system that both violates the human rights of many individuals, and also has severe moral, social, economic, and safety implications for our entire society.

For more information, visit <http://www.truah.org/incarceration>

Based in part on Margo Schlanger's article "In the Story of Jonah, An Urgent Lesson About the Dangers of Solitary Confinement," *Tablet*, 9/11/2013

Text Study: Jonah and Solitary Confinement

1

Close your eyes. Imagine that you are Jonah in the belly of the fish.

What do you see? What do you smell? What do you feel? What thoughts come into your mind? What are your hopes and fears?

2

Review the second chapter of Jonah, his prayer to God from the belly of the whale. What words or images jump out at you? How do these compare to your own meditation on life inside the fish? How does this prayer show Jonah to be feeling?

3

The Zohar, the great Kabbalistic midrash, expands on Jonah's experience in the fish's belly as follows:

...Certainly this fish was appointed for Jonah, to protect him from the other fish of the sea, to be hidden within in. When he entered it, Jonah saw an open space in its belly like a great hall, and the fish's two eyes shone like the sun; a precious stone was also in the belly to give him light, and he saw all that was in the sea and its depths.

You may challenge and say, if so, why does the text say, "I called out from my narrow place" (Jonah 2:3)? [When he said that] he did not have all this space. Rather, when the fish showed him all that was in the sea and its depths, it certainly died, for it could not tolerate [Jonah for] three days. As Rabbi Elazar taught: when Jonah saw all this expanse he was happy. The Holy Blessed One said: what more do you require—for this did I put you here?!

What did [God] do? He killed the fish, and all the rest of the sea's fish surrounded it, this one biting from this side and this one biting from that. When Jonah saw he was in this narrow strait, immediately, "Jonah prayed to the ETERNAL." (Zohar 2:48a, translation by T'ruah)

ודאי ההוא דג הוא הוה מנה ליונה, לנטרא ליה מן שאר נוני ימא ויהוי גניז בגויה. וכיון דאעליה בגויה, חמא יונה במעוי פותיא דאתר ימא (נ"א פותיא דאתר דמעוי) כמו היכלא רברבא, ותרין עינוי דההוא נונא דנהרין כשמשא, ואבן טבא הוה במעוי דנהיר ליה, והוה חמי כל מה די בימא ובתהומוי.

ואי תימא, אי הכי מאי דכתיב, (יונה ב ג) קראתי מצרה לי, הא לא אתחזי דכל האי רווחא הוה ליה, אלא ודאי כיון דאחמי ליה ההוא נונא כל מה די בימא ובתהומוי מית, דלא יכיל תלת יומין למסבל, כדיון עקת ליה ליונה, דאמר רבי אלעזר, כיון דחמא יונה כל ההוא רווחא הוה חדי, אמר קודשא בריך הוא ומה תבעי יתיר, להא אעילנא לך הכא,

מה עבד קטל לההוא נונא ומית, וכל שאר נוני ימא הוו סחרי סחרניה דההוא נונא, דא נשיך ליה מהאי גיסא ודא נשיך ליה מהאי גיסא, כדיון חמא יונה גרמוי בעקו, מיד ויתפלל יונה אל ה'.

Discussion Questions

1. The Zohar wonders whether the fish was wide "like a great hall" or very narrow, and also imagines Jonah looking into the vast depths of the sea. In what ways does the experience of being in a wide space differ from the experience of being in a narrow space? How do you think Jonah might have experienced the contrast between narrowness and great depth?
2. Think of a time when you felt entirely alone. What was the situation? Why did you feel so alone? In what ways was your experience and your reaction similar to or different from that of Jonah?
3. What does Jonah experience after God kills the big fish? What feelings does this description elicit in you?

4

Now compare the Zohar's accounts to the following testimony⁴⁹³ from Cesar Francisco Villa, who was held in California's Pelican Bay State Prison Security Housing Unit (SHU, aka solitary) for 11 years:

There's a definite split in personality when good turns to evil. The darkness that looms above is thick, heavy, and suffocating. A snap so sharp, the echo is deafening. A sound so loud you expect to find blood leaking from your ears at the bleakest moment.

The waking is the most traumatic. From the moment your bare feet graze the rugged stone floor, your face begins to sag, knuckles tighten—flashing pale in the pitch of early morning. The slightest slip in a quiet dawn can set a SHU personality into a tailspin: If the sink water is not warm enough, the toilet flushes too loud, the drop of a soap dish, a cup. . . . In an instant you bare teeth, shake with rage. Your heart hammers against ribs, lodges in your throat. You are capable of killing anything at this moment. Flash attack; a beating, any violent outburst that will release rage.

This would be the time it's best to hold rigid. Take a deep breath. Try to convince yourself there's an ounce of good left in you. This is not a portrait you wish anyone to see. And then a gull screeches passing outside—another tailspin and you're checking your ears for blood.

And this is a good day...

The truth is we're all broken in our own way. We've been undone, unwound. The inside of our plastic skulls—raked and routed. A composition of cracks and fissures where nothing will ever be the same again.

Discussion Questions

1. What words, phrases or images jump out at you from this testimony? What surprises, frightens, or confuses you?
2. How does Cesar's description of solitary confinement compare to the Zohar's description of Jonah's experience? What is similar? What is different?
3. Look back at the fourth chapter of Jonah, where Jonah seems to have two odd temper tantrums—one after God says Nineveh will be spared and one after the gourd that has been providing him shade withers and dies. In what ways does Jonah's response parallel or differ from Cesar's description of his own emotional response to solitary?
4. What effect does solitary confinement seem to have on Jonah? How might this experience have influenced his later actions?
5. In the late eighteenth century, solitary confinement was created as a means of inspiring people to reflect and repent. Does this punishment seem to have this effect on Jonah? On Cesar?

⁴⁹³ Quoted in Schlanger, originally published by Solitary Watch:

<http://solitarywatch.com/2013/03/16/voices-from-solitary-where-cold-quiet-and-emptiness-come-together/#more-8120>

5

Contemplate this rabbinic saying from midrash *Vayikra Rabbah* 7:2, a medieval rabbinic commentary on Leviticus:

Rabbi Alexandri said: An ordinary person who uses broken vessels is ashamed, but all of the Holy Blessed One's vessels are broken, as it says in Psalm (34:?), "God is close to the broken-hearted."

א"ר אלכסנדרי ההדיוט הזה אם משמש הוא בכלים שבורים גנאי הוא לו אבל הקב"ה כלי תשמישו שבורים שנאמר (שם /תהלים/ לד) קרוב ה' לנשברי לב.

Discussion Questions

1. How did God demonstrate being close to Jonah when Jonah was broken-hearted?
2. How do you imagine God might be close to Cesar when he feels broken?
3. Does God feel close to you when you feel broken? How or how not?

6

Our tradition teaches us to use the prayers of our righteous ancestors as models for our own prayers. We close our study together by praying with Jonah, caught in the fish's belly, and with all those caught up unjustly in our nation's prison system:

From a narrow tightness we call to the ETERNAL, and God answers; from the belly of death we cry out and You hear our voice.

Our brothers and sisters have been cast into the depths of solitary confinement; so many waves and breakers have buffeted and drowned them.

We, too, feel their pain, and the impact this injustice has on our entire society.

They are cast out from the public eye, but we will not let them be forgotten.

Though they go down to the deepest pit, the ETERNAL our God will help us raise them up, help us cast down a system that does not serve justice.

When our souls grow faint at the awful magnitude of the task before us, we remember God; our prayers come into God's innermost sanctuary, and they are beloved,

For salvation belongs to God.

INCARCERATION

What Jonah Teaches Us About Repentance

By Rabbi Avi Killip

Jonah wants strict justice. The instinct is understandable, perhaps even universal. He sees people who have sinned and wants them to pay for their crimes. God, however, has a radically different idea of how to address those who transgress: *teshuvah*, the insistence that everyone can change, even the worst sinners.

This debate between God and Jonah continues to play out today in our American prison system. The punitive system touts a Jonah-like demand for a type of justice in which crimes are punished and sinners suffer. In the past 20 years, the U.S. prison system has sought ever-stricter punishments through increases in mandatory minimum sentencing.⁴⁹⁴ These increases have led to a system of greater incarceration in overcrowded prisons. Overcrowding has led to fewer resources per prisoner and more violence within prisons — including the increased use of solitary confinement as punishment. In many states, those who have been imprisoned for a felony, for any amount of time, lose (even once they've been released from prison) the right to government subsidies, including access to public housing, food stamps, and student aid, as well as the right to vote.⁴⁹⁵

We often feel that prisoners earned their fates. We can tell ourselves that many of the people in prison are dangerous criminals who have committed horrendous crimes. Jonah believes that people should get what they deserve, and sometimes we do, too.

God, however, teaches Jonah about *teshuvah* and the opportunity to begin the process of change from any starting point. In the words of the Rambam, “Nothing can stand in the way of *teshuvah*.” (*Mishneh Torah, Hilchot Teshuvah* 3:14) God is open to *teshuvah* from any person, at any time, for any sin. No matter how hard it might be for us to trust that a criminal can change, the book of Jonah reminds us of God’s patience, forgiveness, and healing. Each year, we devote an entire season to reminding ourselves that *teshuvah* is real, possible, and necessary for ourselves. Are we willing to protect this right for others?

Many of us are unaware of the current state of the American prison system. Like Jonah, we refuse to “go to Ninveh.” Like Jonah, we must hear God’s call, rise to the task, and take responsibility to ensure that all people, including prisoners, have the opportunity to change.

Reprinted with permission from Sh'ma (www.shma.com), September 2012—an issue focusing on the book of Yonah.

494 See “Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History” by Heather Ann Thompson, *The Journal of American History* 97 (Dec. 2010).

495 See *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* by Michelle Alexander for details about these hardships.

TESHUVAH: RETURN

The Metzora as a Model for Welcoming Returning Citizens

“Once leprosy had gone, and the figure of the leper was no more than a distant memory, these structures [the medieval European leprosaria or lazar-houses] still remained. The game of exclusion would be played again, often in these same places, in an oddly similar fashion two or three centuries later. The role of the leper was to be played by the poor and by the vagrant, by prisoners and by the ‘alienated’ [i.e., the insane], and the sort of salvation at stake for both parties in this game of exclusion is the matter of this study.”

– Michel Foucault, *History of Madness* (emphasis added)

Joe Loya served seven years in prison for bank robbery. Reflecting on an encounter with a cashier at a 7-Eleven the day of his release, he writes,

Instinctively, I feared that the sludge of my life would besmirch this boy. (Like all the self-despising men I knew in prison, I willingly chose to play the unclean leper to his spotless vulnerability.)

– Loya, Joe. *The Man Who Outgrew His Prison Cell: Confessions of a Bank Robber*. 2004, p. 345



Photo by Dan Vickers, Creative Commons License

The skin condition that the Torah calls *tzara'at* is not the medical condition of leprosy, though as Rabbi Nancy Fuchs Kreimer writes, this old-fashioned translation “vividly communicates the text’s fear of the disease and of the stigmatized individual who is stricken with it.”⁴⁹⁶ A person with *tzara'at* is called a *metzora* and is sent outside the camp for a period of recovery. As Foucault notes, today’s incarcerated person is the descendant of yesterday’s leper; Rabbi Fuchs Kreimer goes on to observe, “In America today, one in one hundred people are living ‘outside the camp,’ behind bars, in city, state and federal prisons.” When released from prison, these returning citizens are hampered by stigma, difficulty finding jobs or housing, disruptions in medical and mental health care, and a host of other challenges. Leviticus 14 describes the lengthy process by which a *metzora* is purified and returned to normal life in the camp. The Torah’s process can teach us important lessons about how our society can reintegrate returning citizens and help them succeed in rebuilding their lives:

⁴⁹⁶ <http://truah.org/resources-91356/divrei-torah/561-reintegration.html>

Leviticus Chapter 14

(Translation: NJPS)

Verse 3: The priest—the upper echelon of society, the keeper of sanctity, whose whole job is to remain holy so that he can serve God—is the one who goes outside the camp to examine and care for the *metzora*. Rabbi Jonathan Wittenberg writes, “[The priest] is at once the guardian of the many against infection by the few and the healer who reintegrates people into society.” Rather than maintaining the *metzora*’s stigma, this shows how important his or her reintegration is to the society. Why is it that Barack Obama was the first sitting President to make an official visit to a prison?

Verse 3-4: Terminology. After verse 3, the term “*metzora*,” here translated leper, does not appear again. Instead, the person is referred to as the “*mittaher*,” the “one who is to be cleansed.” Continuing to call people ex-offenders emphasizes their past, rather than their future, and transgresses the Talmud’s dictum, “If someone has repented, do not say to him, ‘Remember your past misdeeds.’” (Bava Metzia 58b)

Verses 4-7: The two birds. Rabbi Samson Rafael Hirsch, the 19th century German father of Modern Orthodoxy, observes that the two identical birds—one to be sacrificed, one to be set free—echoes the two goats of the Yom Kippur ritual. Further, because birds are not subject to human authority, he also links them to the calf of the *eglah arufah* ritual (Deut. 21:1-9), which must have never been used to plow a field or carry a burden. The scapegoat ritual atones for the sins of the entire community; the *eglah arufah* is performed when a person is found murdered outside a town and there is no suspect, as an atonement for any oversight or negligence on the part of the authorities that may have endangered the victim. In other words, how do we broaden the focus on a returning citizen to include not only his or her personal *teshuvah*, but also the question of how society might be responsible for creating the conditions for the crime?

¹The Lord spoke to Moses, saying: ²This shall be the ritual for a leper at the time that he is to be cleansed.

When it has been reported to the priest, ³the priest shall go outside the camp. If the priest sees that the leper has been healed of his scaly affection, ⁴the priest shall order two live clean birds, cedar wood, crimson stuff, and hyssop to be brought for him who is to be cleansed. ⁵The priest shall order one of the birds slaughtered over fresh water in an earthen vessel; ⁶and he shall take the live bird, along with the cedar wood, the crimson stuff, and the hyssop, and dip them together with the live bird in the blood of the bird that was slaughtered over the fresh water. ⁷He shall then sprinkle it seven times on him who is to be cleansed of the eruption and cleanse him; and he shall set the live bird free in the open country. ⁸The one to be cleansed shall wash his clothes, shave off all his hair, and bathe in water; then he shall be clean. After that he may enter the camp, but he must remain outside his tent seven days. ⁹On the seventh day he shall shave off all his hair — of head, beard, and eyebrows. When he has shaved off all his hair, he shall wash his clothes and bathe his body in water; then he shall be clean. ¹⁰On the eighth day he shall take two male lambs without blemish, one ewe lamb in its first year without blemish, three-tenths of a measure of choice flour with oil mixed in for a meal offering, and one log of oil.

Verses 8-10: Phased reentry. The *mittaher* is not abruptly returned to normal life but spends a week in an interim state, living in the camp but outside his tent, before completing his reentry. What can society do to help make reentry a guided, staged process rather than an abrupt, unsupported transition?

Verse 9: Shaving the beard is usually forbidden (see Lev. 19:27), being a key marker of Israelite identity. Being incarcerated challenges our basic ideas about who we are—as does release after a long incarceration. How do we navigate these fundamental changes? What parts of our identity remain rock-solid through these traumatic transitions and what parts are shed or transformed?

11These shall be presented before the Lord, with the man to be cleansed, at the entrance of the Tent of Meeting, by the priest who performs the cleansing.

12The priest shall take one of the male lambs and offer it with the log of oil as a guilt offering, and he shall elevate them as an elevation offering before the Lord. 13The lamb shall be slaughtered at the spot in the sacred area where the sin offering and the burnt offering are slaughtered. For the guilt offering, like the sin offering, goes to the priest; it is most holy. 14The priest shall take some of the blood of the guilt offering, and the priest shall put it on the ridge of the right ear of him who is being cleansed, and on the thumb of his right hand, and on the big toe of his right foot. 15The priest shall then take some of the log of oil and pour it into the palm of his own left hand. 16And the priest shall dip his right finger in the oil that is in the palm of his left hand and sprinkle some of the oil with his finger seven times before the Lord. 17Some of the oil left in his palm shall be put by the priest on the ridge of the right ear of the one being cleansed, on the thumb of his right hand, and on the big toe of his right foot — over the blood of the guilt offering. 18The rest of the oil in his palm the priest shall put on the head of the one being cleansed. Thus the priest shall make expiation for him before the Lord. 19The priest shall then offer the sin offering and make expiation for the one being cleansed of his uncleanness. Last, the burnt

Verses 14-18: Sanctification rituals. Dabbing the blood on ear, thumb, and big toe mirrors the ritual by which Aaron and his sons were consecrated as priests (Lev. 7:24). Pouring oil on the head was similarly part of that ritual (Lev. 7:12) and of the crowning of Israelite kings. In the course of purification, the *mittaher* is treated like priestly royalty. How can we strive to elevate the returning citizen to her proper place in society?

Verse 21: “If, however, he is poor”—a different set of sacrifices is allowed. Poor people leaving prison face much steeper challenges than wealthier people, because they are denied many public benefits. How can social services be tailored to help the individual, rather than a one-size-fits-all approach?

offering shall be slaughtered,²⁰and the priest shall offer the burnt offering and the meal offering on the altar, and the priest shall make expiation for him. Then he shall be clean. 21If, however, he is poor and his means are insufficient, he shall take one male lamb for a guilt offering, to be elevated in expiation for him, one-tenth of a measure of choice flour with oil mixed in for a meal offering, and a log of oil; 22and two turtledoves or two pigeons, depending on his means, the one to be the sin offering and the other the burnt offering... [The Torah repeats almost verbatim the sacrificial instructions of verses 10-20.]



“Cleansing Leprosy,” from the Bowyer Bible (1795), photo by Phillip De Vere, Creative Commons License

TESHUVAH: RETURN

Using *Birkat HaGomel* as a Ritual of Reentry and Reconciliation

By Alison J. Link, PhD and Morris Treibitz

AJL: When I met Morris in 2004, he had been incarcerated for almost ten years. I was working as the de facto Jewish chaplain, in addition to my position as Director of Leisure Education at the correctional facility. During the next two years, I planted the seed for him to think about what it might mean for him to recite *Birkat HaGomel* upon his release.

The morning in 2006 when he was released, his rabbi asked him if he wanted to recite *Birkat HaGomel* on that coming Thursday, but he was not yet ready. He wanted to be thoughtful about it.

MT: I knew about a *brachah* for escaping danger, but I didn't know it was called *HaGomel* or that it included being released from prison. My initial thought about it was that of course I would say it when I was released, but I didn't think it would be any different than saying *Birkat HaMazon* after a meal. As I got closer to my release I realized that I could make it more meaningful...

Over a year later, I received a phone message from Morris stating that he received the parole transfer he had sought—from New Jersey to Brooklyn—and had been there, with his sister's family, a couple of weeks. He had decided he was ready for *Birkat HaGomel*. He felt "ripe" and was calling to invite me to come to Shabbat morning services and for Shabbat lunch with his family.

I had decided not to do it until I felt that I was living a life that Hashem had helped me survive for and it wasn't until then... that I felt ready. To me it represents a chance to start over a new

beginning. It proves Hashem's unconditional love...planning for *HaGomel* for me didn't take much work. It was preparing for what it represented to me that had the value....

It took about 6 months to get [my parole transfer] approved, but until then I was using [heroin] and didn't fit in anywhere as far

as I was concerned. I felt distant from my family, my community, my religion and Hashem, and more than anything, I felt distant from myself and the person I wanted to be. All this combined with my reluctance to be seen by some who knew my history was what most likely caused my initial hesitation to recite *HaGomel* in shul.

Ms. Link, I need you to know that I stayed there with [my sister's family] for a couple of months before I moved out into my own apartment. I am 39 years old, and I had never in my life felt so

complete, content and at ease...I never used while I was living in that house. It was within the first month of living there when I called you and asked you to come. It felt like the right time. Only family members there would know me at the shul and I felt that I was beginning to come to terms with many of the issues that prevented me from the ritual earlier.

Even though the ritual was public, it was still a private event. Only my family knew why I was being called up to the Torah because people recite *HaGomel* for many reasons.

What a day it was Ms. Link. It was beautiful... I remember feeling nervous when being called up. But proud at the same time...I was wearing a new linen suit. I felt sharp. I was excited.



Morris Treibitz, photo courtesy of his family.

I don't remember feeling any guilt or shame or even pain. It left me with a great memory of a day that I wouldn't trade for anything.

Over Shabbat lunch, back at the house, I asked each member of the family to share how they felt about Morris returning from prison and any additional words they might want to share with Morris and each other. I remember Morris's young nephew shared that when they picked him up, "The gate opened and Morris had a bag over his shoulder...it was like he was leaving Egypt." Morris agreed, and said, "It felt like I was leaving Egypt." The family requested support on how to move forward and I facilitated thoughts around general next steps. Even though, I was there primarily to support Morris' reentry and the *teshuvah* between Morris and his family members, the conversation was spiritually rich for me on a personal level. I left forever transformed.

I have not thought about that Shabbat lunch in so many years. It was perfect. I was so happy. My family was so happy. I remember that you maintained such control of the conversation that I felt as though we were honored guests at your table instead of you at ours. Nobody was excluded, from my brother-in-law, down to my niece. From that day until the day I moved out of that house and into my own place I guess you can say I was on a "pink cloud". And just like that, the cloud disappeared and I found myself in a tornado that picked me up and dropped me into a pool of quicksand. I think about how things were that day with my sisters and my nephews and niece. I think of how it is today between us and my heart breaks.

When engaging people who are incarcerated around the idea of *Birkat HaGomel*, I would suggest that this ritual can act as both a process as well as a way to "mark time". Reciting this *brachah* is not just about an isolated event. Even before

release, one can reflect on *Birkat HaGomel* in relation to the other traditional categories of people who say it, either literally or metaphorically: "one who has crossed the sea, traversed the wilderness, recovered from illness, a prisoner who has been set free (or someone who has survived any other dangerous situation)..." (*Brachot* 54b) It starts with simply knowing that the *brachah* exists and contemplating its meaning. One could recite it daily-- for just getting through each day, taking one day at a time. One might mark time upon one's release(s), in stages of prison or parole, or even related to their recovery from drug use. Ultimately, the richness and depth of this ritual is in the planning and the follow-through, and in the reminders of the ongoing role and potential of *teshuvah*. It can function as an opportunity for reflection, for both the individual and the family/community, to express gratitude and to deepen the process and experience of *teshuvah* on multiple levels over time.

Helping Morris learn about, study and understand *Birkat HaGomel* while supporting his own interpretation allowed for him to prepare for the right time and make the expanded ritual conversation relevant to his own desires, circumstance and experience. I also recognize the trust, respect, support, *chesed* and *gevurah* needed in my relationship with Morris that allowed for the fullness of the experience.

I would also let [other people who are incarcerated and contemplating Birkat HaGomel] know that it can mean anything to them that they want. It could be just between them and Hashem or it can be between them and their family or even the community. The choice is theirs... I would also go so far to suggest to family members or witnesses to keep in mind any blessings they have for their loved one and any thanks they have for Hashem for allowing their loved one to survive.

Morris is currently incarcerated again, and is back in the process of making it through each day, recovering from a life-threatening coma, thinking about a meaningful way to mark time and how *Birkat HaGomel* fits in. Morris also shared with me that he has discussed *Birkat HaGomel* with other Jews he has met in prison. One of these men, an Ashkenazi Chasid from Williamsburg, was not as interested in expanding the ritual around this *brachab*—though he was going to say it—but was more interested in saying the “prayer that Sephardim say for Shabbat, *Hodu La Hashem*”⁴⁹⁷ upon his release. One of the others recites *Tefilat Haderekb*, the traveler’s prayer, each day.

*You have my full permission and consent to use any or all of this letter as you want to or see fit... I have been hiding behind a mask for so long... maybe if I start exposing myself then I will learn to know who I am as well. I do know this, if nothing else: I am Morris Treibetz, son of D. and M. and brother to E. and G*⁴⁹⁸.
And I want to learn to be all those things the way I was meant to.

Thank you, Morris for your candor and openness. May the one who has bestowed upon you enduring kindness, bestow upon you kindness forever.



Alison J. Link, PhD has been working with people who are incarcerated and formerly incarcerated since starting her doctoral work in social welfare, which examined the leisure functioning and rehabilitation of people returning to society from prison. She founded The Leisure Link (www.howsyourleisurelife.com) and is trained as a Spiritual Director through the Yedidya Center. Alison lives in Morrisville, Vermont with her husband David (Rabbi of the Jewish Community of Greater Stowe) and their two young children.

⁴⁹⁷ Possibly Psalm 107, which Chasidim say on Friday night before Kabbalat Shabbat and which talks about prisoners going free.

⁴⁹⁸ T’ruah has redacted these names out of respect for Morris’s family’s privacy.

TESHUVAH: RETURN

Crime Victims' Needs and Restorative Justice: Three Perspectives

Part of the contribution that we as clergy make to activism is in transforming culture. As moral and spiritual leaders, we have the ability to offer people new lenses for seeing the world, through one-on-one counseling, small group teaching, and preaching to a large audience. The field of restorative justice represents one such transformation, shifting assumptions about so many aspects of the justice system: who the players are, what their needs are, the goals, how we measure success. In the following essays, three Jewish leaders—two experts in the field and one rabbi—share what they have learned from engaging with restorative justice. When we teach these lessons in our communities, we are laying the groundwork for a seismic shift in the foundation of mass incarceration.

PAGE 138

System: “Building a Justice System Rooted in Healing”

By Shari Silberstein

PAGE 139

God: “Restorative Justice Helped Me Discover *Teshuvah* as Theology”

By Rabbi Avi Killip

PAGE 140

Survivor: “Meeting the Needs of Crime Survivors”

By Danielle Sered



“Connecting Hands.” Detail from Community Bridge (<http://bridge.skyline.net/history/>) by William Cochran. Photo by Jeff Kubina, Creative Commons License.

System: “Building a Justice System Rooted in Healing”

By Shari Silberstein

In my work to end the death penalty over the last 15 years, I’ve met and worked with many hundreds of family members who have lost loved ones to murder. Some supported the death penalty and others opposed it. But what united them all was the devastating trauma they experienced in the wake of their unimaginable loss.

“My daughters and I struggled with immense grief and the basics of day-to-day living,” said one EJUSA supporter about the murder of her son. “In our community there was almost no support available to help us pick up the pieces in our shattered lives. I learned the hard way that most victims are a mere afterthought in the criminal justice system.”

The assumption is that justice means punishment for someone who has done something wrong. A crime happens, law enforcement finds out who did it, the courts hand down a sentence, and the crime victim is healed.

So the story goes. The reality is much more complex.

The vast majority of crime survivors’ needs have nothing to do with what happens to the person who harmed them. These needs include medical assistance, physical therapy, trauma and grief counseling, relocation to a safe space, replacement of lost wages and other financial assistance, time off from work, help with funeral expenses, accompaniment to medical appointments, mental health services for an affected child, and so much more. Without meaningful assistance, victimization can impact physical and mental health, employment, education, and community safety. (See more on p. 44.)

Yet crime survivors are rarely offered more than an alienating legal process as the primary salve for their wounds. Our justice system’s near-exclusive focus on the person who committed harm, financially as well as psychically, robs crime survivors of the vital services they need to rebuild their lives. Ending mass incarceration by itself is not enough to heal the lives and communities impacted by violence and trauma.

Transformation requires us to expand beyond the “more vs. less” punishment question to build a justice system rooted in healing. That must include prioritizing and supporting those who have been harmed by crime to move through their pain and grief.

For those working to reform the criminal justice system, that starts with understanding and naming the trauma that crime survivors have experienced. It means recognizing that the justice system not only fails those incarcerated, but it fails survivors as much or more so. It means using language that is inclusive of both failures, and avoiding language that diminishes the reality of survivors’ pain. Most importantly, it means expanding the criminal justice reform agenda to include advocacy for resources and life saving services that will support survivors after tragedy strikes.

Shari Silberstein is Executive Director of Equal Justice USA (EJUSA), a national organization working to transform the justice system to one that heals and restores lives. They are best known for their leadership in ending the death penalty and building bridges between disparate constituencies, including crime survivors and criminal justice reformers. See ejusa.org for more information.

God: “Restorative Justice Helped Me Discover *Teshuvah* as Theology”

By Rabbi Avi Killip

I had always thought of *Teshuvah* as a practice, or a ritual. It was a guideline for what actions I could take to right a wrong; a process for conflict resolution. After a semester studying prison ministry, with the stories and challenges of the prison system in my mind and heart, and a closer study of Rambam’s *Hilchot Teshuvah*, I understand *Teshuvah* as much more than a practice. It is a theology.

A friend challenged me, “It sounds like for prison ministry you have to believe that there is no such thing as pure evil.” I disagreed. Instead, I offered, “It requires a deep and profound belief in the possibility for *Teshuvah*.”

When applied to the rather mundane conflicts of my daily life, *Teshuvah* is mostly just a good idea for maintaining healthy relationships. Even the biggest conflicts in my life, like asking forgiveness from a once-close friend after the relationship had painfully severed, or struggling to forgive family members after my parents’ divorce, had never pushed the limits of *Teshuvah* into the realm of theology. But prison ministry is different. While many people are in jail for nonviolent crimes, primarily drug abuse and dealing, there are also those who have done real wrong. I cannot hear about violent double homicides, thefts of millions, stabbings, shootings, rapes, child abuse, and not understand these acts to be evil—true רשע. I believe these wrongs fundamentally break the wholeness and stability of our world.

There are people in prison who have done real evil, and yet I feel called by their stories. I want to defend their humanity and demand that even for them there must be justice and kindness. Even murderers and rapists can feel alone and need a human touch. But if I am to be the minister, the chaplain, the rabbi, I have to consider a third party—God. I cannot bring the Christian God, loving father of all people, eternal sufferer, who sits in the solitary confinement with the afflicted sinner. That isn’t my God. I cannot look at a person whose crimes and sins are so great that they have no doubt distanced the person from God, and distanced all of humanity from God, and tell them, “God loves you and is there with you.”

But I believe in *Teshuvah*. *Teshuvah* inspires me to sit with even those who are furthest from God and help them to return, לשוב. Unlike the Christian image of a God who is always there, *Teshuvah* offers a human-divine relationship that fluctuates. It is a relationship that breaks and heals, only to break and heal again.

Perhaps the most crucial aspect of *Teshuvah* as theology for prison ministry is the freedom to begin the process from any point. No matter how far God may be from the person, there is always the potential to bring God near. No matter how deep and broken the person, knowing that God can be reached provides the eternal incentive to strive. *Teshuvah* has no prerequisites. The most unreformed of sinners can embark on the process with an entirely absent God. But once they begin, the process is the opposite, demanding from the person extraordinary soul searching, emotional vulnerability, and will to change. And demanding from God patience, forgiveness and healing of divine magnitude.

Rabbi Avi Killip lives in New York City, and works and teaches at Mechon Hadar. She studied prison ministry at Boston College, as a part of her studies at the Rabbinical School of Hebrew College.

Survivor: “Meeting the Needs of Crime Survivors”

By Danielle Sered

I have the privilege of directing Common Justice, a victim service and alternative to incarceration program based in restorative justice principles that works with serious and violent felonies. While it is clear to many how a restorative alternative to incarceration can benefit those who are diverted from prison into programs, what we know at Common Justice is that the impact for survivors can be at least as powerful as it is for those who cause harm. When we understand survivors’ needs in the aftermath of violence, this makes sense. These are some lessons we have learned that guide us in this work:

- Survivors deserve a process that keeps their needs at the center. After all, they are the ones most severely impacted by the crime and most likely to be frightened and in pain right after the incident and for months or even years to come. In fact, many survivors of crime suffer symptoms of depression, anxiety, and post traumatic stress. Restorative justice recognizes the importance of attending immediately to the needs of survivors, some who are still in a state of shock and acute crisis, and to adapting to their changing needs as time goes on.
- Survivors want a voice in how to address harm done to them. We know that for survivors, process matters: focusing on the process of arriving at an outcome in addition to the judicial sentencing itself is more aligned with how humans heal physically and emotionally, and how they recover from traumatic experiences. Trauma theory teaches us that nearly all people can benefit from certain things when they are harmed: to ask why, to express the harm they endured, to regain control and a sense of agency relative to the incident, to begin to assemble a coherent narrative regarding what took place, to have a say in the outcome, and/or to have that harm repaired in a way that is responsive and meaningful to them. When someone has suffered serious trauma and/or sustained a serious injury, those needs are even more urgent and more acute, and it therefore can be even more impactful when they are responsibly and compassionately met. As one Common Justice harmed party put it: “I knew immediately when I was robbed at gunpoint that I didn’t want those boys to go to prison, but I wanted something. I needed something. I wanted them to face me man-to-man, human-to-human. I wanted to know they would do something with their lives so they’d never do this to anyone again. And I wanted to have some say in what that might be.”

- Healing from loss and trauma is a gradual and evolving process. Survivors of trauma typically experience feelings of shock, anger, sadness, denial, and desperation before reaching acceptance. Restorative justice allows the time for survivors to go through the necessary stages in their healing process. It is responsive to the needs of survivors to have their feelings heard and validated, to develop the appropriate natural coping mechanisms, to ask for additional support and finally to begin to make steps to feel whole again. Unfortunately the traditional court process is limited by its nature to have to aim for speed and is all too often poorly equipped to support or advance the natural stages of healing.⁴⁹⁹
- Survivors deserve options that resonate with their sense of safety and justice. Survivors differ in their experience, culture, healing process, values, and desires, but all survivors want options. Almost all survivors care both about their own safety and about the safety of others—they do not want to be hurt again, and they do not want anyone else to go through what they experienced. While some survivors do believe in incarceration, many others do not feel it is the best way to keep themselves and others safe from harm. Restorative alternatives to incarceration allow survivors the opportunity to see the people who harmed them held accountable for their actions in a way that is likely to keep them and others safe.⁵⁰⁰ Alternatives to incarceration overall are shown to reduce recidivism significantly as compared with jail and prison.⁵⁰¹ And restorative justice, when accompanied by appropriate preparation and support, has been shown to increase survivors' sense of safety as compared to incarceration. In expanding the range of options available to survivors, we can increase the portion of survivors who experience justice and safety as a result of their decision to engage law enforcement—and can increase the chances they will heal through the harm they survived.

Danielle Sered is Director of Common Justice, an organization that develops and advances solutions to violent crime that transform the lives of victims and foster racial equity without relying on incarceration. In Brooklyn, it operates the first alternative-to-incarceration and victim service program in the United States that focuses on violent felonies in the adult courts. Nationally, it leverages the lessons from our direct service to transform the justice system through partnerships, advocacy, and elevating the experience and power of those most impacted. See more at <http://www.vera.org/project/common-justice>.

⁴⁹⁹ This study found a 37% reduction in PTSD symptoms for those who went through restorative justice, compared to the standard court process: Caroline M. Angel. *Crime Victims Meet their Offenders: Testing the Impact of Restorative Justice Conferences on Victims' Post-Traumatic Stress Symptoms*. A Dissertation in Nursing and Criminology at the University of Pennsylvania, 2005.

⁵⁰⁰ Studies have shown an 80-90% satisfaction rate for crime survivors who have participated in restorative justice, compared to rates around 30% for the courts. Kilpatrick, D. and Acierno, R. "Mental Health Needs of Crime Victims: Epidemiology and Outcomes." *Journal of Traumatic Stress*, 2003:1612; National Center for Post Traumatic Stress Disorder. 2004. *PTSD in Children and Adolescents*. Washington, D.C.: Department of Veteran Affairs; PTSD Alliance, "Post Traumatic Stress Disorder Fact Sheet," the Sidran Institute (2004), available online at <http://www.sidran.org/sub.cfm?contentID=76&ionid=4>.

⁵⁰¹ A meta-analysis of multiple participatory justice programs found a 34 percent reduction in recidivism for participating defendants; some studies report even better results for individual projects: Mark S. Umbreit, Robert B. Coates, and Betty Vos, "The Impact of Victim-Offender Mediation: Two Decades of Research," *Federal Probation* 65, no. 3 (December 2001).

TESHUVAH: RETURN

Text Study: Victims and Perpetrators - *Teshuvah* and Restorative Justice

1

Opportunities for *Teshuvah*

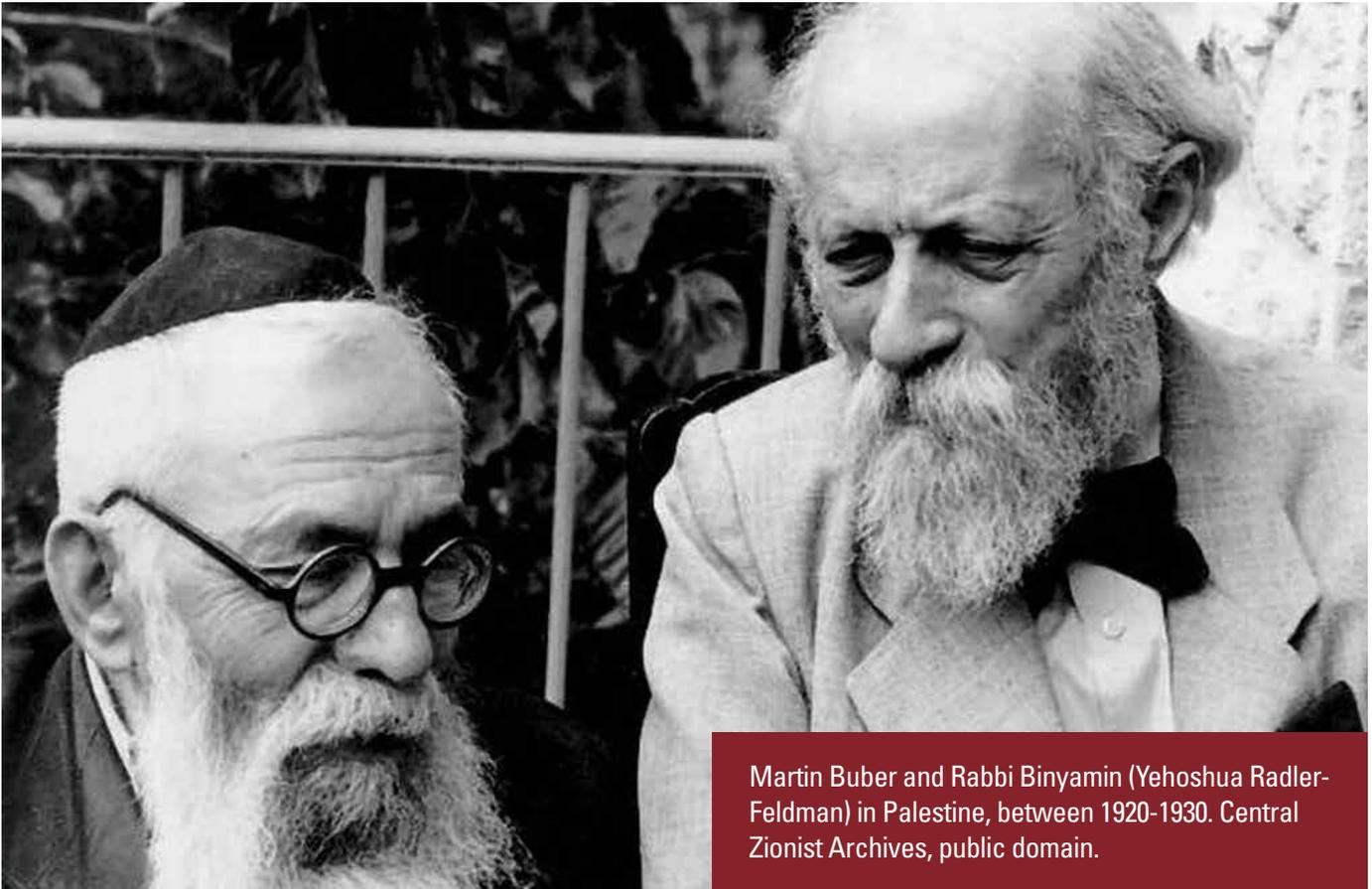
Rambam Hilchot Teshuvah 1:3

In these days, when the Temple no longer stands and we have no altar of atonement, all we have is *teshuvah*. *Teshuvah* atones for all sins. Even if someone was wicked all her days and repented towards the end of her life, we do not remind her of any of her wickedness, as it says, "The wicked will not fail on account of her wickedness, on the day that she repents of her wickedness." (Ezekiel 33:12)

בזמן הזה שאין בית המקדש קיים ואין לנו מזבח כפרה אין שם אלא תשובה, התשובה מכפרת על כל העבירות, אפילו רשע כל ימיו ועשה תשובה באחרונה אין מזכירין לו שום דבר מרשעו שנאמר רשעת הרשע לא יכשל בה ביום שובו מרשעו, ועצמו של יום הכפורים מכפר לשבים שנאמר כי ביום הזה יכפר עליכם.

Discussion Question

How does Rambam's approach to *teshuvah* differ from the approach embodied in America's criminal justice system?



Martin Buber and Rabbi Binyamin (Yehoshua Radler-Feldman) in Palestine, between 1920-1930. Central Zionist Archives, public domain.

2

Obligations of *Teshuvah*

Rambam Hilchot Teshuvah 2:9

Teshuvah and Yom Kippur only atone for sins between a person and God, such as eating something forbidden or engaging in [consensual] illicit sexual relations, and so on. But sins between a person and her fellow—such as injuring another person or cursing at her or stealing from her and so on—she is not forgiven ever until she gives her fellow what she owes her and reconciles with her.

Even if she returned the money that she owes, she must appease her and ask her forgiveness. Even if she hurt her fellow only with words, she must soothe [the hurt feelings] and entreat her until she forgives.

If [the victim] does not want to forgive, [the perpetrator] should bring a row of three people who are [the victim’s] friends, and they should entreat her and ask her [to forgive]. If she is not appeased, do so a second and a third time. If she still does not wish [to forgive], let her be and go away; she who did not forgive is now the sinner. And if [the victim] was her teacher, she should come and go even a thousand times until she is forgiven.

אין התשובה ולא יום הכפורים מכפרין
 אלא על עבירות שבין אדם למקום כגון
 מי שאכל דבר אסור או בעל בעילה
 אסורה וכיוצא בהן, אבל עבירות שבין
 אדם לחבירו כגון החובל את חבירו או
 המקלל חבירו או גוזלו וכיוצא בהן אינו
 נמחל לו לעולם עד שיתן לחבירו מה
 שהוא חייב לו וירצהו,

אע"פ שהחזיר לו ממון שהוא חייב לו
 צריך לרצותו ולשאלו ממנו שימחול לו,
 אפילו לא הקניט את חבירו אלא בדברים
 צריך לפייסו ולפגע בו עד שימחול לו,

לא רצה חבירו למחול לו מביא לו שורה
 של שלשה בני אדם מריעיו ופוגעין בו
 ומבקשין ממנו, לא נתרצה להן מביא לו
 שניה ושלישית לא רצה מניחו והולך לו
 וזה שלא מחל הוא החוטא, ואם היה רבו
 הולך ובא אפילו אלף פעמים עד שימחול לו.

Discussion Questions

1. How is the perpetrator held accountable in Rambam’s system?
2. In what ways are Rambam’s instructions sensitive to the needs of the victim? In what ways are they not?
3. The word translated “to entreat,” *lifgo’a*, can also mean “to strike or wound.” How can the process of asking forgiveness be painful for the victim? For the perpetrator?
4. In Rambam’s context, the last line is about the honor given a teacher of Torah. Translating it to a contemporary context, what does this injunction teach you about the limits of forgiveness?

3

Sensitivity to the Victim's Needs

Exodus 21 (Tr. Everett Fox)

¹⁸ When men quarrel, and a man strikes his neighbor with a stone or with (his) fist, yet he does not die, but rather takes to his bed: ¹⁹ If he can rise and walk about outside upon his crutch, he that struck (him) is to go clear, only: he is to make good for his resting-time, and provide-that-he-be-healed, yes, healed.

Rashi ad. loc. (11th century France)

“Provide-that-he-be-healed, yes, healed” -- according to its translation: [the assailant] should pay the doctor's fee.

Siftei Chachamim ad. loc. (17th-18th century Poland)

Even if the assailant is a doctor, the victim may say to him, “I am not comfortable with you treating me, for you appear as a lion to me.” And if the assailant says to the victim, “I know a doctor who will treat you for free,” the victim may say, “A doctor who gives treatment for nothing is worth nothing.”

שמות כא

(יח) וְכִי־יִרִיבֵן אָנָשִׁים וְהָכָה־אִישׁ אֶת־רֵעֵהוּ בְּאֶבֶן אוֹ בְּאֶגְרֹף וְלֹא יָמוּת וְנָפַל לְמִשְׁכָּב: (יט) אִם־יָקוּם וְהִתְהַלֵּךְ בַּחוּץ עַל־מִשְׁעָנָתוֹ וְנָקָה הַמַּכֵּה רַק שְׂבִתוֹ יִתֵּן וְרָפָא יִרְפָּא:

רש"י

ורפא ירפא - כתרגומו, ישלם שכר הרופא:

שפתי חכמים

ואפילו אם הוא רופא יכול לומר לו לא ניחא לי שתרפאני דכאריה דמית עלי וגם אם אמר לו יודע אני רופא שירפא אותך חנם יכול לומר לו אסיא דמגן במגן מגן שויא.

Discussion Questions

1. What sensitivities are Rashi and the Siftei Chachamim picking up on?
2. How do you interpret the phrase, “You appear as a lion to me”?

4

Case study: Ritva 159 (Rabbi Yom Tov Ishbili, Spain c. 1250-1330)

Question: The community had decreed [banishment] for Isaac son of Abraham from Daro and Abraham son of Joseph son of Plas, because they were found in the synagogue here in Droka at night, while everyone was asleep in their beds. They were breaking down the doors of the ark where the Torah scrolls are kept to steal their silver decorations. The two were placed in jail and subsequently escaped, so the community decreed [exile]...

Now the mother of Abraham son of Joseph son of Plas has come to the court and said: Please take action so that my son, Abraham, does not become an apostate, for you have banished him from this city in consequence of his escape. He is ready to accept any punishment and fine that you mete out, as long as he may return to the community... Do me this blessing so that he will not be turned to idol worship--him and his brother--as happened to Jamila, the widow of Abraham of Daro, and her sons Nissim and Joseph and her daughters Oro and Tzevach, whom this holy community of Droka also banished...Now, my son Abraham is ashamed and wants to do complete *teshuvah*. Don't push him away; bring him close under the wings of your love.

Answer: ...You may reverse the decree that you decreed upon him, so that he may do full *teshuvah*... Even if we were to say that this constituted "the will of the public" [a technical legal term meaning the ruling cannot be overturned], we have the precept that "the will of the public" can be negated for the sake of a mitzvah, and it is a great mitzvah to rescue a Jew from being ruined with idol worship and to help him do *teshuvah*. In my opinion, anything can be negated for the sake of a mitzvah, even if there was no mistake in this matter. All the more so because, in this instance, there is an element of error, for if the community knew that he would be an extraordinary individual, they would not have been so harsh.

התקינו תקנה על יצחק בר אברהם מדרו ועל אברהם בן יוסף בן פלאס שנמצאו בבית הכנסת הנה בדרוקה בלילה בעוד שישנים הקהל על מטותיהם, והתחילו לשבר דלתות ההיכל אשר בתוכו ס"ת כדי לגנוב הכסף שעליהן, ושמנו אותם במשמר וברחו שניהם מן המשמר, וסדרו תקנה עליהם כמו שתראה...

ועכשו באה אם אברהם בר יוסף בן פלאס לב"ד ואמרה בבקשה מכם הבו לכם עצה כדי שלא ישתמד בני אברהם מפני שגרשתם אותו מן העיר הזאת על אודות התפיסה שברח ממנה, כי הוא מזומן לקבל עליו כל עונשין וקנסות שתגזרו עליו ובלבד שיכנס בתוך הקהל...עשו אתי ברכה וכדי שלא יתפתה לע"ז הוא ואחיו אחריו כמו שאירע לג'מילה אלמנת אברהם מדרו ובניה נסים ויוסף ואורו וצבח בנותיה שתקנו עליהם תקנה הקהל הקדוש שבדרוקה...ועתה כיון שמתבייש בני אברהם הנז' ורוצה לחזור בתשובה שלמה אל תדחו אותו רק תקרבו אותו תחת כנפי חסדכם.

יכולים אתם להתיר הגזרה אשר גזרתם עליו... כדי שיחזור בתשובה...אפי' נימא דהא חשיבה דעת רבים מ"מ קי"ל דעל דעת רבים יש לו הפרה לדבר מצוה וזו מצוה גדולה היא להציל נפש מישראל מקלקול ע"ז ולהחזירו לתשובה, ולדידי כל לדבר מצוה יש לו הפרה אע"ף שאין טעות בדבר וכ"ש שבזו גם יש צד טעות, שאלו ידעו הקהל שזה יהיה יוצא מן הכלל לא היו מחמירי' כל כך.

Discussion Questions

1. Whom did Abraham and Isaac harm, and how? (Think expansively.)
2. What punishment did they receive? What are its ramifications? (Try to put yourself in the mind of 14th century Jews in their insular communities.) What modern punishment does this resemble?
3. What argument does Abraham's mother make to the court? What best case and worst case scenarios can you imagine if Abraham is allowed to return?
4. What value is guiding the Ritva's ruling? What "mistake" does he think the community may have made?
5. What does this entire situation teach you about America's contemporary prison system?

INTRODUCTION

BEFORE INCARCERATION

DURING INCARCERATION

AFTER INCARCERATION

JEWISH RESOURCES

TAKE ACTION

5

After Return

Mishnah Makkot 2:8

...[After his return from exile in the City of Refuge,] he may return to the high public office that he held previously, according to Rabbi Meir.

Rabbi Yehudah says: he may not return to the high public office he previously had.

משנה מכות ב:ח

וחוזר לשררה שהיה בה, דברי רבי מאיר.

רבי יהודה אומר, לא היה חוזר לשררה שהיה בה.

Discussion Questions

1. What rationale do you think Rabbi Meir and Rabbi Yehudah would give for their positions?
2. Which best matches the current American system?
3. Which do you think is more just?



Eugene V. Debs leaving the Federal Penitentiary in Atlanta, Georgia, on Christmas Day 1921. He was the Socialist Party's candidate for president four times, including from his prison cell in 1920. He had been imprisoned in 1918 under the Sedition Act, for giving a speech against participation in the First World War. President Warren G. Harding commuted his sentence to time served in December 1921.

Photo by Underwood and Underwood, public domain.

TESHUVAH: RETURN

Text Study: Justice Among Brothers

Deuteronomy 25:2-3

If the wicked one is to be flogged, the magistrate shall have him lie down and be given lashes in his presence, by count, as his guilt warrants. He may be given up to forty lashes, but not more, lest being flogged further, to excess, your brother be degraded before your eyes.



Sifrei Devarim 286, c. 3rd century

Rabbi Chananya ben Gamliel said, "All day, the text calls him 'wicked,' as it says, 'if the wicked one is to be flogged.' But from the time that he is flogged, the text calls him 'your brother,' as it says, 'your brother be degraded.'"

The Lord said to Cain, "Where is your brother Abel?" And he said, "I do not know. Am I my brother's keeper?" Then [God] said, "What have you done? Hark, your brother's blood cries out to Me from the ground! Therefore...you shall become a ceaseless wanderer on earth."

- Genesis 4:9-12

"Cain went forth..." Rabbi Hama says in the name of Rabbi Hanina bar Isaac: he went forth joyfully...Adam met Cain and asked: how did your judgment [*din*] go? Cain said: I did *teshuvah* [repented] and was reconciled. Adam slapped himself and said: Such is the power of *teshuvah*, and I did not know!

- Genesis Rabbah 22:13, c. 4th-5th century

Rabbi Yoshiya says (on Psalm 89:16)...[Israel] knows how to win the favor of their Creator, so that [God] moves from the throne of judgment [*din*] to the throne of mercy [*rachamim*], is filled with mercy for them, and turns the attribute of strict judgment into the attribute of mercy.

- Leviticus Rabbah 29:4, c. 5th-7th century

"With every ruling and punishment that the [Jewish court] carries out according to the needs of the hour, they may punish him appropriately as they see fit, as long as their intention is only to pursue righteousness [*tzedek*] and truth, without any other additional intention."

- Rabbi Judah ben Asher, *Zichron Yehuda* 79, Germany/Spain 1270-1349

Rabbi Shimon ben Gamliel taught: The world stands on three things—on judgment [*din*], on truth and on peace.

- *Pirkei Avot* 1:18, c. 2nd century

Righteousness [*tzedek*] and justice [*mishpat*] are the foundation of Your throne; mercy [*chesed*] and truth go before You.

- Psalm 89:15

"If your brother becomes poor... do not charge him interest; fear your God, that your brother might live with you."

- Leviticus 25:35-36

"We're not just talking about an economic state, but about the emotional state of someone who has fallen into trouble, as the midrash explains that a poor person is in mortal danger. We're talking about a person who falls from high status into depression. This is why the word "your brother" in the text is so important. Because he is your brother, do not relate solely to his economic straits; take care of him, protect him. You have no right to make someone who is your brother depressed or low."

- Rabbi Danny Meir, Contemporary Israeli Reform movement

INTRODUCTION

BEFORE INCARCERATION

DURING INCARCERATION

AFTER INCARCERATION

JEWISH RESOURCES

TAKE ACTION

משפט אחים

(ב) וְהָיָה אִם-בֶּן הַכּוֹת הִרְשָׁע וְהִפִּילוּ הַשֹּׁפֵט
וְהִכְהוּ לְפָנָיו כְּדֵי רִשְׁעוֹתָו בְּמִסְפָּר: (ג) אַרְבָּעִים
יָפְנוּ לֹא יִסִּיף פְּרִי־יִסִּיף לְהַכְתּוֹ עַל-אֵלֶּה מִכָּה רַבָּה
וְנִקְלָה אַחִיד לְעֵינֶיךָ: (דברים כב)



רבי חנניה בן גמליאל אומר כל היום הכתוב
קורא אותו רשע שנאמר והיה אם בן הכות
הרשע אבל משלקה הכתוב קורא אותו אחיך
שנאמר ונקלה אחיך. (ספרי דברים קפ"ו)

(ט) ויאמר ה' אל-קין אי הבל אחיך ויאמר לא
ידעתי השמר אחי אנכי: (י) ויאמר
מה עשית קול דמי אחיך צעקים אלי
מן-האדמה: (יא) ועתה... (יב) ... נע
ונד תהיה בארץ: (בראשית ד)

ויצא קין מלפני ה',... רבי חמא בשם רבי חנינא
בר רבי יצחק אמר יצא שמח... פגע בו אדם
הראשון א"ל מה נעשה בדינך, א"ל עשיתי
תשובה ונתפשרתי, התחיל אדה"ר (אדם
הראשון) מטפח על פניו, אמר כך היא כחה
של תשובה ואני לא הייתי יודע מיד עמד
אדה"ר ואמר (תהלים צב) מזמור שיר
ליום השבת וגו'. (בראשית רבה כב:יג)

א"ר יאשיה כתיב אשרי העם יודעי
תרועה (תהלים פט:טז) ...אלא שהן
מכירין לפתות את בוראן בתרועה והוא
עומד מכסא הדין לכסא רחמים ומתמלא
עליהם רחמים והופך להם מדת הדין
למדת רחמים. (ויקרא רבה כט:ד)

(לה) וכי ימוך
אחיך... (לו) אל-
תקח מאתו נשך
ותרבית ויראת
מאלהיך
וחי אחיך עמך:
(ויקרא כה)

לא מדובר רק על
המצב הכלכלי,
אלא אף על מצבו
הנפשי של האדם,
אשר נקלע לצרה,
כמו שנאמר
במדרש על המסכן
שמסכן את נפשו.
מדובר על אדם
היורד ממצב
מרומם לדכאון
הרוח. מכאן
חשיבותה של
המילה "אחיך"
בביטוי שלפנינו.
היות והוא אחיך
אל תתיחס רק
למצבו הכלכלי,
אלא דאג לו,
שמור עליו; אל לך
להשפיל ולדכא
את מי שהוא אחיך.
רב דני מאיר,
יהדות מתקדמת
בישראל

כל דין ועונש
שעושים ב"ד
לצורך השעה
כאשר יתאמת
יענישוהו עונש
שיראה לב"ד
ובלבד שתהיה
כוונתם
לרדוף הצדק
והאמת בלבד
בלא שתוף כוונה
אחרת.
(זכרון יהודה ע"ט)

רבן שמעון בן
גמליאל אומר
על שלשה דברים
העולם עומד על
הדין ועל האמת
ועל השלום
שנאמר (זכריה
ח) אמת ומשפט
שלום שפטו
בשעריכם:
(פרקי אבות א:יח)

צדק ומשפט מכון
כסאך חסד ואמת
יקדמו פניך:
(תהילים פט:טו)

CLOSING THOUGHTS

Two Final Lessons the U.S. Could Learn from Jewish Criminal Law

Zooming out from the specifics of policing and incarceration, there are two other overall lessons the U.S. could learn from a study of halacha. One is about a qualitative distinction between categories of crimes, and the other is about the public nature of punishment.

The Mishnah, in tractate Sanhedrin, lays out the two types of criminal cases and how they are to be judged. *Dinei nefashot*, capital cases, are heard and decided by a court of 23. The 36 crimes that are punishable by death essentially boil down to the three categories of most egregious violations, those that “do violence to the divine presence in some way...[they] represent both crimes against God and threats to the civic and moral fiber of Jewish society.”⁵⁰² They are murder, idol worship, and sexual impropriety as defined by the Torah.

All other crimes—including property damage, assault, and rape⁵⁰³—are *dinei mamonot*, “monetary legal matters.” They are judged by a court of three and punished by a combination of fines and lashes—never incarceration and never the death penalty.

In other words, in the Jewish view, most crimes are matters that can be ironed out in society in such a way that the harmed individual(s) can be made whole again and the one who did the harm can be held accountable, do *teshuvah*, and go on with his/her life. In only an extreme few cases does a crime pose such a threat to society that the one who committed it must be removed permanently.

The U.S. has what, at first glance, appears to be a similar system, with different courts and rules of procedure for criminal and civil cases. The Jewish division, however, does not map at all onto the American one—*dinei mamonot* are not solely “civil” suits; they are the vast majority of ways one person can harm another.

If a court of 23 has convicted someone of a capital crime and the death sentence is to be carried out, it is done quite publicly, and that is the second lesson. The American legal system likes to hide punishment where possible. Prisons are often located in rural areas, so that the people held there effectively “disappear” from life. Moreover, the problems those people represent—homelessness, addiction, domestic violence, mental illness, and so on—disappear, making it easier for society to ignore them.⁵⁰⁴ Executions are carried out at midnight, in the depths of a prison, so that few people will be around to be “disturbed” by them. But if society is going to execute one of its members, shouldn’t we be disturbed?

Under the halachic system, an execution is carried out in a public place, in the middle of the day, some distance from the courthouse. A town caller goes before the condemned crying out his/her name and the nature of the crime, so that anyone who might have exculpatory evidence can bring it forward at the last minute. The witnesses themselves, and in some cases the entire community, carry out the execution. (See *Mishnah Sanhedrin* 6:1, 4) It is a public act, done with the full knowledge of the community, and not something that can be hidden away so that most people can ignore it.

This is not primarily an argument about the death penalty but about understanding the severity of crimes and of punishment. American criminal law easily allows—indeed, sometimes mandates—that crimes be upgraded based on their circumstances. For instance, if a person dies during the commission of another crime, that becomes “felony murder”—even if the death is totally accidental. Similarly, a nonviolent illegal drug transaction becomes classified as a violent crime, with additional penalties, if a gun was present, even if it was never used or even brandished.⁵⁰⁵ *Halacha* reminds us that the punishments we mete out are real, with serious, lifelong (or life-ending) consequences; we cannot simply weasel our way, collectively, out of being responsible for them.

502 Jacobs, Jill. *There Shall Be No Needy: Pursuing Social Justice Through Jewish Law and Tradition*. p. 194-195.

503 See *Mishnah Sanhedrin* 1:1. Our modern sensibilities are repelled by the idea of treating a rape as mainly a matter of damage to the woman’s marriageability—i.e., to the father’s property—and today we might want to draw the distinction between the two categories somewhat differently. Nonetheless, the fundamental point about the distinction between *dinei nefashot* and *dinei mamonot*—and the relationship each bears to society—remains important.

504 See Schenwar, *Locked Down, Locked Out*, p. 3.

505 <http://famm.org/projects/federal/us-congress/gun-mandatory-minimum-sentences/>

CLOSING THOUGHTS

Lesson Plan: Change the Conversation About Justice

Based on the article of the same title⁵⁰⁶ by Rabbi Rachel Mikva, PhD

Goals

- To expand students' thinking about justice by introducing four different kinds of justice
- To use both familiar Bible stories and Biblical legal passages to discuss the four kinds of justice
- To apply all four kinds of justice to discussions about contemporary society

Target Population

- Middle school students through adults

Procedure

1. Start by asking the group what it means for something to be just. Get a few ideas on the table. Probe to see whether there is more than one way to define justice.
2. Use any educational technique you like to get the group on board with the definitions of the four kinds of justice. This may include reading the definitions together and taking clarifying questions, giving each student one of the four and having them teach each other, an introductory lecture, or boiling the group's ideas down to the four types; whatever works for your setting and timeframe. The handout "Goals of Four Types of Justice" is included for your use. Ask for an example from modern life of each type of justice.
3. Put before the group the familiar Bible stories of Joseph, Jonah, and Sodom and Gomorrah. Check for understanding of the details of the story, then ask what types of justice each story highlights. Again, depending on setting and time, this may be done with the whole group or with three smaller groups that report back to the larger group.
4. To move from story to law, place before the group Ex. 23:1-11 and ask them to identify which kind(s) of justice play out in each verse or cluster of verses.
5. Share with students the following definition of justice, the primary definition from Merriam-Webster online: justice is "the process or result of using laws to fairly judge and punish crimes and criminals." Discuss which of the four forms of justice are included in this definition. What seems to be missing? What would they want to change about our justice system so that all four kinds of justice were represented? Have them go back to their original four examples. Are there times when two forms of justice seem to be at odds with each other? In these instances, how do we decide which to favor?

⁵⁰⁶ <http://www.tikkun.org/nextgen/change-the-conversation-about-justice-by-rachel-mikva>

GOALS OF FOUR TYPES OF JUSTICE

Retributive Justice

- Punish someone who has done something wrong.
- Make other people think twice about doing the same wrong.
- Prevent the person from doing other things wrong.

Restorative Justice

- A person who has caused harm to others takes responsibility for it.
- Repair the harm done to someone.
- Rebuild relationships between someone who has done harm and the people harmed.

Procedural Justice

- Ensure an equally fair process for everyone involved, no matter how rich or poor, powerful or unimportant they are.
- As long as the process is trustworthy, it matters less what the end result is.

Distributive Justice

- Provide for the diverse needs of everyone in a society by distributing resources fairly.

Exodus Chapter 23

¹ You must not carry false rumors; you shall not join hands with the guilty to act as a malicious witness:
² You shall neither side with the mighty to do wrong — you shall not give perverse testimony in a dispute so as to pervert it in favor of the mighty — ³ nor shall you show deference to a poor man in his dispute.

⁴ When you encounter your enemy's ox or ass wandering, you must take it back to him. ⁵ When you see the ass of your enemy lying under its burden and would refrain from raising it, you must nevertheless raise it with him.

⁶ You shall not subvert the rights of your needy in their disputes.

⁷ Keep far from a false charge; do not bring death on those who are innocent and in the right, for I will not acquit the wrongdoer. ⁸ Do not take bribes, for bribes blind the clear-sighted and upset the pleas of those who are in the right.

⁹ You shall not oppress a stranger, for you know the feelings of the stranger, having yourselves been strangers in the land of Egypt.

¹⁰ Six years you shall sow your land and gather in its yield; ¹¹ but in the seventh you shall let it rest and lie fallow. Let the needy among your people eat of it, and what they leave let the wild beasts eat. You shall do the same with your vineyards and your olive groves.

(א) לֹא תִשָּׂא שְׁמַע שׁוּא אֶל־תִּשָּׂט יָדְךָ
עַם־רָשָׁע לְהִיט עַד חֶמְסִי: (ב) לֹא־תִהְיֶה
אֲחֵרֵי־רַבִּים לָרַעַת וְלֹא־תִעָנֶה עַל־רַב
לְנֹטֵט אֲחֵרֵי רַבִּים לְהִטֹּת: (ג) וְדַל לֹא
תִהְדָּר בְּרִיבוֹ:

(ד) כִּי תִפְגַּע שׁוֹר אֹיְבֶךָ אוֹ חֲמֹרוֹ תֵּעָה
הַשֵּׁב תְּשִׁיבֵנּוּ לוֹ: (ה) כִּי־תִרְאֶה חֲמֹר
שׁוֹנֵאֵךְ רֹבֵץ תַּחַת מְשָׁאוֹ וְחִדַּלְתָּ מֵעֹזֵב לוֹ
עֹזֵב תִּעֲזֹב עִמּוֹ:

(ו) לֹא תִטֹּה מִשְׁפַּט אֲבִינֶךָ בְּרִיבוֹ:

(ז) מִדְּבַר־שֶׁקֶר תִּרְחַק וְנִקִּי וְצַדִּיק
אֶל־תִּהְרַג כִּי לֹא־אֶצְדִּיק רָשָׁע: (ח)
וְשָׁחַד לֹא תִקַּח כִּי הַשָּׁחַד יַעֲוֶר
פְּקֻחִים וְיִסְלַף דְּבַר־יְצַדִּיקִים:

(ט) וְגַר לֹא תִלְחָץ וְאַתֶּם יַדְעֶתֶם
אֶת־נַפְשׁ הַגֵּר כִּי־גֵרִים הָיִיתֶם בְּאֶרֶץ
מִצְרַיִם:

(י) וְשֵׁשׁ שָׁנִים תִּזְרַע אֶת־אֲרָצְךָ
וְאָסַפְתָּ אֶת־תְּבוּאָתָהּ: (יא) וְהַשְּׁבִיעַת
תִּשְׁמַטְנָה וְנִטְשָׁתָה וְאָכְלוּ אֲבִינֵי עַמּוֹךְ
וַיִּתְּרֵם תֹּאכַל חֵיט הַשָּׂדֶה כַּוְרֵתֵעֶשֶׂה
לְכַרְמֶךָ לְזִיתֶךָ:

Exodus Chapter 23 Facilitator's Guide

Ret = Retributive Res = Restorative P = Procedural D = Distributive

P ¹ You must not carry false rumors; you shall not join hands with the guilty to act as a malicious witness: ² You shall neither side with the mighty to do wrong — you shall not give perverse testimony in a dispute so as to pervert it in favor of the mighty — ³ nor shall you show deference to a poor man in his dispute.

(א) לא תשא שמע שוא אל-תשת ידך עם-רשע להיות עד חמס: (ב) לא-תהיה אחרי-רבים לרעת ולא-תענה על-רב לנטת אחרי רבים להטת: (ג) ודל לא תהדר בריבו:

P/Res ⁴ When you encounter your enemy's ox or ass wandering, you must take it back to him. ⁵ When you see the ass of your enemy lying under its burden and would refrain from raising it, you must nevertheless raise it with him.

(ד) כי תפגע שור איבך או חמרו תענה השב תשיבנו לו: (ה) כִּי-תראה חמור שנאך רבץ תחת משאו וחדלת מעזב לו עזב תעזב עמו:

P ⁶ You shall not subvert the rights of your needy in their disputes.

(ו) לא תטה משפט אבינך בריבו:

Ret ⁷ Keep far from a false charge; do not bring death on those who are innocent and in the right, for I will not acquit the wrongdoer. ⁸ Do not take bribes, for bribes blind the clear-sighted and upset the pleas of those who are in the right.

(ז) מדבר-שקר תרחק ונקי וצדיק אל-תהרג כי לא-אצדיק רשע: (ח) ושחד לא תקח כי השחד יעור פקחים ויסלף דברי צדיקים:

P/Res ⁹ You shall not oppress a stranger, for you know the feelings of the stranger, having yourselves been strangers in the land of Egypt.

(ט) וגר לא תלחץ ואתם ידעתם את-נפש הגר כי-גרים הייתם בארץ מצרים:

D ¹⁰ Six years you shall sow your land and gather in its yield; ¹¹ but in the seventh you shall let it rest and lie fallow. Let the needy among your people eat of it, and what they leave let the wild beasts eat. You shall do the same with your vineyards and your olive groves.

(י) ושש שנים תזרע את-ארצך ואספת את-תבואתה: (יא) והשביעת תשמטנה ונטשתה ואכלו אביני עמך ויתרם תאכל חית השדה כן-תעשה לכרמך לזיתך:

Notes

- Verses 4 and 9 are not perfect examples of restorative justice, which would focus more on making the injured party whole by enabling the guilty party to take responsibility. They could be considered restorative insofar as they are geared towards repairing relationships—between you and your enemy in verse 4, between you and the stranger in verse 9.
- Verse 7 seems to be retributive justice in the context of procedural justice. In order to make sure that no one is prosecuted falsely (procedural), a harsh penalty (retributive) is placed on someone who levies a false charge.

TAKE ACTION
Introduction

TALMUD KIDDUSHIN 40B

Rabbi Elazar son of Rabbi Zadok said: To what are the righteous compared in this world? To a tree whose trunk is rooted in a place of holiness and whose boughs spread out to a place of impurity. Even if the boughs are cut off, its body stands in a pure place...

Rabbi Tarfon and the sages were gathered in the upper chamber of Nitzah's house in Lod, where they were asked which is greater, study or action. Rabbi Tarfon answered: action is greater. Rabbi Akiva answered: study is greater. The rest answered: study is greater, for study leads to action.

Just as a tree depends both on its trunk and its boughs, so too does changing the world depend on the interplay of study and action.

One important step on the path is connecting to news sources and advocacy groups you trust, so you can stay informed of the latest developments in broader efforts to

“We who believe in freedom cannot rest until it comes.”

This is the refrain of “Ella’s Song,” written by Dr. Bernice Johnson Reagon from words spoken by the civil rights leader Ella Baker over the years.⁵⁰⁷ This section of the handbook offers some frameworks for moving beyond study to action.



Ella Baker, from the Ella Baker Center for Human Rights, Creative Commons license.

end mass incarceration. Following are a few suggestions to get you started.

An over-arching guiding principle of the campaign against mass incarceration is that, as much as possible, it should be led by those most affected by it: the currently and formerly incarcerated, their families, and their

wider communities. As Glenn E. Martin of Just Leadership USA says, **“Those closest to the problem are closest to the solution, but furthest from resources and power.”**⁵⁰⁸

⁵⁰⁷ See <http://ellabakercenter.org/blog/2013/12/ellas-song-we-who-believe-in-freedom-cannot-rest-until-it-comes>. Baker was a director of the Southern Christian Leadership Conference, as discussed in Jelani Cobb’s March 2016 *New Yorker* article about the Black Lives Matter movement: “New scholarship [has] begun charting the contributions of women, local activists, and small organizations—the lesser-known elements that enabled the grand moments we associate with the civil-rights era. In particular, the career of Ella Baker... See <http://www.newyorker.com/magazine/2016/03/14/where-is-black-lives-matter-headed>

⁵⁰⁸ <https://www.justleadershipusa.org/about-us/>

All of the organizations in this list are sources of important information and wisdom, as well as centerpoints of activism; the starred organizations were created by or have leadership from people of color.

- Of course we'll start with T'ruah. www.truah.org. Follow us on Twitter at @truahrabbis for updates about campaigns, volunteer opportunities, and news.

- The Marshall Project offers a daily digest collecting incarceration-related news stories from around the web, plus their own original reporting. www.marshallproject.org.

- The ACLU is a major driver of criminal justice reform advocacy. www.aclu.org

- *The Black Alliance for Just Immigration (BAJI) “educates and engages African American and black immigrant communities to organize and advocate for racial, social and economic justice” and has particularly good resources on incarceration in both an immigration and criminal context. <http://blackalliance.org>

- *Campaign Zero is a grassroots movement led by young activists, mainly from communities of color, to end police violence in America. <http://www.joincampaignzero.org/#vision>

- *Detention Watch Network is organizing to end immigration detention. <http://www.detentionwatchnetwork.org>

- The Drug Policy Alliance “is the nation’s leading organization promoting drug policies that are grounded in science, compassion, health and human rights.” www.drugpolicy.org

THE RECORD, FROM THE MARSHALL PROJECT

For those not interested in a daily email digest, The Marshall Project offers a database, indexed by topic. They write, “Since 2014, The Marshall Project has been curating some of the best criminal justice reporting from around the web. In these records you will find the most recent and the most authoritative articles on the topics, people and events that are shaping the criminal justice conversation.” This is a crucial resource for anyone who wants to end mass incarceration.

<https://www.themarshallproject.org/records>

- *Equal Justice Initiative, founded originally to represent men wrongfully sentenced to death, now conducts a wide range of work on mass incarceration, race, and poverty, as well as ending the death penalty. www.eji.org

- Grassroots Leadership, focused primarily in the southeast and Texas, organizes against for-profit incarceration, both in criminal justice and immigration. <http://grassrootsleadership.org>

- *Just Leadership USA is committed to cutting the U.S.

correctional population in half by 2030. <https://www.justleadershipusa.org>

- NRCAT, the National Religious Campaign Against Torture, is a leading group focused on solitary confinement. www.nrnat.org

- The Sentencing Project—“working for a fair and effective criminal justice system by promoting reforms in sentencing law and practice, and alternatives to incarceration.” www.sentencingproject.org

TAKE ACTION

Education That Leads To Action

Forming a study-action-reflection (or study-action-support) group can be a powerful way to start and maintain a community that learns together, takes effective action, and grows. Here we offer two models from the field showcasing different approaches but common themes.

In the Bay Area, Rabbi Michael Lezak started by collecting a group of congregants to read and discuss Michelle Alexander's *The New Jim Crow* together. After laying the groundwork for a year of programming, Rabbi Lezak used his Rosh Hashanah sermon to announce a year-long project of learning and action. He invited people to join him most Tuesday nights for a working group on ending mass incarceration. Since then, the working group has discussed issues of white privilege and power, and has studied Jewish texts on liberation and responsibility. It has taken field trips together—to visit congregants at the local San

Quentin State Prison, to witness restorative justice programs in action, and to lead Torah study and Shabbat services in jails. Some members of the group have gotten involved in legislative advocacy, others in direct service. Rabbi Lezak says he is already envisioning how the second year of the program moves further into action and broadens the network to include more partners outside the synagogue. "It's singing in beautiful ways," he says. "I can see the arc continue to move over the next few years."

In Philadelphia, lay leader Lynne Iser attended an event at her synagogue that included the screening of a documentary on mass incarceration that had been produced by a member of the congregation. Drawing on the energy of that evening, she and a few other lay leaders began to organize a monthly, Sunday afternoon group of about two dozen people. Half came from the synagogue and half came from other religious communities in the neighborhood. They, too, started with

The New Jim Crow, and then they moved on to learning how local organizations are addressing incarceration. At each meeting, a speaker from a local group talks about their service or advocacy work. Key to the group's flourishing, in Lynne's view, is the time set aside at each meeting for facilitated conversation. This gives members a chance to articulate why they are there, and what they are struggling with. "Once you've made a statement, declared something publicly, it's not passive anymore," says Lynne. "It's not as easy to walk away and say, 'That was interesting,' and not do anything. The group is a way to keep us from just backing

away in shame or repulsion or fear or overwhelm." As opportunities to take action arise, group members take them up in small subgroups, according to each person's interest and ability. (For a list of events the group has put on, visit: <https://mishkan.org/mlk-full-weekend-of-programs-january-17-20-2014>.)



San Quentin State Prison, on San Francisco Bay. Photo by Jitze Couperus, Creative Commons license.

Whether your group is mobilized and led by a professional or organized from the bottom up, a few lessons emerge on how to maximize the chances for success:

1. Create volunteer opportunities, which can inspire long-term commitment to the effort.
2. Balance accountability with flexibility. Allow each person to participate as s/he is able, while maintaining accountability through regular gatherings, an emphasis on building relationships, and space for honest conversation.
3. Make time to celebrate. Ending mass incarceration is a marathon, not a sprint, and if people come to see activism as a chore or a box to be checked off, no one will stick with this holy endeavor. Celebrate even your small successes or anniversaries of your work together.

TAKE ACTION

Start Inside Your Community

Change you effect inside your walls will seep out into the world in ways small and larger, obvious and unexpected. It doesn't replace efforts made in the larger arenas of neighborhood, city, state, and nation, but it can be a parallel track, part of a study-action-reflection group's focus, or a preparatory stage. Here are some of the topics you might consider:

- What does your community do to support members who have an incarcerated family member? Often, Jews who have an incarcerated family member feel significant shame and may avoid mentioning the situation. This adds a heavy emotional burden of secrecy on top of all the others that person is carrying. How do we shift our communal culture so that Mom coming home from prison or a son being incarcerated for four years elicits a response more like when Grandma is in the hospital or a new baby is born?
- What can your community do to support returning citizens themselves, both inside the community and in the surrounding area? Are returning citizens welcome at services? (See facing page.) When there is a job opening, could you consider hiring a returning citizen? Reach out to a local nonprofit that helps returning citizens find jobs to see how they can help. Even if you don't end up hiring a returning citizen, being public about an honest willingness to hire one sends an important signal. How else might your community utilize its skill base to support or mentor returning citizens? They may value help with everything from writing a resume to filing a tax return to simply being included in community events. Again, contact a local nonprofit to learn about how you can help meet their particular needs.
- What does your community do to support members who have been the victims of crime? How do you help them recover and heal? Our interest, learning, and activism to end mass incarceration must include caring for those who suffer harm. Read more on p. 44.

- How sophisticated is the community's discourse about race and racism? Are people on the same page about language, goals, and understandings? Workshops, study sessions, and facilitated discussions on race, privilege, whiteness, and diversity can unclog some of the channels of communication. Congregations where these issues are clearly on the table for discussion can grow to be stronger, more vibrant, more welcoming communities. Word of that will spread, with the potential to bring in both new congregants and partners from other communities.

- When does the community hire police to guard the building? What kinds of attack are the leadership concerned about—for instance, anti-Semitic incidents, domestic gun violence, foreign terrorism? (The lines between these can be blurry, showcasing how 21st century policing slips seamlessly into the War on Terror.) Are there members of the community who might feel less safe, rather than safer, with police around? Think about black congregants, people who were the victims of serious crimes and may still be traumatized, and people who have experienced jail and prison—either themselves or close family and friends. Consider a community conversation about the risks and benefits of hiring police. Regardless of the decision, communicating it publicly with some sensitivity—instead of taking it as a given that police make everyone feel safer—can help the people who feel less safe at least not feel invisible. For a first-person take on this issue, read this blog post by Rafael Lev, a black Jew in the Twin Cities: <http://www.reformjudaism.org/blog/2014/09/23/sin-prejudice-growing-jewish-person-color>

WHERE DOES A JEWISH RETURNING CITIZEN DAVEN?

“One of the questions I get asked most as a prison chaplain is what Jewish community the men I serve can join when they get out. So many of them will leave jail with few connections and no support system. Religious communities are an obvious choice to help reduce recidivism and reintegrate people who have been incarcerated into life and community. However, so many Jewish communities have strict unspoken assumptions about who is Jewish and who “we” are that most people coming out of prison would not be welcome, either implicitly or explicitly, in many liberal synagogues. And so, as a result, I often refer people to the ever-welcoming Chabad. But I am hearing more and more about Jewish communities that are reflecting seriously on their relationship to race and working to increase their vision of “audacious hospitality.” Change is underway. I would love to see congregations connect directly with their local jails and prisons and offer themselves as places for people to go when they get out—for prayer, for holiday observances, for friendship, for pastoral support, for social services. One way to facilitate this connection is for synagogues to start a volunteer visitation or pen pal program, which can serve as a pipeline for formerly incarcerated people when they are released. Prison erases community. Synagogues have tremendous potential to be a network for healing and resiliency.”

– Rabbi Ari Lev Fornari, prison chaplain



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TAKE ACTION

Using Art and Media for Advocacy and Education

Using various kinds of art and media can support both the education and advocacy sides of your campaign. A live performance can become a big community event that brings new people in and even attracts press attention. Video clips can stimulate discussion and transport a community to a world they can't otherwise inhabit. Art exhibits or installations can give people space to learn or be moved on their own time. Here are some specific suggestions to get you started:

- *Mariposa and the Saint* (<http://www.juliasteeleallen.com/portfolio/mariposa/>) is a 45-minute, two-person play based on letters from a woman (Mariposa) held in solitary confinement. Rabbi Michael Lezak brought the play to his community in the Bay Area, where it was well-attended. The national tour for this production, coordinated by NRCAT, ran from September 2015 through June 2016. Another example is Judith Sloan's one-woman show *YO MISS!* (<http://www.earsay.org/projects/performance/>) Look for

similar productions that are traveling to your community or could be brought in.

- If no play is available, consider staging a reading yourself. *If the SHU Fits*, produced by NRCAT from the testimony of people held in solitary, is a 21-page script available at <http://www.nrcat.org/storage/documents/if-the-shu-fits-script.pdf>. It can be read in a meeting by simply going around the room and letting each person read a part, or could be rehearsed for a formal reading, or could be staged as a performance.

- NRCAT has built a full-size model of a solitary cell, which is available to be transported around the country and assembled as an interactive art exhibit. Visit <http://nrcat.org/torture-in-us-prisons/replica-shu-cell> for more details. (Be advised that transport and assembly of the cell can cost \$5,000 or more.)

ABOUT NRCAT

NRCAT, the National Religious Campaign Against Torture, was founded in 2006 as a response to the revelations about torture in the US military prison at Abu Ghraib, Iraq. T'ruah was a founding organization and remains an active partner. Since then, NRCAT has expanded its mandate to include torture in US prisons, jails, and other sites of detention, specifically advocacy to end the use of solitary confinement. Over 320 organizations, representing Evangelical Christians, Catholics, Orthodox Christians, mainline Protestants, Muslims, Jews, Sikhs, Hindus, Bahá'ís, and Buddhists, are part of NRCAT.

Photo courtesy of NRCAT



• A simpler version of the replica cell is to conduct a “chalk-in.” Using chalk on a sidewalk or parking lot, or tape on a floor, mark out a box six feet by nine. This is approximately the size of most solitary cells. You can invite students or volunteers to sit in it, or put up a simple explanatory sign and let people have their own experience with it as they walk by.

• Using video is a great way to start a conversation or bring a class deeper into a world they otherwise wouldn’t have access to, or bringing a voice into the classroom from behind bars. Both fiction and nonfiction can be appropriate. We have found that screening a full-length movie or documentary is challenging in this context; unless the filmmaker is on hand to take questions afterwards, generally people have used up their attention span and are ready to leave when the film is over. Showing a series of short clips, or at most one episode of a television show, can allow time for a rich conversation. Following is a list of clips you may find useful:

- *Racial Disparities in the American Criminal Justice System*⁵¹³ (2 min.)—animated documentary from BeyondBars.org and Brave New Films. First in a series of shorts.
- *Fear of a Brown Planet: comedian Aamer Rahman on “Reverse Racism”*⁵¹⁴ (3 min.)—brief history of white supremacy.
- *Rev. Deborah Johnson: At the Heart of Changing Systems and Structures*⁵¹⁵ (7 min.)
- *Incarcerated People Speak*⁵¹⁶: A list of 16 short clips curated by the Criminal Justice Policy Foundation.
- *Why Solitary Confinement is Modern-Day Torture*⁵¹⁷ (5 min.)—animated op-ed making the case for why solitary is torture.
- *Slavery to Mass Incarceration*⁵¹⁸ (6 min.)—by Equal Justice Initiative.
- *Breaking Down the Box*⁵¹⁹—a 40 minute documentary about ending solitary confinement, produced by NRCAT.
- *How I Learned To Stop Worrying and Love Discussing Race*⁵²⁰ (12 min.)—TED talk by Jay Smooth.

Available on YouTube⁵⁰⁹:

- *I Am Not Black, You Are Not White*⁵¹⁰ (4 min.)—first-person narrative about race as a social construct.
- *The Future of Race in America: Michelle Alexander at TEDxColumbus*⁵¹¹ (24 min.)
- *Cracking the Codes: The System of Racial Inequity. Joy DeGruy, A Trip to the Grocery Store*⁵¹² (4 min.)—first-person narrative about being treated differently due to race.

Comedian John Oliver, on his comedy/news show “Last Week Tonight,” has covered a series of topics related to mass incarceration, where he explains clearly the issues at hand:

- Prison:
https://www.youtube.com/watch?v=_Pz3syET3DY
- Prisoner Reentry:
<https://www.youtube.com/watch?v=gJtYRxH5G2k>

509 Thanks to Lynne Iser and Rev. Laura Markle Downton for these recommendations.

510 <http://www.globetoday.com/watch-the-video-thats-taking-the-world-by-storm-today-this-will-leave-you-questioning-everything/>

511 www.youtube.com/watch?v=SQ6H-Mz6hgw

512 <https://www.youtube.com/watch?v=GTvU7uUgjUI>

513 <https://www.youtube.com/watch?v=cGFdIEZRH5k>

514 www.youtube.com/watch?v=dw_mRalHb-M

515 <https://www.youtube.com/watch?v=ijiFh-NgWfl>

516 <https://www.youtube.com/playlist?list=PLd1OmLQbUbMtE9o4QTNs9CbxM25eR0RYI>

517 <https://www.youtube.com/watch?v=I9xeIRpLUdc>

518 https://www.youtube.com/watch?v=r4e_djVSag4

519 <http://www.nrcat.org/torture-in-us-prisons/breaking-down-the-box>

520 <https://www.youtube.com/watch?v=MbdxeFcQtaU>

- Mandatory Minimums:
<https://www.youtube.com/watch?v=pDVmldTurqk>
- Municipal Fines:
<https://www.youtube.com/watch?v=0UjpmT5noto>
- Police Militarization:
<https://www.youtube.com/watch?v=KUdHIatS36A>
- Civil Forfeiture:
<https://www.youtube.com/watch?v=3kEpZWGgJks>
- Bail:
<https://www.youtube.com/watch?v=IS5mwymTIJU>
- Public defenders:
<https://www.youtube.com/watch?v=USkEzLuzmZ4>

Non-video sources for the stories of incarcerated people or their families:

- *Between the Bars: Human Stories from Prison:*
<https://betweenthebars.org/>
- *My Life Now: Stories from Young People with Parents in Prison:*
<https://www.shineforkids.org.au/mylifenow/>
- *Hell is a Very Small Place*—stories from people held in solitary, published by SolitaryWatch.

The Dhamma Brothers (<http://www.dhammabrothers.com/>)—Rabbi Ari Lev Fornari, a prison chaplain in Massachusetts, finds this documentary exceptionally useful with both incarcerated people and free people interested in learning more about incarceration. It tells the story of a Vipassana silent meditation retreat conducted inside Alabama’s maximum security prison for the people incarcerated there. With a run time of 75 minutes, it provides time afterwards for discussion and follow-up.

The following two documentaries, though a little long to be followed by much discussion, provide more in-depth looks at two aspects of mass incarceration:

- *The House I Live In* (2012, 108 min.) examines the War on Drugs and its implications for human rights. Available on NetFlix.
- *Herman’s House* (2012, 80 min.) tells the story of Herman Wallace, one of the “Angola Three”—a black man held in solitary confinement in Louisiana’s Angola Prison for 41 years—and Jackie Sumell, a white woman who began a correspondence with Herman and eventually designed a scale model of his dream house. Herman was released from prison on October 1, 2013 and died three days later of liver cancer.



TAKE ACTION

It Starts with Advocacy...But It Doesn't Stop There

When the Jewish community wants to make a difference in the world, one of the first tactics we reach for is often advocacy with our elected officials. This can, indeed, be effective, though it should be one amid a number of tools, allowing us to select the right approach for each situation.

The first question is at what level of government to target our advocacy. Mass incarceration must be combated on multiple scales, as most policies are set at the state and local level, rather than at a federal level. Local and state leaders represent fewer constituents, so your voice may be more significant to them, and you may see results more quickly.

Once you know who your state representatives are, you need to know what Assembly or Senate committees they are on. A Senator or Representative who is on a committee that oversees the issue you care about (whether on the federal or state level) has significant influence over introducing bills or getting them out of committee and onto the floor.

Clergy—who are assumed to represent a whole community whether or not they actually work in a congregation—often have more influence with elected leaders than individual constituents do. Your long-term goal can be to build a relationship with a representative and her/his staff, so that you become a known and trusted voice on a cluster of issues. You don't want to be adversarial if it can be avoided; you do want to express your community's priorities and partner with the representative to shape public policy that benefits everyone. When there is a bill under discussion, it is helpful to be

specific about the name/number of the bill (e.g., H.R. 211) and why you support it. But your relationship-building efforts proceed even if there is not current legislation pending.

Choose the method of contacting your representative that is best for the particular moment and reason for your call, and that fits into your arc of relationship-building. An in-person

meeting generally has the most impact (more on these below). Phone calls tend to be more effective than emails, with ten or 20 calls having more influence than hundreds of boilerplate emails. A personalized message goes much farther than a generic one, via any medium, so plan to communicate a bit about who you are and why this issue matters to you. Representatives and their staff are human too, and a memorable message may stick with them longer. Due to security measures, postal mail can be very slow in reaching a member of Congress (two weeks' delay or more), so for an urgent message,

email or phone is preferable. You can find all the relevant contact information on your representative's website.

Another way to get your message across is to write a letter to the editor of your local newspaper, mentioning the name of the representative you are targeting (e.g., "I hope that Congresswoman Smith votes yes on..."). Members of the representative's staff keep a close eye out for their boss's name, so if your letter gets published, they will see it. T'ruah can help you write and submit an op-ed, and if you are collaborating with a local advocacy group, they will have talking points to guide you.



Rabbi David Levy testifies before a legislative committee in Trenton, NJ, supporting a bill to reduce the use of solitary confinement.

Whether you are calling to express your opinion or to request a meeting...

- Don't be nervous! Your call will be answered by someone whose main job is answering the phone and being friendly to you.
- Identify yourself as a constituent.
- If you are looking for a meeting, ask whether it would be possible to meet with someone from the representative's staff to discuss the issue. Representatives always have local offices as well as offices in the state capital or Washington, DC, so you should be able to arrange a meeting without traveling too far.

If you are having an in-person meeting, plan it in advance!

- Decide who is going with you—a group of 4-5 people is best.
- Assign roles: who will introduce the members of your group and what part of your message will each of you communicate.
- You won't know in advance how much time you'll have with the staffer—and it may depend simply on how busy the schedule is that day—so plan for both the three-minute

version and the 30-minute version of the conversation.

- Don't worry about all the policy details you do or don't know. Present why the issue matters to you, relying more on emotion and values than facts. That is what you, as a religious leader or a member of a religious community, bring to the discussion.
- It can also help to bring with you a maximum of one sheet of paper with information about the bill or issue you are advocating for. You can leave this with the staffer to refer back to later, or to pass along to the representative.
- After your meeting, follow up with a thank-you letter or email. It never hurts for the staff to think you were pleasant to work with as well as passionate, and the thank you gives you an opportunity to add anything you weren't able to say in the meeting.

Rabbis and other employees of nonprofit institutions, including synagogues, are prohibited from endorsing candidates in a political race. But we are allowed to speak and educate about the issues we care about, and devote a small, but not "substantial" amount of our time and budget to directly advocating for policies or legislation.

PUTTING THE SYSTEM ON TRIAL

When we think about advocacy, the legislative branch usually comes to mind, but the District Attorney or State's Attorney can also be an effective person to target. In Cleveland, where police shot and killed 12-year-old Tamir Rice, the DA was up for reelection. Rabbi Joshua Caruso and his allies from Greater Cleveland Congregations organized an event called "Putting the System on Trial," hosted at Rabbi Caruso's synagogue, where they would present public testimony about the problems with policing in Cleveland and what reforms they want to see. With hundreds of people guaranteed to turn out, the DA and his challenger were compelled to show up. ("If the people show up, the candidates will too," says Rabbi Caruso, "so part of the work is educating the county that this matters.") Caruso and his co-organizers published an op-ed⁵²¹ in advance of the event, which moved the paper to follow with an editorial⁵²² calling on the candidates to attend. With the power that DA's hold in our system (see p. 48), asking them to respond to public opinion can be a path forward towards change. DA's are also unusual among elected officials, in that incumbents run unopposed 85% of the time.⁵²³ That means that if the DA isn't responsive to public pressure, encouraging a challenger to run can be another way of holding him/her accountable. The event was a big success, with more than 1,000 people attending.⁵²⁴

521 http://www.cleveland.com/opinion/index.ssf/2016/01/failed_justice_in_tamir_rice_d.html

522 http://www.cleveland.com/opinion/index.ssf/2016/01/clergy_should_have_met_with_prosecutor_timothy_mcginty_editorial.html

523 <http://www.urban.org/urban-wire/ten-reasons-care-about-your-local-da-race>

524 For news coverage of the event, see http://www.cleveland.com/metro/index.ssf/2016/02/faith_group_puts_justice_syste.html or <http://wviz.ideastream.org/news/greater-cleveland-congregations-puts-county-justice-system-on-trial>. As it happened, DA McGinty lost the primary.

TAKE ACTION

Get Connected

If you're new to community organizing or the fight to end mass incarceration and are looking for a way in, the best advice for how to get started comes from Rabbi Michael Lezak: Talk to—and learn from—everyone. Though his passion was ignited by reading *The New Jim Crow*, he really began to get traction after spending a flight from San Francisco to New York picking the brain of an expert in criminal justice reform. When he got home, he started talking to everyone she had recommended, not only asking them what they do and how he might help but also whom else he should talk to. Following up from one lead to the next opened some incredible doors for him, leading to amazing opportunities for him and his congregation to get further involved.

The second piece of advice is to find out what grassroots organizing is already happening near you and then to join in. **Nation Inside** (www.nationinside.org) is one online platform

that keeps a national list of local campaigns against mass incarceration; scroll down on their homepage to find the map and see if there is a campaign near you. Another option is to look at the websites of the major organizing networks (e.g., PICO, IAF) to see if they have a local affiliate. If they are not running an active campaign on an aspect of mass incarceration, they can likely connect you to someone who is. We at T'ruah also want to know how you're getting involved and may be able to connect you to local organizing. Email us at office@truah.org.

We learn from our colleague Rabbi Susan Talve that, when the moment of crisis comes, it's too late to reach out to other communities. We need to be building relationships across racial, economic, cultural, and other lines, so that when the crisis arrives, the collective response arises out of existing

bonds. Of the Ferguson protests in the wake of Michael Brown's shooting, Rabbi Talve writes, "The faces I saw on the street of the young black men and women helping and organizing are the wonderful friends I have marched with from fast food chain to fast food chain" in the Fight for \$15 campaign. These connections can be built on so many levels, in simple ways. Rabbi Talve encourages us: "Mentor—not once a month, every week—and cross the divide.... It's not scary. Even now. Go to shops in neighborhoods you don't usually go to. Support the stores and businesses that are making a difference in these communities plagued by economic disparities." Conversely, another way to cross lines

is by opening your building to outside groups. For instance, Rabbi Ari Lev Fornari notes that it's common for churches to host AA meetings but much less common for synagogues.

Another way to get connected is by volunteering in a

restorative justice program. Sometimes these organizations are free-standing and other times they are incorporated into the formal criminal justice system. Sometimes they operate solely with professionals, but other times they rely heavily on volunteers—and religious leaders can play an especially useful role. The website **Restorative Justice on the Rise** (<http://restorativejusticeontherise.org>) lists programs across the country (scroll down to bottom of the homepage for the map). Participating in a restorative justice program as a community member can have benefits in multiple directions. It's a way for you to actually contribute to an alternative, more just form of responding to harm in a community. It's a way to learn more about ending mass incarceration. It's a way to meet people you might otherwise not meet, and it's a signal to their communities that you care about what happens to them.

GET A LOCAL SNAPSHOT

The Vera Institute of Justice has an online database with incarceration statistics and trends for each county in the United States. As part of your local organizing campaign, look into the state of your county jail population over the last 40 years.
<http://trends.vera.org/#/>

TAKE ACTION

Reaching Out to Incarcerated People and Their Families

It's important to put a face on mass incarceration. It's not just an abstract system that needs to be dismantled; it's millions of real people whose lives have been affected, deeply and often irreparably, by it. Finding opportunities to communicate with them reminds us what's at stake. By reaching through the prison walls or beyond them to families, we already take an initial (if symbolic) step towards ending mass incarceration by refusing to accept the system's assertion that incarcerated people are dangerous and must be isolated from the rest of society.

One easy way to get involved is to correspond with incarcerated people, which requires relatively little time from volunteers and serves at least three important functions. It contributes to the volunteer's education

and understanding of prisons. It builds the morale of the incarcerated person. And it can actually improve his/her safety. "Mail call" is public in prisons, so everybody knows who's receiving mail and who isn't. An incarcerated person who never receives mail is tagged as abandoned and becomes vulnerable to attack or exploitation; s/he would have no advocates outside the system. For those interested in becoming a prison pen pal, see the facing page for guidance.

Visiting is a step up from writing to an incarcerated person regularly. If the person you are visiting is a member of your community, the visit is all the more important, because it reminds all involved that s/he is still one of you, despite the current circumstance of incarceration. On page 167, director and storyteller Eileen McAdams reflects on her experience visiting an incarcerated woman; Eileen is her only visitor. See the facing page for guidance on how to become a formal visitor in federal or military prison. For local or state facilities, a good first step is to contact the chaplain.

Another avenue for volunteering is with the families of incarcerated people. Incarceration can make life exponentially more difficult for these families (see p. 80), and a variety of programs exist to help support them. These range from help that relates directly to the facts of incarceration (such as arranging transportation to make visiting incarcerated family easier) to more general support and encouragement (e.g., one-on-one tutoring, holiday parties). **The National Resource Center on Children and Families of the Incarcerated** at Rutgers University maintains a list of national organizations providing such services (<https://nrcf.camden.rutgers.edu/resources/directory/national-programs>). You can also search for local organizations such as Virginia-based Assisting Families of the Incarcerated (www.foi.org).

"It's a moral argument that, historically, leads to reform. You think of HIV/AIDS. It's not until the people impacted spoke directly to the public that you started seeing real change."⁵²⁵

- Glenn E. Martin, founder of Just Leadership USA

Finally, if you don't have the capacity for a sustained volunteer commitment, inviting a formerly incarcerated person (or a family member) to speak at a community event is another way to put a human face on the prison system. Local coalitions fighting mass incarceration can often connect you with returning citizens who are available to speak publicly.

Ultimately, these various forms of correspondence and volunteering should aim to bring down barriers and forge relationships with those most directly affected by mass incarceration: communities of color. Their leadership is crucial in the fight to end mass incarceration. One way to measure the effectiveness of volunteer efforts is to ask how much they contribute to putting the voices and agenda of directly-affected people at the center of the movement.

⁵²⁵ <https://www.themarshallproject.org/2015/03/04/how-to-cut-the-prison-population-by-50-percent>

RESOURCES FOR VOLUNTEERING TO VISIT INCARCERATED PEOPLE

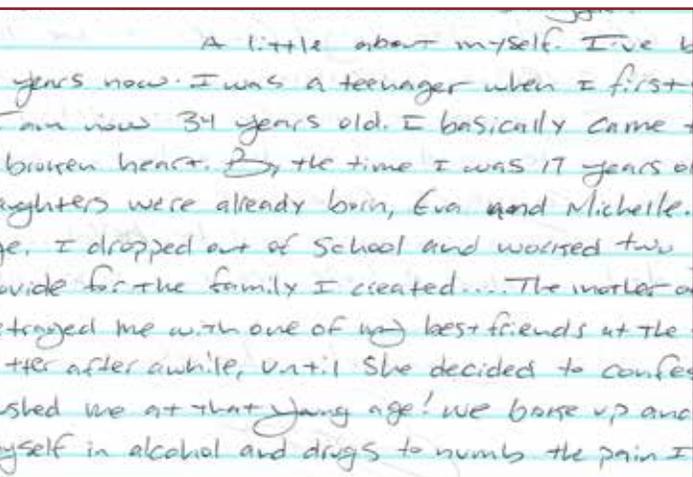
Prisoner Visitation and Support (PVS) is the only nationwide, interfaith visitation program with access to all federal and military prisons and prisoners in the United States. Founded in 1968, today PVS has 400 volunteers who visit at more than 100 federal and military prisons across the country. The visitors make monthly visits to see prisoners who rarely, if ever, receive outside visits. PVS visitors also focus on seeing those prisoners with an acute need for human contact: those serving long sentences, those frequently transferred from prison to prison, and those in solitary confinement and on death row. No other group has this access. PVS is very selective in appointing local volunteer visitors, who are appointed only after a personal interview with one of the PVS visitor recruiters. For more information, visit <http://www.prisonervisitation.org/> or email Executive Director Eric Corson at ecorson@prisonervisitation.org.

RESOURCES FOR BECOMING PEN PALS WITH AN INCARCERATED PERSON

- SolitaryWatch runs a project, Lifelines to Solitary, that matches pen pals on the outside with incarcerated people held in solitary confinement. For more information, visit <http://www.nrcat.org/torture-in-us-prisons/write-a-letter>.
- Phyllis B. Taylor was the Jewish chaplain in the Philadelphia prison system for 18 years. She now runs a pen pal program. Email her at rktptb@me.com.
- Black and Pink (www.blackandpink.org), based in Massachusetts, advocates for LGBT incarcerated people and runs a pen pal system.
- The November Coalition (www.november.org), based in Washington State, advocates for an end to the drug war and does some prison correspondence matching. Email Executive Director Nora Callahan, nora@november.org.
- The Prisoner Correspondence Project (<http://www.prisoner-correspondenceproject.com/>), based in Montreal, coordinates a pen pal program for LGBT incarcerated people in Canada and the U.S.

- Human Rights Pen Pals (<http://humanrightspenpals.org/pen-pals/>) connects free people and people incarcerated in California's solitary confinement units as pen pals.

For the sake of your own safety, all of these groups will advise you to use a PO Box or an organization (synagogue, workplace, etc.) for a return address, rather than your home address, and to avoid using your full name.



Letter from solitary, in response to a card from Rabbi Singer's congregation (see following page)

For the past five years I've been visiting an inmate at Bedford Hills Correctional Facility in Westchester, NY. Once a month we sit across the table from each other, talking over a meal as any two friends out for lunch might do. And although I did not know her when I first began visiting, our friendship has grown into a mutually caring relationship and has become an important part of her life as she serves her twenty-to-life sentence. Inmates with long sentences often receive less and less visitors as the years go by. Parents die, family members move away, friends drop out. Yet visitors play an important part in an inmate's recovery - lifting morale, helping their fight against depression and encouraging belief in a meaningful future. If you are considering visiting a woman at Bedford and have any questions about my experience, I would be happy to share them with you.

– Eileen McAdam, emcadam@hvc.rr.com

100 POSTCARDS

Rabbi Suzanne Singer of Riverside, CA shares the following: [In December 2015,] members of my congregation sent 100 cards to men in solitary, letting them know that we were thinking about them and praying for them by name. The letters we wrote ended: "Your journey is a difficult one but it is our hope that this note will give you strength. Please know that you are not forgotten."

The thank you notes we received testify to the power of this simple action. One Jewish inmate wrote: "I received your note and it made my day and will continue to bring me joy and happiness as I remember your kindness...I came to prison in 1995, at 20 years old...I sat in solitary for seven years...If you could keep me in mind with any Jewish thoughts, lessons, studies or wisdom that you could send I'd like that very much." Motivated by this response, and knowing that our actions made a difference, my congregation plans to write and send more cards soon.

TAKE ACTION

How Clergy Can Help Inside Prisons and Jails

Every prison and jail is different, with its own set of rules and procedures; federal, state, and local regulations are different, and individual wardens have a fair amount of discretion.

When trying to get access as a volunteer, learning the system's ins and outs and showing it the deference it expects can grease the skids.

One common entry point is through offering to consult on kosher food. According to Rabbi Ari Lev Fornari, who works in two prisons in the Boston area, almost every prison needs this kind of help, because all too often “there’s a Catholic minister trying to oversee the kosher meal plan.” (He adds that, for all the ways the show *Orange is the New Black* gets prison wrong, the kosher meal plan scenes in season three were uncannily similar to his experiences.) This may include advocating for inmates, observing the kitchen, talking with staff about what meals are being provided, and creating standards for people enrolling in the kosher meal plan. “Overseeing (or helping to coordinate) the kosher meal plan is a great way to establish a connection with a facility.”

Another potential entry point is to offer to lead services, especially on holidays. Most prison chaplains across the country are Catholic and will often value the support of a rabbi or cantor for the Jews in their care. Where there is a Jewish chaplain, most are Orthodox, meaning they can’t travel on *yom tov*, even if a chaplain does drive on the holidays, s/he may work at three or four facilities, making it impossible to visit all of them in a single day. Rabbi Joanna Katz, a chaplain in New York State, suggests that a rabbi or cantor whose observance does include traveling could fill in, which might be attractive to wardens given their desire to forestall complaints from the people in their charge. In the Bay Area, Rabbi Lezak is coordinating a group of volunteers, including musicians, who will volunteer to lead Shabbat services in San Quentin State Prison from time to time. Rabbi Andrew Scheer, a chaplain in New York City, cites an example of a Christian colleague who is also the minister of a local church. This chaplain once brought some of his parishioners into the jail with him to participate in a prayer service with incarcerated people, which benefited both groups.

IT HAPPENED IN IOWA

Rabbi Tamar Grimm was surprised to get a call from one of the wardens at a prison in Iowa, across the border from her congregation in Rock Island, IL. It seemed he had simply called the synagogue closest to his facility. Could she answer a few questions about what it means to keep kosher? After a few phone conversations, the warden explained that they had a Jewish prisoner who was requesting kosher meals, but the pre-packaged meals that were available for order were cost-prohibitive. The prison was trying to find a way to meet its legal obligation to provide kosher food while staying within its budget, and they were wondering if there was such a thing as “levels of kosher.” She eventually was invited to tour the kitchen and offer her feedback on the accommodations they were making—which she did, though not without some conflicted feelings (and while making clear to the warden that she could not officially certify his kitchen as kosher). The relationship lasted about three months, until the warden decided, between what Rabbi Grimm and the incarcerated Jew in question were telling him, that he had done enough.

Teaching classes in a jail or prison is another opportunity that prison staff may welcome. Rabbi Fornari frequently teaches a Jewish spirituality group and says he always starts with some meditation. “There is so little mindfulness and connection in prisons,” he says, “that I spend half my time just working with them on being present.” He has found Rabbi Arthur Green’s book *Judaism’s Ten Best Ideas* an ideal curriculum for a ten-week class, because it serves as an accessible primer for his students, many of whom aren’t Jewish by birth. Rabbi Fornari notes that he always reads aloud, not assuming basic literacy—even in English.

Rabbi Fornari also adds that he has found teaching incarcerated people how to study in *chavruta* to be impactful and effective.⁵²⁶ “It’s something people can do in prison” on their own, without a lot of materials or training, he says. “Many incarcerated people have no relationships anymore,” so being able to build a connection within the framework of studying the Tanach can be transformative.

Rabbi Scheer injects a note of caution about understanding how prisons operate. Unless the facility allows incarcerated people to move around unescorted, any program is going to add to the workload of the corrections officers, who are

already often overworked. They have to bring the participants into the room, be present during the class, and then bring them back, all of which takes them away from other duties. What seems like obstruction deserves some understanding, he says. And it’s always best to plan an event far in advance; prisons and jails are no place for surprises.

The idea of teaching classes or promoting *chavruta* learning raises the question of book donations, which looks different to chaplains in different facilities. Rabbi Katz, in Westchester, says, “I have a full library—people always want to donate old books. I need new books! My inmates are serious students. They want new prayerbooks. I want to be able to have a variety of contemporary *siddurim* from the whole spectrum.” Rabbi Scheer, in New York City, has a different experience: “The more elementary, the more they loved it. The vast majority of guys say, ‘I don’t know anything about the faith.’ One guy read [a book I brought him] cover to cover. It was dated, from the eighties, but he loved it.” He says that the most effective way to donate books is to contact the chaplain so s/he can bring them into the jail a few at a time. Of the red tape involved in sending a box of books straight to the prison, “God help you,” he says.

THE ALEPH INSTITUTE

The Aleph Institute, run by Chabad, is the best-known—in many places, the only—national Jewish organization providing services for incarcerated Jews. It will often be familiar to prison officials and to incarcerated people themselves; any clergy wanting to work in prisons should become familiar with what Aleph provides. Among their offerings are holiday materials—including Passover food—which they are happy to send free of charge. Aleph will also advocate on behalf of the religious needs of Jews, and they also publish a newsletter, which many incarcerated Jews are happy to receive. For more information, visit <http://aleph-institute.org/>.

⁵²⁶ Notwithstanding the North Carolina case where the prison refused to allow Torah study in groups of less than ten, citing their understanding of *halacha* - see: <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/02/29/justice-alito-on-discrimination-against-jewish-prison-inmates/>

TAKE ACTION

Jewish Language for Protest Signs

When we attend rallies and protests about police violence or mass incarceration, bringing Jewish language to our signs sends an important message. We don't just happen to be Jews in attendance; we are showing up as Jews, rooted in Jewish text and tradition, representing the Jewish community. Here are a few texts from #BlackLivesMatter protests—short and simple enough to understand at a glance, with great depth and power to them—to get you started.



TAKE ACTION**Recommended Reading**

There are many good books about aspects of mass incarceration, with more being written all the time. Here are a few suggestions to get you started.

For a first dip into reading about mass incarceration:

- *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, by Michelle Alexander. (2010) This is the book that led many of us to think deeply about mass incarceration and its entanglement with race for the first time.
- *Locked Down, Locked Out: Why Prison Doesn't Work and How We Can Do Better*, by Maya Schenwar. (2014) Schenwar uses the story of her sister's multiple incarcerations on drug-related charges as a lens through which to view the prison system and the restorative justice models that could transform it.
- *Just Mercy: A Story of Justice and Redemption*, by Bryan Stevenson. (2014) Stevenson's memoir of representing people on death row and providing other legal services for the poor is a gripping read and a view on race from a black lawyer who has seen its ravages firsthand.
- *Ghettoside: A True Story of Murder in America*, by Jill Leovy. (2015) This journalistic account of homicide in Los Angeles' black inner city reads like a murder mystery and draws attention to our country's skewed policing priorities.

For a deeper dive:

- *A World Apart: Women, Prison, and Life Behind Bars*, by Cristina Rathbone. (2005) Rathbone takes the reader inside Massachusetts' women's prison.
- *Beyond Prisons: A New Interfaith Paradigm for Our Failed Prison System*, by Laura Magnani and Harmon L. Wray. (2006) This book, by the American Friends Service Committee (Quakers), takes a sweeping look at incarceration in America through its history and explores alternative models.
- *Building a Movement to End the New Jim Crow: An Organizing Guide*, by Daniel Hunter. (2015) A hands-on guide; available for purchase online at www.newjimcroworganizing.org.
- *Caught: The Prison State and the Lockdown of American Politics*, by Marie Gottschalk. (2015) Dense with data and research, Gottschalk makes the case for ending mass incarceration.
- *Couldn't Keep It To Myself: Testimonies from Our Imprisoned Sisters*, edited by Wally Lamb. (2003) This is a collection of autobiographical essays by incarcerated women, written during writing classes taught by author Wally Lamb.
- *The Protestant Ethic and the Spirit of Punishment*, by T. Richard Snyder. (2000) Snyder uses a theological and historical lens to explain why America thinks about prisons the way it does.
- *Tattoos on the Heart: The Power of Boundless Compassion*, by Gregory Boyle. (2010) Written by a priest who spent 25 years working with gang members in Los Angeles, this memoirsque book paints a moving portrait of returning citizens fighting a great uphill battle.

For first-person testimony from solitary confinement, there is no book like SolitaryWatch's new collection:

- *Hell is a Very Small Place: Voices from Solitary Confinement*, edited by Jean Casella, James Ridgeway, and Sarah Shourd. (2016)