

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>