



Incarceration As a Modality of Punishment and Rehabilitation

A Torah Perspective

By [Sholom B. Lipskar](#)

Introduction

Every civilization throughout history has promulgated rules providing for the punishment of those who offend society's norms. The history of criminal justice is replete with societies that have included the practice of "incarceration" as one form of such punishment with—arguably—various degrees of success as a deterrent to crime or as a form of retribution for it.

Under America's criminal justice system, we have incarcerated

The concept of prison appears nowhere in Judaism

more than two million of our fellow citizens in federal, state and county facilities. Prison building has been described as one of the "growth" industries of the decade.

Yet, the concept of prison appears nowhere in Judaism. Indeed, while sentencing options as diverse as financial penalties,¹ atonement offerings,² corporal punishment,³ capital punishment⁴ and even death directly by the hand of G-d are found in the Torah,⁵ the punishment of "incarceration" as we know it is nowhere to be found in traditional Torah-based Jewish law.

This article will first attempt—in a highly-abbreviated form—to explain the various references to imprisonment in the Pentateuch,⁶ Prophets,⁷ Talmud,⁸ Maimonides,⁹ Codes of Jewish Law,¹⁰ Halachic Responsa of generally-accepted Rabbinical sources¹¹ and community edicts.¹²

Second, it will posit a Torah-based philosophical rationale as to why the Torah does not advocate prison.

Finally, recognizing that we now live in a society that increasingly appears to demand longer and "tougher" sentences, it will offer suggestions consistent with the Torah rationale to propose certain programs in prison that should reduce recidivism and improve chances for rehabilitation.



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"Prison" In the Torah

A careful reading of Torah sources reveals that where the Torah refers to prisons, they are not sanctioned modes of punitive incarceration. There are prisons established by non-Jewish societies, *e.g.*, Joseph's imprisonment in the jails of Pharaoh's Egypt¹³; prisons created in contravention to Jewish Law, *e.g.*, the jailing of the prophet Jeremiah¹⁴; prisons utilized as temporary holding cells until trial and sentencing¹⁵; and a prison environment used solely to execute a sentence of capital punishment.¹⁶

That is not to say that Jewish law did not condone restrictions on liberty. The Bible itself provides for servitude (involuntary, imposed by the court), as a reparative form of incarceration. Under certain circumstances, the court could order that a perpetrator of larceny or theft be "sold" for a period of time (not to exceed six years) in order to raise the funds necessary to make restitution.¹⁷ Yet such court-imposed servitude could not degenerate into cruel slave labor. The "bondsman" was entitled by law to good nutrition, proper clothing, productive work and food and shelter for his wife and children.¹⁸ Restitution, not punishment, was the goal.

Another form of restrictive liberty—often misunderstood as "prisons" by readers of the Bible—were the "Cities of Refuge," three of which were established by Moses just prior to the Jews' entry into the Holy Land after wandering though the desert for forty years and three others established by Joshua after the Jews settled in the Land of Israel.¹⁹

Those cities were, in effect, the earliest known form of "protective custody."²⁰ Persons found guilty of unpremeditated murder were given the option of moving into one of what eventually were six cities, thereby escaping the lawful revenge of the victim's surviving relatives.

But the Cities of Refuge cannot—under any stretch of the imagination—be deemed to have functioned in any way similar to today's prisons. For one thing, the offender was not isolated from contact with his loved ones and outside contacts. These environments were penal colonies that had all functions of a community, including productive work. Indeed, once the offender chose to flee to one of the cities, the court would order the inmate's wife, children and teacher to accommodate him.²¹ The underlying purpose of the Cities of Refuge was atonement, not isolation.²²

A clear indication that the Torah does not advocate the use of prisons is the fact that, while the Scriptures deal in minutest detail with all punishments, giving the precise method of their infliction, types of instruments used, amount of fines, etc., there is absolutely no guidance to be found with respect to punitive incarceration.²³

Prison Contrary to Creation's Purpose

The Jewish tradition teaches that everything in this universe was created by G-d with a positive purpose—to be utilized completely without waste.²⁴ Accordingly, in the criminal justice system, punishments should affect direct results and benefits for all parties involved: the perpetrator, victim and society in general.²⁵

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For the criminal, the consequential punishment of crime brings penance, atonement, rehabilitation and ultimate purging.²⁷ After being punished, one starts with a fresh slate; Jewish law dictates that the community must accept the wrongdoer as before and he regains a place in the World to Come.²⁸ For the victim and society, punishment must serve goals such as restitution, deterrence, retribution and protection.

Imprisonment does not serve these functions. It certainly brings no benefit (short or long term) to the victim. It appears to offer only temporary benefit to society (taking into account the high percentage of recidivism and the increasing numbers of people being sent "away"). And it obviously does no good for the inmate. On the contrary, prison inhibits and limits man's potential, destroys families and breeds bitterness, anger, insensitivity and eventual recidivism.

Man is understood in the Jewish tradition to play the central role in fulfilling G-d's creation, charged with making this world into a "dwelling place for Almighty G-d"²⁹ and using each of his moments to accomplish this purpose by serving his Maker.³⁰ Accordingly, man must use all

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ability to function**

resources available to fulfill this obligation. Imprisonment inherently limits a person's mobility and ability to function. Accordingly, it appears inconsistent for G-d to charge man with obligations and at the same time prevent him from fulfilling them.³¹

Reconciling Torah with the Reality of Present-Day Incarceration in America

Although the Torah does not endorse the use of prisons as a viable punishment, Torah law imposes an obligation on Jews to obey the law of the land in which they reside, particularly when the government of that land respects human rights and believes in the betterment, freedom and growth of their inhabitants.³² Accordingly, following the axiom that everything in creation is for a purpose, we must find meaning and purpose in prison to the extent possible.³³

Examining the extant forms of imprisonment in the Torah, one that most closely parallels the concept of punitive incarceration is the penal colonies established in the Cities of Refuge. We may find and develop some humane and beneficial aspects of imprisonment from the Torah's rules and regulations for this environment.

First, Torah law specifies that such penal colonies must be designed to provide a proper human habitat, required to be located near market towns and fresh water.³⁴

Second, the sentencing court was obligated to send the inmate's teacher and mentor into these penal colonies together with the offender.³⁵ Addressing the most important needs of the inmate, the Torah insists that his rabbi/teacher be placed in the prisoner's environment, too. The detriment of limiting the teacher's freedom is balanced against benefit of giving the incarcerated an opportunity for life through rehabilitation. A Torah-true life—introduced and administered by a competent rabbi/teacher—can be the foremost force in this rehabilitative process.

In his compendium of the Laws of *Rotze'ach*,³⁶ Maimonides expounds on the Biblical verse: "and he should run to one of these cities (of refuge) and live,"³⁷ by noting that

"a student who is exiled to a penal colony has his teacher exiled together with him so that he should live." Having one's teacher present gives the inmate an opportunity for life, for those who seek wisdom without the study of Torah are considered as dead.³⁸

Making the Best Of Prison Time

When imprisonment affords the opportunity for rehabilitation and restructuring of the offender's values, priorities and lifestyle, then a valid purpose can be established and realized.

For serious and proper rehabilitation—called *Teshuvah*, or return, in the Jewish tradition—there are two necessary prerequisites. First, one must gain a true understanding and acceptance of one's present state of being as undesirable. Second, one must develop a firm and disciplined resolve to change and improve.³⁹ Both remorse for the past and resolutions for the future are required.⁴⁰ In the prison environment—where one is separated from society and sheds much of the externalities of societal pressures and facades—one may begin a realistic and objective evaluation of self and structure a pattern for improvement.

From the darkest moments and deepest loss can come the greatest light and ultimate gain

The disciplining forces of Jewishness—the commandments referred to as *mitzvot*—give a person: (1) the mechanism to create control devices for his actions, even to the extent of affecting habit; and (2) regulation in structuring balanced living patterns.⁴¹ These benefits not only prepare a person for a personal life of righteousness and decency, but can extend outward to be an example to others of how not to act and how one can change. The guidelines of Jewish living, through the study of Torah and performance of its *mitzvot*, allow the prison environment to be utilized in this positive manner.

Indeed, as the Torah teaches, from the darkest moments and deepest loss can come the greatest light and ultimate gain.⁴² Consequently, it is of utmost importance to make it possible for inmates in physical confinements to transform a period of suspended death to vibrant life, thus fulfilling their purpose in the universe.

The proven way for a Jew to attain this freedom is by involving himself in a life of Torah study and observance.⁴³ Non-Jews can obtain this same type of spiritual development through the study of, and commitment to abide by, the Seven Noahide Laws.⁴⁴

Our prison systems spend much time and money on vocational, academic and psychological programs. To really accomplish the rehabilitation that is possible in prison, we should also focus on emancipating and structuring the soul — maximizing the human potential even while temporarily incarcerating the body.

The above discussion is based, in great part, on public discourses given by Rabbi Menachem Mendel Schneerson, The Lubavitcher Rebbe, of righteous memory, on Purim 5736 (Spring, 1976), Shabbos Nasso and Shabbos Korach 5745 (Summer, 1985).

FOOTNOTES

1. Exodus 21:37; Leviticus 5:24; Maimonides, Laws of Stolen Property, ch. 1
2. Leviticus 4; Maimonides, Laws of Transgressions, chs. 1-8
3. Leviticus 20:2, 14; Deuteronomy 25:3; Maimonides, Sanhedrin, chs. 15, 17
4. Exodus 12:15.
5. The Torah is accepted by Jews as a collection of Divinely-inspired 613 commandments found in the Written Law (the five books of Moses (The Pentateuch: Genesis, Exodus, Leviticus, Numbers and Deuteronomy) and derivative precepts expounded in the Oral Law (contained in writings such as the Talmud, the Code of Jewish Law ("Shulchan Arukh") and later rabbinic rulings) (collectively, the "Mitzvot" or "Halacha"). The Torah comprises the entire code of Jewish conduct—civil law, religious law, ritual law and ethical behavior. While many rulings in Torah law are expounded by later rabbinic authorities, the lessons taught are believed to exceed even the stature of their teachers. The very first paragraph of the first chapter of the Talmud's tractate *Avot* states: "Moses received the Torah from Sinai and transmitted it . . ." Except for clearly-delineated original edicts imposed by rabbinical courts under exceptional circumstances — always to protect existent Torah rulings and never to contradict them — all Torah rulings and traditions are accepted to have originated no less at Sinai than did the Ten Commandments. Judaism melds ethics and morality with ritual and civil law into the total code of behavior contained in the Torah, expounded by the Sages and embodied in practice into a living expression of G-d's Will. The eternal nature of the Torah is expressed in the belief that no religious law may be abrogated, eliminated or compromised. The original 613 precepts and ancillary rules remain in force and are followed wherever possible by observant Jews even in modern times and circumstances.
6. Genesis 39:20.
7. Jeremiah 37:15-16, 38:4-14.
8. Talmud Pesachim 91a; Talmud Yoma 11a; Talmud Sanhedrin 81b.
9. Maimonides, Laws of Rotze'ach ch. 4 § 8; Laws of Sanhedrin ch. 18 §§ 4-5.
10. Tur, Choshen Mishpat 2, Tur, Choshen Mishpat 93, no. 13.
11. Halakhot Pesukot min Ha-ge'onim No. 135, Responsa Ribash 348; Rashba, vol. 2, Responsa 276, Responsa Rosh 52:8.
12. See Elon, *Herut ha-Perat*, 172, 180-225.
13. Genesis 39:20.
14. Jeremiah 37:15-16; 38:4-14.
15. Numbers 15:34.
16. Talmud Sanhedrin 81, 2; Maimonides, Laws of Rotze'ach ch. 4 § 8; Laws of Sanhedrin ch. 18 §§ 4-5.
17. Exodus 21:2; Maimonides, Laws of Slaves, ch. 1.
18. Maimonides, Laws of Slaves, ch. 9.
19. Numbers 35: 9-34.
20. Numbers 35, 9-34; Maimonides, Laws of the Sabbatical Year, ch. 13; Laws of Rotze'ach, ch. 8.
21. Deuteronomy 4:42; See Likutei Sichos by Rabbi Menachem M. Schneerson, Portion of Va'eschannan, 5745.
22. Talmud Makkoth 2:2, Encyclopedia Talmudit at 123.
23. When Jewish law was not dominant, certain authoritative codifiers sanctioned imprisonment as a deterrent and to protect society. See, e.g., *Sefer ha-Aguddah*, Shabbos No. 150; Responsa Ribash No. 484; Responsa Maharash dam, Choshen Mishpat No. 390; and Rema, Choshen Mishpat 97:15. They endorsed punishments that were foreign to original Jewish law on one of two grounds. First, that Jewish law required one to "eradicate the evil from your midst" (Deuteronomy 13:6; 17:7; 19:19; 21:21), even when Torah law could not be enforced. See, e.g., Maimonides, Laws of Rotze'ach ch. 4:8-9; Laws of Sanhedrin ch. 24a). Others relied on the dictate "the law of the land is the law." Talmud Nedarim 28a; Talmud Gittin 106; Talmud Baba Kamma 113a; Talmud Baba Batra 54b. Even under these circumstances there were authorities who continued to prohibit the use of jails within Jewish communities. See Responsa Rosh No. 78:3; Responsa Rashba, vol. 1, No. 1069; Shulchan Aruch Choshen Mishpat 97:15.

  
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24. Talmud Shabbos 77b; Bereishis Rabba 44:1, 10:7.
25. Talmud Berachos 60b; Likutei Torah Nasso 25c.
26. Likutei Amarim Tanya, ch. 24.
27. Talmud Sanhedrin, 23a.
28. Likutei Amarim Tanya, Igeret Ha'Teshuvah, ch. 2.
29. Likutei Amarim Tanya, ch. 36; Tanchuma Nasso 7, 1.
30. Deuteronomy 11:13; Likutei Amarim Tanya, ch. 37.
31. Talmud Avodah Zorah, 3a.
32. Talmud Nedarim 28a; Talmud Gittin 106; Talmud Baba Kamma 113a; Talmud Baba Batra 54b.
33. Kesser Shem Tov 127-129.
34. Maimonides, Laws of Rotze'ach, ch. 6.
35. Maimonides, Laws of Rotze'ach, ch. 7:1.
36. *Id.*
37. Deuteronomy 4:42.
38. Maimonides, Laws of Rotze'ach, ch. 7:1.
39. Maimonides, Laws of Repentance; Likutei Amarim Tanya, Igeret Ha' Teshuvah, ch. 1.
40. *Id.*
41. Rabah Vayikra 13:3; Rabah Bereishis 44:1.
42. Eccl. 2:13; Zohar.
43. Ethics of the Fathers 6:2.
44. Maimonides, Laws of Kings, ch. 8.



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Rabbi Sholom B. Lipskar an emissary for the Lubavitcher Rebbe, he founded the Landow Yeshiva Center in Miami Beach in 1969, and in 1981 he founded both The Shul of Bal Harbour in Surfside, Florida and the Aleph Institute and the Educational Academy for the Elderly. He may be reached directly at sholom@aol.com

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Teachers

Posted: Sep 17, 2011

Many are not Jews. Who is the teacher? Is it their parents, school teachers, mayors, politicians, neighbours, friends. Are we not all teachers to one another? It seems to me that we are all incarcerated in cities of refuge with our criminals because we fail in our teaching of each and everyone of our citizens. Certainly those who live in neighbourhoods where drug rings rule are stuck fast in there, innocent or guilty. The rich who can live in less criminal neighbourhoods are incarcerated in their fear (of the jailed criminals escaping or being released back into the law abiding world or of loosing what they have).

The Torah is wiser than I will ever be and makes me think. It also makes me examine myself and see where I could do better in my example to others - there is much work to be done by all of us in order to "Bring[ing] Heaven Down to Earth". G_d willing. May he grant us all, the strength and clarity of vision, the courage and willingness to bring about His will.

[Posted By Julie, Durham, UK](#)

mars is not australia

Posted: Apr 20, 2010

The only trouble with exile and Rubens cities is that almost all parts of the earth are accessible by heli, boat, underground tunnels, subs and whatever coke dealers and other major killers can ably afford. I feel that, as ghastly and depersonalizing the prison still is, people who are murderers, violent pedophiles/marketeteers and world-class offenders like the dealers or nuclear terrorists are inevitably more of a threat to society when placed in the inevitable underground to "pay society back". The situation is so frustratingly tautological that it does not seem hard to imagine that after the massive

pollutants of unscrupulous businesses and other types of terrorism have reduced the clarity of all of our intellects via alzheimers, ADD and other environmental curses, laziness and terror will appeal more often to those who believe in execution, since there are so few viable alternatives if those of the most criminal element are at their kids, town, business and so on.

Posted By Anonymous, Kanata, ON

prison is negative.

Posted: Apr 19, 2010

I agree that prison is absurd!. Im a christian and esteem G-Ds methods of punishment and forgiveness as stated in the bible. I have often thought about this topic and totally agree with the wise Rabbi, it would be wonderful to establish G-Ds will on earth and get rid of the pathetic prison system that is built on revenge instead of justice.

Posted By Steven Hawkes, sydney, australia

Terrifying

Posted: Apr 16, 2010

Thanks, R' Lipskar for the fresh and unexpected view. I can see both sides of this issue; I have several close friends in a federal 'penitentiary' right now, serving decade-long sentences for petty crimes. It's a shame and an injustice. Conversely, I also am forced to go to great lengths to safeguard the safety of my family in America, where violent crime and murder are rampant at the hands of ever-more psychotic and drug-addled criminals. I have to agree that the modern penal system is flawed in concept and application. But, the 'cities of refuge' concept was not applicable in cases of true murderers; but this concept could still be adapted to expand 'prisons' beyond work camps and farms to true exile communities where life continues, but isolated from polite society. But, in all things, it must be more just and balanced, not simply more gentle.; for such an idea to succeed, the most violent must be executed. Otherwise, 'cities of refuge' will devolve into anarchy and bloodshed.

Posted By Daniel Benjamin, Bradenton, FL

what about S. M. Rubashkin

Posted: Apr 15, 2010

IF the greater part of the purpose of prison is protection, then we do not need white collar jails and people like Rabbi Rubashkin and Jonathan Pollard are not close to being a "danger to society" They actually need to be protected from a system that allows political agendas to rule!!! As far as the teacher being incarcerated, torah is true and one of the reasons can be found in that the teachers are meant to be seeing the students flaws as opportunities for themselves to grow- that is true education so they actually are BOTH elevated when in these cities of refuge.

Posted By Nechama D Zwiebel, Brooklyn, NY

sending the teacher into confinement

Posted: Apr 15, 2010

That is one of the stupidest thinks I have ever read on this website. How can it seem right to the sages that you punish the teacher along with the criminal. The alleged benefit to the criminal does NOT outweigh the loss of freedom of the teacher. The criminal has already proven he is a criminal and the teacher is innocent. If he learns anything it would be minimal compared to the loss to the teacher. The sages obviously didn't understand that certain people have no conscience and can never be rehabilitated. The recidivism rate is high in prison not because the sentences are too long but are not long enough. Criminals commit crimes soon after release. Their idea is don't get caught again. Society needs protection from armed robbers, murders, rapists and yes, even embezzlers. There is a lot of psychobabble about rehabilitation, but there no program that works. Con artists convince parole boards every day. They leave prison and go back to the same type of crime. Society needs protection.

Posted By Anonymous

Other purpose for prisons

Posted: Apr 15, 2010

Rabbi Lipskar; What an interesting and thought provoking article! Thank you.

One point I would like you to consider. I agree that part of the purpose of our prison system is "punishment." However, I think that another (much more valid) purpose of this system is to separate those that represent a danger to individuals and society.

Violent criminals that pose an ongoing danger to their neighbors must be locked away until and unless they no longer represent that danger.

Posted By Aaron Weissman, Great Falls, MT
via jewishmontana.com

Prisons

Posted: Apr 14, 2010

It's interesting that prisons in the conventional sense don't appear in Judaism. However, if we neglect follow certain laws, Kashrut, Nidah, etc... we are subject to be "Karet", Isn't this prison in reverse? Do you honestly think this is more humane? Personally, I'd rather serve time in prison.

Posted By Ava, Winnipeg, Canada

fine

Posted: Apr 13, 2010

While the death penalty and incarceration may not be deterrents, in today's society the scheme of penal colonies would fare no better, and in my insignificant opinion far less. Some crimes and criminal psychopaths are beyond redemption. We have many Jewish laws. They often are at odds with secular laws. Again, where this occurs, it does not make Jewish law superior just because I was here first. In establishing Jewish law there were sages who differed and normally overruled by the majority, which again does not make the law right. So how do you get it right? I don't know. But I would not switch what we have for what you expound.

The characters who thank Chabad for their recovery, are they the common? Whether yes or no or maybe, the point I would make is that they were in the right place where their tshuva was possible. I prefer their recovery in a prison to a dubious result in a penal colony. I might be more open to this notion if the penal colony is in a place like Easter Island.

Posted By Anonymous, wc

Incarceration As a Modality of Punishment and Reha

Posted: Apr 13, 2010

Brilliant article! And spot-on vis a vis something everyone takes for granted as the "right" way to deal with crime.

Criminals would be of such better use to society if they were required to "work themselves out of the debt" they owe as a result of committing a crime.

On a separate note, I've always considered GOLD and SILVER to be the currency of G-d rather than paper, and non-precious metal coins.

Posted By Anonymous, Ft. Lauderdale, FL/BROWARD

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