

## PRISON SERMON FOR YOM KIPPUR 5775

Rabbi Suzanne Singer

On August 13, 1986, just one day after his thirty-second birthday, Michael Morton returned home from work to discover that his wife had been brutally murdered. Morton was devastated. He tried to pick up the pieces of his life, returning to work and taking care of his 3-year-old son, Eric. Then he was arrested for the murder. The jury took only two hours to convict him. He received a life sentence and spent 25 years in prison. In a powerful and devastating memoir, *Getting Life*, published this past summer, Morton writes: “It seemed as if the word guilty was still ringing through the courtroom when I felt the cold steel of the cuffs close on my wrists — a sensation that in the next quarter-century would become as familiar as wearing a wristwatch.”

Only, Morton did not commit the crime. The police work was shoddy, missing a bloodied bandanna near the crime scene that was found by Morton’s brother-in-law. The sheriff and the prosecutor who tried his case withheld evidence that could have exculpated him — such as an eye-witness account by Morton’s 3-year-old son. Eventually, DNA testing became available but prosecutors resisted allowing this test. It was only through the perseverance of The Innocence Project lawyers that DNA on the bloodied bandanna proved that the killer was not Morton but another man with a long criminal history.

Free while Morton was imprisoned, he committed another, similar murder.

The man who prosecuted Morton later became a judge.

After details of his misconduct came out, he resigned, serving a brief jail term and losing his license to practice law. But this miscarriage of justice cost Morton

25 years of his life in the violent and dehumanizing environment of prison,

which he describes this way: “It is a warehouse filled with broken souls

we don’t want to look at or live with...Nothing about me mattered—

my existence was irrelevant...I could have toppled off the bench

with a massive heart attack, splitting my head open on the concrete floor.

There was not going to be a stampede to help me. I was on my own...

You stayed alive by acting like you weren’t afraid to die...

you were able to live in peace by acting like you were always ready for a fight.

But every inmate had to accept a certain amount of abuse from the guards.”<sup>1</sup>

In addition to losing these precious years and his beloved wife, he also lost his son, Eric, for a long period of time. Morton’s in-laws, convinced that he was his wife’s murderer, turned on him, bringing up Eric to believe in his father’s guilt.

Amazingly, after all he was put through, Morton seems to have been left with very little bitterness and anger. Once exonerated, he remarried and, after many years, has reconciled with his son. “Life is good,” Morton concludes. “I am free. I

am home. I am in love. Finally, the long night has ended. The sun is rising.”<sup>2</sup>

Clearly, Morton has been able to forgive, using his experiences to try and prevent others from undergoing a similar fate.

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<sup>1</sup> Getting Life, p. 110 and 126.

<sup>2</sup> Getting Life, p. 278.

As columnist Nicholas Kristof points out, however, despite being wrongly convicted and imprisoned, Morton did have several advantages. “He had no criminal record. He was white, from the middle class, in a respectable job. Miscarriages of justice disproportionately affect black and Hispanic men.” This story is just one of so many that show how flawed our criminal justice system is. Kristof writes that: This system “is arbitrary, and the mass incarceration experiment since the 1970s has been hugely expensive and grossly unfair. Prisons are unnecessarily violent, with some states refusing to take steps to reduce prison rape because they say these would be costly. And the system sometimes seems aimed as much at creating revenue for for-profit prisons as at delivering justice. Finally, it’s worth noting that Michael Morton is able to deliver this aching and poignant look at the criminal justice system only because he didn’t get a death sentence. When Morton was finally freed from prison, some of his first words were: ‘Thank God this wasn’t a capital case.’”

On Yom Kippur morning, we read the searing words of Isaiah calling us: “to unlock the shackles of injustice, to loosen the ropes of the yoke, to let the oppressed go free, and to tear every yoke apart.” Well the shackles of injustice have affected many people in our society who have ended up behind bars. Our get-tough-on-crime approach, which includes the war on drugs and harsh sentencing laws, has resulted in mass incarceration, particularly of people of color.

The United States, with five percent of the world's population has 25% of the world's prisoners, incarcerating more people than any other country in the world—more even than China or Russia. In fact, more people are in prisons in the United States than in all other developed countries combined.<sup>3</sup>

There are close to 2 and a half million people locked up in our jails and prisons,<sup>4</sup> and many of them are in for non-violent crimes.

According to the Sentencing Project: “At the Federal level, prisoners incarcerated on a drug charge comprise half of the prison population, while the number of drug offenders in state prisons has increased thirteen-fold since 1980. Most of these people are not high-level actors in the drug trade, and most have no prior criminal record for a violent offense.”<sup>5</sup>

Aside from the humanitarian issue involved, the fact is that putting people behind bars does not result in less crime.

Prisons punish, they do not rehabilitate, and in all too many cases, already disadvantaged people become saddled with a greater disadvantage – a record that restricts their opportunities once they are released from prison.

Michelle Alexander wrote a seminal book about mass incarceration, *The New Jim Crow*. Through painstaking documentation, she demonstrates that the war on drugs has disproportionately targeted people of color, resulting in a new underclass. As she writes:

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<sup>3</sup> <http://www.learnliberty.org/videos/us-prison-population-largest-world/>

<sup>4</sup> <http://www.economist.com/blogs/democracyinamerica/2014/03/americas-prison-population>

<sup>5</sup> <http://www.sentencingproject.org/template/page.cfm?id=128>

“Once you’ve been labeled a felon, the old forms of discrimination—employment discrimination, housing discrimination, denial of the right to vote, denial of educational opportunity, denial of food stamps and other public benefits, and exclusion from jury service—are suddenly legal. As a criminal, you have scarcely more rights, and arguably less respect, than a black man living in Alabama at the height of Jim Crow.

We have not ended racial caste in America; we have merely redesigned it.”<sup>6</sup>

And what happens to your family when prison is part of your biography?

Unfortunately, your children are much more likely to end up in prison if you have been incarcerated.

And consider this statistic: Eighty percent of criminal defendants are too poor to afford a lawyer. Some who are accused of felonies often meet their lawyers an hour before court, and are thus forced into plea deals.

It’s very common for public defenders to handle 400 felonies a year, which means they’re spending less than a day on any given case.<sup>7</sup>

This is certainly not what we would consider justice, either according to our Constitution, or according to the Torah and the Jewish tradition.

Judaism teaches us that we are created *b’tzelem Elohim* – in God’s image.

Human dignity is one of the most important values in our tradition.

And, incarceration as punishment is not part of the Jewish legal understanding.

In the Bible, the closest thing to a penal colony was the City of Refuge where a person who had unintentionally killed someone could go.

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<sup>6</sup> The New Jim Crow, p. 2.

<sup>7</sup> <http://www.alternet.org/civil-liberties/real-story-real-piper-orange-new-black?page=0%2C5>

The 12<sup>th</sup> century Spanish rabbi, Maimonides, provides us with details on the requirements for such an environment. These Cities of Refuge needed to be built near towns with water and fresh food, and the guilty party's teacher needed to be there with him. Clearly, the laws of our tradition wanted to ensure the well-being, both physical and spiritual, of the offending party.

Though Judaism holds people accountable for their actions, "[t]he Sages took tremendous care to value the dignity of the criminal and, thus, rejected punishment for its own sake," according to Rabbi Shmuly Yanklowitz.<sup>8</sup>

For example, the Torah<sup>9</sup> tells us that when a guilty person is to be flogged, he may be given up to forty lashes, but not more, "lest your peer be degraded before your eyes."

As Rabbi Melanie Aron points out, "The physical condition of the guilty party was taken into consideration along with his ability to withstand punishment."<sup>10</sup>

Indeed, punishment was generally limited to fines and lashes in ancient Israel and there was no such thing as long-term imprisonment.

"People were held [only] until their case could be heard."<sup>11</sup>

The focus was on restitution to the victim...

There was no perceived need to separate the criminal from society

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<sup>8</sup> <http://www.bjpa.org/Publications/details.cfm?PublicationID=14874>

<sup>9</sup> Parashat Ki Teitze

<sup>10</sup> Melanie Aron, URJ, "Reform Voices of Torah."

<sup>11</sup> Leviticus 24:12; Numbers 15:34

in this category of cases.”<sup>12</sup>

The goal was for the criminal to return to society, having done teshuvah, and to become a viable member of the community after he had paid his debt to the offended party. Isn't that the goal we should be aspiring to as well? Helping people to reenter our communities in order to lead productive lives rather than keeping them locked away for long stretches of time in isolated areas, away from their families, with little chance of being able to turn their lives around. Shouldn't we be providing them, instead, with mental health counseling, drug treatment, and job training? And wouldn't it ultimately be preferable to work from the other end, providing people with decent educations and the opportunity to work for a living wage so that they have less of a need to turn to a life of crime?

I assume you all know the story of the man pulling a drowning child out of the river? People come to help him until they are all pulling many children out of the river. One man comes along and walks past them. “Why aren't you helping us?” the others demand. The man replies: “I'm going to the mouth of the river to see why all these children are falling in the first place.” Rather than incarcerating people, shouldn't we be offering them alternative paths so that crime is not their preferred means of survival?

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<sup>12</sup> Melanie Aron, URJ, “Reform Voices of Torah.” Aron says further: “Returning to our biblical text, we find tremendous concern for the criminal both in the text itself and in the Rabbinic commentaries and applications. We note first of all the limitations on the punishment of the guilty offender (Babylonian Talmud, *Makot* 22b). The punishment must be proportional to the crime and must be done in the presence of the judge. Later in Rabbinic practice, this becomes three judges.”

The cost of imprisoning so many of our citizens is staggering. US News and World Report cites a Pew Center study showing that federal spending on corrections grew from about \$12 billion to about \$60 billion over the past 20 years. “[C]orrections budgets have become one of the fastest growing areas of spending, second to Medicaid.”<sup>13</sup> In California, for example, we spend over \$50,000 a year to lock someone up but only \$9,000 a year to educate them.<sup>14</sup> According to The Huffington Post, “since 1980, higher education spending has decreased by 13 percent...whereas spending on California's prisons... has skyrocketed by 436 percent. The state now shells out more money from its general fund for the prison system than the higher education system. (When combined with K-12 education, the state's overall education spending dwarfs its prison expenditures.)”<sup>15</sup> Ironically, the high cost of prisons is actually good news for prison reform.

In a time of budget constraints, even conservatives who believe in being tough on crime realize that these costs need to be reined in. In a New York Times OpEd, Richard A. Viguerie points out that, “it’s not just the excessive and unwise spending that offends conservative values. Prisons, for example, are harmful to prisoners and their families. Reform is therefore also an issue of compassion.

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<sup>13</sup> <http://www.usnews.com/opinion/articles/2013/08/29/eric-holder-and-congress-role-in-reforming-the-criminal-justice-system>

<sup>14</sup> <http://www.foxnews.com/politics/2011/03/14/states-spend-times-incarcerating-educating-studies-say-464156987/>

<sup>15</sup> [http://www.huffingtonpost.com/2012/09/06/california-prisons-colleges\\_n\\_1863101.html](http://www.huffingtonpost.com/2012/09/06/california-prisons-colleges_n_1863101.html)



The current system often turns out prisoners who are more harmful to society than when they went in, so prison and re-entry reform are issues of public safety as well...Increased spending has not improved effectiveness.

More than 40 percent of ex-convicts return to prison within three years of release; in some states, recidivism rates are closer to 60 percent. Too many offenders leave prisons unprepared to re-enter society.”<sup>16</sup>

States are beginning to get this message. According to The New York Times, last year, “35 states passed at least 85 reform-minded bills that created community-based alternatives to prison...”<sup>17</sup>

As states have reduced their prison population, crime has actually decreased.<sup>18</sup>

As you know, through realignment, California has shifted responsibility for low-level, non-violent offenses from the state to the counties.

The intention was to encourage counties to find innovative and effective alternatives to incarceration. Unfortunately, instead, there has often been a push to build more county jails.

As I mentioned, not only have many of these people not committed a serious, violent crime. 63 percent of people held in county jails have not even been convicted of any crime.

Most simply cannot afford to post bail.

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<sup>16</sup> <http://www.nytimes.com/2013/06/10/opinion/a-conservative-case-for-prison-reform.html>

<sup>17</sup> According to the Vera Institute, in NY Times Editorial, 7/22/14.

<sup>18</sup> <http://www.theguardian.com/commentisfree/2013/jul/04/alternatives-incarceration-prison-numbers>

As an alternative, several counties have had success with pretrial services, which keep someone awaiting trial out of jail by providing interventions such as drug rehabilitation, and supervision, such as GPS monitors.<sup>19</sup>

An important alternative to incarceration is on the ballot this November. Proposition 47 will reduce sentencing for low-level, nonviolent crimes such as simple drug possession and petty theft, from a felony to a misdemeanor. Now does that mean the streets will be less safe?

No, because the financial savings will be used to focus law enforcement on violent crimes. The savings will also provide money for schools.

There are flyers at your seats that detail what Prop 47 is all about.

Please remember what a privilege and a responsibility it is to vote, and please make sure you are registered and that you go to the polls on November 4<sup>th</sup>. By voting can you make a difference.

Please seriously consider voting yes on Proposition 47.

Our afternoon study session will focus on reforming our prison system.

At 2 o'clock, a formerly incarcerated woman, who turned her life around and is now an attorney, will be here to speak to us about her journey and this issue.

Please plan to come. She is an amazing woman and you won't want

to miss her story. As we turn to the Torah service, and as we hear

the words of Isaiah during the Hafatarah reading,

let us think about those behind bars whose shackles we need to unfetter.

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<sup>19</sup> [http://www.cjcj.org/uploads/cjcj/documents/cjcj\\_pretrial\\_reform\\_july\\_2014.pdf](http://www.cjcj.org/uploads/cjcj/documents/cjcj_pretrial_reform_july_2014.pdf)