

“Justice, Justice:” America’s (and Arkansas’) Prison Crisis

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Rabbi Barry Block

“Justice, Justice, shall you pursue.” These immortal words, highlighting our Torah reading tonight, remind us that our people have been passionate about justice from the era of ancient Israel to this very day.

At the same time, the phrase presents a problem. The first word is repeated, an apparent redundancy: “Justice, Justice.” We may imagine that the repetition is for emphasis. The rabbis of old, though, always sought deeper meanings. The Torah, in their minds, is perfect; it cannot be redundant. The word “justice” must be repeated for an important reason. In rabbinic understanding, each time the word occurs, it must have a different purpose.

For example, one medieval commentator, Ibn Ezra, taught that we must pursue justice, on the one hand, when it is to our advantage; and on the other, when it is to our disadvantage. Such thinking is consistent with American law, which requires prosecutors to provide all evidence to defense attorneys, especially any data that may indicate that the defendant is innocent.

Tonight, let us consider how the repetition of the word “justice” may apply to a critical problem facing our nation today. According to the American Legislative Exchange Council, “The United States currently incarcerates 1 in nearly 100 American adults.” Perhaps more stunning, the NAACP reports: “Today, the US is 5% of the World population and has 25% of world prisoners.” In Arkansas, the problem is particularly pronounced. A March *Arkansas News* report revealed that “the state had 17,455 inmates, with a backup of 2,786 offenders waiting to be incarcerated.”

Prison overcrowding has consequences. Worst of all, violent offenders may be prematurely paroled, and parole violators may not be promptly returned to prison, in an effort to keep prison populations down. In Arkansas, that particular problem has been tightened up in the last year, but not until the tragic murder of our own Forrest Abrams. Sadly, other states may expect similar tragedies if the problem is not addressed.

One solution, of course, would be to expand the prison system. But at what cost? Higher taxes? Less money for education? For health care?

Prison overcrowding causes a backlog in local jails. For most of July, Pulaski County Jail was closed to all “minor, nonviolent offenders.” Whether or not that closure presented a public safety threat, it surely indicates a difficult situation inside our jail and others. Crowded conditions aren’t secure for inmates or for guards, and they may not always be humane.

Perhaps most corrosive for our society, the problem is particularly acute for minorities. The NAACP informs us: “African Americans now constitute nearly 1 million of the total 2.3 million [U.S.] incarcerated population . . . and are incarcerated at nearly six times the rate of whites. Together, African Americans and Hispanics comprised 58% of all prisoners in 2008, even though African Americans and Hispanics make up approximately one quarter of the US population. . . . If current trends continue, one in three black males born today can expect to spend time in prison during his lifetime.”

“Justice, Justice.” Opening our schools to African Americans on a legally equivalent basis was one form of justice. But Torah repeats the word “justice.” Justice in the past is only complete if it is matched by justice in our own day.

Perhaps the problem is simply that African Americans commit more crimes than whites. Alternatively, we may think the explanation to be about poverty. It’s true that the poorer a person, the more likely that he or she will be incarcerated; and it’s true that African Americans are more likely to be poor than whites.

The facts, though, provided by NAACP, suggest that the problem is deeper: “About 14 million Whites and 2.6 million African Americans report using an illicit drug[, which is to say that] 5 times as many Whites are using drugs as African Americans, yet African Americans are sent to prison for drug offenses at 10 times the rate of Whites.” According to the Sentencing Project, “African Americans serve virtually as much time in prison for a drug offense (58.7 months) as whites do for a violent offense (61.7 months).” Lest anyone imagine that these figures are biased, I should add that Senator Rand Paul told the National Urban League last month: “Anyone who thinks that race does not still, even if inadvertently, skew the application of criminal justice, he’s just not paying close attention.”

Much of the problem is likely a result of our nation’s failed “War on Drugs.” Don’t get me wrong. Drugs destroy lives, here and around the world. We have good reason to wage a war against drug abuse and drug trafficking, which lead to

broken lives and broken families, fomenting poverty and violence. However worthy the cause, after over thirty years of this so-called “war,” America has little to show for our efforts, aside from over-crowded prisons. Prohibition didn’t work in the 1920s, when the target was alcohol; and neither does it work today, when the target is illegal drugs. Just as the 18th Amendment gave rise to organized crime, so does the “War on Drugs” lead to violence in our cities, on our southern border, and abroad.

To be precise, when we discuss prison populations, the culprit is the way the “War on Drugs” has been waged. Tough prison sentences were enacted, even for possession of relatively small quantities of contraband drugs. “Three strikes and you’re out” and similar laws compounded the problem, as authorities locked minor repeat offenders in jail and threw away the key. Put another way, crimes that poor people tend to commit have been met with sentences far more severe than felonies characteristic of the wealthy and middle class. We need look no farther than the sentences for possession of crack cocaine, which have typically been much longer than prison terms for being arrested with cocaine in its more expensive, powder form.

“Justice, Justice:” Let us seek justice not only at trial, in the determination of guilt, but also justice in sentencing. Torah commands us not to show favoritism on the basis of a person’s wealth. America is guilty of having done just that in recent decades, however well-intentioned, in a war on drugs that has landed far too many minor law-breakers in prison for much too long.

Thankfully, Americans across the political spectrum are beginning to awaken to this terrible injustice. Some may be motivated by a desire to restrict government spending, while others are more concerned with the ethics and morals involved. Whatever the reason, we may be grateful that people of good will, across the political spectrum, are beginning to come together to discuss rewriting sentencing guidelines. “Sen. Rand Paul . . . and Sen. Cory Booker . . . , [one from each of our major political parties,] are among those supporting a measure now pending in the Senate that would reduce mandatory sentences for drug offenses.

“Justice, Justice:” Let us seek justice for African Americans in our land, even as we would seek justice for ourselves and our own loved ones.

“Justice, Justice.” Let us rationalize our sentencing guidelines, and let us take a second, companion act of justice, diverting minor drug offenders to programs aimed at releasing them from addiction’s grip.

“Justice, Justice.” Let us reduce unnecessarily harsh sentences. Then, may we reduce the need to spend our tax dollars on new prisons, opening the door for the justice of an increased commitment to education and health care, and to reducing the tax burden of our hard-working middle class.

“Justice, Justice.” Let us temper justice with mercy for those whose non-violent crimes are rooted in addiction, and may we then open space in our prison for dangerous criminals like the one who took the precious young life of one so dear to this congregation.

We have been doubly commanded, “Justice, Justice shall you pursue.” Let us, then, double our own commitment to justice. Then, may we find favor in the eyes of the God who demands no less.

Amen.