

## **Prison Inmates: Among the “Neighbors” We Are Commanded to “Love.” Especially Now**

### ***Shabbat Acharei Mot-Kedoshim 5780***

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Yesterday, Governor Hutchinson announced that Arkansans may return to their gyms and athletic clubs, albeit with significant restrictions. The *Democrat-Gazette* reported: “The rules were issued as the state’s death toll from the virus rose by two, to 61, and the number of cases in the state’s official tally rose by 74, to 3,281. That total does not yet include all the results from an outbreak at the Cummins Unit in Lincoln County, where infections have been identified among 860 inmates and 51 staff members.”<sup>i</sup> 13 are hospitalized, three on ventilators. “At the federal prison in Forrest City, the number of inmates who have tested positive increased by 14, to 101...”<sup>ii</sup>

This scourge is hardly unique to Arkansas. A week ago, The Marshall Project reported that “at least 9,437 people in prison had tested positive for the illness...and the number of cases has grown threefold in the last week alone...And more than 140 people—most of them incarcerated[, but including some staff]—have died thus far.” The Marshall Project was quick to add: “As startling as these figures are, they are almost certainly an undercount.” Arkansas, to our state’s credit, has been a leader in testing inmates and releasing data.<sup>iii</sup>

We could be tempted to see prison infections as a distant problem. After all, we won’t have prison inmates—or guards, for that matter—working out 12 feet from us or seated in a restaurant with one-third capacity. These infected inmates and prison staff are not our “neighbors,” by the standard definition of the term. The Cummins Unit is 80 miles from my home; the Federal Correctional Institution in Forrest City, 96 miles away.

Moreover, because inmates are confined, and visitors are necessarily prohibited during the pandemic, we do not risk being infected by them. Prison staff, by contrast, live in the community. While those who have tested positive for the virus are doubtless quarantined, we know that this virus is transmitted before it shows up in a test or a carrier suffers symptoms. Prisons are not hermetically sealed. While we may not live among Cummins inmates or staff, plenty of Arkansans do, and this virus is highly contagious.

This week, we read what Rabbi Akiva called “the general principal of the Torah,”<sup>iv</sup> “Love your neighbor as yourself.”<sup>v</sup> We would do well to ask: Are

Arkansas prison inmates among the “neighbors” we are commanded to “love?” And if so, how would we go about fulfilling that commandment?

In the 13<sup>th</sup> Century, Rabbi Hezekiah ben Manoah explained: “You are to put yourself mentally into the position of your fellow human beings, and therefore not do anything to them that you would not have others do to you. By the same token, you should love as much to do favors for them as you would have others do favors for you.”<sup>vi</sup>

Arkansas and federal prison inmates may deserve a special measure of neighborly treatment. After convicting them of crimes in our courts, our society has confined them. Therefore, we are all responsible for their well-being. In this way, they are acutely our “neighbors.”

Most of the Torah’s teachings about convicted criminals relate to the death penalty. For example, Rabbi Shlomo M. Brody writes in *Tablet*, quoting Deuteronomy 21: “The Torah explicitly mandates burying executed criminals: ‘If a man is guilty of a capital offense and is put to death, and you impale him on a stake, you must not let his corpse remain on the stake overnight, but must bury him the same day.’”<sup>vii</sup> Brody explains the rationale for this law, as explicated in the Talmud: “No actions, however horrific, can remove the fundamental element of a person’s humanity.”<sup>viii</sup>

If we must be concerned about the welfare of corpses left behind by executed criminals, our responsibility to living human beings who are inmates in our state and federal prisons is even greater.

Prison merits little mention in the Torah or Talmud. By modern times, though, rabbis were evaluating the prisons in the societies where they lived. “The 19<sup>th</sup> century Turkish rabbi Chaim Palagi seems to address something resembling a modern prison system when he writes: ‘...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.’”<sup>ix</sup> Rabbi Palagi didn’t know about the barracks in the Cummins Unit and other Arkansas prisons, where inmates live by the scores, their beds only feet apart. Still, his dictate distinctly prohibits that type of incarceration. Ruling against keeping prisoners in “soiled” conditions, Rabbi Palagi wasn’t, but could have been, referring to inmates of prisons with rampant coronavirus infections.

What can be done? We cannot build new prisons fast enough to relieve overcrowding during this crisis. After emergency powers granted by Governor Hutchinson, “The Board of Corrections voted unanimously to...certify a list of 1,244 inmates as being eligible for consideration by the Parole Board...All inmates

under consideration have been convicted of crimes that are non-sexual and non-violent...The inmates must [still] be granted early release by the Parole Board, and they must have an acceptable parole plan, which means that not every inmate on the list will be released.”<sup>x</sup> If every single one were released, they would constitute less than seven percent of the average daily prison population of 18,091 reported by The Arkansas Department of Corrections for the year ending June 30, 2018.<sup>xi</sup>

Our Governor is on the right track, but moving too slowly and modestly. Prison Policy Initiative reports that “Arkansas has an incarceration rate of 900 per 100,000 people,” significantly higher than the United States average of 698 per 100,000.<sup>xii</sup> About half were convicted of nonviolent crimes.<sup>xiii</sup>

Rabbi Nachman of Bratslav wrote, “All the world is a very narrow bridge,” words Jana will sing in Hebrew in just a moment. Rabbi Nachman, who died in 1810, couldn’t have imagined a pandemic spreading from China to the United States, Europe, and worldwide. He did not live in a world that had become as small and interconnected as ours has. Still, he understood: We are all on this narrow bridge together—no matter where we live, even in prison, we are all neighbors. Rabbi Nachman concludes, “And our main objective is that fear not consume us.”

If I had a loved one in prison today, and some of our congregants do, I would be afraid. Still, we must not let that justified fear prevent us from advocacy and action. Imprisoned Arkansans are our neighbors. We are enjoined to love them, and to treat them as we would wish to be treated. The time has come to end crowded conditions. The time has come to expand compassionate release to as many nonviolent offenders as possible. The time has come to love all our neighbors as ourselves.

Amen.

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<sup>i</sup> Andy Davis and Tony Holt, “State rule sets 12-foot buffer for workouts,” *Arkansas Democrat-Gazette*, May 1, 2020.

<sup>ii</sup> *Ibid.*

<sup>iii</sup> Katie Park, Tom Meagher, and Weihua Li, “Tracking the Spread of Coronavirus in Prisons,” The Marshall Project, April 24, 2020, accessed May 1, 2020 at <https://www.themarshallproject.org/2020/04/24/tracking-the-spread-of-coronavirus-in-prisons>.

<sup>iv</sup> Sifra, Kedoshim, Chapter 4, 12, cited by Rashi in his commentary to Leviticus 19:18.

<sup>v</sup> Leviticus 19:18.

<sup>vi</sup> Chizkuni to Leviticus 19:18:5.

<sup>vii</sup> Shlomo M. Brody, “Even Criminals Rest in Peace,” *Tablet*, May 9, 2013.

<sup>viii</sup> *Ibid.*, citing Sanhedrin 46b.

<sup>ix</sup> Rabbi Jill Jacobs and Rabbi Jonathan Crane, “Incarceration in Jewish Law: A Brief Overview,” *A Handbook for Jewish Communities Fighting Mass Incarceration*, citing Shu’t Hik’kei Lev II: Hoshen Mishpat 5, published 1849. Accessed on May 1, 2020 at <https://www.truah.org/wp-content/uploads/MIH/MIH-110-112-incarceration-jewish-law-overview.pdf>.

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<sup>x</sup> Max Brantley, “Board of Corrections approves early release of more than 1,200 inmates, *Arkansas Times*, April 24, 2020, accessed May 1, 2020 at <https://arktimes.com/arkansas-blog/2020/04/24/board-of-corrections-approves-early-release-of-more-than-1200-inmates>.

<sup>xi</sup> Annual Report, Arkansas Department of Correction, FY 2018, p. 19, accessed May 1, 2020 at [https://adc.arkansas.gov/images/uploads/ADC\\_FY18\\_Annual\\_Report\\_BOC\\_Approval\\_12\\_20\\_2018\\_Edit\\_3-28-19.pdf](https://adc.arkansas.gov/images/uploads/ADC_FY18_Annual_Report_BOC_Approval_12_20_2018_Edit_3-28-19.pdf).

<sup>xii</sup> Arkansas profile, Prison Policy Initiative, accessed May 1, 2020 at <https://www.prisonpolicy.org/profiles/AR.html>.

<sup>xiii</sup> ACLU, “Blueprint for Smart Justice: Arkansas,” p. 8, accessed May 1, 2020 at <https://50stateblueprint.aclu.org/assets/reports/SJ-Blueprint-AR.pdf>.