

## Mercy, Anger, and Mass Incarceration

### *Shabbat Ki Tisa 5782*

February 18, 2022

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On Monday, Governor Hutchinson asked the Arkansas General Assembly for funding to expand a prison in north central Arkansas. He insists that “this need for a new facility is not a reflection of a change in incarceration policy,” but merely reflection of what he calls Arkansas’ growing population.<sup>i</sup>

Last year, though, Governor Hutchinson urged a change in incarceration policy. He went to Washington to plead for reversal of federal policies that he supported decades ago, which increase America’s incarceration rate, particularly of Black men. I refer to laws that specify a higher sentence for crimes involving crack cocaine compared to powder cocaine. As Governor Hutchinson says, “the double standard is harmful and has done ‘disproportionate harm to communities of color.’”<sup>ii</sup> He is to be commended for admitting that he was wrong in the past and working to correct the injustice.

Still, America’s incarceration rate, and Arkansas’, is a broad problem with devastating consequences. I trust that Governor Hutchinson is telling the truth, that his request for a new prison facility does not reflect a change in incarceration policy. The question, and the cause for the protest in the Capitol during his talk, is whether we **should** have a such a change, decreasing incarceration.

Prison Policy Initiative reports: “With over two million people behind bars at any given time, the United States has the highest incarceration rate of any country in the world. We spend about \$182 billion every year—not to mention the significant social cost—to lock up nearly 1% of our adult population.”<sup>iii</sup> Specific to our state, the report says, “Arkansas has an incarceration rate of 942 per 100,000 people...meaning that it locks up a higher percentage of its people than any democracy on earth.”<sup>iv</sup> Full disclosure: I noticed that’s also true of several other states—you know, like Mississippi. Arkansas’ incarceration rate is about one-third higher than that of our nation as a whole. Black Arkansans are over four times more likely to be imprisoned than white people in our state.<sup>v</sup>

This morning, in an editorial laudably calling for increased state funding for public defenders, the Arkansas *Democrat-Gazette* also voiced its support for the Governor’s plan to add prison beds. Referring to those who oppose prison expansion, the editorialists say, “[W]e wonder if any of them would volunteer to have a released criminal move next door.”<sup>vi</sup>

The editorialists pose their question as rhetorical, the answer being “no.” That attitude is problematic. People’s prison terms end. They do, and they should, move back into their communities, and our society is safer if we facilitate that with jobs and social support. Moreover, the real answer to the question about whether we would volunteer to “have a released criminal move next door” varies vastly, depending on the nature of the crime and other factors. Wealthy white criminals, accused of embezzling millions, who are released on bond that they can afford but low-level drug offenders cannot, often return “next door” to their longtime neighbors.

Moreover, the editorial appeals to emotion, which may be how we got into this mass incarceration mess in the first place. A desire to punish those who commit crimes is human nature—in fact, as we see in this week’s Torah portion, it’s even God’s inclination.

Tomorrow, Mira will read from the Torah about the Golden Calf and will highlight one particular aspect of that portion in her *D’var Torah*: God is inclined to wipe out all the Children of Israel—that is, inflict the death penalty on those who criminally constructed the Golden Calf.<sup>vii</sup> As Rabbi Deana Sussman Berezin observes in *The Social Justice Torah Commentary*, “If God becomes this angry, then we ought not be surprised that human beings often act similarly. Punitive acts that feed our anger may seem like reasonable responses.”<sup>viii</sup>

God apparently realizes that Moses will not approve of the plan to destroy all the Israelites, even though part of God’s proposal is to raise up a new chosen people descended from Moses. After all, Moses has gone to a lot of trouble, going before Pharaoh to seek the Israelites’ freedom. Therefore, God admonishes Moses, “Now, **let Me be**, that My anger may blaze forth against them and that I may destroy them, and make of you a great nation.”<sup>ix</sup>

Rabbi Berezin, though, reminds us of a midrash, which suggests that God means exactly the opposite of “let Me be.” Our sages compare God to a monarch who is so angry with their child that they take the child into a private room, proposing to kill them. The sovereign then yells, “Leave me alone to kill them!” Subconsciously, at least, the ruler knows that the courtiers will do no such thing, and shouts precisely so that the servants will hear what’s about to happen and burst in to intervene. Similarly, Moses ignores God’s demand to be left alone and implores God to relent.<sup>x</sup>

Rabbi Berezin writes: “[W]e learn that compassion and *t’shuvah* (repentance) have the power to make us whole again. Slowly, the relationship between God and the Israelites is repaired and the covenant is restored—

reconciliation is possible.” However, Rabbi Berezin argues, “Our current system of justice does not make room for mercy or *t’shuvah* (repentance). It doesn’t encourage our government to become a partner in facilitating reconciliation, and it doesn’t make space for healing.”<sup>xi</sup>

Instead, we build more prisons.

Admittedly, many of those in American prisons need to be there in order to keep our society safe. Still, data demonstrate that higher incarceration rates do not make us safer.<sup>xii</sup> It’s easy for the *Democrat-Gazette* to throw out a pithy line about none of us wanting a released “criminal” next door. It’s harder, but more important, for each of us to see the humanity in those who have broken the law and to imagine a different but potentially effective response.

Rabbi Berezin concludes: “When faced with retribution or mercy, God always chooses mercy. How can we do any less? The two million people trapped in our system of mass incarceration are worthy of mercy. They deserve for their humanity to be weighed in equal measure to their actions. They deserve advocates who see them as people... And most of all, they deserve the opportunity to make *t’shuvah* [—in this case, best translated “restitution”—] to make themselves and their communities whole again.”<sup>xiii</sup>

Amen.

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<sup>i</sup> Michael R. Wickline, “Governor urges support for police,” *Arkansas Democrat-Gazette*, February 15, 2022, p. 1.

<sup>ii</sup> Frank E. L2ockwood, “End cocaine-case disparity, governor urges,” *Arkansas Democrat-Gazette*, June 23, 2021, accessed at [End cocaine-case disparity, governor urges \(arkansasonline.com\)](https://www.arkansasonline.com/news/2021/06/23/end-cocaine-case-disparity-governor-urges/).

<sup>iii</sup> United States profile, Prison Policy Initiative, [United States profile | Prison Policy Initiative](https://www.prisonpolicy.org/profiles/usa.html).

<sup>iv</sup> Arkansas profile, Prison Policy Institute, [Arkansas profile | Prison Policy Initiative](https://www.prisonpolicy.org/profiles/ark.html).

<sup>v</sup> *Ibid.*

<sup>vi</sup> “Loaded Questions,” *Arkansas Democrat-Gazette*, February 18, 2022, p. 6B.

<sup>vii</sup> Exodus 32:9-10.

<sup>viii</sup> Rabbi Deana Sussman Berezin, “May My Mercy Overcome My Anger: Ending America’s System of Mass Incarceration,” *The Social Justice Torah Commentary*, New York: CCAR Press, 2021, p. 125.

<sup>ix</sup> Exodus 32:9-10.

<sup>x</sup> *Sh’mot Rabbah* 42:10.

<sup>xi</sup> Berezin, p. 127.

<sup>xii</sup> Don Stemen, “The Prison Paradox: More Incarceration Will Not Make Us Safer,” *Vera Evidence Brief*, July 2017, accessed at [The Prison Paradox | Vera Institute](https://www.verainstitute.org/evidence-brief/the-prison-paradox/).

<sup>xiii</sup> Berezin, p. 127.