

ORANGE IS THE NEW BLACK -- PARASHAT KI TETZEI

8-16-13

Rabbi Suzanne Singer

Piper Kerman is a blond, self-described WASP, a graduate of Smith College, born into a Boston clan of doctors, lawyers and teachers – the last person you might suspect of spending a year in prison. But she did, for carrying money for a West African drug kingpin when she was fresh out of college. She served time at Danbury Prison and retells her experiences there in a memoir called *Orange is the New Black*, the basis of a new series produced by Netflix. Kerman did not experience the worst of prison life – Danbury is a minimum security prison, she was only there for a short sentence, and had a home, a family, and a job to come back to. Such is not the case for most inmates. Still, in reading the book, you get a sense of the absolute power the guards have over the inmates and the arbitrariness of some of the rules and their enforcement. The physical environment is grim and the psychological one is apt to break down one's sense of self.

Of course, you might say: These are criminals and they don't deserve any better treatment. But consider the fact that these are women in prison for non-violent crimes, and that they grew up, for the most part, in terribly disadvantaged circumstances, suffering from poverty, abuse, many from illiteracy and, some, from mental illness. Their time in prison does little to rehabilitate them or to prepare them for reentry into the real world.

This week's Torah portion, **Parashat Ki Tetze** contains a variety of laws: criminal, civil, family. The emphasis is on how people in a society treat one another, and how we care for those who are most in need. Many of these laws are humane precepts for which Deuteronomy is known – the book of Deuteronomy having as its goal the creation of an ideal society.¹ I would like to focus on one of these laws, because it has to do with incarceration and punishment for crimes.

The Torah says: "When there is a dispute between persons and they go to law, and a decision is rendered declaring the one in the right and the other in the wrong, if the guilty one is to be flogged, the magistrate shall have the person lie down and supervise the giving of the lashes, by count, as warranted by the offense. The guilty one may be given up to forty lashes, but not more, lest being flogged further, to excess, your peer be degraded before your eyes."

¹ Women's Torah Commentary, p. 1165.

As Rabbi Melanie Aron points out, "In ancient Israel there was no long-term imprisonment. People were held until their case could be heard,² but the choices for punishment were fines and lashes or, in the most extreme cases, the death penalty. As Jewish law developed...crimes that involved only property could be punished only with fines. The focus was on restitution to the victim, restitution not only of the stolen object, but also restitution for loss of use, hardship, and so on. There was no perceived need to separate the criminal from society in this category of cases."

The tradition shows a great deal of concern for the criminal.³ "Punishment is never to be more than forty lashes, and traditionally the count was thirty-nine, so as to avoid accidentally exceeding the law...The physical condition of the guilty party was taken into consideration along with his ability to withstand punishment."⁴ The goal was for the criminal to return to society, having done teshuvah, and to become a viable member of the society after he had paid his debt to society.

Unfortunately, this has not been the way of our criminal justice system. The United States has the highest documented incarceration rate in the world.⁵ The U.S. spends 6 times more money on prisons than on education. In 2006, California spent 8,000 dollars on one student in the Oakland School district. The same year, California spent 216,000 dollars on one juvenile inmate. In total, almost 7 million adults were under correctional supervision (probation, parole, jail, or prison) in 2011 – almost 3% of adults in the U.S. population.⁶ In addition, there were over 70,000 juveniles in juvenile detention in 2010. Over the course of the last 20 years, the amount of money spent on prisons increased by 570%, while the money spent on education increased by only 33%.⁷

Violent crime is not responsible for the quadrupling of the incarcerated population in the United States from 1980 to 2003. The prison population increased primarily because of public policy changes causing more prison

² Leviticus 24:12; Numbers 15:34

³ 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."

⁴ Ibid.

⁵ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, New York: The New Press, 2012, p. 6.

⁶ Wikipedia

⁷ <https://sites.google.com/site/educationvsprisoninamerica/facts-about-america-s-prison-sytem>

sentences and lengthening time served, through mandatory minimum sentencing, "three strikes" laws, and reductions in the availability of parole or early release. Perhaps the single greatest force behind the growth of the prison population has been the national "war on drugs." In 2000, 22 percent of those in federal and state prisons were convicted on drug charges. Nearly three quarters of new admissions to state prison were convicted of nonviolent crimes.⁸

Take the case of Edward Young.⁹ He was convicted of several burglaries when he was a young man. He was released from prison in 1996, and turned his life around. He married, had 4 children and worked 6 days a week. When his neighbor died, he helped the neighbor's widow sell her husband's belongings. Mixed in with these things, he found seven shotgun shells which he removed and put away so that his children would not find them by mistake. "Then Young became a suspect in [some] burglaries...in the area." Note that those charges were later dropped, but in the meantime, the police searched his home and found the shotgun shells. He was prosecuted "under a federal law that bars ex-felons from possessing guns or ammunition. Under the Armed Career Criminal Act, that meant a 15-year minimum sentence." The judge had no choice but to impose this sentence on him. As columnist Nicholas Kristoff writes: "So the federal government, at a time when it is cutting education spending, is preparing to spend \$415,000 over the next 15 years to imprison a man for innocently possessing seven shotgun shells while trying to help a widow in the neighborhood."

How is this helping society? As you probably know, California is currently facing a prison crisis, under a federal order to reduce the number of inmates by tens of thousands in our overcrowded prisons. The tide is shifting away from imposing overly harsh and overly long sentences for non-violent crimes. For example, "Last November, voters overwhelmingly passed Proposition 36 which restricted the use of the three-strikes law for non-violent offenses, even for current prisoners."¹⁰

Just this past week, Attorney General Eric Holder unveiled a plan to reduce mandatory minimum sentencing for nonviolent drug-related crimes. This is a good start. But there is much more that needs to be done. As the New York Times stated in a recent editorial concerning California's prison problem: "...the state must do more to help released prisoners get the re-entry and rehabilitation services that already exist across California. Inmates are often

⁸ http://en.wikipedia.org/wiki/Incarceration_in_the_United_States and *United States demographics - Part B: Education, health, crime and law enforcement*, By Wikipedians, Pedia Press, p. 205.

⁹ Nicholas D. Kristof, NY Times, 8-11-2013.

¹⁰ NY Times editorial, 8-11-13.

released with no warning to friends or family, with no money, no means of transportation and no clothes other than the jumpsuits on their backs. It is no wonder a 2012 report showed that 47 percent of prisoners returned to prison with a year of their release."¹¹

The Torah tells us that we are to free the captive – *matir asurim*. It is part of our daily liturgy in the second blessing of the Tefilah. So, perhaps even more important than rehabilitation, we should, as Rabbi Mark Goldfarb urges us, "...fulfill the obligation of *matir asurim*, "freeing the captives," by keeping people from becoming captives in the first place by addressing issues of poverty, lack of affordable housing, lack of quality education, access to health care, and other ills our society faces." Let us remember that even the so-called criminal is a child of God, created b'tzelem Elohim – in God's image.

¹¹ New York Times, 8-11-13.