

## No Prison in Judaism

In this week's portion, *Vayeshev*, we hear for the first time a mention of prison in the Torah. The Egyptians put Joseph in prison:

So Joseph's master had him put in prison, where the king's prisoners were confined. But even while he was there in prison, God was with Joseph, extending kindness to him and disposing the chief jailer favorably toward him. [Genesis 39:20-21]

There are only two other instances of jail in the Torah – cases of people who were confined while waiting for a decision on their punishment:

-The son of the Israelite woman pronounced the Name [of God] in blasphemy. He was brought to Moses... and was placed in custody, pending God's decision. [Lev. 24:11-12]

-The Children of Israel... found a man gathering sticks on Shabbat... They warned him that... this is a sin akin to idol worship. But he continued to defy the law. So they brought him to Moses and Aaron and to the community council. They put him in jail... [pending a decision on his punishment]. [Numbers 15:32-35]

Beyond the Torah, we read that the prophet Jeremiah was illegally put in a makeshift prison:

The officials were furious with Jeremiah. They beat him and put him into prison, in the house of the scribe Yehonatan, which had been made into a jail... and he remained there a long time. [Jer. 37:15-16]

Note that the authorities didn't have a prison because that was not part of the penal system. They had to turn a private house into one just for Jeremiah. They did it to him again later. [Jer. 38:4-14]

The only form of freedom restriction in the Torah is when a thief is caught and cannot return what he stole. The court can then force him to serve a master until he can pay for his theft:

[The thief] must make restitution, and, if lacking the means, shall be sold for the theft. [Ex. 22:2]

However, he must be set free at the latest after six years. [Ex. 21:2]

Another form of restriction on freedom in the Torah is the “cities of refuge”, built to allow “any man who slays a person unintentionally to flee there” to avoid being killed for revenge by the family of his victim. But he is not forced to seek asylum there, he can bring his family with him, and the cities have all the amenities of a city. [Numbers 35:9-34]

For monetary debts, Maimonides writes:

Torah law is that when a creditor demands payment, and if the borrower owns property, we arrange to give the creditor what the borrower owns, above his needs, to cover his debt... If he has nothing that can be spared... he owes nothing. We do not imprison him. [Mishneh Torah, Malveh veLoveh 2:1]

In modern terms, those who cannot repay his debts are allowed to declare bankruptcy.

A Jewish court also may confine someone until he agrees to fulfill a court decision (e.g., granting his wife a divorce).

That’s it. There is no prison as punishment for breaking a commandment. Jewish law never prescribes imprisonment as punishment, although it does not forbid it. There are four types of punishments in Jewish law: Execution, flogging, fines and shunning. Prison is not one of them. No Jewish tribunal sentenced anybody to death since the year 28 [Avodah Zarah 8b; Shabbat 15a], or to flogging since the Middle Ages, leaving only fines and shunning today.

The aim of Jewish law is not so much to punish the perpetrator as to restore the victim [if possible] and get the perpetrator to repent and redress his wrong.

One can argue that early society was nomadic, a way of life that cannot support prison. But later, when people lived in cities, the rabbis still didn’t allow prison.

Why no prison, given that prison existed in surrounding societies and the Torah frequently allowed certain prevailing practices to continue to get the people to accept the Torah? Because the Torah totally rejects the idea that putting someone in prison can be useful.

Prison does not materially benefit either the perpetrator or the victim. It is argued that it benefits society in two ways: It removes the perpetrator so he can’t strike again; and it serves as deterrence to others. But does the

perpetrator usually learn his lesson? No: The rate of recidivism is high. Studies revealed that felons sentenced to prison repeat their crime more often than felons sentenced to probation for the same crime. Some say that's because a prison experience ostracizes an individual from society and makes it difficult for him to get a job.

Rav Hirsch writes:

The punishment of imprisonment, with all the hopelessness and destruction of ethics behind the walls of the dungeon, with all the sadness and misery it brings on the prisoner's wife and children, has no place in God's Torah. [On Ex. 21:6]

A hint that God does not like prison: He is frequently called *matir assurim* (He who frees the captives) in the liturgy. In fact, redemption of the captives, or *pidyon shvuyim* (פְּדִיּוֹן שְׁבוּיִים), is a Torah commandment. It is done by ransom or physical action. The Talmud calls it a *mitzvah rabbah*, a great mitzvah [Bava Batra 8b]. The Shulhan Arukh adds:

Every moment that one delays unnecessarily the freeing of captives is tantamount to murder. [Yoreh De'ah 252:3]

A powerful statement, explaining why the State of Israel sacrifices so much in order to free hostages abducted by terrorists.

The Jewish view is that prison prevents people from performing many mitzvot, the purpose of existence. People were born to be free, to fulfill their full potential.

But, with no death penalty, what should be done with convicted murderers, other than imprisoning them? Maimonides rules they must be imprisoned to deter others:

These murderers and such who cannot be executed by the court... must be imprisoned, deprived and afflicted with all types of discomfort in order to strike fear and awe into the hearts of other wicked men. [Rambam, Mishneh Torah, Murderer and the Preservation of Life 2:4-5]

However, his opinion was not retained in the Shulhan Arukh, the Code of Jewish Law, which does not allow prison as punishment.

Here is the record of imprisonment in the world:

-Israel has no death penalty, but has prisons, populated primarily by Palestinian terrorists. It had 22,000 people in prison in 2023, or 1 in 425.

-The US has the death penalty and had 1.8 million people in prison in 2021 (1 million state, 157,000 federal, and 636,000 local), or 1 in 184.

-Most of the world has the death penalty and had 10.2 million people in prison in 2013, or 1 in 700.

There is no easy solution to the problem of judicial punishment, one that satisfies all of its objectives of retribution, deterrence, neutralization and rehabilitation. But Judaism has made its position clear: No prison.

Shabbat shalom.