

Imprisonment In America Today:
Our Shameful Equivalent Of Slavery

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Forty years ago, I started to care about prisons and how we as a society treat prisoners.

I was a young lawyer. I worked for our state government. Frank Sargent was our Governor. I was the Deputy General Counsel of the Executive Office of Human Services.

One of the agencies we supervised was the Department of Corrections, the agency that runs our state prisons.

So, as a very young man, I began to learn about prisons and how they work and don't work.

Nearly everyone who goes to prison eventually comes out of prison and rejoins society. A major problem we faced then, and still do face today, was how to prepare prisoners for that eventual release so that they are ready to work and to avoid returning to crime.

I had the privilege of working with the Commissioner of Corrections at that time, John Boone, and Secretary of Human Services Peter Goldmark, and a group of experts. My role was to consider their ideas and incorporate them into draft legislation. We created a bill that became the Correctional Reform Act of 1972.

That new law established programs to aid reintegration of prisoners into society upon release. There were two important features of the law: prerelease programs, and home furloughs.

A subsequent study by the Department of Corrections showed that these programs worked pretty well. The Department studied how many released prisoners were back in prison within one year of release. Those were seen as the failures. The study compared the failure rate for inmates who participated in the prerelease and furlough programs with those who did not participate. The failure rate for participants was 11%, but the failure rate for those who did not participate was twice as high. In other words, about one-tenth of participating prisoners were back in prison within a year of their release, but twice as many came back if they had not participated.

This whole chapter of my legal career came back to me this week for three reasons. First, I read in this week's New Yorker magazine a disturbing and eye-opening article about prisons. Second, Governor Patrick called for parole and prison reform legislation in

the State of the Commonwealth address he delivered on Monday. And finally, our Torah portion today and our readings the last couple of weeks, describing demands that Pharaoh let our people go free, raised for me the issues of how and when we allow prisoners to go free in our society and what we, as Jews, should do about that.

The article I read in The New Yorker was written by Adam Gopnik. It is called “The Caging of America.” The article asks, “Why do we lock up so many people?”

Gopnik tells us that more than half of all black men in America without a high-school diploma – more than half - go to prison at some time in their lives. America incarcerates its criminals on a scale that has practically no equal in all of human history. He calls this fact the “fundamental fact of our country today.” He suggests that the enormous size of the prison population, and the cruel conditions in which so many are held, is as much a fundamental fact of our time as slavery was the fundamental fact of 1850. According to the article, there are more black men in the grip of the criminal-justice system in America today—in prison, on probation, or on parole—than were in slavery then.

Gopnik’s research reveals that there are now more than six million people under “correctional supervision” in America. That number is more than Stalin imprisoned in the Gulag. Here’s another way to see the size of this population. If the people being confined and controlled by our penal system counted as a city, that city would be the second largest in the U S.

How did this happen? Gopnik cites three primary causes. The first is the approach to drug offenses that came to be known as the Rockefeller drug laws. New York State enacted in 1973, under Governor Nelson Rockefeller, laws that provided a penalty of no less than fifteen years in prison and up to 25 years in prison for selling two ounces or more of heroin, morphine, "raw or prepared opium," cocaine, or marijuana, or possessing four ounces or more of the same substances. These and similar draconian punishments for non-violent drug offenses were adopted by other states and by the federal government.

A second reason was the adoption in some states of so-called “zero tolerance” policing. The term refers to aggressive arrest and prosecution of everyone who commits even very minor offenses, such as spraying graffiti or other acts of vandalism or jumping a turnstile, in order to create a more civilized environment. That approach has been credited, some say falsely, with reduced crime rates, but certainly it resulted in far more people being sent to jail.

The third cause of increased prison populations has been a proliferation of statutes that establish mandatory standards for sentencing, preventing judges from exercising judgment. Advocates of this approach argued that judges were being too lenient. One result was that many more of those convicted were sent to prison for far longer sentences.

Gopnik concludes that the scale and the brutality of our prisons are the moral scandal of American life. Here is just one example of what he means. Every day, at least fifty thousand men—the equivalent of about one and half times the capacity of Fenway Park —wake in solitary confinement. They are often in so-called “supermax” prisons or

prison wings. Men are locked in small cells. They see no one. They cannot freely read and write. They may be allowed out just once a day for one hour of so-called “exercise” in which they may be permitted to walk back and forth alone in a larger cage similar to a dog run.

In 1861 Fyodor Dostoyevsky published a novel called The House of the Dead. The novel portrays the life of convicts in a Siberian prison camp. It’s based on Dostoyevsky’s own experiences of serving a term of four years in such a camp.

In that novel, Dostoyevsky says, “The degree of civilization in a society can be judged by entering its prisons.” In my work four decades ago, I entered our prisons. I saw first-hand what goes on there. I agree with Dostoyevsky’s assessment.

Prison reform, and particularly parole reform, are again hot topics in Massachusetts. In part this is a result of the shooting death of a police officer in Woburn in late December, 2010.

Dominic Cinelli, age 57, a criminal with numerous prior convictions, was released on parole in March, 2009. Less than two years later, on the night of December 26, 2010, Cinelli and two others were in process of robbing a jewelry store in Woburn at gun-point.

Not far away, Woburn police officer Jack Maguire, age 60, got the call of a robbery in progress.

By this time the robbery was going badly. Police cars were showing up, blocking the robbers’ escape. Cinelli headed down Washington Street in the snow, with Maguire in foot pursuit.

A shootout ended both lives. Maguire took four bullets to his chest. He was the son of a former Woburn police chief and was also the first Woburn cop to be killed in the line of duty.

The public immediately demanded to know why Cinelli had been released on parole, given his record. We learned that the prosecutors for his former crimes had not been informed that the parole board was considering his parole. This failure to notify violated standard procedure.

As a result of the scandal, Governor Patrick reorganized the Parole Board and replaced its members. As a further result, both chambers of the Massachusetts legislature enacted legislation designed to be tougher on criminals by lengthening some sentences and making it more difficult to be released early.

The two bills passed their respective chambers by clear majorities. The bills are not identical, however, so a conference committee is now working to reconcile them.

That brings us to the news coverage we’ve seen this week. The conference committee is being lobbied to issue a single bill that reforms our parole and prison system without being unjust and overreaching.

The Senate bill, for example, would deny parole to felons convicted three times for

any of roughly 60 serious felonies. This part of the law is known as “three strikes” or the habitual offender law.

The list includes murder and rape, as it should, but also some far less grievous crimes, like assault and battery (a crime that does not necessarily involve serious bodily harm) and nonviolent drug offenses. Opponents of the bill argue that being imprisoned with no possibility of parole for these lesser crimes would doom large numbers of offenders who could turn their lives around if given the chance and would do nothing to enhance public safety, while imposing an undue burden on taxpayers.

Some provisions of these bills would send a third-time offender to prison for life without parole for some two dozen felonies. This is a dramatic expansion over current law, where the only offense for which an offender can be sentenced to life without parole is murder.

This debate takes place in the context of extreme overcrowding in Massachusetts prisons. On average, our state prisons are over 143 percent of capacity. Overcrowding in county jails is even worse.

Governor Deval Patrick spoke about this legislation, and his views on it, in his State of the Commonwealth address to the legislature on Monday night. He spoke not only about amending the three strikes law, but also about reforming our mandatory minimum sentencing laws. The Governor said he would agree to lengthen the time before a third-time violent felon would become eligible for parole, and would support a mandatory sentence of life without the possibility of parole for anyone whose third felony is murder or a similarly heinous act of violence. At the same time, he urged the legislature to preserve what he called “a proper place of parole in public safety.”

The Governor also recommended reforming the laws that are modeled on the Rockefeller laws of forty years ago, laws that often send non-violent drug offenders to jail for far too long and have been shown to be both ineffective and unduly expensive. Do you know that the cost to taxpayers for each prisoner is more than \$45,000 every year? As Governor Patrick said, “Simply warehousing non-violent offenders is a costly policy failure.” He pointed out that many states have recognized the folly of mandatory minimum sentences for non-violent drug offenders and have made significant reforms. He urged the legislature to pass a bill that allows Massachusetts to join those states.

Finally, he recommended a comprehensive reentry program, improving further on the work I recall doing four decades ago. He said that we need more education and job training, and certainly more drug treatment, in prisons and we need mandatory supervision after release. And we must make non-violent drug offenders eligible for parole sooner.

Reverend Eugene Rivers of the Ten Point Coalition has called upon religious leaders in particular, from all religious communities, to step up and take part in the fight to make sure the legislation that emerges from conference is balanced and fair. I spoke with Reverend Rivers on Thursday. I have also been in touch with the Jewish Community Relations Council. Reverend Rivers and I agree that every faith community should be

studying this issue urgently and joining together to prevent an injustice.

I also agree with Adam Gopnik's observation that the scandal of excessive imprisonment in America today is as fundamentally wrong as the slavery we ended in 1865. Our Torah readings inspire us to work for the end of such injustices. As Jews we include in our sense of our history that we once were slaves. It is that sensibility that led so many Jews to take part in the great civil rights work of fifty years ago. We went to the South to support freedom and voting rights, in some cases giving up our lives in the effort. We were active in such organizations as the NAACP. Rabbi Abraham Joshua Heschel and Rabbi Seymour Seigel marched with Martin Luther King in Selma and spoke out for justice along with him. Now it is our turn to meet our special responsibility to do our part in opposing injustice in our prison system.

So what do I recommend that we do?

First, inform ourselves. Please pay close attention to the news reports we will be hearing about the "three strikes" law and related reforms now being debated. Just yesterday I saw an article in the Braintree Forum that referred to this debate. Look for those reports.

Second, consider our positions. We may not all agree on what should be done. But I hope we can agree that the issue is important. The issues involve both the fundamental value of freedom and our appropriate concerns about public safety. We therefore need to be both thoughtful and proactive. I myself believe that Governor Patrick has outlined a sensible, balanced approach that I would support. But we must each make up our own minds and decide what we think is best.

Third, we should each contact our state representatives and senators to let them know that we care about this issue and to ask them what they plan to do in order to assure that a fair and just law is finally enacted.

I expect in the coming days I may have more specific actions that Reverend Rivers and the JCRC and others are proposing for us. I will keep you informed.

I hope that our legislative and executive leaders will take a wise and balanced approach to assure that our society treats all of our citizens fairly, including those who have committed crimes. Criminals do deserve punishment, but they also deserve fair punishment. And they will eventually be released from prison. It is up to us to ensure that the way that happens is both safe and fair.

And let us say, Amen.