

Darnell Epps is your typical Yale law student. He eats lunch at Ruttenberg Hall with other law students. He finds himself gazing off at the portraits of the storied alums of Yale Law School. Where Darnell's story differs from many law students is that starting at the age of 20, Darnell was sentenced to a life in jail for aiding and abetting a shooting outside a Brooklyn public housing project. Although he never shot a gun during that incident, Darnell ended up spending 17 years, the major part of his adult years behind bars until he made parole. Since that point, Darnell has been fighting a battle against the mass incarceration system nationally and locally in New York.

Per capita, New York is the nation's wealthiest state, and it boasts the third-largest corrections budget, exceeding \$3.5 billion annually. New Yorkers pay a premium of nearly \$115,000 per year to incarcerate someone. As Darnell notes "If taxpayer dollars are our measuring stick, a 40 percent recidivism rate would suggest that New Yorkers are not getting a good ROI."

Clearly, the way we're doing things is not working. Although the rate of overall recidivism is high, the numbers for those serving long-term sentences, defined as over 10 years is only 8 percent. Meaning, folks reach a certain point in their incarceration where, once released, they're much less likely to go back to jail.

It's been clear for a number of years that we have a mass incarceration problem in this country. Locally, last year Rikers had its highest number of inmate deaths. New York City's Department of Corrections recently backtracked on the policy where jails are required to inform the public about deaths behind bars, something Brad Lander, NYC's Comptroller said indicated that "they don't care about the humanity of the people in its custody enough to even report honestly when they die."

It's that through line that I want to focus on today, the humanity of those that are incarcerated. I think we tend to lose sight of a person's humanity when they commit a crime. Certainly there are categories of people that commit egregious enough crimes that should not be walking around free.

And it's only human to want to strip humanity from someone who assaulted, murdered, or otherwise stripped someone else of their humanity. And yet, they are human beings. As Comptroller Lander noted, and as Darnell argues, it seems as if jail has lost sight of what its original intentions were: to give people the chance to rehabilitate themselves.

This is not a policy d'var torah, although there are some potentially transformational acts of legislation on the books that I will recommend you take a look at, at the end of this d'var Torah. I want to focus on how we look at people that screw up and what we can do to help give them another chance. Because in the span of a short series of verses in our Torah reading today, that very thing happens.

As Caleb and Joshua try their hardest to convince the people that they can make it in this land, the naysayers offer the following retort:

וְהָאֲנָשִׁים אֲשֶׁר-עָלוּ עִמּוֹ אָמְרוּ לֹא נוֹכַל לַעֲלוֹת אֶל-הָעָם כִּי-חַזֵּק הוּא מִמֶּנּוּ:

But the other men who had gone up with him said, "We cannot attack that people, for it is stronger than we."

And then the griping continues: we're like grasshoppers to them! People start weeping. It would've been better to die in Egypt! They're going to take our wives and children. Joshua, Caleb, Moses, and Aaron plead with them to no avail and God is about to step in and absolutely wipe them off the face of the Earth when Moses intercedes on their behalf.

They are saved from immediate destruction although their punishment is that their end will happen in the desert, as God so eloquently describes their carcasses dropping in the wilderness. But after that, something peculiar happens:

וַיִּשְׁכְּמוּ בַבֶּקֶר וַיַּעֲלוּ אֶל-רֹאשׁ-הַהָר לְאֹמֶר הַיָּבֵנּוּ וַעֲלִינוּ אֶל-הַמְּקוֹם אֲשֶׁר-אָמַר יְהוָה כִּי הִטָּאנוּ:

Early next morning [their fighting force] set out toward the crest of the hill country, saying, “We are prepared to go up to the place that יהוה has spoken of, for we were wrong.”

Ok, they say, we’re ready to go now. We’ll do it. We were wrong. Slash lanu ki chatanu to mix metaphors.

No words have come in the interim from them but suddenly they have a pretty wild change of heart. So what gives? How did they go from we should’ve just died enslaved in Egypt to chomping at the bit ready to battle their way into the land?

A skeptic might look at this 180 and see it solely as driven by coercion and fear. God tells them they’re about to die in the wilderness so they say, not if we make it into Israel first. We can avert this evil decree!

Other commentators offer creative interpretations. The Rosh, Rabbi Asher ben Yechiel, known more for his talmudic and halachic commentaries shares a penetrating teaching:

We must understand that ever since the Israelites had seen the Egyptian soldiers dead on the beaches of the sea, they had intended to return to an Egypt devoid of men, a rich country theirs for the taking, and had seen no point in journeying to the land of Canaan, a land populated by giants, a challenge that they had no stomach for. Every time there had been a problem, their desire to return to a defeated Egypt had come to the fore. They had hoped that by reporting on the nature of the inhabitants in that country God might at least consent to their returning to Egypt, instead. This must not be understood as a rebellion, but as a request to God to allow them to return to Egypt where they hoped to live in peace without having to face a war of conquest. When they had now found out that this was not a viable option, they decided to accept the unpalatable alternative and with God’s help to conquer the Land of Canaan.

So this wasn’t so much an instantaneous change of their minds. This was a long, drawn out internal struggle. Ever since leaving, they had intended to go back. They didn’t want a war. They just wanted to be in peace. Realizing finally that this wasn’t going to happen, they said, ok, we’re in, we’ll fight.

Now you may not like this reframing of this generation. Even I might agree it’s specious. Nonetheless, it’s a different take that helps give a little bit of explanation behind the surprising heel turn.

But my favorite one comes from the Alter Rebbe, the first Lubavitcher Rebbe who taught the following:

How could it be that they changed their minds because God told them they were going to die? This whole story is based on the notion that they don’t believe in God’s power so why would that sway them?

“Undoubtedly, since the Israelites themselves are “believers, the descendants of believers,” it’s the *sitra achara* (*the kabbalist force that draws us to wayward thoughts*)—which is clothed in their bodies—had risen against the light of the holiness of their divine soul...now, therefore, as soon as the Lord had become angered against them and thundered angrily...their heart was humbled and broken within them when they heard these stern words, as is written, “And the people mourned greatly.” Consequently, the *sitra achara* toppled from its dominion, from its haughtiness and arrogance, leaving the Israelites to their inborn faith.

Every person in whose mind enters doubts as to their faith can deduce that they are nothing more than empty words of the *sitra achra*, which raises itself against his soul. But the Israelites themselves are believers....”

Ultimately for the Alter Rebbe, this whole story is about that force within every person that wants us to make the wrong decision. It was the *sitra achra* within the individuals in this generation that was also whispering to them, “go back to Egypt; it’s better there.”

But the power of God’s unalloyed anger shattered the facade of the *sitra achra* and how do we know it was a real response. “Vayitablu.” They mourned. It wasn’t just tears or sadness. They embodied what it means to lose something and weep over it. That part of them had died. Because in the end the *sitra achra* is just smoke and mirrors. In fact, all doubt that we feel while presenting itself as big and scary is just this vaporous entity which is trying to hold us back. But they, and we, maybe we’re not the highest realm of believers, but we are the children of believers.

I find this framing powerful and meaningful. It speaks to the power of each of us to become aware of the voices within us that want to cause our downfall and lord knows, we all have them. When we’re able to cultivate this perspective though, it shows us how human we all are. People can make radical shifts to who they are, how they act, and what they’ll do in their lives.

It’s that same brand of thinking that animates much of the work being done to fight back against mass incarceration in this country. There are two bills currently up for debate that could be groundbreaking in fighting against these forms of injustice.

The Second Look Act, would allow anyone who has served 10-plus years in prison to apply to a judge for a sentence reduction based on, among other factors, evidence of rehabilitation. If enacted, the law would also establish a presumption in favor of resentencing for those over 55 years old.

The second bill, the Earned Credit Time Act, would allow people to earn vested good-time credits up to one-half of their maximum sentence for participating in educational and rehabilitative programming.

I urge you to do a little digging into them. Understand what they’re trying to accomplish. In this country, when very little legislatively gets bipartisan support, efforts to fight against mass incarceration does get that.

One of the things Darnell worries about is that when people hear his story, they’ll conflate exceptional outcomes with exceptional character. What has happened to him has been exceptional but as he notes “I’m no different than the thousands of reformed men and women that New York has condemned to death-by-incarceration. Unlike me, these incarcerated parents, siblings, and aunts and uncles — many of whom started their sentences before Bill Clinton became president — may never get out.”

People can change. We know this within ourselves. We’re examples of it. If you want to be generous to the people in our parsha, they’re examples of it too. Maybe they spent much of their journey screwing up but here they have real and authentic change. May we all strive to make the world a more just place where people really have the chance to exhibit this to the world because after all, we’re all of us, believers the children of believers.

Shabbat Shalom
Rabbi Adir Yolkut