

Many of you know the story of Kalief [Browder](#). After spending three years on Rikers Island for robbery, a crime he was adamant that he didn't commit, being released, and battling mental health issues, Kalief took his own life in 2015. Much of his mental health struggle was tied to his poor treatment while incarcerated, specifically the amount of time he spent in solitary confinement.

You would think, when a story like this makes national headlines along with countless others, certain things might change. But here's what popped up when I did a simple search for deaths in American jails: "deaths up 46% in US jails, "family demands answers after 19 year old found dead in Atlanta jail," "jail is a death sentence for a growing number of Americans." The list goes on and on.

It's not just our centers for mass incarceration either. In Michigan, a man in the custody of Immigration and Customs Enforcement (ICE) was sent into a jail's general population unit with an open wound from surgery, no bandages and no follow-up medical appointment scheduled, even though he still had surgical drains in place.

A federal inspector found: *"The detainee never received even the most basic care for his wound."*

In Georgia, a nurse ignored an ICE detainee who urgently asked for an inhaler to treat his asthma. Even though he was never examined by the medical staff, the nurse put a note in the medical record that "he was seen in sick call."

"The documentation by the nurse bordered on falsification and the failure to see a patient urgently requesting medical attention regarding treatment with an inhaler was negligent."

And in Pennsylvania, a group of correctional officers strapped a mentally ill male ICE detainee into a restraint chair and gave the lone female officer a pair of scissors to cut off his clothes for a strip search.

"There is no justifiable correctional reason that required the detainee who had a mental health condition to have his clothes cut off by a female officer while he was compliant in a

restraint chair. This is a barbaric practice and clearly violates ... basic principles of humanity."

Those cases, among others, were excerpted from a piece on NPR this week that detailed the gross misconduct taking place across ICE detention centers across America in over 1,600 pages of previously secret inspection reports written by experts hired by the Department of Homeland Security's Office for Civil Rights and Civil Liberties. In examining more than two dozen facilities across 16 states from 2017 to 2019, these expert inspectors found "negligent" medical care (including mental health care), "unsafe and filthy" conditions, racist abuse of detainees, inappropriate pepper-spraying of mentally ill detainees and other problems that, in some cases, contributed to detainee deaths.

Unlike the first cases I listed, these centers are for civil detention, not criminal. They are primarily meant as holding centers until immigrants can have their cases adjudicated, which makes this even worse. Much of this occurred under both the Trump and Biden administrations and both of them fought the release of this information.

Perhaps that is so because of how systemic this issue is across our country. From those who are trying to find a place in America to those incarcerated, we are coming up short in maintaining proper moral and ethical behavior. The Department of Justice failed to identify more than 900 deaths in prisons and local jails in fiscal year 2021.

Many of us might think that as far as jails are concerned, we should be doing the bare minimum to tend to those incarcerated. They screwed up so what do we owe them? The thing is, the Torah has a bone to pick with that sort of mindset.

In the parshah this week, we read of the following case:

כִּי־יְהִי־רִיב בֵּין אַנְשִׁים וְנִגְשׁוּ אֶל־הַמִּשְׁפָּט וְשִׁפְטוּם וְהִצְדִּיקוּ אֶת־הַצְדִּיק וְהִרְשִׁיעוּ אֶת־
וְהִפִּילוּ הַשֹּׁפֵט וְהִקְהוּ לְפָנָיו כְּדִי רִשְׁעוֹתָו בְּמִסְפָּר: אַרְבַּעִים הַרְשָׁע: וְהָיָה אִם־בֶּן הַכּוֹת הַרְשָׁע
;לְעֵינַיִר־יָבֹנּוּ לֹא יִסֹּף פֶּן־יִסֹּף לְהַכְתּוֹ עַל־אֵלֶּה מִכָּה רַבָּה וְנִקְלָה אַחִיר

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

A fairly simple case is presented. Two individuals get into a dispute. Their case is adjudicated. One is found guilty and liable for lashes. However, once they receive their punishment, no more punishment can be added to it because...”your brother will be degraded.”

Why does the Torah deem it necessary to add in a warning against excessive punishment? Perhaps they were worried about what it meant to have a society that lacked compassion. The Torah understood the human penchant for taking out our anger on those that have wronged us. So they make it very clear. The punishment set is the punishment given. Don’t add anything to it.

But if you’re playing close attention, you’ll notice something else about the verses, highlighted by the following *Midrash* from the collection called *Sifre*:

R. Chanina b. Gamla says: The entire day Scripture calls him "wicked," "Then it shall be, if liable to stripes is the wicked one." But once he has been smitten Scripture calls him "your brother," "and your brother be demeaned." Now if a man commits one transgression, his soul is *taken* from him (i.e., he receives *kareth*), then, if he does one mitzvah (after being smitten), how much more so (is it to be inferred that) his soul is *restored* to him.

When the Torah describes the perpetrator, they are described as a wicked one. That makes sense. They have committed a violation and are in the wrong. But then, in a subtle way, the Torah switches this person’s description. They are no longer listed as wicked but rather called your brother after they’ve received their punishment.

What warrants that? After all, they're the same person. As the Malbim¹ argues, the Torah is worried that in a society in which such a punitive system is set up, punishing someone causes us to diminish our ability to see the personhood of that individual.

We can, theoretically, become inured to the physical act of punishing them. Sure, they're wicked, but they're also still human.

As we know, every human is created with divinity in them, no matter how they act. So argues the Chafetz Chayim²:

There are in the Torah several sections on punishing sinners — with death, stripes, or monetary payment — which might lead one to believe that the Holy One is angry with the sinner, wherefore God proscribed these punishments for his evil. But, in truth, this is not so. The Holy One brings punishments upon him to cleanse him.

While we might take issue with the notion of punishment as cleansing, the idea behind this approach resonates. We might be the ones meting out such punishment but it's not **really** our job. So when we get it in our heads that someone that has perpetrated an act deserves something extra, we deem ourselves gods and that's a no-no.

In doing so, we lessen ourselves. In the Talmudic discussion around what makes a *gavra rabba*, a great person, Rava the great sage gives the example of changing a Torah law:

While the Torah commands the Beit Din (rabbinical court) to administer 40 lashes for certain offenses (Devarim 25: 2-3), the Sages reduced them to 39.

Compassion and understanding is what makes us potentially great people. This whole portion is a master class in teaching yourself to live with empathy for others, no matter what they do. It begins with detailing how we treat captives of war. We get insight into how we should help someone's animal even when we don't know them. Finally toward the end of the portion, we get a back to back: don't be dishonest in your business dealings and then don't forget about what Amalek did to you.

The latter is the second reminder to not be like that nation-state that preys on the weak and the vulnerable. One answer as to why we need another reminder of this and why it follows the commandment around being honest in our dealings comes from Reb Levi Yitchak of Berditchev.

Every person is a small world. That means we also have Amalek inside of us. It's that root within us that wants us to take advantage of people. If we don't attempt to scrub it from ourselves, we will be consumed by Amalek-ness.

We contain myriads. Some part of us has this desire to want those that have wronged us to suffer. That's not inherently bad. It's when we go beyond that it becomes problematic.

Ki-Tetze, when you go out, is our portion this week. We are meant to live by this book, not just ritually in how we eat or how we pray but how we embody its principles in our moral and ethical behavior. When we treat those behind bars as less than human, even if they have been found guilty of doing the same, we are not living out the message of this book. We have to remember that in lieu of adding actions that degrade our fellow humans, we should instead be doubling down on compassion, empathy, and kindness for all.

Shabbat Shalom and Happy Weekend,

Rabbi Adir Yolkut