

A Tisha B'Av Offering on Mass Incarceration for the Reform Movement

Eicha yishba vadad ha-ir, rabati am! Hayita k'almana, rabati v'goyim. Sarati b'midinot hayita lamas.

אֵיכָה יִשְׁבָּה בְּדָד הָעִיר רַבַּתִּי עִם הַיְתָה כְּאַלְמָנָה רַבַּתִּי בַגּוֹיִם
שָׂרַתִּי בְּמִדֵּינֹת הַיְתָה לְמַס:

Alas! Lonely sits the city once full of people. She that was a princess among nations has become a widow...

Lamentations 1:1

Eicha—the first word of Lamentations, is a primal cry of pain. How can this be: Jerusalem destroyed, the Jewish people shattered and scattered, afraid for themselves and alienated from God? Every broken heart has its own cry. Tisha B'Av, the 9th of Av, is the day when the Jewish people sit with the pain of our history: the destruction of the Temples in Jerusalem, the exile of the people from the land, the Crusades, the Inquisition, the Holocaust. These were the moments when our people's world was chaos and pain, when we feared the Covenant itself might not survive. As children of a human family with a particular history, we remember and we mourn, we fast and we read Lamentations, echoing the cries of our ancestors: How, oh how, could this happen?

This Tisha B'Av we listen to the cries of people trapped in the American system of mass incarceration. How can a world where one in three Black males and one in six Hispanic males born today can expect to go to prison in his lifetime be anything but broken? Black citizens are incarcerated at six times the rate of whites, but the overwhelming majority of people of color swept into the criminal justice system are non-violent offenders. This disparity in incarceration has had a devastating effect on individuals, families and whole communities, and must be reversed.

Midrash teaches in Lamentations Rabbah that the cry of "**Eicha**?" is not only the sound of our broken hearts; it is the sound of God's broken heart. God's heart breaks for human suffering and for the suffering humans cause to each other and the earth. God's heart breaks at the iniquity we commit and the inequity we permit. God's heart breaks for us and because of us. We must face, and live with, both sides of this equation.

We are living in a period when the cries of "**Eicha**!" are all around us. There are many reasons to cry out, but the cries of the victims of racial injustice and mass incarceration are especially urgent. This Tisha B'Av, as Jews and as a Reform Jewish community, we commit ourselves to listen, to learn, and to take responsibility for our share in the suffering around us. Beyond Tisha B'Av, Reform Jews around the country can join together through "*Atem Nitzavim*", our national racial justice campaign to engage voters. This movement-wide effort will register new voters and encourage the broadest possible participation in the November election. Helping to turn out an electorate that more fully reflects Americans and their concerns will help create the conditions in which justice can be done and healing can happen.

Consider the following texts and questions for reflection:

Text 1: Is criminal justice reform a Jewish issue?

"I Adonai have called you in righteousness, and have taken hold of your hand, and kept you, and made you to be a covenant people, to be a light unto the nations; To open the eyes of the blind, to bring out prisoners from confinement, from their prisons those who sit in darkness."

Isaiah 42:6-7

1. What is God telling the people in this text?
2. Which part of this text is most familiar to you? How does the second half of the text relate to the first half?
3. The instruction to be *or l'goyim* or a light unto the nations has been a core value throughout Jewish history. In the face of the crisis of mass incarceration, what is the light that Jewish people can bring at this moment?

Text 2: Is a society that tends towards stern justice strong or weak?

In the Torah portion *Shelach-lecha* (Numbers 13:1-15:41), Moses sends spies into the land of Canaan to scout out the terrain. They report back that the people who live there are powerful, and the cities well fortified and very large. Rashi, citing Midrash Tanchuma 6, asks, "How were they [the spies] to know [the people's] strength? [By looking at their cities], "are they unwalled or fortified? If they live in unwalled cities, they are strong and trust in their own strength. If, however, they live in fortified cities, they are weak and insecure."

Rashi, commentary on Numbers 13:18

1. How does Rashi understand the events of *Shelach-lecha*?
2. Why does Rashi interpret intimidating fortifications as a sign of weakness and unfortified cities as a sign of strength? Our criminal justice system can be seen as a modern equivalent to ancient city walls—designed to separate citizens from danger. Which elements of our system make society stronger? Which ones weaken us?

Text 3: How should we regard the incarcerated?

"(In a discussion of criminal procedure)...It seems that even so, the Torah did not give permission to place someone in a prison that is cramped, for prisons are only for keeping a person to ensure he doesn't escape....even more so, we should not place him in a prison that's soiled, where he will not be able to study Torah or to keep the mitzvot. For even if the Torah gave us permission, since even though he has sinned and must be imprisoned in a prison, he has not ceased to be a Jew."

Rabbi Chaim Palagi, Shu't Hik'kei Lev II: Hoshen Mishpat 5, published 1849

1. What are the expectations of housing and treatment for someone who has been convicted of a crime?
2. Does it make a difference that the text specifies the prisoner is a Jew? In a modern context, would you apply the standard universally or is there something different to you about Jewish prisoners?
3. How do these standards mesh with our society's orientation to the incarcerated? How do they sit with you?

Text 4: How should we reintegrate the formerly incarcerated?

“The Torah suggests (in Parashat Metzora) that there are times when a community must protect itself by excluding from society those it deems dangerous. It also suggests that the stigma should last as long as necessary, but not longer. Restoring individuals to the dignity that is their birthright seems to be a concern, alongside protecting society from those who could harm it. When returning citizens are barred from jobs or required to share their criminal record with prospective employers, or when digital databases make that information easily accessible, a question of human rights emerges: When does society’s valid interest in protection come up against a person’s right to be a full and dignified member of society?”

Rabbi Nancy Fuchs Kreimer, in Truah’s Handbook for Communities Fighting Mass Incarceration

1. Based on her reading of Metzora, how does Rabbi Fuchs Kreimer suggest we should treat incarcerated individuals and those coming out of prison?
2. What are some of the Jewish values we might derive about the treatment of criminals from this teaching?
3. How do you see our current system living up to these values? Where do we fall short?
4. How would you answer Rabbi Fuchs Kreimer’s final question?

Text 5: Can Teshuvah be a model of restorative justice?

There were hooligans in Rabbi Meir’s neighborhood who harassed him greatly, and Rabbi Meir would pray for their death. His wife, Beruriah, said to him: What are you thinking? The verse says, “May sins disappear” (Psalm 104:35)—does it say “sinners”?! It says “sins”! Go to the end of the verse—“and the wicked be no more.” If sins disappear, will the wicked be no more? Rather, pray that they do teshuvah (full and sincere repentance)—and they will no longer be wicked. He prayed for them and they did teshuvah.

Babylonian Talmud, Berachot 10a

1. How does Rabbi Meir want to treat the hooligans in his neighborhood? How does his wife respond?
2. What is the place of the voice of the victim in the justice system?
3. Meir and Beruriah may both seem reasonable. When do you tend to conflate people with their actions? When are you able to keep them separate in your judgement?
4. How might our present system be different if we elevated Beruriah’s paradigm of focusing on changing behavior rather than punishing individuals?

Having learned from our tradition, recognized brokenness, and reflected on our responsibilities to play a role in repair, we offer our broken hearts and this prayer to God:

*Wail, America, with your prisons, like a woman in labor,
Like a child from the neighborhood, his friends dead and gone.*

We cry out to God--Alone in our cells--to anyone who will listen.

Beaten down by systems that conspired in our failure, we

Demand something different.

Exiled from the dream of America, we live its nightmare

Freedom: lost

Fear: our new companion

Gone are rights to body, labor, movement, vote, dignity;

Hope: a temptress, mouthing empty promises

Isolation: our most insidious torture

The world beyond these walls, will it have a place for us?

Lament for what has been done, rattle the bars, crack the bones

Move stone hearts which grind down men to meal.

Say our names!

Our stories are our power, however dark, still our truth.

Quiet is the night, its own dark and lonely cell

Restore to us some hope for redemption

Save us all from cycles of violence, systems of oppression, racism

Woe the nation that locks up its children, throws away young men and women

Excised from the body politic

Year in, year out, waiting for opportunity, for freedom, for change

Zealous in the hope that we are all more than the worst thing we have done.

Wail, America, with your prisons, like a woman in labor,

Like a child from the neighborhood—his friends dead and gone.

This mostly alphabetic acrostic is based on the traditional Tishah B'Av liturgical poem (kinah) Eli Tzion. Its anonymous author described the destruction of Jerusalem; we reimagine it here as a lament for the destruction mass incarceration wreaks on America. Chanting Eicha and kinot help us release feelings of grief and loss. We see the secular equivalent of this release of grief in the repetition of slogans like "Can't Breathe" and "Say Her Name" followed by the litany of names of men and women of color killed by the police. Even as we hold this pain, we are permitted a sliver of hope...after the travail of childbirth, new life is born; after the recognition of injustice, there is the possibility of creating something better.

rac.org/racialjustice

