

## Incarceration, “Jewish Values,” and the URJ – Part One

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A recent [post](#) on a website sponsored by the Union for Reform Judaism urges Reform Jews to support the proposed Sentencing Reform and Corrections Act (S. 2123). Introduced in the United States Senate with impressive [bipartisan support](#), the bill limits the imposition of mandatory minimum sentences especially for nonviolent drug offenders. The goal is to deal with the problems of over-criminalization and mass incarceration (the US [leads the world](#) in incarceration, both in absolute numbers and in percentage of the population). The post notes that the draconian penalties now imposed upon even nonviolent drug offenders fall disproportionately upon persons of color, though they as a group are no more likely than white people to use or sell illegal drugs. This clear racial disparity, the post says, is an offense against "Jewish values," which is a reason why Jews in particular ought to support the reform effort.

That's clearly a worthy goal. But troubles us is the way in which the URJ post justifies its claim that sentencing reform is in accord with "Jewish values".

Jewish tradition teaches us to pursue justice in all aspects of society. In Deuteronomy 16:20, the Torah commands us, "*Tzedek, tzedek tirdof*" ("Justice, justice you shall pursue"). We are taught that the repetition of the word is not only for emphasis, but also to signify that just ends must be reached by just means. As it is today, our criminal justice system, with its problems of mass incarceration and racial disparities in enforcement and sentencing punishes unjustly.

Really? Is that the best we can do? The sum total of the "Jewish values" it cites on behalf of the sentencing reform bill is a quotation of three words (okay, five words in the English) from Deuteronomy. True, these aren't just any old three (or five) words; *Tzedek, tzedek tirdof* is one of the most memorable passages in the entire Bible. Still, I'm disappointed. It's not that I'm against justice, mind you. Rather, I have to think that, as a matter of textual support, this is rather thin. There's no substance here, no bite. As a stand-alone bit of "evidence," Deuteronomy 16:20 proves next to nothing about "Jewish values" and their relevance to incarceration and sentencing reform.

Let us explain.

First, I hope I'm not being too picky if I suggest that justice is not a "Jewish" value. It is a *human* value, an aspiration shared by all cultures and peoples. Our own tradition recognizes this fact. The obligation to establish courts of justice is one of the *mitzvot* incumbent not only upon Jews but upon all humankind (*b'nei Noah*).<sup>[1]</sup> It is a member of that set of ethical obligations that, had they not been enjoined upon Israel by the Torah, we would have derived through the powers of our own reason.<sup>[2]</sup> Yes, the Torah makes a point of demanding that we, the covenant community of Israel, act justly. And yes, to live in covenant means that when we act justly we are not only acting ethically but also fulfilling the will of our covenantal Partner. But this does not mean that there is something essentially or particularly *Jewish* about the duty to treat one's fellow human being with fairness and equity. "Justice, justice" may appear in the Hebrew Scriptures, but its demand, as our tradition teaches us, is addressed to all nations and peoples.

Second, and perhaps more to the point, the words of Deuteronomy 16:20 are, in isolation, devoid of specific content. It helps us little to know that we must pursue something called "justice"; we need to know precisely what *to do*, what justice demands of us here and now. To put this differently, the word "justice" is necessary but not sufficient: it states an important principle ("value"?), but it does not decide for us how that principle is to be realized in any concrete situation. That decision requires a separate, empirical judgment, a judgment that is not determined by the verse itself. Take our subject, for example. One of the major objections to current sentencing laws, as mentioned in the URJ post, is that they are enforced in an inequitable - that is, an unjust - manner. But if persons of color are currently being punished disproportionately, it does not necessarily follow that mandatory sentencing standards should be eliminated. It would be just as logical to go the other way, to *tighten* the mandatory sentencing regime rather than loosen it, and to make sure to enforce those sentences upon all offenders, white as well as non-white. Obviously, that runs counter to the proposed legislation, but it does go to show that the goal of justice *in this case* can be served equally well by *either* answer, by stringency as well as by leniency. One must choose between those alternatives, and we do not arrive at the right or better choice merely by invoking the word "justice"... even if we say it twice.

Bottom line: the exalted verse "Justice, justice you shall pursue" is little more than a slogan. And like many slogans, it expresses a sentiment that is superficial, even banal; it is little more than an unobjectionable flag to wave over whatever policy proposal we happen to think best. All of us, I trust, wish to do justice, but the verse does not address the more important - and therefore more difficult and controversial - question: how might Jewish tradition guide us on this or any other specific problem or social issue?

If we seek that kind of guidance, we need to move beyond the superficial sound-byte, away from the mantra of "Jewish values" and toward the study of Jewish *law*. For if the question we ask concerns an issue of practice - whether that practice is ritual or ethical in nature - the Jewish answer (or answers) to that question will be located within the texts and sources of the halakhic tradition. It is there, in the Talmud and the codes and the responsa literature, that we are most likely to find the discussions and debates and analysis from which, hopefully, we can derive useful guidance on concrete issues. And it is the particular goal of progressive *halakhah* to study those sources in such a way that the guidance it yields can speak directly to us, to the community of Jews committed to living lives defined by "values" both liberal *and* Jewish.

What, if anything, the halakhic tradition might teach us concerning the reform of our sentencing laws is the subject of our next post. Whatever that teaching, it is likely to be deeper, more definite, and more substantial than the slogan - the high-sounding and well-meaning slogan - "Justice, justice you shall pursue."

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[1] *B. Sanhedrin* 56a; Rambam, *Hilkhot M'lakhim* 9:1.

[2] *B. Yoma* 67b.