



CRIME AND CONSEQUENCE

*A new, six-session course on the Talmud, Jewish ethics,
and the United States Criminal Justice System*

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Criminal justice policy affects the safety and peace of mind of all citizens, and has broad implications for crime victims, the accused, the convicted, and their families. While an essential issue for all of society, it is particularly relevant for law enforcement, attorneys, judges, and other legal professionals working within the criminal justice system in pursuit of justice and equal protection under the law.

With a growing consensus on both sides of the ideological divide that the United States requires criminal justice reform—either because the current system is unjust, inequitable, and ineffective; or simply because it's too expensive to taxpayers—*Crime and Consequence* is particularly timely.

While there are many valid approaches to studying criminal justice reform, a footnote in the landmark Supreme Court case of *Miranda v. Arizona* highlights one important approach. *Miranda* is famous for establishing that criminal suspects have a constitutional right to be informed of their right to be silent, their right to have an attorney present, and that any statement made may be used against them. What is less known is that the court, in discussing the roots of the privilege against self-incrimination, cited a passage from the thirteenth-century Talmudist Maimonides and a Talmudic law article on the topic.

Across six sessions, *Crime and Consequence* engages in this form of analysis, moving between Judaic and American legal doctrines, addressing ethical concerns, and sharing multiple perspectives on criminal justice reform. The course raises some of the most important questions about American criminal law in the light of Talmudic law: What is the Talmud's theory of criminal justice, and how does it compare with secular theories? How can we impose punishment fairly and effectively? What are we to think about the ballooning numbers of those incar-

cerated in the U.S.? Should the death penalty be permissible? How can offenders be rehabilitated? How can recidivism be reduced? When, if ever, can trust be restored to a convict? And most importantly, how can crime be prevented?

The Talmud is a rich compilation of Jewish legal and moral scholarship, preserved and taught by the ancient sages and transmitted by scholars throughout the ages. This work is well-positioned to shed light on some of the modern ethical and legal dilemmas because it provides not only answers, but also questions—asking not only what, but also why; and because it is willing to suppose, to imagine, and to test the boundaries of intellectual curiosity.

The following is a brief breakdown of the six sessions:

LESSON ONE

INCARCERATION

In 1996, Anthony Rolon, a seventeen-year-old drug dealer, stabbed Bobby Bothelo to death in a street fight. Rolon was sentenced to life in prison without the opportunity for parole. But in 2012, the Supreme Court in *Miller v. Alabama* held that a life sentence without parole for juvenile offenders was unconstitutional. Writing for the majority, Justice Kagan drew from neuroscience and developmental psychology and reasoned that, because juvenile brains are not fully developed, juveniles must always have the possibility for parole, given their potential for rehabilitation. At Rolon's parole hearing that followed, he pleaded with the board that he was a changed man and that he deserved a second chance. But Bothelo's family argued that an irreversible crime demands an irreversible sentence and that freeing Rolon would send the wrong message to society.

This case brings into focus some of the most important questions about modern criminology: Why does the U.S. have the highest incarceration rate in the world? Which theory of punishment guides America's criminal justice system? Why is recidivism so high? How ought we to balance the rights of the accused with the rights of victims and their families? And delving deeper: How do secular theories of criminal justice compare with Talmudic theories? How might the Talmud advise us on how to change the way we incarcerate and rehabilitate offenders?

LESSON TWO

DEATH PENALTY

Dzhokhar Tsarnaev, the captured and convicted Boston Marathon bomber, is often cited as an example of someone deserving the death penalty. Can one be *against* the death penalty even in the face of such abject evil? On the other hand, the case of Cameron Todd Willingham, executed in Texas under very dubious circumstantial evidence, is invoked by those who wish to do away with the death penalty. Can one still be *in favor* of the death penalty even after learning about such a highly questionable execution?

What is the Judaic take on this question? This matter was debated in *Hayes v. Lockhart*, 852 F.2d 339 (8th Cir. 1988), where the majority held that a prosecutor did not violate the defendant's rights when he cited Exodus 21:12—"He that strikes a man who dies shall surely be put to death"—during closing arguments in a capital murder case. However, the dissent in *Hayes* noted that such "selective quoting" from the Hebrew Bible was "not only incendiary, but misleading," since in reality, "ancient Jewish law abhors the death penalty." So, which is it?

LESSON THREE

DUE PROCESS

Sixteen-year-old Brendan Dassey confessed to the rape and murder of Teresa Halbach, and this admission was the primary evidence the jury relied on in reaching a guilty verdict in 2007. But questions have been raised about Dassey's confession. He has an IQ in the borderline deficiency range and he had been interrogated with the "Reid Method," with no legal representative or parent present. In *Dassey v. Dittmann*, United States magistrate judge William E. Duffin ruled that Dassey's confession had been involuntary and unconstitutional. But the Seventh Circuit reversed, and the Supreme Court declined to grant *certiorari*. Should these types of confessions be considered voluntary and admissible as evidence?

This lesson compares Talmudic and common law approaches related to the trustworthiness of testimony as it pertains to confessions and the testimony of cooperating witnesses and "jail snitches."

LESSON FOUR

REHABILITATION

Jacob Dunne, a British teenager, killed a paramedic with a single punch in 2011, after grabbing his fancy pirate hat following an England sports match. Stacie Rosen, a Florida woman, was arrested and accused of embezzling more than \$140,000 from her former employer between 2011 and 2014.

Can Dunne and Rosen be rehabilitated? If yes, how might this be achieved?

If society is going to reclaim rehabilitation as its goal in criminal sentencing, we must discuss how this would practically look, to what types of offenders it would and would not apply, and how to fashion a sentence that would really achieve this goal.

The Talmud offers a prescription for repentance that is meant to restore one's place within society. This prescription consists of an elaborate and rigorous multistep process that is driven by a motivated and repentant offender. By examining this process, we can gain insight into some key ideas for how to achieve rehabilitation in modern society. Some organizations that advocate alternative sentencing and restorative justice have incorporated elements of this thinking into their manner of operation.

LESSON FIVE

CRIMINAL RECORDS

After serving a short prison sentence for a nonviolent financial offense, Neil Cardoso applied for a job in an entirely different field as a professional chauffeur. He sailed through the interview process, meshing well with the personalities of his would-be coworkers, and he was offered the position. However, Cardoso was contacted a second time after his application was forwarded to a human resources department for what is ordinarily a *pro forma* review. A background check immediately brought attention to his previous conviction, and his candidacy was terminated. Cardoso lamented a perceived injustice: "I had no fiduciary responsibilities as a chauffeur; I would just be driving people around."

What happened to Cardoso happens to thousands of Americans, many of whom were not even convicted by a jury but who have made guilty pleas. There's a widespread consensus that this is a disincen-

tive for convicts to try to turn their lives around, and the end results are injustice and higher recidivism. On the other hand, employers do have a right to be protected from those who may cause them harm. How should these conflicting interests be balanced? This issue cannot be divorced from the cultural and legal “right to know” that is so prevalent in the U.S., leading to many details about criminal cases being publicly available, even before a conviction or exoneration.

How should we balance these differing values? At what point in the Talmudic model of criminal justice is it appropriate to publicize the identity of a criminal? When is trust restored to an offender? Does the nature of the crime make a difference? This lesson examines laws in the U.S., Talmudic law, and Israeli law.

LESSON SIX

CRIME PREVENTION

The first five lessons of *Crime and Consequence* focus on the *consequences* of crime: Why should we punish offenders? How can we punish fairly? How do we rehabilitate? When is trust restored? The sixth lesson pivots to focus on the root causes of crime. From a Jewish perspective, one of the most important ideas about criminal justice is to view crime as a consequence of societal factors that, if changed, can prevent crime from occurring in the first instance.

There are numerous areas of the law, some not without controversy, that relate to crime prevention; for example, “Terry stops,” gun control laws, “broken windows policing,” and so forth.

Poverty and unemployment are often cited as factors that create the preconditions for crime, and, as this lesson demonstrates, there is much truth to this argument. But the lesson proceeds to show that poverty and unemployment are not the only relevant factors. One famous example illustrating this point is the infamous murder carried out by Nathan Leopold and Richard Loeb, two boys from affluent families, and the famous trial that ensued.

Some argue that schools must incorporate virtues, values, character development, and perhaps even a moment of silence into their curricula, arguing that this will result in adults who are less inclined to engage in criminal activity due to enhanced self-control, empathy, and personal integrity. But this solution raises some thorny Constitutional issues regarding the establishment clause and the required separation of church and state, questions that call out for yet further analysis.