

Systems of Confinement & the Dignities of Freedom

How Bad do Animals want to get out?

<p>Mishnah Bava Kamma 6.1</p> <p>If a man brought his flock into a pen and shut it in properly and it went out and caused damage, he is exempt. If he had not shut it in properly and it went out and caused damage, he is liable. If the pen was broken through at night, or bandits broke through it, and the flock came out and caused damage, he is not liable. If the bandits brought out the flock, the bandits are liable.</p>	<p>משנה בבא קמא</p> <p>הכּוֹנֵס צֹאן לְדִיר, וְנָעַל בְּפָנֶיהָ כְּרָאוּי, וְנִצָּאָה וְהִזִּיקָה, פְּטוּר. לֹא נָעַל בְּפָנֶיהָ כְּרָאוּי, וְנִצָּאָה וְהִזִּיקָה, חַיֵּב. נִפְרָצָה בַלַּיְלָה אוֹ שֶׁפְּרָצוּהָ לְסֻטִּים, וְנִצָּאָה וְהִזִּיקָה, פְּטוּר. הַזֹּצִיאֶוּהָ לְסֻטִּים, לְסֻטִּים חַיֵּבִים:</p>
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What is a Cell?

<p><u>Responsa Minhat Yitzchak 2:82</u></p> <p>In the <u>Bircei Yoseph</u>, the author recorded the debate of the <u>Sha'ar Ephraim</u> and the <u>Bet Hillel</u> regarding prisons and whether or not they are exempt from the commandment to put up a <i>mezuzah</i>. The <u>Bet Hillel</u>, on the one hand, argued that the reason prisons are exempt from <i>mezuzah</i> is that they are not dignified dwelling places. The <u>Bircei Yoseph</u>, on the other hand, disagreed with this reason and nonetheless agreed that prisons are exempt from <i>mezuzah</i> – even in a case where a person stays there for a few months and there is no danger or humiliation involved. The reason is that these places (prisons) are made to be</p>	<p>שו"ת מנחת יצחק חלק ב סימן פב</p> <p>ובס' ברכי יוסף (סי' רפ"ו אות ג'), הביא מחלוקת השער אפרים עם הבית הלל לגבי בית האסורים, אם פטור ממזוזה, דב"ה כתב הטעם דבית אסורים פטור, משום שאינו דירת כבוד, וברכ"י דחה טעם זה, וכתב לצדד דפטור, הגם שיושבין שם כמה חדשים בקביעות, וליכא סכנה ולא ביזוי, מטעם שמקומות אלו נעשו לדירת ארעי, ולא לדירת קבע...</p>
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temporary dwellings, and not permanent dwellings...	
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Discipline overflowing from the Cell

Foucault

Michel Foucault, the twentieth-century French postmodern philosopher, argued extensively that western society during the Enlightenment period embraced the humanistic virtues of reason and justice, which led to fundamental shifts in the use of power and discipline. The penal system had shifted from regulating one's body, by means such as torture and corporal punishment, and replaced it with "technologies of punishment" regulating thoughts and behavior, by means such as strict surveillance and psychological abuse. This "disciplinary punishment" provides a potential abuse of power on the part of the parole officer, jailer, psychologist, and program facilitator over the prisoner. Foucault does not see the penal system as existing only on the margins of society but rather it manifests itself in many different ways throughout society. He views the prison, the school, the army barracks, and the workshop as completely interconnected in how discipline is administered. Foucault also argues that the disciplinary measures taken within the prison walls perpetuate "criminal factories" convincing the inmates that they are lazy, evil, useless, deviant, failures, and worthless.¹

¹ Michel Foucault, *Discipline and Punishment: The Birth of the Prison* (New York: Vintage, 1975).

Obsession with Voyeurism

“This perversion of the truth, familiar to the artist though it was, always unnerved him afresh and proved too much for him. What was a consequence of the premature ending of his fast was here presented as the cause of it! To fight against this lack of understanding, against a whole world of nonunderstanding, was impossible.”

— Franz Kafka, A Hunger Artist

Does Eating Animals Foster Racism? On White Supremacy & The Perpetuation of Cruelty!²

Almost any good analysis of racism or coloniality usually calls attention to the degree to which racialized folks are *animalized*. That is, we *animalize* or dehumanize certain folks, individually or as groups, thereby justifying their violation (45).

As long as these notions “the animal” and “the human” are intact, white supremacy remains intact... For this reason, I have advised against a strategy of “humanizing” groups of color or gaining protections for vulnerable groups on the basis of their humanity. [Law professor Maneesha] Deckha similarly warns us about relying on theories in which the subhuman is crucial, such as humanist and liberal theories: “Whether motivated by a focus on human vulnerability, nonhuman vulnerability, or both pursuing anti-violence projects with the current anthropocentric status quo seriously undercuts those very same projects” [See “The Subhuman as a Cultural Agent of Violence,” *Journal for Critical Animal Studies*]. As a result of holding this unique position—namely, that uprooting white supremacy is going to involve uprooting the human-animal divide... (47).

The racial hierarchy and racism, not to mention the racial thinking it generates, was the novel way white, Western Europeans in the colonial period legally and morally placed groups outside the “human” zone. As a result, the authors of this system were deeply invested in a rigid species divide where “human” indicated

² Aph Ko and Syl Ko, *APHRO-ISM: Essays on Pop Culture, Feminism, and Black Veganism from Two Sisters* (Lantern Books)

the domain of morality and law, and “animal: was a space of absence of being and lawlessness, inviting a need to be controlled, disciplined, and contained by “humans” (46).

Freedom

“Rabbi Joseph Dov Soloveitchik provides a conceptual framework for slavery that resonates in our contemporary context. Slavery, as portrayed in Jewish Law, is not only a physical condition, but a psychological reality that we must personally work to heal, if we are to realize our own liberty.:

-“On Freedom and Slavery” (in Reflections of the Rav, p. 198)

Meshech Chochmah, Genesis 1:26 (R. Meir **משך חכמה בראשית פרק א פסוק כו** Simcha of Dvinsk 1843-1926)

The image of God is the ability to make independent decisions (free will). God’s foreknowledge not withstanding, Gods knowledge is not external like humans, but is a part of His essence. We can’t understand this, for “if we knew God, we would be God.” But we do know that free choice is a result of God “pulling back” allowing room for His creatures to make decisions. It thus says, “Let us make man in our image” The verse thus means that God left space for humanity to freely choose

נעשה אדם בצלמנו - הצלם האלקי הוא הבחירה החפשית בלי טבע מכריח רק מרצון ושכל חפשי, והנה ידיעתו יתברך אינה מכרעת הבחירה כי אין ידיעתו באה נוספת כידיעה של בשר ודם הבאה מהחושים רק היא עצמותו יתברך וכמו שכתב הרמב"ם, (ה' תשובה ספ"ה) והנה אם כי אין ביכולת בנו להבין איך היא כי אילו ידעתיו הייתיו רק זאת אנו יודעים שלהבחירה החפשית הוא מצמצום האלקות שהשי"ת מניח מקום לברואיו לעשות כפי מה שיבחרו ושלל ממפעליהם הגזירה וההחלטה בפרטיות, ולכן אמר אל לבו (בראשית רבה ח-ג) נעשה אדם בצלמנו. פירוש, שהתורה מדברת בלשון בני אדם שאמר נניח מקום לבחירת האדם שלא יהא מוכרח במפעליו ומחויב במחשבותיו ויהיה בחירי חפשי לעשות טוב או רע כאשר יחפוץ נפשו ויוכל לעשות דברים נגד מזגי טבעו ונגד הישר בעיני ד', ולכן מדבר בלשון רבים...

between good and evil –
 either going against his own
 nature or against God – which
 is why the verse speaks in the
 plural...

Relationships

או חברותא או מיתותא --Friendship or death!
 -Ta'anit 23a

Profits

To a very great extent, it's the fast-food industry that really industrialized our agriculture - that drove the system to one variety of chicken grown very quickly in confinement, to the feedlot system for beef, to giant monocultures to grow potatoes. All of those things flow from the desire of fast-food companies for a perfectly consistent product. -Michael Pollan

Liberating the Divine from Confinement

Zohar III:113b³

בגין דצדקה דא אילנא דחיי, ...מאן דיהיב ליה צדקה למספנא, הוא עביד לעילא שמה קדישא שלימים
 וצדקה יהיב לצדק. וכד יהיב לצדק, פדין אתחבר דא בדא, ושמה קדישא אשתכח שלימים
 מאן עביד דא אתערוותא דלתתא, ודאי כאלו עביד שמה קדישא בשלימו. כגוונא דאיהו עביד לתתא, הכי
 אתער לעילא.

³ Translation from Professor Nathaniel Berman & his note: Tsedakah and Tsedek are common Zoharic synonyms for the Blessed Holy One and the Shekhinah!

One who gives *Tsedakah* [Righteousness/Charity] to a poor person makes perfect the holy Name above ...

For *Tsedakah* is the Tree of Life. And *Tsedakah*, gives to *Tsedek*, Justice. And when it gives to *Tsedek*, then they join one to the other. And the holy Name is found to be perfected.

The nexus of mass incarceration and mass exploitation of nonhuman animals (NHAs): 5 commonalities⁴:

- (1) the emotional and psychological strain and violence enacted on bodies that is interwoven into their day-to-day operations;
- (2) the geographies of these carceral spaces—their locations, design and layout, and the carefully choreographed and regulated movements within them;
- (3) the relationships between carcerality and “purpose breeding” that extends across both NHA and racialized prisoner populations;
- (4) the shared ways in which “animalization” of incarcerated bodies works to create the conditions for social death and “killability”; and
- (5) the legal and political contexts that produce certain lives as disposable “bare lives” (after Agamben 1998).

The oppressions that occur at sites of slaughter, experimentation, and labor that humans and nonhumans share are not the same, although they share key aspects. Ultimately, by drawing out these comparisons I aim to signal a nexus of interests that can be put to productive use for both critical human and animal geographies.

Space, Technology, and Control The geographies of the prison/execution chamber and the animal slaughterhouse— their locations; their physical structures, spatial layout and design; as well as their technological and other control features that regulate movements within them— map uncannily well onto

⁴ Carceral Space: Prisoners and Animals, Karen M. Morin, 2016

one another. Most obviously, these carceral sites are “hidden in plain view” in rural or remote locations, their color and architectures so innocuous and ordinary that they do not attract attention. From an aerial view, the prison and slaughterhouse look the same (Merritt and Hurley 2014). Pachirat (2011:23) discusses the “banal insidiousness” of the slaughterhouse that hides in plain sight, its construction blending physically into the landscape:

Controlled containment and controlled mobility are integral to the functioning of the execution chamber and the slaughterhouse as well (Gillespie 2014). Slaughterhouses are equipped with an array of chutes, pens, ramps, and technological equipment intended to efficiently and quickly move animals for processing; in addition to the stun gun described above are mobile shackle lines, electric prods, hoists, and mechanical restraining pens (Higgin et al. 2011). After being shot in the forehead and whether still alive and sentient, the cow is hung on a conveyer by a back leg and subsequently loses each of its body parts, its tail, its hooves, its hide, its head, its liver, one by one. Patterson (2002:110–131) argues that industrialized “killing centers” have several things in common—their technologies, speed, efficiency, and “rational” Tayloresque assembly line techniques (also see Glick 2013; Higgin et al. 2011:175). Their procedures require routine, mechanical, repetitive, and “programmed” tasks, taking bodies through similarly choreographed spaces. In the slaughterhouse and execution chamber, each movement is carefully choreographed, regulated, and surveilled. Gillespie (2003), Lynch (2000:15), and others write of the “execution assembly line” of the prison’s death house and execution chamber. This includes the tracking of the minute details of the condemned’s final weeks in isolation; a computer tracking system that opens cell doors, controls lights, and maintains an activity log of every movement and location of the inmate within the death house cell; to the execution chamber itself, the delegation of specific tasks to each member of the execution team; to the final enunciation—“go ahead”—of the warden (Lynch 2000:16).

Prison inmates, especially men of color, are among the most abjected group of humans treated as “not quite human humans”. They are among those

marginalized human groups that have been cast as “animals” (along with the colonized, the enslaved, other “others”; (Patterson 2002; Spiegel 1997; Wacquant 2001).

“Currently an unprecedented number of individuals live in captivity. In the US, over 2 million people are incarcerated in prisons.⁵ Around the world, men, women, and children are held as slaves. Wars and natural disasters have created refugees who live in dangerously deprived conditions in confined camps. Tens of billions of animals are captives of the food industry before they are slaughtered; hundreds of thousands of animals are kept in labs, zoos, and aquaria; millions of “pets” are captive in our homes.”

INCARCERATION, LIBERTY, AND DIGNITY⁶

“James Bryant, James Davis, David Haywood, Clyde Meikle, and Andre Pierce, incarcerated individuals who are serving a total of 225 years in a maximum-security prison share a slice of their experiences:

After our initial humiliation upon being strip searched when we enter prison, we lose all control of our lives. We will eat, bathe, and shave when told. We will be expected to follow direct orders, no matter how absurd or unfair. Noncompliance will be met with force. ... the depressive environment tends to stifle intellectual curiosity. We simply become too tired and sullen to engage in intellectual pursuits. Simply put, we dwell in our cells, we are not actively using our minds, and in a very real sense, we are thus losing our minds. The loneliness caused by prisons in general and

⁵ End of year 2009 statistics from the Bureau of Justice:

⁶ LORI GRUEN Forthcoming in Andrew Linzey (ed.) Handbook of Practical Animal Ethics

prison cells in particular is exacerbated by the loss of intimacy and the loving touch of friends and family...⁷

“Clearly causing physical and psychological suffering raises ethical concerns. In addition, denying captives their freedom itself constitutes a harm. Freedom is often thought to be the same as being permitted to act autonomously, to make our own choices, and to be in a condition in which there is an absence of arbitrary interference. Depriving someone of her freedom is one of the things that can make a life go badly for that individual. There are two ways that denying individuals their liberty may negatively impact the quality of their lives. If we understand liberty to be an instrumental value then respecting an individual’s liberty is important because it is conducive to other things that are valuable, like pleasure and well-being. Doing what one wants, being free to make choices and to act on them, following the desires one wants to satisfy, and not being interfered with in the pursuit of one’s desires are all freedoms that are important, because they contribute to making an individual’s life go better by allowing that individual to satisfy her desires. Individuals who are confined, restrained, or subordinated cannot act freely upon their desires and live their lives as they want. But liberty can also be thought of as an intrinsic value, a value that in itself, regardless of anything else, is constitutive of living a good life.”

“Alasdair Cochrane, for example, has argued that most captive animals do not value freedom and thus have no intrinsic interest in liberty. So pain-free captivity is not objectionable. He writes:

Most animals cannot frame, revise and pursue their own conceptions of the good. This is not to say that sentient animals do not have different characters, nor is it to deny that they can make choices. It is simply to make the point that most animals cannot forge their own life plans and goals. Given this, restricting the freedom of these animals does not seem to cause harm in the same way that it does for humans.... As autonomous agents,

⁷ James Bryant, James Davis, David Haywood, Clyde Meikle, and Andre Pierce, “Life Behind Bars” in Gruen 2014: 105-106.

most human beings have a fundamental interest in being free to pursue their own life plans, forge their own conception of a good life and not to have a particular way of life forced upon them.⁸

Ethically problematic captivity involves the incarceration and control of others who are otherwise perfectly capable of living freely and satisfying their own interests. While some are prone to use “prison” as metaphor, I’m thinking of literal captivity (actual jails, prisons, zoos, factory farms, etc.) that denies autonomy and, to varying degrees, infringes on the dignity of captives. In many cases, incarcerated individuals cannot be freed; this is most certainly true for captive bred wild animals who would die if released. The wrong that incarceration poses should force us to be cautious about creating more captives, by rethinking draconian imprisonment policies in the case of humans and by ending captive breeding, in the case of other animals. But as long as there will be captives, the dignity violations that they regularly experience can be minimized, and I believe we have a responsibility to devise and implement ways to do that.

Alternatives to Cages

Ir Ha'Miklat (City of Refuge)

<u>Numbers 35</u>	<u>במדבר פרק לה</u>
<p>9. The Lord spoke to Moses saying 10. Speak to the children of Israel and say to them, When you cross the Jordan to the land of Canaan, 11. you shall designate cities for yourselves; they shall be cities of refuge for you, and a murderer who killed a person unintentionally shall flee there. <u>12. These</u></p>	<p>(ט) וידבר יקוק אל משה לאמר: (י) דבר אל בני ישראל ואמרת אליהם כי אתם עברים את הירדן ארצה כנען: (יא) והקרייתם לכם ערים ערי מקלט תהיינה לכם ונס שמה רצח מכה נפש בשגגה: (יב) והיו לכם</p>

⁸ Alasdair Cochrane 2009. “Do Animals Have an Interest in Liberty?” Political Studies. Vol. 57 No. 3: 660-679: 669.

<p><u>cities shall serve you as a refuge from an avenger, so that the murderer shall not die until he stands in judgment before the congregation.</u> 13. The cities that you provide shall serve as six cities of refuge for you. 14. You shall provide the three cities in trans Jordan and the three cities in the land of Canaan; they shall be cities of refuge. 15. These six cities shall be a refuge for the children of Israel and for the proselyte and resident among them, so that anyone who unintentionally kills a person can flee there.</p>	<p>הערים למקלט מגאל ולא ימות הרצח עד עמדו לפני העדה למשפט: (יג) והערים אשר תתנו שש ערי מקלט תהיינה לכם: (יד) את שלש הערים תתנו מעבר לירדן ואת שלש הערים תתנו בארץ כנען ערי מקלט תהיינה: (טו) לבני ישראל ולגר ולתושב בתוכם תהיינה שש הערים האלה למקלט לנוס שמה כל מכה נפש בשגגה.</p>
<p><u>Babylonian Talmud Makkoth 10a</u></p> <p>These cities of refuge – they are not made to be small manors nor large cities – rather, they are medium-sized cities. We do not set up these cities in any place other than one with a water source. If there is not a water source – we transport water there. We do not set up these cities except in a place where there are markets. We also do not set up these cities except where there is a sizeable population. If the population dwindles – we add to it (by bringing people)...</p>	<p><u>תלמוד בבלי מסכת מכות דף י</u> <u>עמוד א</u></p> <p>ערים הללו, אין עושין אותן לא טירין קטנים ולא כרכין גדולים אלא עיירות בינוניות; ואין מושיבין אותן אלא במקום מים, ואם אין שם מים - מביאין להם מים; ואין מושיבין אותן אלא במקום שווקים; ואין מושיבין אותן אלא במקום אוכלוסין, נתמעטו אוכלוסיהן - מוסיפין עליהן...</p>

Responsibility that comes with Freedom

Rabbi Eliyahu Dessler, Michtav M'Eliyahu, Vol. I, p. 115 – Butterfly Effect

<p>Each decision that one makes impacts on all situations in every day of his life, whether to a small or great extent, whether beneficial or detrimental. And one's decisions affect not only oneself. For example, the decisions one makes regarding his children's education have repercussions for all future generations. Each person influences his environment. Therefore, the impact of one's decisions affects his environment as well as his generation, even the entire world, for all future generations.</p>	<p>וכל בחירה שבוחר האדם, עושה רושם בכל מצבו לכל ימי חייו, אם מעט ואם הרבה, אם לטוב ואם למוטב. ולא רק בו, אלא באשר יעשה לחינוך בניו, וכל אשר יתפתח מזה עד סוף דורותיו. וכל אדם פועל על סביביו. וע"כ רושם בחירתו יהיה גם על כל סביביו, וגם על כל סביבות דורותיו, וסביבות סביבותיהם, עד סוף כל הדורות.</p>
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Spiritual/Moral Confinement & Freedom

<p>"We must liberate ourselves from confinement within our private concerns...This reduces us to the worst kind of smallness, and brings upon us endless physical and spiritual distress. It is necessary for us to raise our thought and will and our basic preoccupations toward universality, to the inclusion of all, to the whole world, to humankind, to the Jewish people, to all</p>	<p>קא האדם צריך להחליץ תמיד ממסגרותיו הפרטיות הממלאות את כל מהותו, עד שכל רעיונותיו סובבים תמיד רק על דבר גורלו הפרטי, שזהו מוריד את האדם לעומק הקטנות ואין קץ ליסורים גשמיים ורוחניים, המסובבים מזה. אבל צריך שתהיה מחשבתו ורצונו, ויסוד רעיונותיו נתונים להכללות, לכללות הכל, לכללות העולם, לאדם, לכללות ישראל לכל היקום. ומזה תתבסס אצלו גם הפרטיות שלו בצורה הראויה. וכל מה שהתפיסה הכללית היא יותר חזקה אצלו, ככה תגדל שמחתו, וככה יזכה יותר להארת האור האלהי כי שם מלא חל על עולם מלא, ולית שכינתא שריא, באתר חסיר, וכיון דבאתר חסיר או פגים לא שריא איך תשרה באתר שהכל נטול וחסר, ואין שם כי אם נקודה דלה מצערה ואפסית, שהיא הפרטיות האנכית לבדה, והתביעה הזאת להיות תמיד נתון ביסוד הכללי בצרורא דלעילא דביה חיי כולא, הוא יסוד נשמת' הצדיקים, המתהלכים לפני האלהים, ומתענגים על ד</p>
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<p>existence...The firmer our vision of universality, the greater joy we will experience and the more we will merit divine illumination." (Orot HaKodesh- vol 3, page 147, Torah 101)</p>	<p>דף 148 והם צריכים להתחזק לדעת את עצמות רצונם, ושלא לעזבו, משום מניעה שבעולם, רק תמיד יגדלוהו יקדשוהו ויפארוהו ויזכו לברכת ד', מיסוד בכל מכל כל</p>
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