

*Human Rights Themes for Divrei Torah:*

*Indefinite/Preventive Detention and Parshat Vayeshev,*

*Genesis 37:1-40:23 (December 11-12)*

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At the beginning of Genesis 40, Joseph has been in prison for a very long time. The Torah is non-specific about the length of his incarceration, merely stating: "Some time later" (v.1) as a way of indicating that the narrative has moved forward. His incarceration is open-ended, without limits. Accused of a crime against Potifar's wife, we are never told whether Joseph has received a trial or a sentence of any length. Instead, he sits in jail awaiting some kind of intervention. According to Nahum Sarna, imprisonment (as opposed to immediate punishment) was unique to Egyptian law and order. His potential high status is revealed by the fact that he is incarcerated with "the king's prisoner." (39: 20). But the text gives us no sense that Joseph will be released any time soon. He is a danger to the state, and as such, the state has the right to hold him forever. This situation is not unique to Joseph. When the cupbearer and the baker arrive in the prison to keep him company, they, too, have sentences without limits. They approach Joseph for dream interpretation "When they had been in custody some time" (40: 4). Ironically, it is only through the interpretation of their dreams that they see an end to their detention: the cupbearer through rehabilitation, the baker to his death.

The Universal Declaration of Human Rights, ratified in 1948, contains many provisions about the right to a fair trial:

Article 9.

- No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.

- Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

- (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
- (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Indeed, it is a foundation of the American justice system that one is innocent until proven guilty, that one cannot be held simply on the suspicion that one might commit a crime in

future, and that only through a fair public trial can true justice be achieved. No one can be held arbitrarily, without a chance to respond to charges or see the evidence against them.

And yet, since 9/11, this is precisely the situation in which many of those held in the war on terror find themselves. Denied access to lawyers and the right of *habeas corpus*, the evidence against many of these detainees is tainted by the fact it was obtained under torture. Even as the Obama Administration attempts to close the detention facility at Guantanamo, it has asserted that the Constitution does not apply to prisoners held in Afghanistan, who can spend years in American custody. Whether or not those being held are guilty of being terrorists (something that cannot be ascertained unless they are brought to trial), they deserve basic human rights regarding detention and trial. We must hold ourselves to our own moral standards.

Moreover, the American legal system has proven to be an effective mechanism for prosecuting terror suspects. Any attempt to create a new system of tribunals will not give suspects the legal protections they deserve, nor ensure a fair trial. It is also especially troubling that the Obama Administration seems to be in favor of continuing to hold suspected terrorists in prison out of the fear of the crimes they might commit, absent any evidence of actual crimes committed.

Judaism has taken the judicial process very seriously. The care by which witnesses were examined in capital cases trickles down to all levels of the court system: people cannot be held guilty for things for which there is not exceptionally strong evidence. We must ensure that this kind of care is taken at all levels of government, even when those in question might be our enemies.

Joseph was lucky: with God looking over his shoulder, he was eventually redeemed from prison. Today, we cannot allow our government to continue a system that goes against the very rights this Country was founded to protect. The war on terror does not demand new rules. It demands that we use the freedoms we hold so dear as Americans to successfully bring this war to a close.

For more on the Judaism and the Judicial Process, see:

[http://www.rhr-na.org/files/RHR-NA curriculum 3 Judicial Process.pdf](http://www.rhr-na.org/files/RHR-NA%20curriculum%203%20Judicial%20Process.pdf)

***For more on indefinite detention:***

[\*Stop Indefinite Detention.\*](#) The ACLU's action center on issues of indefinite detention.

[\*After Guantanamo.\*](#) An episode of PBS NOW that looks at issues of detention.

[\*Victory on Preventive Detention in Context.\*](#) Glenn Greenwald. Greenwald discusses the problem that while the Obama Administration's plans to hold suspects in indefinite custody

is extremely problematic, legislation proposed by Congress (defeated in September) would have been much worse.

Also from Greenwald:

[Obama appointee previews the imminent preventive detention debate](#). A look at the rhetoric being used to silence those who disagree with the Administration's detention strategy.