

AGAINST SOLITARY CONFINEMENT: JONAH'S REDEMPTION AND OUR NEED FOR MERCY

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Author's Note: This essay is adapted from one I wrote in September 2013 to give as a *d'var Torah*¹ for Yom Kippur, and published in *Tablet*, an online Jewish magazine.² Mostly, I've added footnotes.

As a law professor, I am far more expert at constitutional than biblical exegesis. But perhaps because the Bible and the Constitution share their status as instrumental and highly authoritative documents, my own subjective experience of developing a reading or critique of both has turned out to be remarkably similar. Both exercises require close textual reading and wide-ranging investigation of its extant interpretations; both are informed by a normative vision. So although I am no Biblicalist, I have ventured into biblical interpretation with some sense of familiarity—and particularly so when the normative issue that draws me to the project is a familiar one. In this essay, I set out the results of one such venture.

When I decided in the summer of 2013 to study the *Book of Jonah*—traditionally read and analyzed in the early Fall for Yom Kippur—I was looking for some connection to the issue of solitary confinement. After all, Jonah, imprisoned inside the whale for three nights and three days, is perhaps the most famous solitary prisoner of all time. And solitary confinement was very salient that summer: in California, long-term solitary had provoked a hunger strike³ by tens of thousands of prisoners; dozens refused to

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¹ A “d’var Torah,” literally “a word of Torah,” is a homiletic interpretation of a Jewish text, usually of Torah, but in this case of haftarah, a selection from one of the prophetic books of the Hebrew Bible.

² Margo Schlanger, *In the Story of Jonah, an Urgent Lesson about the Dangers of Solitary Confinement*, TABLET MAGAZINE, (Sept. 11, 2013), available at <http://tabletmag.com/jewish-life-and-religion/143081/jonah-solitary-confinement>.

³ Ryan Devereaux, *Searching for the Truth About California's Prison Hunger Strike*, ROLLING STONE, (Aug. 13, 2013), <http://www.rollingstone.com/politics/news/searching-for-the-truth-about-californias-prison-hunger-strike-20130813>.

eat for two entire months, ending their protest only after the California legislature promised hearings.⁴ Strikers sought more humane and less isolating conditions—better food, greater access to sunlight, more individualized decision-making about their continued stay in Special Housing Units.⁵ Could *Jonah* have anything to say about the best response to reasonable demands like these?

At first blush it might seem that Jonah's (short) stay in solitary inside the whale was pretty good for him. Given my strongly held views against solitary confinement, was I headed to a critique rather than a reading of *Jonah*? I thought I might be. In the end, though, what I found was an interpretation that is far more sympathetic, for me. Even *Jonah*, it seems to me on careful analysis, didn't find redemption in solitary confinement.

Jonah's first chapter tells us about God's call to the prophet Jonah to go to Nineveh—an enormous, distant, and non-Jewish city—and inform the Ninevites of the errors of their ways. But Jonah does not do what prophets do. He does not answer God in words; he does not inveigh or argue. He simply disobeys, running away as fast and far as he can. He hires a ship to Tarshish, at the opposite end of the Mediterranean. On the ship, too, Jonah declines the prophetic role of speaking to God. As all the sailors cry out to their gods to save them from the deadly storm that threatens, Jonah sleeps. Even when lots are cast and it becomes apparent that he is the source of the storm, he explains to his shipmates what is going on but does not deign to pray, or even talk, to God. He has them throw him into the water, and when he is in the water, drowning, again he fails to seek salvation, intercession, or explanation.

But then things change. The text tells us: "The Lord appointed a great fish to swallow Jonah; and Jonah was in the belly of the fish three days and three nights. Then Jonah prayed to the Lord, his God, from the belly of the fish."⁶ So we learn from the *Book of Jonah* the possibility, the aspiration, that stress and discomfort, hopelessness and fear can lead to some kind of redemption. Jonah uses his three days alone with his conscience to

⁴ Paige St. John, *Inmates End California Prison Hunger Strike*, L.A. TIMES, (Sept. 5, 2013), <http://articles.latimes.com/2013/sep/05/local/la-me-ff-prison-strike-20130906>.

⁵ See PRISONER HUNGER STRIKE SOLIDARITY: PRISONERS' DEMANDS,, <https://prisonerhungerstrikesolidarity.wordpress.com/the-prisoners-demands-2/> (last visited Apr. 13, 2015).

⁶ *Jonah* 2:1 (Jewish Publication Society).

good effect. He ends them with obedience in two ways: First, he embraces his relationship with God, by calling out in prayer to him. And second, he goes to Nineveh, as commanded.

This episode and text shed light on the modern prison practice of solitary confinement—isolating prisoners alone in a cell smaller than a parking space⁷ for 23 hours a day, with an hour, still alone, in an “exercise yard” or “pen” (a shed-sized, ceiling-less room of concrete, open to the sky and elements but often with no ability to see out, except above).⁸ At last count, over 80,000 American prisoners were locked in solitary confinement.⁹ Prisoners and their keepers call this kind of confinement “seg” (for segregation) or “the box” or “the hole” or “the SHU” (Special Housing Unit).¹⁰ The original impetus for seg housing, used by the Quakers in the nation’s first prison in Philadelphia, was to provide time and occasion for thought and repentance¹¹—the very way that the whale’s belly worked for Jonah. Modern prison segregation, however, has a different theory. It is premised more on ideas about

⁷ The American Correctional Association standards specify that segregation cells should be no smaller than 80 square feet. *See Standards*, ACA, http://www.aca.org/ACA_Prod_IMIS/ACA_Member/Standards__Accreditation/Standards/ACA_Member/Standards_and_Accreditation/StandardsInfo_Home.aspx?hkey=7c1b31e5-95cf-4bde-b400-8b5bb32a2bad (last visited Apr. 22, 2015). A parking space is at least 7.5 by 10 feet, and usually much bigger. *See Asphalt Paving Design Guide* 5-2, available at https://www.apai.net/cmdocs/apai/designguide/AsphaltComposite_SmFst.pdf (last visited Apr. 13, 2015).

⁸ *See, e.g., Westefer v. Snyder*, 725 F. Supp. 2d 735, 747 (S.D. Ill. 2010), *vacated and remanded sub nom. Westefer v. Neal*, 682 F.3d 679 (7th Cir. 2012) (“An exercise yard at Tamms is an empty concrete room with a hard composite deck that is about fifteen by twenty feet (approximately the size of two cells), with walls about thirty feet high; only about a third of the yard is uncovered, and through this small uncovered space inmates occasionally are able to see a bird or an airplane passing overhead.”).

⁹ U.S. Dep’t of Justice et al., *Census of State and Federal Correctional Facilities*, 2005. The cited figure is derived from census data posted as Study No. 24,642, available at <https://www.icpsr.umich.edu/icpsrweb/ICPSR/studies/24642?q=24642> (last updated Oct. 5, 2010). I summed the population reported in V116 (restricted population), and added in the population—952—of the federal Bureau of Prison’s supermax facility in Florence; the result is 82,532. (The BOP reported that facility’s population, but did not report separate figures for restricted populations.) *Id.*

¹⁰ *E.g., Jacob Zoghlin, Punishments in Penal Institutions: (Dis)Proportionality in Isolation*, 21 HUM. RTS. BRIEF 24, 24 (2014).

¹¹ Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 CRIME AND JUSTICE 441, 456-457 (2006).

contagion and control—fear that, if not isolated, the “worst of the worst” prisoners will harm others—and the belief that the just punishment for noncompliance within prison is to make conditions harsher, sentencing offending inmates to a prison within a prison.¹²

So, how does this work in practice? We learn from countless witnesses, voices from inside solitary confinement,¹³ that Jonah’s hope, and his deliverance to a life of purpose, are atypical responses to isolation. How do most people react to isolation, to the modern belly of the whale? Here’s one account, from Cesar Francisco Villa, a California prisoner who had been in solitary confinement for 11 years when he wrote this essay.¹⁴ It is worth quoting at some length:

Nothing can really prepare you for entering the SHU. It’s a world unto itself where cold, quiet, and emptiness come together seeping into your bones, then eventually the mind. The first week I told myself: It isn’t that bad, I could do this. The second week, I stood outside in my underwear shivering as I was pelted with hail and rain. By the third week, I found myself squatting in a corner of the yard, filing fingernails down over coarse concrete walls. My sense of human decency dissipating with each day.... My sense of normalcy began to wane after just 3 years of confinement. Now I was asking myself, can I do this? Not sure about anything anymore. Though I didn’t realize it at the time—looking back now—the unraveling must’ve begun then. My psyche had changed—I would never be the same. The ability to hold a single good thought left me, as easily as if it was a simple shift of wind sifting over tired, battered bones.

There’s a definite split in personality when good turns to evil. The darkness that looms above is

¹² See, e.g., *Madrid v. Gomez*, 889 F. Supp. 1146, 1155 (N.D. Cal. 1995).

¹³ For a collection of such voices, see SOLITARY WATCH: VOICES FROM SOLITARY, <http://solitarywatch.com/category/voices-from-solitary/> (last visited Apr. 13, 2015).

¹⁴ Voices from Solitary: *Where Cold, Quiet, and Emptiness Come Together*, SOLITARY WATCH (Mar. 16, 2013), <http://solitarywatch.com/2013/03/16/voices-from-solitary-where-cold-quiet-and-emptiness-come-together/#more-8120>.

thick, heavy, and suffocating. A snap so sharp, the echo is deafening. A sound so loud you expect to find blood leaking from your ears at the bleakest moment. The waking is the most traumatic. From the moment your bare feet graze the rugged stone floor, your face begins to sag, knuckles tighten—flashing pale in the pitch of early morning. The slightest slip in a quiet dawn can set a SHU personality into a tailspin: If the sink water is not warm enough, the toilet flushes too loud, the drop of a soap dish, a cup.... In an instant your bare teeth, shake with rage. Your heart hammers against ribs, lodges in your throat. You are capable of killing anything at this moment. Flash attack; a beating, any violent outburst that will release rage.

This would be the time it's best to hold rigid. Take a deep breath. Try to convince yourself there's an ounce of good left in you. This is not a portrait you wish anyone to see. And then a gull screeches passing outside—another tailspin and you're checking your ears for blood.

And this is a good day.¹⁵

Some extremely resilient prisoners can survive even long-term solitary confinement with their minds and spirits whole, almost unscathed. But for many, perhaps most, isolation—and the featureless, purposeless life that accompanies it—is deeply damaging.¹⁶ Yet today, we impose this state, this harm, on tens of thousands of prisoners. In our national experiment of mass incarceration, we are not only imprisoning more people than any nation ever has before—over 20 percent of the world's current prisoners¹⁷—we are housing more of them in segregation, for

¹⁵ *Id.*

¹⁶ For a collection of citations to the literature, see Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J.L. & POL'Y 325 (2006).

¹⁷ *Highest to Lowest - Prison Population Total*, ICPS, http://www.prisonstudies.org/info/worldbrief/wpb_stats.php?area=all&category=wb_poptotal (last visited Apr. 21, 2015) (under “1. Select a category of data (the page will reload)”, select “Prison Population Control”; then under “2. Select a continent/region and click ‘Apply’”, select all; then, click Apply button).

longer periods of time¹⁸ than has ever been attempted. We should be unsurprised if few or none experience Jonah's positive response.

Let's move back to *Jonah* for a deeper look. Jonah learned something in the whale's belly, but even Jonah's newfound clarity was far from perfect. He learned obedience but not understanding. Later in the story we find that Jonah is deeply aggrieved, even angry with God. Why? Because when the Ninevites so speedily repented, God relented and went back on the prior promise to ruin the city. Jonah heads outside the city to sit alone—again, solitary if not confined—and stew over this felt grievance. He complains that God is “a compassionate and gracious God, slow to anger, abounding in kindness, repenting of evil,”¹⁹ throwing those words at God as an accusation, not, as Jews pray today, as words of hope or entreaty or praise.²⁰ Jonah is deeply skeptical of mercy and believes only in harsh justice. At the same time, he is psychologically in a very similar place as the prisoner quoted above, enraged and desperate over the withering of the gourd on which he was relying for shade.

God could simply reject Jonah's views about the world and subject him to punishment for them. Perhaps that punishment would be a harsher or longer term of isolation, as is so often the case in prison. But that's not what happens. Instead, what God rejects is Jonah's chosen isolation. God ends Jonah's segregation in the *sukkah*, the booth he has built, interrupting it with conversation that extolls the quality of mercy—deserved or not, applicable even to the thousands who don't know their right from left, to the beasts as well as the people.²¹ We don't see or hear Jonah's reaction, but the tradition subscribed to by most Jewish commenters on *Jonah* holds that he is abashed and persuaded, that this book is about Jonah's salvation more than the redemption of Nineveh.

Following that tradition, Jonah's *teshuvah*—return/redemption—does occur, but not in isolation in the whale's belly, and not as a matter of justice. Jonah's *teshuvah* occurs when God engages Jonah's humanity to explain to him the ineffable value of mercy and when Jonah understands that just like a child

¹⁸ *ACLU Briefing Paper: The Dangerous Overuse of Solitary Confinement in the United States 2*, available at https://www.aclu.org/files/assets/stop_solitary_briefing_paper.pdf (last visited Apr. 21, 2015).

¹⁹ *Jonah* 4:2 (Jewish Publication Society).

²⁰ The words Jonah uses are most of the “thirteen attributes of God” enumerated in Exodus 34:6-7, which are chanted repeatedly in Jewish liturgy.

²¹ *Jonah* 4:11 (Jewish Publication Society).

who doesn't know right from left, good from evil—just like all of us, including our prisoners—he, too, depends on mercy.